

IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO.17 OF 2013

Sesa Goa Limited,
Sesa Ghor,
20 EDC Complex, Patto,
Panjim, Goa 403001

... Appellant

Versus

The Joint Commissioner of Income-Tax,
Range 1, Panaji Goa.

... Respondent

Mr. R. G. Ramani, Senior Advocate with Ms. Srushti Patil, Advocate for
the Appellant.

Ms. Susan Linhares, Standing Counsel for the Respondent.

AND

TAX APPEAL NO. 18 OF 2013

Sesa Goa Limited,
Sesa Ghor,
20 EDC Complex, Patto,
Panjim, Goa 403001

... Appellant

Versus

The Joint Commissioner of Income-Tax,
Range 1, Panaji Goa.

... Respondent

Mr. R. G. Ramani, Senior Advocate with Ms. Srushti Patil, Advocate for
the Appellant.

Ms. Susan Linhares, Standing Counsel for the Respondent.

**Coram:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.**

Reserved on :- 27th February, 2020

Pronounced on: 28th February, 2020

Judgment (Per M. S. Sonak,J)

Heard Mr. R. G.Ramani, learned Senior Advocate who appears alongwith Ms. Srushti Patil for the Appellant in both these appeals.

2. Heard Ms. Susan Linhares, learned Standing Counsel for the Income Tax Department —Respondent, in both these appeals.

3. The learned counsel for the parties state that both these appeals can be taken up and disposed of by a common judgment and order.

4. Tax Appeal No.17 of 2013 was admitted by order dated 23rd September, 2013 on the following substantial questions of law :-

“i. Whether on the fact and in the circumstances of the case, the issue as to the Appellant's claim against disallowance u/s. 40(a)(i) of the Act of an amount paid as demurrage to the non-resident buyers of iron ore, which demurrage has been accepted by the Tribunal as taxable u/s. 172 of the Act, could be considered as covered by the decision of the Hon'ble High Court in the case of Orient

Goa P. Ltd. (Supra) considering that in the said decision, the Hon'ble High Court had observed that there were no pleadings or material brought on records to show that the case is governed by occasional shipping within the meaning of section 172 of the Act, and that the said section applies.

ii. Whether on fact and in the circumstances of the case, the issue about the Appellants claim that the demurrage paid to the non-resident buyers of iron ore in terms of the relevant sales contract was not the income accrued or arisen to the said non-resident buyers in India within the meaning of section 5(2) (b) read with Explanation 1(b) to section 9(1) (i) of the Act, could be considered as covered by the decision of the Hon'ble High Court in the case of Orient Goa P. Ltd. (supra).

iii. Whether on the facts and in the circumstances of the case and in law, the Education Cess and Higher and Secondary Education Cess is allowable as a deduction in the year of payment.”

5. Similarly, the Tax Appeal No.18 of 2013 was admitted vide order dated 23rd September, 2013 on the following substantial question of law :-

“i. Whether on the facts and in the circumstances of the case and in law, Education Cess and Higher and Secondary Education Cess is allowable as a deduction in the year of payment ?”

6. Both the appeals have been instituted by the same Appellant —Assessee though, in respect of assessment for different Assessment

Years. The substantial question of law No.(iii) in Tax Appeal No.17 of 2013 is also the only substantial question of law involved in Tax Appeal No.18 of 2013. For all these reasons, it is only appropriate for both these appeals are disposed of by a common judgment and order.

7. In so far as the substantial questions of law Nos. (i) and (ii) in Tax Appeal No.17 of 2013 are concerned, we note that the same arise in the context of the assessment for the Assessment Year 2008-2009. In fact, identical questions arose in relation to the Appellant —Assessee for the Assessment Year 2009-2010, which is evident from the order of Income Tax Appellate Tribunal (ITAT) in ITA No.72/PNJ/2012 and ITA No.85/PNJ/2012. These questions have been set out as question Nos.(3) and (4) in the judgment and order dated 8th March, 2013 by which the said two appeals came to be disposed of by the ITAT.

