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IN THE HIGH COURT OF BOMBAY AT GOA

Civil Application (Review) No. 3 of 2020

In

Writ Petition NO.1104 of 2017

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 1, MARGAO AND ANR., ... APPLICANTS

Versus

PANDURANGA TIMBLO INDUSTRIAS, THR. ITS CONSTITUTED ATTORNEY, ANANT LAWANDE., ... RESPONDENTS

Ms. Susan Linhares, Advocate *for the Applicants.*
Mr. Mihir Nanewadekar, Advocate with P. Karpe, Advocate *for the Respondent.*

CORAM: MANISH PITALE & M. S. JAWALKAR, JJ
DATED: 24th SEPTEMBER, 2021

P.C.

1. By this Review application, the department is before this Court seeking review of Judgment and order dated 9/7/2019 passed by this Court, only in so far as Writ Petition No.1104 of 2017 is concerned.

2. The ground for seeking review is that, according to the review-applicant, the aforesaid writ petition was wrongly clubbed with a bunch of writ petitions, wherein the contention of the assessee was that re-opening of assessment could not have been undertaken based on Justice Shah Commission Report. The applicant contends that in the present case concerning assessment year 2010-2011, re-opening of the proceedings was undertaken based on information received from office of the DCIT Circle, New Delhi and not on the Shah Commission Report. On the basis of this distinction sought to be drawn by the applicant, it has been claimed that there has been an error apparent on the face of the record and, therefore, the Judgment and order of this Court needs to be reviewed to the extent of this Court disposing of Writ Petition no.1104 of 2017.

3. Ms. Susan Linhares, the learned counsel appearing on behalf of the applicant made submissions in terms of the statements made in the review application, seeking to draw the aforesaid distinction between Writ Petition No.1104 of 2017 and the other Writ petitions disposed of by the said Judgment and order.

4. On the other hand, Mr. Mihir Nanewadekar, the learned counsel appearing for the non- applicant submitted that there was no error apparent on the face of the record, for the reason that if this Court peruses the reasons for re-opening of the assessment, although it is stated that the exercise is sought to be undertaken on the basis of the information received from the DCIT Circle , New Delhi, the whole basis of re-opening the assessment proceedings is based on the aspect of under invoicing on account of export of iron ore, based on the recommendations contained in the Shah Commission Report. In this regard, the learned counsel invited attention of this Court to the manner in which the objections raised by the non-applicant were dealt with and disposed of by an order dated 17/11/2017 passed by the applicant herein. It was brought to the notice of this Court that copious references were made to the Shah Commission Report and the very basis of calculating the extent of under invoicing was based on the Shah Commission Report. On this basis it was submitted that by a conscious judicial order Writ Petition No.1104 of 2017 was clubbed with other similarly situated petitions. On this basis it was contented that there was no error apparent on the face of the record in the Judgment and order dated 9/7/2019 passed by this Court.

5. We have perused the documents placed on record, including the reasons for re-opening assessment in the case of the non-applicant assessee in the present case. A perusal of the order dated 17/11/2017, passed by the applicant rejecting the objections raised by the non-applicant assessee indeed shows that the entire exercise of re-opening the assessment was undertaken with reference to the Shah Commission Report pertaining to under invoicing in connection with the export of iron ore. We are satisfied that the issue arising in Writ Petition No.1104 of 2017 was the same as the issue raised in the other Writ Petitions and that it was correctly clubbed with them and disposed of. Therefore, there is no substance in the contention raised in the present Review application. There is no error apparent on the face of the record demonstrated by the applicant. Hence, the Review application is dismissed.

M. S. JAWALKAR, J **MANISH PITALE , J**

MARIA AURA PEREIRA
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