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

**TAX APPEAL NO. 79 OF 2014**

Smt. Myra Muriel Paul,
Resident of House No.647,
Ponsulem, Colvale,
Bardez Goa 403 513
major in age. ... Appellant

***Versus***

Income Tax Officer, Ward-2 (2),
"Ayakar Bhavan",
Plot No.5, EDC Complex,
Patto, Panaji Goa. ... Respondent

Mr. S. D. Lotlikar, Senior Advocate with Mr. T. Sequeira, Advocate for the Appellant.

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

**Coram:- M. S. SONAK &**
**SMT. M. S. JAWALKAR, JJ.**
**Date:- 6th March, 2020**

***Oral Judgment*** **( Per M. S. Sonak,J)**

Heard Mr. S. D. Lotlikar, learned Senior Advocate who appears alongwith Mr. T. Sequeira for the Appellant and Ms. A. Razaq, learned Standing Counsel for the Respondent.

2. This appeal was admitted on 9th April, 2015 on the following substantial question of law:-

> "Whether in the facts and circumstances of the case, the appropriate assessment year for the purpose of assessment of the capital gains, arising out of the transfer by the appellant of the property belonging to her, was Assessment Year 2009-2010 in which the original sale-deed was executed during the previous year 2008-2009, or 2010-2011 since there was a Rectification Deed executed in the said year, substantially altering the original sale deed ?

3. On hearing the learned counsel for the parties, we find that apart from the aforesaid substantial question of law there arises in this appeal a question as to whether the property which is subject matter of the sale deed was an agricultural property. If this question is to be answered in favour of the Assessee then perhaps, there may arise no liability for payment of any tax.

4. Ms. Razaq however pointed out that though this ground was raised by the Assessee before the Commissioner (Appeals), the same was expressly given up. She points out that this is recorded not only in the order dated 28th October, 2013 made by the Commissioner (Appeals) but also in the order of the ITAT dated 4th April, 2014.

5. Though, it is true that there is a reference that this ground being withdrawn, in the peculiar circumstances of the present case, we feel that this point which goes to the root of the matter, is required to be adjudicated upon. However, Ms. Razaq is quite right in

her submission that this point cannot be adjudicated upon in this appeal.

6. Ultimately, the purpose of proceeding under the IT Act in particular before the Appellate Authority is to determine appropriate amount of tax, if any, which is liable to be paid by the Assessee. In the peculiar facts of the present case, we accept Mr. Lotlikar's contention that the Chartered Accountant who appeared before the Commissioner (Appeals) perhaps being confident of succeeding on ground No.3 chose not to stress on the remaining two grounds which went to the root of the matter. The record indicates that the Commissioner (Appeals) in fact, held in favour of the Assessee in so far as the third ground was concerned. However, ITAT, reversed the Commissioner (Appeals) on these three grounds and thereafter did not permit the Assessee to urge other two grounds though they went to the root of the matter.

7. Therefore, in these peculiar facts and circumstances of the case only, we set aside the impugned order made by the ITAT and the order dated 28th October, 2013 made by the Commissioner (Appeals) as well, and restore the Assessee's appeal before the Commissioner (Appeals) for fresh adjudication on all grounds. We make it clear that all contentions of all parties are left open to be adjudicated by the Commissioner (Appeals) in accordance with law and on their own merits.

8. Mr. Lotlikar, learned Senior Advocate in fact points out that the Assessee's husband's appeal in relation to the very same property is stated to be pending before the Commissioner (Appeals). If this is so then it is only appropriate that both the appeals are taken up together and disposed of by the Commissioner (Appeals). This is an additional ground for remanding the matter to the Commissioner (Appeals).

9. The substantial question of law framed in this appeal is not answered. Instead, the same is left for the determination of the Commissioner (Appeals) alongwith other two grounds which had in fact been raised before the Commissioner (Appeals) i.e. ground Nos.1 and 2.

10. The parties to appear before the Commissioner (Appeals) on 15th April, 2020 at 11.00 a.m. and file an authenticated copy of this order.

11. The appeal is disposed of in the aforesaid terms.

12. All concerned to act on the basis of the authenticated copy of this order.

**SMT. M. S. JAWALKAR, J.** **M. S. SONAK, J.**

**at***