8. The ITAT, upon detailed consideration of such questions has in fact held in favour of the Appellant —Assessee and against the Respondent —Revenue, in so far as the Assessment Year 2009-2010 is concerned. The ITAT has referred to the Circular number 723 dated 19th September, 1995 which deals with the provision of Sections 172, 194C and 195 of the IT Act and held that it is apparently clear that the provisions of Sections 194C and 195 relating to tax deduction at source are not applicable. The ITAT further held that since the Circular issued

by the CBDT is binding on the Department, the Appellant —Assessee was not obliged to deduct TDS on the payment made as demurrage charges and the demurrage charges are also liable to be taxed under Section 172 of the IT Act. Since the Assessee was not liable to deduct tax at source, no question arise for making any disallowance under Section 40(a)(i).

9. Normally, the ITAT in respect of very same Assessee was expected to follow its own judgment and order dated 8th March, 2013 in concerning the Assessment Year 2009-2010, when it came to assessment in the Assessment Year 2008-2009. However, in its judgment and order dated 17th May, 2013 in ITA No.89/PNJ/2012, which is the impugned judgment and order in the Tax Appeal No.17 of 2013, ITAT felt itself obliged to follow the decision of the Division Bench of this Court in ***CIT Vs Orient (Goa) Co. Pvt. Ltd.*** reported in 3 Vol. 325 ITR 554 and on such basis answered the ground Nos. 5 and 6 set out in ITA No.89/PNJ/2012, against the Appellant —Assessee and in favour of the Respondent -Revenue.

10. Mr. R. G. Ramani, learned Senior Advocate appearing for the Appellant has now placed reliance upon the decision of the Full Bench of this Court in Income Tax Appeal No.989 of 2015 and connected matters disposed of on 5th February, 2016. He submits that

the Full Bench has held that *Orient (Goa) Private Limited* (supra) was not correctly decided and stands overruled by the decision of the Full Bench. He therefore submits that the view taken by the ITAT itself, in relation to the Assessment Year 2009-2010, which was not even challenged by the Respondent —Revenue, in case of this very Appellant —Assessee, is required to be restored, in so far as the Assessment Year 2008-2009 is concerned.

11. The judgment and order dated 5th February, 2016 made by the Full Bench indicates that reference to Full Bench was necessitated on account of another Division Bench of this Court disagreeing with the view taken in *Orient (Goa) Private Limited* (supra). Deferring to the demand of the judicial discipline, the Division Bench, placed papers before the Hon'ble the Chief Justice so as to obtain suitable direction for placing the matter before the Full Bench. Accordingly, the Full Bench was constituted to consider the following question of law :-

“Whether, while dealing with the allowability of expenditure under Section 40(a)(i) of the Income Tax Act, 1961, the status of a person making the expenditure has to be a non-resident before the provision to Section 172 of the Act can be invoked ?”

12. The Full Bench, upon detailed consideration of the matter has answered the aforesaid question of law in favour of the Assessee and

against the Revenue. In effect the Full Bench, has not agreed with the view taken by the Division Bench in *Orient (Goa) Private Limited* (supra).

13. As noted earlier, since, the ITAT in its impugned judgment and order dated 17th May, 2013, has solely relied upon *Orient (Goa) Private Limited* (supra) in order not to follow its own view, in respect of this very Appellant —Assessee, in respect of Assessment Year 2009-2010, we feel that the substantial questions of law Nos.(i) and (ii) now framed in Tax Appeal No.17 of 2013, are required to be answered in favour of the Appellant —Assessee and against the Respondent —Revenue, now that the Full Bench of this Court has disagreed in view of the Division Bench in *Orient (Goa) Private Limited* (supra) and decided the substantial question of law in favour of Assessee and against the Revenue. We do so accordingly.

14. Therefore, the substantial questions of law Nos.(i) and (ii) framed in Tax Appeal No.17 of 2013 are hereby answered in favour of the Appellant —Assessee and against the Respondent-Revenue. To that extent, the view taken by the ITAT in its impugned judgment and order dated 17th May, 2013 is ordered to be modified.

15. The substantial question of law No.(iii) in Tax Appeal No.17

of 2013 and the only substantial question of law in Tax Appeal No.18 of 2013 is one and the same namely, '*whether Education Cess and Higher and Secondary Education Cess, collectively referred to as "cess" is allowable as a deduction in the year of its payment ?*'.

