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. 347 OF 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-1(2)
C.R.BUILDING, QUEENS ROAD
BANGALORE

... APPELLANTS

(BY SRI. K V ARAVIND, ADV.)

AND

SHRI.L.SAMBASHIVA REDDY
NO.201, PALACE VIEW APARTMENT
RAMANA MAHARSHI ROAD
BANGALORE

... RESPONDENT

(BY SRI. K R PRASAD, ADV.)

THIS ITA IS FILED U/S.260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 30-1-2009 PASSED IN ITA.NO.211/

BANG/2008, FOR THE ASSESSMENT YEAR 2002-03, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN; ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA NO.211/ BANG/2008, DATED 30-1-2009 AND CONFIRM THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-1(2), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS ITA COMING ON FOR FINAL HEARING THIS DAY, N. KUMAR J. DELIVERED THE FOLLOWING:

JUDGMENT

The Revenue has preferred this appeal against the order passed by the Tribunal, holding the amount received by the assessee in pursuance to the award of the arbitrator, is to be taxed during the previous year, relevant to the assessment year in which the finality of the decision of the Hon'ble High Court of Andhra Pradesh, is delivered.

2. The assessee is a civil contractor and also the Managing Director of M/s. Saravana Constructions Pvt. Ltd., Bangalore. The residential premises of the assessee was subjected to search under Section 132 of the Income Tax Act, 1961 (for short, hereinafter referred

to as the 'Act'), on 8/10/2003. In pursuance of the notice issued under Section 153A of the Act on 24/3/2004, the assessee submitted return of income, admitting a total income of Rs.2,01,772/-, besides agricultural income. During the course of search, two cheques amounting to Rs.40,00,000/- [Rupees forty lakhs only] each, in favour of M/s. Saravana Constructions, represented by its proprietor Shri. L. Sambasiva Reddy, were found. The assessee gave a detailed explanation with reference to the said two cheques. Not accepting the said explanation, the assessing authority added those amounts to the total income admitted, on the ground that the award received is in pursuance to the contract work executed by the assessee during 1983-84. The assessee preferred an appeal to the Commissioner of Income Tax (Appeals). The Appellate Authority sought for a report from the Assessing Authority, on a written submission of the assessee. After obtaining the report, the same was sent to the assessee for his comments. He gave his comments. On considering the said material, the First Appellate Authority deleted the additional amount of Rs.80,00,000/- which was the amount mentioned in those two cheques, on the ground that the said amount can be brought under tax net during the previous year relevant to the assessment year in which the finality of the decision of the Hon'ble High Court of Andhra Pradesh, is delivered. Aggrieved by the said order, the Revenue preferred an appeal to the Tribunal. The Tribunal has affirmed the said judgment of the First Appellate Authority. Aggrieved by the said order, the Revenue has preferred this appeal.

3. The substantial question of law which arises for our consideration is as under:

> *Whether the Appellate Authorities were correct in holding that the interim award of Rs.80 lakhs received by the assessee pursuant to the order of Hon'ble Andhra Pradesh High Court on 16/11/2001 and 24/12/2001 is not liable to tax during the*

> *current assessment year 2002-03 as the same had not accrued and the same will be liable to tax only when the final award is passed by the Andhra Pradesh High Court ?*

4. We have heard the learned counsel for the parties.

5. The crux of the issue is, whether the enhanced award pronounced by the arbitrator and the dispute in question, had not attained finality, can it be brought to tax under the tax net during the period in which the amounts were received by way of an interim order ? Reliance is placed on several judgments of the Apex Court, as well as this court. All those cases are dealing with acquisition of land and payment of compensation and the matter is pending in appeal against such orders. But the principle which emerges from a reading of the aforesaid judgment is, income tax is not levied on a mere right to receive compensation. There must be something tangible, something in the nature of a debt,

something in the nature of an obligation to pay an ascertained amount. Till such time, no income can be said to have accrued. The enhanced compensation accrues only when it becomes payable, ie., when the court accepts the claim. It is also pointed out in the judgment of the Apex Court in the case of **COMMISSIONER OF INCOME TAX, WEST BENGAL – II VS. HINDUSTAN HOUSING AND LAND DEVELOPMENT TRUST LTD.**[1], as under:

> *"It must not be forgotten that, even if a court has awarded enhanced compensation, there is a right of appeal by the Government to the High Court, and the High Court may either disallow that claim or reduce the compensation. As against that judgment, there is a further right of appeal to the Supreme Court. The assessee also can appeal against the insufficiency of the enhanced compensation. Can it be said that the final determination by the highest court of the compensation would entitle the Income-tax Officer, notwithstanding the period of limitation*

[1] [1986] 161 ITR 524 (SC)

> *fixed under the Income-tax Act, to reopen the assessment in which he had included the initial compensation awarded by the Collector and recomputed the entire income on the basis of the final compensation? We do not think there can be any justification for such a proposition. On a proper construction of the terms 'accrue' or 'arise', we are of the view that such an interpretation cannot be placed. The interpretation given by us does not affect the interests of the Revenue. At the same time, it safeguards the assessee and prevents harassment. To hold otherwise would be contrary to the provisions of law."*

6. Therefore, what emerges from the aforesaid judgment is, when an assessee receives money, either under an award or by a decree of the court, or under an award passed by the arbitrator, if the amount paid to him is not in dispute, then that amount represents his income. He should offer it to tax in the previous year of the date of payment of the said amount. But if the amount due to him is in dispute and it is subject-matter

of a litigation and during the pendency of the litigation, if any interim order is made for payment of the said amount, the said payment is subject to the final result of the said proceedings. In the event the assessee looses the legal battle, the amount received by way of interim payment, has to be repaid. The amount to which he is entitled to, out of the disputed amount, would crystallize only when the litigation ends and payment is made after the finality of the litigation, then that amount is to be offered to tax in the previous year of the date of payment. Merely because by virtue of an interim order, with or without conditions, some payment is made for the purpose of Income tax Act, it would not constitute income and therefore there is no liability to pay tax on the day such interim payment is received. Therefore, in the instant case, the assessee is liable to pay the amount covered under the cheques, only after a final conclusion of the dispute before the

Andhra Pradesh High Court, as rightly held by the Appellate Authorities.

7. In that view of the matter, we do not see any merit in this appeal. The substantial question of law is answered in favour of the assessee and against the Revenue.

Appeal is ***dismissed***.

SD/-
JUDGE

SD/-
JUDGE

Rd/-