

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9<sup>TH</sup> DAY OF JUNE 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

**I.T.A. NO.36 OF 2009**

BETWEEN

1. THE COMMISSIONER OF INCOME TAX  
C R BUILDING,  
QUEENS ROAD,  
BANGALORE.
2. THE DEPUTY COMMISSIONER OF  
INCOME TAX,  
CIRCLE-17(1),  
C.R.BUILDING,  
QUEENS ROAD,  
BANGALORE.

...APPELLANTS

(BY SRI K V ARAVIND, ADV.)

AND

M/S. INTERNATIONAL SOCIETY FOR  
KRISHNA CONSCIOUSNESS,  
HARE KRISHNA HILL,  
RAJAJINAGAR,  
BANGALORE.

...RESPONDENT

(BY SRI ASHOK A.KULKARNI, ADV. FOR  
SRI K R PRASAD, ADV.)

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THIS ITA IS FILED UNDER SECTION 260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 05-09-2008 PASSED IN ITA NO.113/BNG/2008, FOR THE ASSESSMENT YEAR 1997-98, PRAYINT TO

I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN,

II. ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA NO. 113/BNG/2008,DATED 05-09-2008 CONFIRM THE ORDERS OF THE DEPUTY DIRECTOR OF INCOME TAX , CIRCLE-17(1),BANGALORE IN THE INTEREST OF JUSTICE AND EQUITY.

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

### **JUDGMENT**

This appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act', for short) has been filed by the revenue. The subject matter of the appeal pertains to Assessment year 1997-98. The appeal was admitted by a Bench of this Court vide order dated 29.06.2009 on the following substantial questions of law:

a) Whether the Tribunal was correct in holding that the Assessing Officer was justifying in dropping the reopened assessments under an order dated

15.03.2005 without recording any reasons by recording its own reasons for the first time in its order presuming the reasons on which the Assessing Officer would have passed an order?

2. Facts giving rise to filing of this appeal briefly stated are that the assessee is a society registered under Section 12A of the Act. During the course of the proceedings for grant of registration under Section 80G of the Act, the assessee had filed copies of statement of accounts for year ending 31.03.1997. As per the aforesaid accounts, the income before granting exemption under Section 11 and 12 was Rs.12,60,9195/-. The assessee was therefore required to file the return of income under Section 139(4A) of the Act. The assessee stated to have submitted its account to the ISKON, Mumbai for consolidation of their accounts. The assessee did not file the return as required under Section 139(4A) of the Act. Therefore, the proceeding under Section 147 of the Act were

initiated by the assessing officer. In response to the aforesaid proceeding, the assessee filed return of income on 28.04.2004. Therefore, the proceeding was dropped vide order dated 15.03.2005.

3. The Director of Income Tax (Exemptions) initiated proceeding under Section 263 of the Act and a notice was issued to the assessee as to why order dated 15.03.2005 be not cancelled and assessing officer be directed to frame a fresh assessment for the Assessment year 1997-98. The Director of Income Tax (Exemptions) by an order dated 30.03.2007 inter alia held that the order dated 15.03.2005, by which proceeding under Section 147 were dropped for the Assessment year 1997-98 to be erroneous and prejudicial to the interest of the revenue. The order dated 15.03.2005 was cancelled and matter was remitted to the assessing officer by treating the income shown as opening balance for the Assessment year 1997-98. Being aggrieved, the assessee filed an appeal

before the Income Tax Appellate Tribunal. The tribunal by an order dated 05.09.2008 inter alia held that contention of the assessee that they were sending accounts to Mumbai for the purpose of consolidation is correct and the aforesaid fact finds place in the order passed by the Director of Income Tax (Exemptions) under Section 263 of the Act. It was further held that assessee was registered under Section 12A of the Act and accounts were being submitted along with ISKON, Mumbai. It was further held that Director of Income Tax (Exemptions) has not found anything wrong with the accounts for the financial year 1996-97.