16. The aforesaid question arises in the context of provisions of Section 40(a)(ii) which *inter alia* provides that notwithstanding anything to the contrary in sections 30 to 38 of the IT Act, the following amounts shall not be deducted in computing the income chargeable under the head "*Profits and gains of business or profession*", -

(a) *in the case of any assessee -*

(ia).....

(ib).....

(ic)

(ii) any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains.

[Explanation 1.—For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, any sum paid on account of any rate or tax levied includes and shall be deemed always to have included any sum eligible for relief of tax under section 90 or, as the case may be, deduction from the Indian income-tax payable under section 91.]

[Explanation 2.—For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, any

sum paid on account of any rate or tax levied includes any sum eligible for relief of tax under section 90A;]

17. Therefore, the question which arises for determination is whether the expression “*any rate or tax levied*” as it appears in Section 40(a)(ii) of the IT Act includes “cess”. The Appellant —Assessee contends that the expression does not include “cess” and therefore, the amounts paid towards “cess” are liable to be deducted in computing the income chargeable under the head “*profits and gains of business or profession*”. However, the Respondent —Revenue contends that “cess” is also included in the scope and import of the expression “ *any rate or tax levied*” and consequently, the amounts paid towards the “cess” are not liable for deduction in computing the income chargeable under the head “*profits and gains of business or profession*”.

18. In relation to taxing statute, certain principles of interpretation are quite well settled. In *New Shorrock Spinning and Manufacturing Co. Ltd. Vs Raval*, 37 ITR 41 (Bom.), it is held that one safe and infallible principle, which is of guidance in these matters, is to read the words through and see if the rule is clearly stated. If the language employed gives the rule in words of sufficient clarity and precision, nothing more requires to be done. Indeed, in such a case the task of interpretation can hardly be said to arise : *Absoluta sententia*

expositore non indiget. The language used by the Legislature best declares its intention and must be accepted as decisive of it.

19. Besides, when it comes to interpretation of the IT Act, it is well established that no tax can be imposed on the subject without words in the Act clearly showing an intention to lay a burden on him. The subject cannot be taxed unless he comes within the letter of the law and the argument that he falls within the spirit of the law cannot be availed of by the department. [See *CIT vs Motors & General Stores* 66 ITR 692 (SC)].

20. In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied, into the provisions which has not been provided by the legislature [See *CIT Vs Radhe Developers* 341 ITR 403]. One can only look fairly at the language used. No tax can be imposed by inference or analogy. It is also not permissible to construe a taxing statute by making assumptions and presumptions [See *Goodyear Vs State of Haryana* 188 ITR 402(SC)].

21. There are several decisions which lay down rule that the provision for deduction, exemption or relief should be interpreted

liberally, reasonably and in favour of the assessee and it should be so construed as to effectuate the object of the legislature and not to defeat it. Further, the interpretation cannot go to the extent of reading something that is not stated in the provision [See *AGS Tiber Vs CIT* 233 ITR 207].

22. Applying the aforesaid principles, we find that the legislature, in Section 40(a)(ii) has provided that “*any rate or tax levied*” on “*profits and gains of business or profession*” shall not be deducted in computing the income chargeable under the head “*profits and gains of business or profession*”. There is no reference to any “cess”. Obviously therefore, there is no scope to accept Ms. Linhares's contention that “cess” being in the nature of a “Tax” is equally not deductible in computing the income chargeable under the head “*profits and gains of business or profession*”. Acceptance of such a contention will amount to reading something in the text of the provision which is not to be found in the text of the provision in Section 40(a)(ii) of the IT Act.

23. If the legislature intended to prohibit the deduction of amounts paid by a Assessee towards say, “*education cess*” or any other “cess”, then, the legislature could have easily included reference to “cess” in clause (ii) of Section 40(a) of the IT Act. The fact that the legislature has not done so means that the legislature did not intend to prevent the

deduction of amounts paid by a Assessee towards the “cess”, when it comes to computing income chargeable under the head “*profits and gains of business or profession*”.

