IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.665 OF 2017.

M/s Goa Shipyard Ltd. Rep.
by its chairman & MD Radm
Shekhar Mital., … Petitioner.

Versus

The Central Board of Direct
Taxes Rep. by its Director (OT &WT)
Govt. of India and 2 ors. ... Respondents

Mr. Chythanya K.K. and Mr.Shailesh Redkar, Advocate for the Petitioner.

Ms. Amira Abdul Razaq, Advocate for Respondent Nos.1, 2 & 3.

Coram : Shantanu S. Kemkar &
N. M. Jamdar, JJ.

Date : 6 August 2018.

P.C.:

Challenging the order dated 21 March 2017 Exh. A passed by the CBDT under Section 119(2)(b) of the Income Tax Act, 1961 by which the Petitioner's application seeking condonation of delay in filing supplementary claim of credit has been rejected the Petitioner has filed this petition.

2. During the course of hearing, it is revealed that the petitioner's grievance is regarding non-consideration of Two TDS certificates aggregating Rs.1,03,15,783/- while Assessment of the returns for the Assessment year 2008-09. It is also revealed from the record that the Assessment in question was reopened under Section 147 of the Act. In the Returns filed in response to the notice under Section 148, the Petitioner had claimed credit of the said two TDS certificates. The Petitioner had also moved an application for condonation of delay for grant of credit of the said two TDS certificates alongwith original returns which came to be rejected by the impugned order passed by the CBDT on the ground that in the reassessment order passed under Section 147 of the Act, the Assessing Officer has considered and disallowed the said two TDS credit at Rs.1,03,15,783/- on merits and the said issue forms part of the pending Tax Appeal No.30 of 2016 before this Court.

3. However, having gone through the records, it is clear that the issue of said TDS credit of Rs.1,03,15,783/- was not considered by the Assessing Officer in reassessment. The same is also reflected in the order dated 11 November 2014 passed by CIT(Appeals) Exh. R-1. Thus the Petitioner's claim for grant of credit of the said TDS has not at all being considered for the Assessment year 2008-09 by any of the Authorities.

4. In these circumstances, observations made in the impugned order to that extent may not be correct. As a result, we direct the Assessing Officer to take fresh decision in the matter with regard to the Petitioner's claim for grant of such TDS credit in accordance with law after giving an opportunity of hearing to the Petitioner. The Petitioner would be at liberty to place the material before the Assessing Officer to justify its claim for the said TDS credit for the relevant Assessment Year 2008-09. While deciding the aforesaid Petitioner's claim, Assessing Officer shall not be influenced by the observations made by the CBDT. Decision as aforesaid be taken within a period of four months from the date of appearance before the Assessing Officer in accordance with law. The Petitioner to appear before the Assessing Officer on 28 August 2018 at 11.00 am

5. With the aforesaid directions, petition stands disposed of.

N.M. Jamdar, J. ***Shantanu S. Kemkar, J.***