IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JANUARY 2015

PRESENT

THE HON'BLE MR.JUSTICE N. KUMAR

AND

THE HON'BLE MR. JUSTICE B. VEERAPPA

I.T.A. NO. 313 OF 2009

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX
C.R. BUILDING, QUEENS ROAD,
BANGALORE

2. THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE-18(1)
C.R. BUILDING, QUEENS ROAD,
BANGALORE

... APPELLANTS

(BY SRI. K V ARAVIND, ADV.)

AND

M/S PANCHAJANYA CHITS PVT LTD
2/11, VISWANATHA RAO ROAD,
MADHAVANAGAR,
BANGALORE - 560001

... RESPONDENT

(BY SRI. R V PRASAD, ADV.)

THIS ITA IS FILED U/S.260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 16-01-2009 PASSED IN C.O.NO.90/BANG/2008 (IN ITA NO.999/BNG/2008), FOR THE ASSESSMENT YEAR 2004-05, PRAYING TO FORMULATE THE

SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN; ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN C.O.NO.90/BANG/2008 (IN ITA NO.999/BNG/ 2008), DATED 16-01-2009 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX,CIRCLE-18(1), BANGALORE IN THE INTEREST OF JUSTICE AND EQUITY.

THIS ITA COMING ON FOR FINAL HEARING THIS DAY, B. VEERAPPA J. DELIVERED THE FOLLOWING:

JUDGMENT

The revenue has filed the above appeal against the orders passed by the authorities holding that, the chit dividend paid by the assessee to its customer, would not amount to interest as defined under the provisions of Section 2(28A) of the Income Tax Act, 1961 (for short hereinafter referred to as 'the Act') and consequently, no deduction of TDS under the provisions of Section 194A of the Act is required to be made.

2. The assessee M/s Panchajanya Chits Pvt. Ltd., is a company engaged in the business of chit funds. The assessee has several chit groups, which are formed by having 25 to 40 customers to make one chit group.

These customers subscribe two equal amounts, which depend upon the value of chits. There are two types of chits - one is lottery system and the other is an auction system. In a lottery system, the lucky winner gets the chit amount after deduction of foreman service charges. In an auction system, the higher bidder gets the chit after deduction of foreman service charges. The bidding through lottery system or auction of chits is done once in a month.

3. The assessee has paid amounts to customers who had participated in its chit scheme. The said amount is called as dividend. However, while making these payments, the assessee failed to deduct TDS amount on the sum earned as income by the customers. Under the scheme, the unsuccessful members in the auction chit will earn dividend and the successful bidders will be entitled to retain the face value till the stipulated time under the scheme. The Department

authorities took the view that, the dividend partakes the character of interest and hence amount paid by the company/assessee to its members is interest and was liable for deduction of tax under the provisions of Sections 2(28A) and 194A of the Act. The assessee failed to do the same and therefore, it was treated as a defaulter under the provisions of Section 201 of the Act and was liable to pay interest under Section 201(1A) of the Act. Accordingly, the Deputy Commissioner of Income Tax has passed an order on 22.1.2008 holding that the assessee ought to have deducted tax at source at the time of disbursement of chit dividends and the same is not done thereby he has defaulted under the provisions of Sections 201 and 201(1A) of the Act. Being aggrieved by the said order, the assessee preferred an appeal before the Appellate Commissioner.

4. The Appellate Commissioner by the order dated 13.5.2008 has held that the assessee was not liable to

pay interest under the provisions of Section 2(28A) of the Act and therefore, no deduction at source under the provisions of Section 194A of the Act had arisen and therefore, there is no liability on the part of the assessee to deduct the tax at source. Accordingly, the order of the Deputy Commissioner of the Income Tax was set aside. Aggrieved by the said order, the revenue has preferred an appeal before the Tribunal.

5. The Tribunal, by its order dated 16.1.2009 has upheld the finding of the Appellate Commissioner and dismissed the appeal. Aggrieved by the same, the present appeal is preferred by the revenue.

6. The substantial question of law that arises for consideration in the present appeal is as under:

> *Whether the Appellate Authorities were correct in holding that the chit dividend paid by the assessee to its customers would not amount to interest as defined under Section 2(28A) of the Act and consequently no deduction of TDS under*

> *Section 194A of the Act need be made as definition of dividend contemplated under the Chit Fund Act should be adopted and not as per the Income Tax Act or the other law applicable?*

7. We have heard the learned Counsel for the parties to the lis.

8. The Division Bench of the Delhi High Court had an occasion to consider the said issue in the case of COMMISSIONER OF INCOME TAX -vs- SAHIB CHITS (DELHI) (PVT). LTD [2010] 328 ITR 342 (Delhi). After setting out the statutory provisions viz., Sections 2(28A) and 194A of the Act and the provisions of the Interest Act, 1974 and relying on the various judgments of the Apex Court, held that in the first place the amount paid by way of dividend cannot be construed as interest. It was further held that the dividend/discount cannot be mistaken for interest income in the hands of the subscribers and therefore, there has been no default under the provisions of Section 194A of the Act.

Further Section 194A of the Act has no application to such dividends and therefore, it held that there is no obligation on the part of the assessee to make any deductions under Section 194A of the Act before such dividend is paid to its subscribers of the chit. The aforesaid Division Bench decision of the Delhi High Court squarely applies to the facts of the present case. Hence, we do not see any merit in the present appeal. The substantial question of law is answered in favour of the assessee and against the revenue. Hence, we pass the following:

ORDER

Appeal is dismissed. No costs.

SD/-
JUDGE

SD/-
JUDGE

Rd/-