24. The legislative history bears out that the Income Tax Bill, 1961, as introduced in the Parliament, had Section 40(a)(ii) which read as follows :

“(ii) any sum paid on account of any cess, rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains”

25. However, when the matter came up before the Select Committee of the Parliament, it was decided to omit the word “cess” from the aforesaid clause from the Income Tax Bill, 1961. The effect of the omission of the word “cess” is that only any rate or tax levied on the profits or gains of any business or profession are to be deducted in computing the income chargeable under the head “*profits and gains of business or profession*”. Since the deletion of expression “cess” from the Income Tax Bill, 1961, was deliberate, there is no question of reintroducing this expression in Section 40(a)(ii) of IT Act and that too, under the guise of interpretation of taxing statute.

26. In fact, in the aforesaid precise regard, reference can usefully

be made to the Circular No. F. No.91/58/66-ITJ(19), dated 18th May, 1967 issued by the CBDT which reads as follows :-

“Interpretation of provision of Section 40(a)(ii) of IT Act, 1961 —Clarification regarding.- “Recently a case has come to the notice of the Board where the Income Tax Officer has disallowed the ‘cess’ paid by the assessee on the ground that there has been no material change in the provisions of section 10(4) of the Old Act and Section 40(a)(ii) of the new Act.

2. The view of the Income Tax Officer is not correct. Clause 40(a)(ii) of the Income Tax Bill, 1961 as introduced in the Parliament stood as under:-

"(ii) any sum paid on account of any cess, rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains".

When the matter came up before the Select Committee, it was decided to omit the word ‘cess’ from the clause. The effect of the omission of the word ‘cess’ is that only taxes paid are to be disallowed in the assessments for the years 1962-63 and onwards.

3. The Board desire that the changed position may please be brought to the notice of all the Income Tax Officers so that further litigation on this account may be avoided.[Board's F. No.91/58/66-ITJ(19), dated 18-5-1967.]

27. The CBDT Circular, is binding upon the authorities under the IT Act like Assessing Officer and the Appellate Authority. The CBDT Circular is quite consistent with the principles of interpretation

of taxing statute. This, according to us, is an additional reason as to why the expression “cess” ought not to be read or included in the expression “*any rate or tax levied*” as appearing in Section 40(a)(ii) of the IT Act.

28. In the Income Tax Act, 1922, Section 10(4) had banned allowance of any sum paid on account of '*any cess, rate or tax levied on the profits or gains of any business or profession*'. In the corresponding Section 40(a)(ii) of the IT Act, 1961 the expression “cess” is quite conspicuous by its absence. In fact, legislative history bears out that this expression was in fact to be found in the Income Tax Bill, 1961 which was introduced in the Parliament. However, the Select Committee recommended the omission of expression “cess” and consequently, this expression finds no place in the final text of the provision in Section 40(a)(ii) of the IT Act, 1961. The effect of such omission is that the provision in Section 40(a)(ii) does not include, “cess” and consequently, “cess” whenever paid in relation to business, is allowable as deductible expenditure.

29. In Kanga and Palkhivala's “*The Law and Practice of Income Tax*” (Tenth Edition), several decisions have been analyzed in the context of provisions of Section 40(a)(ii) of the IT Act, 1961. There is reference to the decision of Privy Council in *CIT Vs Gurupada Dutta* 14 ITR 100, where a union rate was imposed under a Village Self Government

Act upon the assessee as the owner or occupier of business premises, and the quantum of the rate was fixed after consideration of the 'circumstances' of the assessee, including his business income. The Privy Council held that the rate was not 'assessed on the basis of profits' and was allowable as a business expense. Following this decision, the Supreme Court held in *Jaipuria Samla Amalgamated Collieries Ltd Vs CIT* [82 ITR 580] that the expression '*profits or gains of any business or profession*' has reference only to profits and gains as determined in accordance with Section 29 of this Act and that any rate or tax levied upon profits calculated in a manner other than that provided by that section could not be disallowed under this sub-clause. Similarly, this sub-clause is inapplicable, and a deduction should be allowed, where a tax is imposed by a district board on business with reference to '*estimated income*' or by a municipality with reference to '*gross income*'. Besides, unlike Section 10(4) of the 1922 Act, this sub-clause does not refer to '*cess*' and therefore, a '*cess*' even if levied upon or calculated on the basis of business profits may be allowed in computing such profits under this Act.

