

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JANUARY, 2015

PRESENT

THE HON' BLE MR. JUSTICE N.KUMAR

AND

THE HON' BLE MR. JUSTICE B. VEERAPPA

ITA No. 434/2009

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX
CENTRAL CIRCLE,
C.R. BUILDING,
QUEENS ROAD,
BANGALORE.
2. THE ASST. COMMISSIONER OF INCOME-TAX,
CENTRAL CIRCLE-2(3),
C.R. BUILDING,
QUEENS ROAD,
BANGALORE.

.. APPELLANTS

(BY SRI. K V ARAVIND, ADVOCATE)

AND:

Mc. DOWELL & Co., LTD.,
(NOW KNOWN AS UNITED SPIRITS LTD.,)
No.51, RICHMOND ROAD,
BANGALORE-560 001.

... RESPONDENT

(BY SRI. S.R. ANURADHA, ADVOCATE)

THIS ITA IS FILED UNDER SECTION 260-A OF THE INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED 03.04.2009 PASSED IN ITA NO. 138/BANG/2009, FOR THE ASSESSMENT YEAR 2003-04 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND TO ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE ITAT, BANGALORE IN ITA No.138/BANG/2009, DATED: 03.04.2009 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2(3), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS INCOME TAX APPEAL COMING ON FOR HEARING THIS DAY, N. KUMAR J., DELIVERED THE FOLLOWING:

JUDGMENT

Smt. S.R. Anuradha, learned counsel takes notice to the respondent.

2. The revenue has preferred this appeal against the order passed by the Tribunal, which held that the amount representing sales tax deferred under

the sales tax deferred loan incentive scheme is to be deemed as paid and therefore not taxable.

3. The following substantial questions of law are raised in this appeal.

- “1. Whether the Tribunal was correct in holding that the reasons recorded for reopening of assessments had no nexus and the entire information was available with the Assessing Officer and therefore the reopened assessments was without jurisdiction, invalid and consequently was cancelled?”*
- 2. Whether the Tribunal was correct in holding that the assessee was not given sufficient opportunity to establish their case and the order passed u/s.144 of the Act was required to be set aside and the matter remitted back for fresh adjudication became academic in view of the reassessment being set aside?”*
- 3. Whether the Tribunal was correct in holding that a sum of Rs.13,78,41,600/- sales tax amount collected and not paid during the*

current assessment year will not be hit by Section 43B of the Act in view of the Board circular and the Bombay Sales Tax Act?"

4. Dealing with the liability of the sales tax, this Court had an occasion to consider the said question of law in the assessee's case itself in Income Tax Appeal No.899/2008 decided on 02.09.2014, where the said question was answered in favour of the assessee and against the revenue.

5. Insofar as reopening of the assessment is concerned, as the assessee is succeeding on merits, the said question has become purely academic and it is not necessary to answer. It is made very clear that the Tribunal has remanded the matter to the assessing authority for fresh consideration.

6. The assessing authority shall consider it afresh excluding the point, which was concluded in this judgment.

7. Smt. S.R. Anuradha, is permitted to file power within four weeks, from today.

Sd/-
JUDGE

Sd/-
JUDGE

Sbs*