

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 21ST DAY OF OCTOBER 2014

PRESENT

THE HON'BLE MR. JUSTICE N.KUMAR

AND

THE HON'BLE MR. JUSTICE B. MANOHAR

W.A.NO.3640/2013(T-IT)

BETWEEN

THE CHIEF COMMISSIONER OF
INCOME TAX, BANGALORE-II,
C.R.BUILDING, QUEENS ROAD,
BANGALORE-560 001.

... APPELLANT

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

AND

M/S. UB GLOBAL CORPORATION LTD.
(AMALGAMATED WITH M/S.UNITED
BREWERIES (HOLDINGS) LTD.
LEVEL 12, 14 & 15
UB CITY, 24, VITTAL MALLYA ROAD,
BANGALORE-560 001
REP. BY ITS EXECUTIVE VICE PRESIDENT
GROUP TAXATION SRI S. RAMANUJAM
AGE 59 YEARS
S/O LATE SRI R. SRINIVASAN.

...RESPONDENT

(BY SMT.S.R.ANURADHA, ADV.,)

THIS W.A. IS FILED U/S 4 OF THE KARNATAKA HIGH COURT
ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT
PETITION NO.16136/2011(T-IT) DATED 11.03.2013.

THIS W.A. COMING ON FOR HEARING, THIS DAY,
N.KUMAR J. DELIVERED THE FOLLOWING:

JUDGMENT

Revenue preferred this writ appeal against the order dated 11.03.2013 passed by the learned Single Judge extending the benefit of the Board Circular, in particular, Clause 2(c) in the case of assessee and granting relief to him for waiver of interest payable under Section 234B of the Income Tax Act, 1961 (for short 'the Act').

2. The learned Single Judge has set out in his order the facts of the case in detail and therefore, there is no need to reproduce the same. He has formulated the point for consideration at paragraph-7. Then, he has extracted paragraph 2(c) on which reliance is placed. Thereafter, at paragraph-14, he has observed as under:

“Viewed in this perspective the decision of the High Court or Supreme Court need not be in the case of the assessee. In other words the decision of incidence and applicability of Income Tax under the act, need not

necessarily be in the case of the assessee but could be in any other case i.e. of any other assessee or otherwise. As long as the decision covers the field of Income Tax legislation, as may be applicable to any assessee, would be a circumstance for reduction or waiver of interest under Sec.234 A to 'C' as the case may be."

In coming to that conclusion, he has relied on the decision of the Kerala High Court in **A.V.Thomas**, which was followed by the Tribunal in granting relief to the assessee under Section 80HHC of the Act. Now, the said judgment is not accepted by the Supreme Court in the case of IPCA Laboratory Limited. Following the said judgment which impliedly overrules the judgment of the Kerala High Court in **A.V.Thomas** case, the assessee is held liable to pay tax under Section 80HHC. Therefore, the question for consideration is whether the assessee's bonafide belief that the decision of the High Court of Kerala in **A.V.Thomas** is applicable to his case is correct. In fact, the assessee's case is, the Tribunal following the said judgment only gave

him the benefit and it is only when the Apex Court in IPCA Laboratory's case impliedly overruled the said decision, the liability arose for payment of interest as the assessee is not entitled to the benefit of the said Board Circular. It is well settled that the exemption Notifications and the Board circulars, which are issued from time to time would bind the revenue to the fullest extent but those Notifications and the circulars have to be strictly construed. If so construed, the Board Circular categorically states at Clause 2(c) that, where any income was not chargeable to income tax in the case of an assessee on the basis of any order passed by the High Court within whose jurisdiction he is assessable to income-tax, and as a result he did not pay income tax in relation to such income in any previous year and subsequently, in consequence of any retrospective amendment of law or the decision of the Supreme Court of India, or as the case may be, a decision of a larger Bench of the jurisdictional High Court in any assessment or re-assessment proceedings the advance tax paid by the assessee during such financial year is found to be less than

the amount of advance tax payable on his current income and the assessee is chargeable to interest under Section 234B or Section 234C and the Chief Commissioner/Director General is satisfied that this is a fit case for reduction or waiver of such interest, he can exercise his power and grant the relief to the assessee. As is clear from the aforesaid Clause, if any order is passed on the basis of any order passed by the High Court within whose jurisdiction the assessee is not assessable to income tax, then the benefit of the Circular is not available to the assessee. The said circular is carefully worded making it clear that it is only when a judgment of the High Court within whose jurisdiction the assessee is assessable is not liable to pay tax or if the Supreme Court of India declares the law, it is the law for the whole country and then only the assessee would be entitled to have such benefit. Therefore, the observations of the learned Single Judge, the decision of the High Court or the Supreme Court need not be in the case of assessee is not a correct statement of law having regard to the wordings of the

circular. It is only the decision of the High Court within whose Jurisdiction the assessee is assessable is invoked which is reversed by the Supreme Court or if the Supreme Court lays down the law in a case arising from any jurisdiction in the entire country, the assessee would be entitled to the benefit. Therefore drawing analogy and giving a particular interpretation would not be in accordance with law. In this view, the learned Single Judge was not justified in extending the benefit of the said Circular when it was not applicable to the case of assessee. In this view, we pass the following order:

The appeal is allowed. The impugned order dated 11.03.2013 passed by the learned Single Judge is set aside.

Parties to bear their own costs.

Sd/-
JUDGE

Sd/-
JUDGE

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