30. The Division Bench of the Rajasthan High Court (Jaipur Bench) in Income Tax Appeal No.52/2018 decided on 31st July, 2018 (Chambal Fertilisers and Chemicals Ltd. Vs CIT Range-2, Kota), by reference to the aforesaid CBDT Circular dated 18th May, 1967 has held

that the ITAT erred in holding that the “*education cess*” is a disallowable expenditure under Section 40(a)(ii) of the IT Act. Ms. Linhares was unable to state whether the Revenue has appealed this decision. Mr. Ramani, learned Senior Advocate submitted that his research did not suggest that any appeal was instituted by the Revenue against this decision, which is directly on the point and favours the Assessee.

31. Mr. Ramani, in fact pointed out three decisions of ITAT, in which, the decision of the Rajasthan High Court in *Chambal Fertilisers and Chemicals Ltd.*(supra) was followed and it was held that the amounts paid by the Assessee towards the '*education cess*' were liable for deduction in computing the income chargeable under the head of “*profits and gains of business or profession*”. They are as follows :-

(i) DCIT Vs Peerless General Finance and Investment and Co. Ltd. (ITA No.1469 and 1470/Kol/2019 decided on 5th December, 2019 by the ITAT, Calcutta;

(ii) DCIT Vs Graphite India Ltd. (ITA No.472 and 474 Co. No.64 and 66/Kol/2018 decided on 22nd November, 2019)by the ITAT, Calcutta;

(iii) DCIT Vs Bajaj Allianz General Insurance (ITA No.1111 and 1112/PUN/2017 decided on 25th July, 2019) by the ITAT, Pune.

32. Again, Ms. Linhares, learned Standing Counsel for the

Revenue was unable to say whether the Revenue had instituted the appeals in the aforesaid matters. Mr. Ramani, learned Senior Advocate for the Appellant submitted that to the best of his research, no appeals were instituted by the Revenue against the aforesaid decisions of the ITAT.

33. The ITAT, in the impugned judgment and order, has reasoned that since “cess” is collected as a part of the income tax and fringe benefit tax, therefore, such “cess” is to be construed as “tax”. According to us, there is no scope for such implications, when construing a taxing statute. Even, though, “cess” may be collected as a part of income tax, that does not render such “cess”, either rate or tax, which cannot be deducted in terms of the provisions in Section 40(a)(ii) of the IT Act. The mode of collection, is really not determinative in such matters.

34. Ms. Linhares, has relied upon *M/s Unicorn Industries Vs Union of India and others*, 2019 SCC Online SC 1567 in support of her contention that “cess” is nothing but “tax” and therefore, there is no question of deduction of amounts paid towards “cess” when it comes to computation of income chargeable under the head profits or gains of any business or profession.

35. The issue involved in *Unicorn Industries* (supra) was not in the context of provisions in Section 40(a)(ii) of the IT Act. Rather, the issue involved was whether the '*education cess, higher education cess and National Calamity Contingent Duty (NCCD)*' on it could be construed as "*duty of excise*" which was exempted in terms of Notification dated 9th September, 2003 in respect of goods specified in the Notification and cleared from a unit located in the Industrial Growth Centre or other specified areas with the State of Sikkim. The High Court had held that the levy of education cess, higher education cess and NCCD could not be included in the expression "*duty of excise*" and consequently, the amounts paid towards such cess or NCCD did not qualify for exemption under the exemption Notification. This view of the High Court was upheld by the Apex Court in *Unicorn Industries* (supra).

36. The aforesaid means that the Supreme Court refused to regard the levy of education cess, higher education cess and NCCD as "*duty of excise*" when it came to construing exemption Notification. Based upon this, Mr. Ramani contends that similarly amounts paid by the Appellant —Assessee towards the "*cess*" can never be regarded as the amounts paid towards the "*tax*" so as to attract provisions of Section 40(a)(ii) of the IT Act. All that we may observe is that the issue involved in *Unicorn Industries* (supra) was not at all the issue involved in the present matters and therefore, the decision in *Unicorn Industries*

(supra) can be of no assistance to the Respondent —Revenue in the present matters.

