IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1968 OF 2017
WITH
WRIT PETITION NO. 1969 OF 2017

NGC Network Asia LLC. .. Petitioner
v/s.

Union of India through the
Secretary and Ors. .. Respondents

Mr. P.F. Kaka, Senior Counsel a/w Mr. Divesh Chawla i/b Atul Jasani for the petitioner
Mr. N.C. Mohanty for the respondent Revenue

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.

DATED : 5th APRIL, 2017

P.C.

1. This petition under Article 226 of the Constitution of India challenges the orders dated 16th December, 2015 and 23rd November, 2016 passed by the Income Tax Appellate Tribunal (Tribunal) under Section 254(1) and (2) of the Income Tax Act, 1961 (Act) respectively for Assessment Years 2007-08 and 2008-09. The petitioner has filed appeals under Section 260A of the Act from the Orders of the Tribunal dated 16th December, 2015 passed under Section 254(1) of the Act relating to Assessment Years 2007-08 and 2008-09. Therefore, we will not examine the petitioner's challenge to the order dated 16th

December, 2015 as the petitioner has already exercised an alternative remedy of appeal. Therefore, the petitioner's challenge to the order dated 16th December, 2015 is dismissed.

2. The petitioners' grievance which can be examined in this petition is only with regard to the order dated 23rd November, 2016 passed by the Tribunal under Section 254(2) of the Act, rejecting the petitioners' Miscellaneous Application for rectification of errors in the order dated 16th December, 2015. The order dated 16th December, 2015 passed under Section 254(1) of the Act recorded that the hearing of the petitioners' appeals for two subject assessment years had taken place on 4th September, 2015 and the appellant was represented by Ms. Sheetal Shah and Ms. Vandana Sagar appeared on behalf of the respondent Revenue.

3. The aforesaid recording of facts according to the petitioner is incorrect. It is the petitioners' case as set out in its Miscellaneous Application dated 26th January, 2016 that hearing of the appeals for the subject assessment years had taken place on 4th and 5th June, 2015. The Tribunal after having concluded the hearing on 5th June, 2015 reserved its orders. Thereafter, on 4th September, 2015 the

two appeals were again kept on board by the Tribunal. At that time, the application states that the petitioners were not represented by either Mr. Porus Kaka, Senior Counsel appearing for them or by their instructing Advocate as they were both out of India. The application further states that the order dated 16th December, 2015 erroneously records that Ms. Sheetal Shah had appeared in the matter. It is further stated that it is not clear as there is no Ms. Sheetal Shah in whose favour any letter of authority exists. In the above view, when this petition was on board for admission on 2nd March, 2017, the parties had taken time to obtain Roznama of the orders passed by the Tribunal in the two appeals on 4th and 5th June, 2015 and 4th September, 2015.

4. Today, Mr. Mohanty, learned Counsel appearing for the respondent Revenue tenders a copy of the Roznama received from the Registry of the Tribunal. The Roznama reads as under :-

"05.03.2015	*Hearing is adjourned to 04/06/2015 at the request of A's vide letter dt. 05/3/15. Both parties informed* *Sd/- Sd/-* *BRB J.S.* *(AM) (J.M.)*
04/06/15	*Hearing is adjourned to 05/06/2015 (Part Heard). Both parties informed.* *Sd/- Sd/-*

	AS *BRB* *(JM)* *(A.M.)*
05/06/15	*The Appeal / Ref. Application / Stay Application was called out today and heard / part heard by the bench constituted by Shri B.R. Baskaran A.M. Shri. Anit Shukla J.M.* *Appellant / Applicant was represented by Shri Porus Kaka* *Respondent was represented by Ms. Vandana Sagar.* *1. Kept for orders ______________* *2. Further haring on ____________* *Sd/-* *Sd/-* *Judicial Member* *Accountant Member* *Sd/-* *Sd/-* *Accountant Member* *Judicial Member* *AS* *BRB*
31.08.15	*Certain clarifications are required. Hence, these appeals are released and Registry is directed to post the appeals for hearing on 04.09.2015. Inform parties.* *Sd/-* *Sd/-* *(AS)* *(BRB)* *J.M.* *A.M.*
04/09/15	*The Appeal / Ref. Application / Stay Application was called out today and heard / part heard by the bench constituted by Shri B.R. Baskaran A.M., Shri. Anit Shukla J.M.* *Appellant / Applicant was represented by Sheetal Shah* *Respondent was represented by Ms. Vandana Sagar* *______________* *1. Kept for orders ______________* *2. Further haring on ____________* *Sd/-* *Sd/-* *Judicial Member* *Accountant Member* *Sd/-* *Sd/-* *Accountant Member* *Judicial Member* *AS* *BRB (AM)*
	Order pronounced on 16.12.2015."

5. From the above Roznama, it appears that the Tribunal had

reserved its order on the two appeals on 5th June, 2015. However, on 31st August, 2015 the bench of the Tribunal which heard the appeals released it and the Registry was directed to place the appeals again on board on 4th September, 2015 as certain clarification was required. The hearing on 4th September, 2015 only records that Ms. Sheetal Shah appeared for the petitioner-appellant before the Tribunal. Neither the Roznama nor the order dated 16th December, 2015 reflect any clarification sought by the Members of the Tribunal from the so called representative of the assessee.

6. Inspite of the above facts stated in the Miscellaneous Application dated 26th January, 2016, the order dated 23rd November, 2016 passed on the Miscellaneous Application proceeds to record that it is an undisputed fact that the Counsel by name Ms. Sheetal Shah appeared on behalf of the assessee on 4th September, 2015 and hence her appearance was marked on that date. This is factually incorrect as the contention of the petitioner is that nobody by name Ms. Sheetal Shah appeared on its behalf and that no authorization was granted to any person by that name. In the above view, the decision making process is flawed as it proceeds on an erroneous basis that it is an admitted position that Ms. Sheetal Shah appeared on behalf of the petitioner. In

fact, it is just the opposite according to the petitioner.

7. In these circumstances, it would be appropriate that the order dated 23rd November, 2016 is quashed and set aside and restored to the Tribunal for hearing and passing a fresh order on the Miscellaneous Application dated 26th January, 2016. The petition raises various other grievances in the petition with regard to its contention that there are errors apparent on record. At this stage, we have not examined the same, as we are restoring the Miscellaneous Application dated 26th January, 2016 to the Tribunal for fresh consideration and passing a fresh order after taking into account all contentions raised in the rectification application. All contentions kept open to be urged before the Tribunal.

8. Both the Writ Petitions are finally disposed of in the above terms. No order as to costs.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**