

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF FEBRUARY 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE RAVI V. HOSMANI

ITA No.346/2010

BETWEEN:

1. Commissioner of Income Tax,
Central Revenue Buildings,
Queens Road,
Bangalore- 560 001

2. Deputy Commissioner
Of Income Tax,
Circle -8(1),Bangalore.

...APPELLANTS

(By Sri. Jeevan J Neeralagi, Advocate)
a/w Sri. E.I. Sanmathi, Advocate)

AND:

Shri D.M. Purnesh,
6/1, Connaught Road,
Bangalore.

...RESPONDENT

(By Sri. V Chandrashekar, Advocate)
a/w Sri V Narendra Sharma, Advocate)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF THE INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 16/04/2010 PASSED IN ITA NO.408/BANG/2009, FOR THE ASSESSMENT YEAR 2004-05, PRAYING TO i) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN ii) SET ASIDE THE APPELLATE ORDER DATED 16/04/2010 PASSED BY THE ITAT, 'A'

BENCH, BANGALORE, IN APPEAL PROCEEDINGS ITA NO.408/BANG/2009, AS SOUGHT FOR IN THIS APPEAL.

THIS APPEAL COMING ON FOR FINAL HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

Mr. Jeevan J Neeralagi, learned counsel, along with Mr. E.I. Sanmathi, learned counsel for the revenue.

Mr. V Chandrashekar, learned counsel along with Mr. V. Narendra Sharma, for the respondent.

This appeal is filed under Section 260-A of the Income Tax Act has been filed by the revenue, which was admitted by a Bench of this Court on the following substantial questions of law:

- i) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in setting aside the disallowance of Rs.39,86,424 when assessing authority has made disallowance considering that assessee along with two others, has jointly developed sites by converting three acres out of 6.5 acres of agricultural land by entering into an agreement M/s Amalgamated property developers and the total proceeds realized out of the sale of these 44 sites is Rs.1,62,81,350/- which is undisputed?
- ii) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in setting aside the disallowance towards de-notification charges of Rs.18,00,000/-, administrative charges of

Rs.6,60,000/-, total disallowance to the extent of Rs.24,60,000/- when the assessing authority has done the same considering the share of assessee being 1/3rd of total profit and after allowing the applicable costs?

iii) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in setting aside the computation of long term capital gain made by assessing authority relating to Rs.2,94,26,600/- as long term capital being transfer of land in "Devagiri Farms" by the assessee when the assessee was the owner of the said land and had gifted the same to his wife Smt. Anitha Purnesh through a registered Gift Deed dated 20.1.2003 subsequently assessee's wife in turn transferred the said lands to the firm known as "Devagiri Farms" which was constituted by a partnership deed dated 28.9.2003 when the assessing officer has rightly held the said transaction as gift of lands to assessee's wife and the subsequent transfer of these lands to the above said firm is within 9 months from the date on which these were gifted, as "transfer" within the meaning of Sec. 64(1)(IV) of the Act and 45(3) of the Act?

iv) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in setting aside the disallowance made in respect of long term capital asset even when the land in question was not an agricultural land and same is rightly treated as capital asset within the meaning of Sec.2(14) of the Act by the assessing authority?

v) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in setting aside the disallowance made by the assessing

authority to tax an amount of Rs.1,12,745/- under the head "Income of other sources" even when the assessing authority rightly observed that the assessee had not furnished any proof with regard to foreign tour taken by the assessee during the year except that the amount was spent by M/s Classic Coffee and Spices (P) Ltd., in which the assessee is a Director?

vi) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in setting aside disallowance made by the assessing authority to an extent of Rs.37,31,000/- under the head "Income from others" even when the assessee had not proved liability and assessee had not produced any documentary evidence in support of his claim that the said amount is due to the HUF of D.M. Purnesh and D.M. Shankar?

vii) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in setting aside the disallowance made by assessing authority to tax an amount of Rs.42,09,420/- claimed as cash deficit even when the assessee had not produced any of his personal account nor bank pass books/bank statements in spite of several reminders and assessing authority based on the bank statements, rightly worked out the cash deficit amount?

viii) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in setting aside disallowance made on account of amounts deposited by cheques to an extent of Rs.84,61,055/- even when the assessee failed to explain the said deposit with proper material?

2. The facts giving rise to filing of this appeal briefly stated are that, the assessee files income tax returns for the assessment year 2004-2005 declaring the loss of Rs.8,12,981/- and agricultural income of Rs.8,20,000/-. The total income consisted of income from salary, business and other sources. The return filed by the assessee was processed under Section 143(3) of the Income Tax Act. An order of assessment was passed on 17.03.2005. The Assessing Authority passed an order of assessment by making certain additions such as income from joint development of sites, long term capital gains on transfer of land, income declared under agriculture was brought under the head, income from other sources, addition of income from coffee estate, addition relating to personal savings and other additions. The aforesaid order was challenged before the Commissioner of Income Tax (Appeals) by the assessee. The appeal preferred by the assessee was allowed. Being aggrieved, the revenue challenged the aforesaid order in appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal by

order dated 16.04.2010 dismissed the appeal preferred by the revenue and partly allowed the appeal preferred by the assessee. In the aforesaid factual background, the revenue has filed this appeal.

