Santosh

***IN THE HIGH COURT OF BOMBAY AT GOA***

***TAX APPEAL NO.57 OF 2018***

The Principal Commissioner of Income Tax
Central) Karnatak .... Appellant.
Versus
Shantilal Khushaldas and Brothers
Pvt. Ltd. .... Respondent.

Ms. Amira Abdul Razaq, Standing Counsel for the Appellant.

Mr. P. Pardiwala, Senior Advocate with Mr. A. D. Bhobe, Ms. C. Mashelkar and Ms. K. Govekar, Advocates for the Respondent.

***Coram : S.C. Gupte &***
***Nutan D. Sardessai, JJ.***

***Date : 9th July, 2019.***

***P.C. :-***

Heard learned Counsel for the Appellant-Revenue and the Respondent-Assessee.

2. This Tax Appeal, filed by the Revenue, concerns addition of expenditure as commission on export of goods, paid on behalf of the Assessee to its overseas agents for facilitating its export business.

3. The Assessee is engaged in the business of mining and extraction of iron ore and processing, trading and exporting the same. For assessment year 2012-13, it filed a return of income, declaring a

total income of ₹28,79,06,746/-. The return was processed under Section 143(1) of the Income Tax Act. The case later was selected for scrutiny and a notice under Section 143(2) was issued to the Assessee. In the assessment, the Assessing Officer passed an order, purportedly on the basis of a DRI report made against exporters of iron ore, including the Assessee herein that there was under-invoicing of exports, adding the amount of ₹ 54,46,81,088/- paid by way of commission by the foreign counter-parties to whom exports were made by the Assessee to the overseas agents appointed by the Assessee for facilitating its export business and recovery of export proceeds. When the matter was carried by the Assessee before the Commissioner of Income Tax (Appeals), the latter held that the non-resident foreign commission agents had provided services to the Assessee outside India and no part of their income was assessable in India as the agents had no operations in India and, therefore, the provisions of Section 9(1)(i) could not be invoked. The CIT (Appeals), accordingly, deleted the addition of income made on account of dis-allowance of the commission paid to the non-resident foreign agents.

4. In the Department's appeal before the ITAT, it upheld the order of CIT (Appeals) observing, *inter alia*, that the payment of commission had a combined effect of liability as nil in the income of the Assessee and the transaction was between foreign agents and

the importers abroad which was not liable to be assessed in India.

5. The Department's appeal is on the footing that no deduction/expenditure, which was not claimed in the return of income, could be claimed before the Assessing Officer without filing any revised return. A similar plea, in a similar case involving the same issue, was before this Court in Tax Appeal No. 4 of 2019 (The Principal Commissioner of Income Tax, Panaji v/s. M/s. Rajaram Bandekar (Sirigao) Mines Pvt. Ltd.). This Court, after considering the case law cited by the Revenue and, in particular, the case of ***Goetze (India) Ltd. Vs. Commissioner of Income Tax***, 284 ITR 323 (SC), held that there was no question of the Assessee claiming any deduction by filing of a revised return. This Court held that what the Assessee received from its foreign buyers was the net FOB value; the Assessee was not claiming any expenditure on account of commission paid and, there was, thus, no question of any revised return. In that case, the Court observed that there was no tax effect whatsoever by reason of the expenditure made by foreign buyers by way of commission paid outside India and that, in the premises, no substantial question of law arose for consideration of the Court.

6. The decision in ***M/s. Rajaram Bandekar (Sirigao) Mines Pvt. Ltd***. (supra) covers the facts of the present case. For the reasons stated in that case, no substantial question of law arises in the

present Tax Appeal for consideration of this Court. The Appeal, in the premises, is dismissed.

***Nutan D. Sardessai, J.*** ***S.C. Gupte, J.***