

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF FEBRUARY 2016

PRESENT

THE HON'BLE MR.JUSTICE JAYANT PATEL

AND

THE HON'BLE MRS.JUSTICE S SUJATHA

ITA No. 342/2015

BETWEEN

1. THE COMMISSIONER OF INCOME-TAX
LTU, JSS TOWERS
BSK III STAGE
BANGALORE-560 085.
2. THE DEPUTY COMMISSIONER OF INCOME-TAX
LTU, JSS TOWERS
100 FT RING ROAD
BANASHANKARI III STAGE
BANGALORE-560 085.APPELLANTS

(BY SRI. K.V.ARAVIND, ADVOCATE)

AND

M/S HEWLETT-PACKARD
INDIA SALES PVT. LTD.,
NO.24, SALARPURIA ARENA
HOSUR MAIN ROAD
ADUGODI
BANGALORE-560 030.RESPONDENT

(BY SRI. T.SURYA NARAYANA, ADVOCATE)

THIS APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, TO SET ASIDE THE ORDER PASSED BY THE ITAT, BANGALORE IN ITA NO.737/BANG/2013 DATED:30.12.2014 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE COMMISSIONER OF INCOME TAX, LTU, BANGALORE.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, **S.Sujatha J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is by the revenue under Section 260 A of the Income Tax Act 1961 (the 'Act' for short) against the order passed by the Income Tax Appellate Tribunal, Bangalore Bench "A", Bangalore relating to the assessment year 2007-08 by raising the following substantial questions of law:

"1. Whether the Tribunal was correct in quashing the order u/s.263 passed by the CIT without appreciating that the form 3CD report of the auditor had contended that the assessee has not considered CBDT's Circular No.715 in respect of section 194C pertaining to deduction of TDS on advertisement contract an Rs.8,96,04,391/- should be disallowed as an expenditure from the P&L account as per provision of section 40(a)(ia) and brought to tax?"

2. Whether the Tribunal is correct in quashing the order u/s.263 passed by the CIT without appreciating the fact that the omission on the part of the assessing officer not to consider applicability of the CBDT circular has made the assessment order erroneous and prejudicial to the revenue and hence the proceedings u/s.263 is valid and needs to be upheld?"

2. Briefly stated the facts are that the assessee is in the business of manufacturing and trading of computer accessories and had filed its return of income for the assessment year 2007-08. The assessments were concluded making a disallowance on account of depreciation on intangible assets amounting to Rs.1,21,10,326/- to the income declared by the assessee.

3. This order was taken up in revision by the CIT(LTU) (hereinafter referred to as the 'Commissioner') on the ground that the Assessing Officer has not disallowed the expenditure under Section 40a(ia) of the Act as per the audit report submitted by the statutory auditors in Form 3-CD wherein it was specifically made clear that the assessee has not considered CBDT Circular No.715 in respect of Section 194C of the Act pertaining to deduction of TDS on advertisement contract with M/s TLG India Pvt. Ltd. After hearing the parties, the Commissioner set-aside the assessment order holding that the provisions of Section 40a(ia) of the Act is applicable.

4. Being aggrieved by the said order, the assessee preferred appeal before the Tribunal. The Tribunal having considered the explanation furnished by the assessee before the Assessing Officer which forms part of the assessment records, has come to a conclusion that the assessee has deducted TDS under Section 194H of the Act and the provisions of Section 194C of the Act are not applicable to the present case. On law, it has followed the Judgment of the Calcutta High Court reported in 2014(36)ITR 432. As regards the binding nature of the CBDT Circular, the Tribunal has followed the Judgment of the Apex Court in Hindustan Aeronautics Limited reported in 243 ITR 808. The Tribunal has also followed a co-ordinate Bench decision of this Court in Dhaanya seeds Private Limited reported in ITA No.1523/Bang/2012 dated 27.09.2013. Thus, Tribunal having considered the case on facts and law, has come to a conclusion that the Commissioner had no jurisdiction to invoke the provisions of Section 263 of the Act as the twin conditions which are mandatorily required to be satisfied for invoking the provisions of Section 263 of the Act i.e., (i) order to be revised is erroneous and (ii) prejudicial to the interest of the revenue are not satisfied.

5. We have carefully considered the arguments addressed by both the parties and perused the material on record in the light of the Judgments referred to by the Tribunal in arriving at the conclusion.

6. An identical question regarding Section 40(a)(ia) of the Act was considered by the Calcutta High Court in **S.K. Tekriwal's** case (supra) and the findings given by the Calcutta High Court has been followed by the Tribunal. Similarly, as regards the binding nature of the CBDT, the Tribunal has followed the Judgment of the Apex Court in HAL (supra). In view of both the decisions cited supra, no substantial questions of law arises for our determination in this appeal.

Accordingly, appeal stands dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**