3. Learned counsel for the revenue has taken us through the orders passed by the Assessing Officer and has submitted that the Commissioner of Income Tax (Appeals) has reversed the findings recorded by the Assessing Officer on the basis of the material produced before it and the Income Tax Appellate Tribunal in cryptic and cavalier manner has upheld the finding recorded by the Commissioner of Income Tax(Appeals). It is further submitted that the Tribunal committed error of law in setting aside the disallowance of Rs.39,86,424/-, when the Assessing Authority has made the disallowance on considering that the assessee along with two others has jointly developed sites by converting 03 acres out of 6.5 acres of agricultural land. It is further submitted that the Tribunal grossly erred in setting aside the computation of long term capital gain made by the Assessing Authority

relating to a sum of Rs.2,94,26,600/- as long term capital being transfer of land in 'Devagiri Farms' by the assessee. It was also submitted that the Tribunal grossly erred in disallowing the assessment made by the Assessing Authority to tax amount of Rs.1,12,745/- under the head "Income of other sources". Even when the Assessing Authority rightly observed that the assessee had not furnished any proof with regard to foreign tour undertaken by the assessee during the year except that the amount was spent by M/s Classic Coffee and Spices (P) Ltd., in which the assessee is a Director.

4. On the other hand, the learned counsel for the assessee has submitted that the powers of the Commissioner of Income Tax (Appeals) are co-extensive with the Assessing Officer and the assessee had produced the material before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) had called for the Remand Report from the Assessing Officer and in the Remand Report, the Assessing Officer himself after going through the material produced by the appellant had submitted that as the

assessee's argument with regard to the addition as long term capital gains to the tune of Rs.2,94,600/- is acceptable.

5. It is also pointed out that the assessee submits with regard to addition as "income from other sources" to the tune of Rs.84,61,055/- also be accepted. It is also pointed out from the Remand Report by the counsel for the assessee that the Assessing Officer has stated that the argument of the assessee with regard to the addition of income from other sources namely, foreign tour to the tune of Rs.1,12,475/- may be accepted. Thus, it is submitted that the aforesaid Remand Report has been made the basis by the Commissioner of Income Tax (Appeals) for passing the order, which has been affirmed by the Income Tax Appellate Tribunal that the instant appeal does not involve any substantial questions of law.

6. Lastly, it is urged that the amount under the three heads as recommended by the Assessing Officer is accepted, the appeal filed by the revenue before this Court is not maintainable, as the same is covered by the monetary limit

prescribed in sub-Clause 17 of circular 2019 dated 08.08.2019.

7. We have considered the submissions made by the learned counsel for the parties and perused the record.

8. Section 250(4) of the Income Tax Act provides that the Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the (Assessing) Officer to make further inquiry and report the result of the same to the Commissioner(Appeals). When the assessee produced the material before the Commissioner of Income Tax (Appeals), the Commissioner, in exercise of power under Section 250(4) of the Act, directed the Assessing Officer to submit the Remand Report. The relevant extract of the remand report reads as under:

*"Addition as long term capital gain -
Rs.2,94,26,600/-(point 7)*

*The assessee's argument in this regard are
acceptable.*

*Addition as income from other sources - Foreign
Travel-Rs.1,12,475/-(Point 11)*

The assessee has filed certificate issued by the Director of M/s Classic Coffee & Spices (P) Ltd., wherein it is stated that Sri. D.M. Purnesh, Director was requested to represent the Company and attend Specialty Coffee Association of America's Trade Show and Conference at Boston, U.S.A. in April 2003. Further, it is stated that the expenditure of Rs.1,12,475/-has been posted under the head of account 'business promotion expenses' of the company. The argument of the assessee in this regard may be accepted.

On addition of Rs.84,61,055/

The assessee's Chartered Accountant Sri Kiron has stated that the cheque deposits in assessee's Savings account are all transfers from within the family members, firms and companies wherein He is either a partner or a director. The assessee's submissions may be accepted.

Addition as income from other sources-unexplained investment in Harey estate of Rs.9,45,000/-(Point 15)

Assessee's submissions may be accepted."

9. Thus, from perusal of the report submitted by the Assessing Officer himself, it is evident that, if the Remand Report is accepted with regard to long term capital gains, then addition as income from other sources and income from other sources is also accepted, therefore, the question of law framed in this regard namely, substantial questions of law

No.3, 4, 5 and 8 do not arise for consideration in this appeal, as the Commissioner of Income Tax (Appeals) has passed the order on the aforesaid Remand Report and the order passed by the Commissioner of Income Tax(Appeals) has been accepted by the Income Tax Appellate Tribunal.

So far as other substantial questions of law are concerned, it is not necessary for us to answer the same as the Remand Report is accepted in respect of the aforesaid three heads, the appeal filed by the revenue would not be acceptable before this Court in view of the circular 2019 dated 8.8.2019. In view of the preceding analysis, we do not find any merit in this appeal. The same fails and is hereby dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**