IN THE HIGH COURT OF BOMBAY AT GOA

REFERENCE UNDER INCOME TAX ACT NO. 24 OF 2016

DR. JOSE JULIO D'COSTA., ... Applicant

Versus

COMMISSIONER OF INCOME TAX,
BANGALORE., ... Respondent

Mr. R.G. Rivankar a/w. Mr. Rama Rivankar, Advocate for the Applicant.
Ms. Amira Razaq, Advocate for the Respondent.

Coram:- SHANTANU S. KEMKAR &
NUTAN D. SARDESSAI, JJ.

Date:- 17th January 2018

PC.

. Parties through their counsel.

2. This Reference under Section 256(1) of the Income Tax Act, 1961 (for short "the Act") has been made by the Income Tax Appellate Tribunal, Pune for answering the following questions.

"(1) Whether in computing the income from profession carried on by a member of the Communion of property in force in the State of Goa, in accordance to the provisions of Head D - Profits and gains of business of Profession' comprising of sections 28 to 44D, read with sec. 5A of the Ace deduction under section 32 on account of depreciation cannot be allowed on communion property used for the purpose of carrying on profession.

(2) Whether the member of the Communion Property in force in the State of Goa is a fractional owner of the Communion Property and hence is not entitled to depreciation under section 32 of the Communion Property used by him in the course of carrying on Profession ?"

3. The learned counsel for the Applicant submits that all the authorities i.e. Assessment Officer, the Commissioner and the Tribunal have not decided the issue involved in the matter on the basis of Section 5A read with Section 32 of the Income Tax Act as was prevailing during the relevant A.Y. 1984-85. It has been pointed out by him that Section 5A of the Act was amended in the year 1994 with retrospective effect giving effect to it from 01/04/1963 and Section 32 of the Act introducing the expression "owned only or partly by the Assessee" was amended with effect from 01/04/1999. In the circumstances, according to him the questions which have been referred for being answered by this Court will not arise and the Tribunal is required to consider the Assessee's case afresh taking into consideration the law at the relevant time of assessment.

4. The learned counsel appearing for the Revenue submits that Section 5A of the Act since being amended retrospectively, there would not be any change in the interpretation given by the Tribunal to that extent. However, she is not in a position to

dispute that Section 32 of the Act has been amended prospectively from 01/04/1999 and hence may not apply to the assessment of the relevant year in question.

5. Having considered the submissions made by the learned counsel for the parties, we are of the view that the matter requires to be remanded back to the Tribunal to decide it afresh taking into consideration the law prevailing at the relevant time. In these circumstances, we decline to answer the questions referred.

6. The Reference is disposed of accordingly.

NUTAN D. SARDESSAI, J. SHANTANU S. KEMKAR, J.

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