37. Ms. Linhares, learned Standing Counsel for the Revenue however submitted that the Appellant —Assessee, in its original return, had never claimed deduction towards the amounts paid by it as “cess”. She submits that neither was any such claim made by filing any revised return before the Assessing Officer. She therefore relied upon the decision of the Supreme Court in *Goetze (India) Ltd. Vs Commissioner of Income Tax* (2006) 284 ITR 323 (SC) to submit that the Assessing Officer, was not only quite right in denying such a deduction, but further the Assessing Officer had no power or jurisdiction to grant such a deduction to the Appellant —Assessee. She submits that this is what precisely held by the ITAT in its impugned judgments and orders and therefore, the same, warrants no interference.

38. Although, it is true that the Appellant —Assessee did not claim any deduction in respect of amounts paid by it towards “cess” in their original return of income nor did the Appellant —Assessee file any revised return of income, according to us, this was no bar to the Commissioner (Appeals) or the ITAT to consider and allow such deductions to the Appellant —Assessee in the facts and circumstances of the present case. The record bears out that such deduction was clearly

claimed by the Appellant —Assessee, both before the Commissioner (Appeals) as well as the ITAT.

39. In *CIT Vs Pruthvi Brokers & Shareholders Pvt. Ltd.* 349 ITR 336, one of the questions of law which came to be framed was whether on the facts and circumstances of the case, the ITAT, in law, was right in holding that the claim of deduction not made in the original returns and not supported by revised return, was admissible. The Revenue had relied upon *Goetze* (supra) and urged that the ITAT had no power to allow the claim for deduction. However, the Division Bench, whilst proceeding on the assumption that the Assessing Officer in terms of law laid down in *Goetze* (supra) had no power, proceeded to hold that the Appellate Authority under the IT Act had sufficient powers to permit such a deduction. In taking this view, the Division Bench relied upon the Full Bench decision of this Court in *Ahmedabad Electricity Co. Ltd Vs CIT* (199 ITR 351 to hold that the Appellate Authorities under the IT Act have very wide powers while considering an appeal which may be filed by the Assessee. The Appellate Authorities may confirm, reduce, enhance or annul the assessment or remand the case to the Assessing Officer. *This is because, unlike an ordinary appeal, the basic purpose of a tax appeal is to ascertain the correct tax liability of the Assessee in accordance with law.*

40. The decision in *Goetze* (supra) upon which reliance is placed by the ITAT also makes it clear that the issue involved in the said case was limited to the power of the assessing authority and does not impinge on the powers of the ITAT under section 254 of the said Act. This means that in *Goetze* (supra), the Hon'ble Apex Court was not dealing with the extent of the powers of the appellate authorities but the observations were in relation to the powers of the assessing authority. This is the distinction drawn by the division Bench in *Pruthvi Brokers* (supra) as well and this is the distinction which the ITAT failed to note in the impugned order.

41. Besides, we note that in the present case, though the claim for deduction was not raised in the original return or by filing revised return, the Appellant —Assessee had indeed addressed a letter claiming such deduction before the assessment could be completed. However, even if we proceed on the basis that there was no obligation on the Assessing Officer to consider the claim for deduction in such letter, the Commissioner (Appeals) or the ITAT, before whom such deduction was specifically claimed was duty bound to consider such claim. Accordingly, we are unable to agree with Ms. Linhare's contention based upon the decision in *Goetze* (supra).

42. For all the aforesaid reasons, we hold that the substantial

question of law No.(iii) in Tax Appeal No.17 of 2013 and the sole substantial question of law in Tax Appeal No.18 of 2013 is also required to be answered in favour of the Appellant —Assessee and against the Respondent-Revenue. To that extent therefore, the impugned judgments and orders made by the ITAT warrant interference and modification.

43. Thus, we answer all the three substantial questions of law framed in Tax Appeal No.17 of 2013 in favour of the Appellant — Assessee and against the Respondent -Revenue. Similarly, we answer the sole substantial question of law framed in Tax Appeal No.18 of 2013, in favour of the Appellant —Assessee and against the Respondent — Revenue.

44. The impugned judgments and orders made by the ITAT are accordingly directed to be modified and necessary benefits extended to the Appellant —Assessee.

45. The appeals are disposed of in the aforesaid terms. There shall be no order as to costs.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

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