IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO.67 OF 2018

The Commissioner of Income Tax,
Panaji. … Appellant

Versus

Sesa Resources Ltd. … Respondent

Ms. Susan Linhares, Standing Counsel for the appellant.

Mr. R. G. Ramani, Advocate for the respondent.

Coram : R. M. Borde &
Prithviraj K. Chavan, JJ.

Date : 6th December 2018.

P.C. :

Heard Ms. S. Linhares, learned Standing Counsel for the appellant and Mr. R. G. Ramani, learned counsel for the respondent.

2. The substantial questions of law that have been framed in this appeal, we quote-

"(A) Whether the ITAT failed to consider the provisions of section 195 as amended by the introduction of Explanation – II to the said section 195 by the Finance Act, 2012 with retrospective effect from 01.04.1992, whereby it is clarified

that the obligation to comply with sub section (1) and to make deduction there under applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non resident, whether or not the non resident person has (i) a residence or place of business or business connection in India or (ii) any other presence in any manner whatsoever in India ?

(B) Whether the ITAT failed to consider that as the respondent had not deducted TDS under section 195 and the A.O. had correctly made the disallowance ?

3. The issue raised in this appeal is no more *res integra* and is covered by the decision rendered by the Division Bench of this Court in the matter of the *Commissioner of Income Tax-10 V/s Gujarat Reclaim and Rubber Products Ltd.*[1] Our attention is also invited to the decision of the Division Bench of this Court in the matter of the *Principal Commissioner of Income Tax Vs Sesa Goa Ltd.,*[2].

4. As regards the question (B) framed in the instant appeal is concerned, it is recorded in the paragraph 7 of the judgment that the question of TDS on commission income paid to foreign agents and the non-deduction of TDS is an issue fully covered by the decision of the Supreme Court in *GE India Technology Centre Private Limited Vs*

1 Income Tax Appeal Nos.2116 of 2013 & 169 of 2014 dated 8th December 2015.

2 Tax Appeal No.68 of 2016 dated 16th August 2017.

Commissioner of Income Tax and Another[3]. It has been held in the aforesaid judgment as well as in the matter of *CIT Vs Gujarat Reclaim & Rubber Products Ltd.*, by following the decision of the Supreme Court in *CIT Vs Toshoku Ltd.*[4], that the commission earned by a non-resident (that is to say, foreign) agent who carried on the business of selling Indian goods outside India cannot be said to be deemed income accrued or arising in India.

5. In view of the determination of the issue by the Supreme Court as well as by the Division Bench of this Court as has been recorded above, the appeal does not deserve any consideration and the same is dismissed.

Prithviraj K. Chavan , J. ***R. M. Borde , J.***

at*

3(2010)10 SCC 29

4 125 ITR 525