IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 20TH DAY OF NOVEMBER, 2018

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR.JUSTICE K.NATARAJAN

INCOME TAX APPEAL NO.11 OF 2010
C/W
INCOME TAX APPEAL NO.12 OF 2010
INCOME TAX APPEAL NO.13 OF 2010
INCOME TAX APPEAL NO.14 OF 2010

INCOME TAX APPEAL NO.11 OF 2010 :

BETWEEN:

SMT.PRAMEELA KRISHNA
NO.33, SHALIVAHANA ROAD,
MYSURU. ... APPELLANT

(BY SRI A.A.KULKARNI, ADVOCATE)

AND:

THE INCOME TAX OFFICER
WARD – 1(2),
MYSURU. ... RESPONDENT

(BY SRI K.V.ARAVIND, ADVOCATE)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF THE INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED 28.08.2009 PASSED IN ITA NO.764/BNG/2008, FOR THE ASSESSMENT YEAR 1999-2000, PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO; FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN; ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BENGALURU IN ITA NO.764/BNG/2008, DATED 28.08.2009, IN THE INTEREST OF JUSTICE AND EQUITY.

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INCOME TAX APPEAL NO.12 OF 2010

BETWEEN:

SMT.PRAMEELA KRISHNA
NO.33, SHALIVAHANA ROAD,
MYSURU. ... APPELLANT

(BY SRI A.A.KULKARNI, ADVOCATE)

AND:

THE INCOME TAX OFFICER
WARD – 1(2),
MYSURU. ... RESPONDENT

(BY SRI K.V.ARAVIND, ADVOCATE)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF THE INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED 28.08.2009 PASSED IN ITA NO.765/BNG/2008, FOR THE ASSESSMENT YEAR 2002-2003, PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO; FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN; ALLOW THE APPEAL AND SET

ASIDE THE ORDER PASSED BY THE ITAT BENGALURU IN ITA NO.765/BNG/2008, DATED 28.08.2009, IN THE INTEREST OF JUSTICE AND EQUITY.

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INCOME TAX APPEAL NO.13 OF 2010

BETWEEN:

SMT.PRAMEELA KRISHNA
NO.33, SHALIVAHANA ROAD,
MYSURU. ... APPELLANT

(BY SRI A.A.KULKARNI, ADVOCATE)

AND:

THE INCOME TAX OFFICER
WARD – 1(2),
MYSURU. ... RESPONDENT

(BY SRI K.V.ARAVIND, ADVOCATE)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF THE INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED 28.08.2009 PASSED IN ITA NO.766/BNG/2008, FOR THE ASSESSMENT YEAR 2003-2004, PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO; FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN; ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BENGALURU IN ITA NO.766/BNG/2008, DATED 28.08.2009, IN THE INTEREST OF JUSTICE AND EQUITY.

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INCOME TAX APPEAL NO.14 OF 2010

BETWEEN:

SMT.PRAMEELA KRISHNA
NO.33, SHALIVAHANA ROAD,
MYSURU. ... APPELLANT

(BY SRI A.A.KULKARNI, ADVOCATE)

AND:

THE INCOME TAX OFFICER
WARD – 1(2),
MYSURU. ... RESPONDENT

(BY SRI K.V.ARAVIND, ADVOCATE)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF THE INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED 28.08.2009 PASSED IN ITA NO.767/BNG/2008, FOR THE ASSESSMENT YEAR 2004-2005, PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO; FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN; ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BENGALURU IN ITA NO.767/BNG/2008, DATED 28.08.2009, IN THE INTEREST OF JUSTICE AND EQUITY.

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THESE INCOME TAX APPEALS COMING ON FOR HEARING THIS DAY, RAVI MALIMATH J., DELIVERED THE FOLLOWING:

JUDGMENT

The facts in ITA No.11 of 2010, would indicate that the assessee did not file any return of income for the asst. year 1999-2000, within the due date or belatedly. It came to light during the financial year 1998-1999, that the assessee had received a sum of Rs.2,000/- per month as family pension and declared annual rental value of Rs.1,32,489/- before the Mysuru City Municipal Corporation in respect of her immovable properties owned by her. Therefore, the case was reopened under Section-147 of Income tax Act and notices were issued, after obtaining necessary approval.

