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

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.1602 OF 2025**
**WITH**
**WRIT PETITION (L) NO.13118 OF 2025**

GIA India Laboratory Pvt. Ltd. .. Petitioner

Versus

Joint Commissioner of Income-tax (OSD),
(International Taxation), Circle-2(3)(2) & anr. .. Respondents

***Mr.J.D. Mistry, Sr. Advocate a/w. Niraj Sheth i/b. Mr. Atul K. Jasani*** *Advocates for the Petitioner.*

***Mr. Dinesh R. Gulabani,*** *(through V.C.) Advocate for the Respondent No.1.*

**CORAM: B. P. COLABAWALLA &**
**AMIT S. JAMSANDEKAR, JJ.**

**DATE: OCTOBER 08, 2025**

**P. C.**

1. Rule. Respondents waive service. With the consent of parties, Rule made returnable forthwith and heard finally.

2. These petitions challenge the impugned orders dated 24th March, 2025 passed under Section 201 of the Income-Tax Act, 1961 (for short "the Act") for the A.Y. 2018-19 and A.Y. 2019-20, holding the Petitioner to be an Assessee in default and raising demands of Rs.79,22,30,683/- and Rs.191,68,76,677/- respectively.

3. The Petitioner is engaged in the business of grading diamonds. It has entered into a Gem Grading Agreement with its parent, Gemological Institute of America, Inc. ("GIA-US") as per which it pays fees for diamond grading services to GIA US. Apart from grading fees, other payments are made by the Petitioner to GIA US, from which appropriate taxes are deducted. These other payments are not the subject matter of these Petitions.

4. Insofar as the grading fees are concerned, in the case of GIA US, a question initially arose in A.Y. 2010-11 as to whether they were chargeable to tax in India. It was held by the Assessing Officer that the grading fees would constitute business profits and were taxable in India because under Article 5 of the Double Tax Avoidance Agreement between India and the USA (for short "the India-US DTAA") GIA US had a Permanent Establishment (“PE”) in India (the Petitioner herein). While the Assessing Officer and the Dispute Resolution Panel took the view that GIA US had a PE in India, the Tribunal reversed this view and held that GIA US did not have a PE in India. Consequently, grading fees were held not to be taxable in India. The Tribunal has, thereafter, consistently followed this ruling in the Appeals filed by GIA US for the subsequent years, including for the A.Y. 2018-19 and A.Y. 2019-20 respectively, and held that GIA US does not have a PE in India and, therefore, grading fees are not chargeable to tax in India. The Department has filed

appeals before this Court against the Tribunal's orders, which are pending admission.

5. As mentioned earlier, despite the Tribunal having held that GIA US does not have a PE in India, for A.Y. 2014-15 and A.Y. 2016-17, the TDS officer had passed orders under Section 201 of the Act treating the Petitioner as an Assessee in default for not deducting tax at source from payments made towards grading fees to GIA US. The said orders were challenged by the Petitioner by filing Writ Petition Nos. 1430 and 10778 of 2021. These Petitions were allowed, and this Court, vide its judgment and order dated 02.02.2022, quashed the orders passed under Section 201. Being dissatisfied, the Revenue carried the matter to the Hon'ble Supreme Court. The Apex Court vide its judgment and order dated 6th December 2022 passed in SLP (C) No.19873 of 2022 ordered as under:

> *"Having heard Shri Rupesh Kumar, learned Counsel, appearing for the Revenue and Shri Jehangir D. Mistry, learned Senior Advocate, appearing on behalf of the assessee and in the facts and circumstances of the case and considering the fact that the liability of the recipient in the subject-matter of Appeal before the High Court and to avoid any further question, which may arise on limitation, <u>we confirm the impugned judgment and order passed by the High Court quashing and setting aside the order under Section 201 of the Income Tax Act, however, we also direct that the matter be remitted to the Assessing Officer (TDS) at the stage of issuance of show cause notice under Section 201 so that after the decision of the High Court in the pending Appeal, the same can be proceeded</u>*

*further in accordance with law and on merits."*

(emphasis supplied)

Thus, by virtue of the decision of this Court and the Apex Court, the orders under Section 201 for the A.Y. 2014-15 and A.Y. 2016-17 were quashed and the matters stand remitted to the Assessing Officer (TDS).

