IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 73 OF 2017.

The Principal Commissioner
of Income Tax, Panaji., ... Appellant.

Versus

Britto Amusement Pvt. Ltd., ... Respondent.

Ms. S. Linhares, Standing Counsel for the Appellant.
Mr. Gaurang D. Panandiker, Advocate for the Respondent.

Coram:- N. M. JAMDAR &
PRITHVIRAJ K. CHAVAN, JJ.
Date:- 13 June 2018.

P.C.:-

This appeal is raising following two substantial questions of law. As regards the first question of law, we have recorded in the orders dated 6 November 2017 and 6 December 2017 that the first question of law does not arise.

2. As regards the second question of law is concerned, the Appellant has sought to agitate that the Tribunal did not record a finding regarding the amount assessable under Section 2(22)(e) of the Income Tax Act in the hands of shareholders, Dr. William Britto and

Mrs. Muriel Britto.

3. An order of assessment was passed by the Assessing Officer in respect of the Respondent -Britto Amusement Pvt. Ltd. This order dated 16 December 2011 was appealed before the Commissioner of Income Tax(Appeals). The appeal was disposed of on 30 October 2015. Thereafter, the Revenue filed an appeal before the Income Tax Appellate Tribunal, which was disposed of on 28 July 2016.

4. While disposing of the appeal by the Commissioner of Income Tax (Appeals) in paragraph 4.16 recorded as under:-

> *"Respectfully, following the said decision int he appellant's own case for A.Y. 2004-04, in this case also, addition in the hands of the appellant company is deleted. However, this leaves it open for the Assessing Officer to take necessary action in the hands of the shareholders as deemed fit as per law and as interpreted by the superior Courts.(Ground No.6 to 13 are allowed."*

The learned Counsel for the Respondent has submitted that the issue regarding two shareholders i.e Dr. William Britto and Mrs. Muriel Britto, after the decision of the CIT(Appeals) was never raised before the Income Tax Appellate Tribunal and the grounds of appeal filed before the Tribunal will show that appeal was only in respect of liability of the Respondent's/assessee. The learned Counsel for the Respondent submitted that the second question (b) does not arise, as there was no question of the Tribunal recording a finding since this issue was never urged before the Tribunal.

5. Nothing is shown as to how this objection of the Respondent is incorrect or that this issue was raised. For the question of law to arise, it should atleast be pleaded before the Tribunal, more particularly, if the question of law is that, that there is a failure of the Tribunal to give a decision. All that we say is that there is no finding by the Tribunal to show that the liberty granted by the CIT (Appeals), as above, has been interfered with.

6. In this circumstances, since both the questions do not arise for our consideration, the appeal is disposed of.

PRITHVIRAJ K. CHAVAN, J. ***N. M. JAMDAR, J.***