IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JANUARY, 2015

PRESENT

THE HON' BLE MR. JUSTICE N. KUMAR

AND

THE HON' BLE MR. JUSTICE B. VEERAPPA

ITA No.307/2009

C/w.

ITA Nos.298/2009, 299/2009, 291/2009

ITA NO.307/2009

BETWEEN:

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

2. THE INCOME TAX OFFICER-TDS
WARD-16(1),
C.R. BUILDING,
QUEENS ROAD,
BANGALORE

... APPELLANTS

(BY SRI K V ARAVIND, ADVOCATE)

AND

M/S AVENUE SUPER CHITS PVT. LTD.,
21, 2ND FLOOR, HOSPITAL ROAD,
(NEAR MENAKA THEATER),
BANGALORE-560 053

... RESPONDENT

(BY SRI A SHANKAR & SRI M LAVA, ADVOCATES)

THIS ITA FILED U/S.260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 16-01-2009 PASSED IN ITA NO.1029/BNG/2008, FOR THE ASSESSMENT YEAR 2004-05, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND TO ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA NO. 1029/BNG/2008, DATED 16-01-2009 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE INCOME TAX OFFICER, (TDS), WARD-16(1), BANGALORE IN THE INTEREST OF JUSTICE AND EQUITY.

ITA NO.298/2009

BETWEEN:

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

2. THE INCOME TAX OFFICER (TDS),
   WARD-16(1),
   C.R. BUILDING,
   QUEENS ROAD,

BANGALORE

... APPELLANTS

(BY SRI K V ARAVIND, ADVOCATE)

AND

M/S AVENUE SUPER CHITS PVT. LTD.,
21, 2ND FLOOR, HOSPITAL ROAD,
(NEAR MENAKA THEATER).
BANGALORE-560 053

... RESPONDENT

(BY SRI A SHANKAR & SRI M LAVA, ADVOCATES)

THIS ITA IS FILED U/S.260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 16-01-2009 PASSED IN ITA NO.1031/BNG/2008, FOR THE ASSESSMENT YEAR 2006-07, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND TO ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA NO.1031/BNG/2008, DATED 16-01-2009 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE INCOME TAX OFFICER, (TDS), WARD-16(2), BANGALORE IN THE INTEREST OF JUSTICE AND EQUITY.

ITA NO.299/2009

BETWEEN:

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

BANGALORE

2. THE INCOME TAX OFFICER-TDS,
WARD-16(1),
C.R. BUILDING,
QUEENS ROAD,
BANGALORE

... APPELLANTS

(BY SRI K.V. ARAVIND, ADVOCATE)

AND

M/S AVENUE SUPER CHITS PVT. LTD.,
21, 2ND FLOOR, HOSPITAL ROAD,
(NEAR MENAKA THEATER),
BANGALORE-560 053

... RESPONDENT

(SRI A. SHANKAR & SRI M. LAVA, ADVOCATES)

THIS ITA IS FILED U/S.260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 16-01-2009 PASSED IN ITA NO.1030/BNG/2008, FOR THE ASSESSMENT YEAR 2005-06, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, AND TO ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA NO.1030/BNG/2008, DATED 16-01-2009 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE INCOME-TAX OFFICER (TDS), WARD-16(1), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

ITA NO.291/2009

BETWEEN:

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

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

... APPELLANTS

(BY SRI K V ARAVIND, ADVOCATE)

AND

M/S PANCHAJANYA CHITS PVT. LTD.,
2/11, VISWANATHA RAO ROAD,
MADHAVANAGAR,
BANGALORE-560 001

... RESPONDENT

(BY SRI R V PRASAD, ADVOCATE)

THIS ITA IS FILED U/S.260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 16-01-2009 PASSED IN ITA NO.1001/BNG/2008, FOR THE ASSESSMENT YEAR 2006-07, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND TO ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA NO.1001/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.

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

JUDGMENT

The revenue has preferred these appeals against the order passed by the Authorities, 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 Income Tax Act (hereinafter referred to as 'Act') and consequently no deduction of TDS under Section 194(A) of the Act is required to be made.

2. The assessee is a private limited company being assessed in the status of a company engaged in the business of chit fund. The assessee has several chit groups which are formed by having 25 to 40 customers

to make one chit group. The customers subscribe to equal amount, which depends upon the value of chits. There are two types of chits. One is the lottery system and the other is auction system. In the lottery system the lucky winner gets the chit amount and in the auction system the highest bidder gets the chit amount. The assessee has paid amounts to its subscribers who had participated in its chit scheme. The said amount is called as dividend. However, while making these payments, the assessee has failed to pay TDS amount on the sums 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 period under the scheme. The revenue took the view that when the successful bidder in an auction took the face value or the prize money earlier to the period to which he was entitled, he is liable to pay an amount to others who contributed to take prize money which was termed as interest. This interest amount, which had been paid by the assessee to its members was liable for deduction of tax under Section 2(28A) and 194(A) of the Act. The assessee had failed to do so. Therefore, the assessee was treated as defaulter under Section 201 of the Act and was liable to pay interest under Section 201(1A) of the Act.

3. The assessee preferred an appeal against the said order. The Appellate Commissioner held that the amount paid by way of dividend under the chit scheme by the assessee to the members of the chit cannot be construed as interest under the Act and therefore, there is no liability on the part of the assessee to deduct tax at source.

4. Aggrieved by the said order, the revenue preferred an appeal to the Tribunal, which has affirmed

the said findings and dismissed the appeals. Aggrieved by these two orders, the revenue is in these appeals.

5. The substantial question of law that arises for consideration in these appeals 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 u/S.2(28A) of the Act and consequently no deduction TDS u/s.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 or the other law applicable?"*

6. We have heard the learned counsel appearing for both the parties.

7. The Delhi High Court had an occasion to consider the same substantial question of law in the case of ***COMMISSIONER OF INCOME-TAX V. SAHIB***

CHITS (DELHI) (PVT.) LTD., reported in ***(2010) 328 ITR 342 (DELHI).*** After setting out the statutory provisions namely, Section 2(28A), the provisions of the Interest Act, 1974 and noticing various judgments held, in the first place the amount paid by way of dividend cannot be treated as interest. Further, Section 194(A) of the Act has no application to such dividends and therefore it held there is no obligation on the part of the assessee to make any deductions under Section 194(A) of the Act before such dividend is paid to its subscribers of the chit. The aforesaid judgment squarely applies to the facts of these appeals. Hence, we do not see any merit in these appeals. The substantial question of law is answered in favour of the assessee and against the revenue and hence, we pass the following:

ORDER

Appeals are dismissed.

No costs.

Sd/-
JUDGE

Sd/-
JUDGE

Sbs*