2. Thereafter, the assessee filed the return of income on 29.03.2006 declaring the total income of Rs.16,000/-. Subsequently, Notice under Section–143(2) and 142(1) were issued calling for certain information. In response, Sri.T.N.Ramadas, ITP appeared on behalf of the assessee. He assessed the total income at Rs.1,35,08,339/-.

3. Aggrieved by the same, an appeal was filed before the Commissioner of Income Tax (Appeals). The appeal was dismissed. Thereafter, an appeal was filed before the Tribunal. The Tribunal remanded the matter so far as the question of quantification is concerned. Insofar as the question of jurisdiction is concerned, the question was held against the assessee. Questioning the same, the present appeals are filed.

i) ITA 11 of 2010 for asst. year 1999-2000.
ii) ITA 12 of 2010 for asst. year 2002-2003.
iii) ITA 13 of 2010 for asst. year 2003-2004.
iv) ITA 14 of 2010 for asst. year 2004-2005.

The appeals were admitted to consider the following substantial question of law:

ITA No.11 of 2010 :

> *Whether the order of a quasi judicial authority in law like the Tribunal is sustainable as valid even when it does not consider at all, all the grounds taken before it and whereof detailed arguments with written submissions are filed before it?*

Without prejudice whether having regard to the facts and circumstances of the case and the provisions of law capital gains in respect of the property at Aga Abbas Ali road, Bangalore arose for the asst. year 1999-2000?

ITA Nos.12 and 13 of 2010 :

Without prejudice whether having regard to the facts and circumstances of the case the jurisdiction under Section – 147 and the issue of notice under Section – 148 were valid in the eyes of law?

Common Question of law in All connected Appeal :

Whether the question of assumption of jurisdiction under Section-147 and the issue of notice under Section–148 of the Act have been challenged before it and detailed arguments and written submissions have been filed thereof before it whether the order of the Tribunal without setting out the reasons for its conclusion but in a bald single sentence order disposes of the same such an order is valid in the eye of law?

4. The learned counsel for the appellant submits that only two substantial questions of law would arise for consideration. Hence, the substantial questions of law are reframed and the appeals are heard so far as these two questions are concerned, namely:

i) *Whether the order of a quasi judicial authority in law like the Tribunal is sustainable as valid even when it does not consider at all, all the grounds taken before it and whereof detailed arguments with written submissions are filed before it?*

ii) *Whether the question of assumption of jurisdiction under Section-147 and the issue of notice under Section–148 of the Act have been challenged before it and detailed arguments and written submissions have been filed thereof before it whether the order of the Tribunal without setting out the reasons for its conclusion but in a bald single sentence order disposes of the same such an order is valid in the eye of law?*

5. So far as the first substantial question of law is concerned, the same is that the Tribunal did not consider the grounds urged by the assessee, even though detailed arguments and resubmission were submitted. We have considered the order of the Tribunal at internal page–20, wherein after narrating the relevant facts of the case, the Tribunal comes to the conclusion that, on the issue of reassessments, the consideration of the facts by the Commissioner of Income Tax (Appeals) did not require any further deliberation and are upheld. This sentence in our considered view may not be right. To consider an appeal merely by holding that the consideration of facts would not require any further deliberation would not be appropriate. The Tribunal was required to reassess the material and thereafter come to a conclusion. Without according any reason and merely to accept the conclusion of the Commissioner of Income Tax (Appeals) therefore, would be inappropriate. Therefore, we are of the considered view

that the Tribunal would have to reconsider the matter afresh.

6. So far as the second substantial question of law with regard to assumption of jurisdiction under Section-147 of Income tax Act is concerned, hereto we are of the view that the Tribunal did not consider the plea of the assessee with regard to the jurisdiction under Section-147 of the Income Tax Act. Hence, this question also requires to be considered by the Tribunal. The failure of the Tribunal to consider the question of jurisdiction has therefore led to miscarriage of justice.

7. Under these circumstances, both the questions of law are held in favour of the assessee and against the Revenue, by holding that the order of the Tribunal is unsustainable, since it did not consider the grounds urged before it and has committed an error in not considering the contention of the assessee with regard to the question of assumption of jurisdiction under Section-147 of the

Income tax Act. Hence, while answering both the substantial questions of law, the matter stands remanded to the Tribunal for a fresh consideration in accordance with law, on both the issues.

All contentions are kept open.

The appeals are disposed off accordingly.

SD/-
JUDGE

SD/-
JUDGE

JJ