6. On similar lines as A.Y. 2014-15 and A.Y. 2016-17, proceedings under Section 201 of the Act were initiated against the Petitioner for the A.Y. 2018-19 and A.Y. 2019-20 and the impugned orders dated 24th March 2025 were passed under Section 201 holding the Petitioner to be an Assessee in default on the same ground, namely, on account of failure to deduct tax at source from grading fees paid to GIA US. Reliance was placed on the assessment order as well as the DRP directions in the case of GIA US for the A.Y. 2010-11 and, even though these orders were overturned by the Tribunal, the Tribunal's rulings were not followed on the ground that the same have not been accepted by the Department and Appeals have been filed before this Court. It is in these circumstances that the present petitions have been filed challenging the orders dated 24th March 2025 passed under Section 201 of the Act, primarily on the ground that the entire basis of the impugned orders under Section 201, i.e. that the grading fees received by GIA US from the Petitioner are taxable in India in the hands of GIA US by virtue of the

Petitioner being a PE of GIA US (and hence tax ought to have been deducted at source under Section 195 of the Act), is contrary to the Tribunal's rulings in the case of GIA US. The Petitioner has filed Appeals against the said orders out of abundant caution with a view to save limitation and, without prejudice to the rights and contentions raised in these petitions.

7. Mr. Mistri, the learned Sr. Counsel for the Petitioner relied on the decision of this Court in the Petitioner's own case for A.Y. 2014-15 and A.Y. 2016-17, as well as, on the decision of the Hon'ble Supreme Court and submitted that the Court should quash the impugned orders, which have been passed in blatant contravention of the Tribunal's decision. He relied on the decision of the Hon'ble Apex Court in ***Union of India vs. Kamalakshi Finance Corporation Ltd. [1992 Supp (1) SCC 443]***, wherein it has been held that the judgment delivered by the Tribunal is binding on the Assessing Officer and he is bound to follow it in its true letter and spirit. The mere fact that the order of the appellate authority is not "acceptable" to the department, in itself is an objectionable phrase, and just because the same is the subject matter of an Appeal is no ground for not following the Tribunal’s order, unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will be undue harassment to assessees and chaos in the administration of tax laws.

8. On the other hand, learned Counsel for the Respondent has relied on the affidavit in reply filed on behalf of the Respondents. He also submitted that the Petitioners have an alternative remedy in the form of an Appeal. He relied upon the provisions of Section 248 of the Act and contended that the Petitioner ought to have filed an Appeal under Section 248 of the Act. He also stated that if the proceedings under Section 201 were quashed, then, the Department would not have any recourse against the Petitioner in the event the decisions of the Tribunal in 'GIA US' case were reversed by this Court.

9. Mr. Mistri, in rejoinder, pointed out that the provisions of Section 248 would not apply in the present case and there is no agreement or arrangement between GIA US and the Petitioner whereunder the tax deductible, if any, is to be borne by the Petitioner. He submitted that the if the impugned orders are quashed and set aside, then the Petitioner shall withdraw the Appeals filed by it before the CIT (A) for A.Y. 2018-19 and A.Y. 2019-20 as the same would not survive.

10. We have heard both the sides and have also perused the record with the assistance of counsel. The availability of alternate remedy will not be a bar to the maintainability of the present petitions in view of the peculiar facts of this case and especially since the issue is no longer *res integra.* This Court has already held that proceedings contrary to the Tribunal's decision cannot

be taken and, on that footing, the order passed under Section 201 against these very Petitioners, for A.Y. 2014-15 and A.Y. 2016-17, were quashed. Even otherwise, we are of the view that the Assessing Officer (TDS) was acting without jurisdiction in passing orders contrary to the decisions of the Tribunal, which warrants our interference. Hence, the argument of the Revenue on the availability of an alternate remedy is hereby rejected.

11. It is common ground before us that the facts of the case for the present years [A.Y. 2018-19 and A.Y. 2019-20] are identical to the facts of the case for A.Y. 2014-15 and A.Y. 2016-17 and, therefore, the impugned orders cannot survive. Hence, they are quashed and set aside. However, keeping in mind the decision of the Hon'ble Supreme Court, we direct that for A.Y. 2018-19 and A.Y. 2019-20, the matter be remitted to the Assessing Officer (TDS) at the stage of issuance of Show Cause Notice under Section 201 so that after the decision of the High Court in the pending appeal, the same can be proceeded further in accordance with law and on merits, if need be. The impugned orders are quashed on these terms. Needless to add, all consequential proceedings become infructuous.

12. In view of this order, Mr. Mistri undertakes that the Appeals filed by the Petitioner will be withdrawn within 2 weeks of this order being uploaded on the High Court website. The said undertaking is accepted. In the event this

order is challenged by the Revenue and is set aside, the Appeals filed by the Petitioner for A.Y. 2018-19 and 2019-20 before the CIT (A) shall stand revived and thereafter, be heard on merits and in accordance with law.

13. Rule is made absolute in the aforesaid terms, and the above Writ Petitions are also disposed of in terms thereof. However, there shall be no order as to costs.

14. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

**[ AMIT S. JAMSANDEKAR , J.]** **[B. P. COLABAWALLA, J.]**

DATTAPRASAD GHANSHYAM PARAB

Digitally signed by DATTAPRASAD GHANSHYAM PARAB
Date: 2025.10.17 11:37:11 +0530



*Parab, HG Steno*