4. It was further held that the assessing officer applied his mind on the basis of the facts and found that no income has escaped assessment for the Assessment year 1997-98. It was further held that the view taken by the assessing officer is one of the possible views and therefore, in view of law laid by the Supreme Court in the case of '**MALABAR INDUSTRIES CO. LTD., VS.**

**CIT', 243 ITR 83**, it cannot be held that the order of the assessing officer was erroneous and required an action under Section 263 of the Act. The tribunal accordingly quashed the order under Section 263 of the Act and partly allowed the appeal. In the aforesaid factual background, this appeal has been filed.

5. Learned counsel for the revenue submitted that the assessee was admittedly registered under Section 12A of the Act and did not file the return. Therefore, the proceeding under Section 148 of the Act initiated. It is further submitted that scope of proceeding under Section 148 and 263 of the Act is different and the proceeding under Section 263 could not have been brought on the ground that the income was already assessed to tax in Mumbai. In support of aforesaid submission on a decision of the Supreme Court in '**COMMISSIONER OF INCOME-TAX, MUMBAI VS. AMITABH BACHAN**', (2016) 69 TAXMANN.COM 170 (SC). It is also urged that the assessing officer was

under a duty to proceed with the assessment and to find out whether amount in question was assessed to tax in Mumbai.

6. On the other hand, learned counsel for the assessee has submitted that the proceedings under Section 263 of the Act were brought after taking into account factual aspect. A decision of division bench of this Court in W.A.No.595/2007 has also been referred to and our attention has been invited to paragraph 6 of the aforesaid decision and it has been pointed out that the return of income was filed for the first time in the year 2000-01 showing opening corpus fund of Rs.39.59 Crores in the balance sheet. It is also urged that corpus fund is not taxable. In this connection, our attention has been invited to the order passed by the Commissioner of Income Tax (Appeals) as well as Section 11(1)(d) of the Act where the finding has been recorded that amount in question is part of corpus fund. It is also submitted that proceeding under Section 263 of the Act were ab initio

void and the tribunal has passed a reasoned order, which does not call for any interference.

7. By way of rejoinder reply, learned counsel for the revenue has invited our attention to paragraphs 7 & 8 of the order passed by the division bench in W.A.No.595/2007 and has submitted that assessee is a separate legal entity and was required to file the return.

8. We have considered the submissions made on both the sides and have perused the record. Admittedly in response to the notice under Section 148, the assessee filed the return on 28.04.2004. From perusal of the proceeding, it is evident that the assessee was called upon to furnish certain details as well as documents on 28.10.2004 and 06.01.2005, which were supplied by the assessee on 18.02.2005. The Deputy Director, Income Tax (Exemptions) on 23.02.2005 confirmed that the assessee's consolidation of accounts was done at Mumbai and assessment was completed. After examining the submissions, made by the assessee,

the proceeding under Section 147 of the Act were dropped. The Director of Income Tax (Exemptions) in its order has found that the assessee for the Assessment year 1997-98 had disclosed an opening balance of Rs.15,88,02,860/- as corpus fund. The finding recorded by the Director of Income Tax (Exemptions) that the proceedings were dropped without proper enquiry and appreciation, cannot be sustained as from perusal of the record, it is evident that an enquiry was conducted and confirmation was sought from Deputy Director, Income Tax (Exemptions), Mumbai who confirmed that consolidation was done at Mumbai and assessment was completed and exemption under Section 11 of the Act was granted. The fact that assessee was sending accounts to Mumbai is recorded in the order under Section 263 passed by the Director of Income Tax (Exemptions), Mumbai. The relevant extract has been reproduced by the tribunal in para 4.5 of the order, which is reproduced below for facility of reference:

*"Up to the asst. year 2000-01, the assessee have included complete accounts of its Bangalore Branch functioning from Hare Krishna Hill in Rajajinagar, Bangalore in its final audited accounts."*

9. Thus, the accounts were being submitted along with ISKON, Mumbai. The Director of Income Tax (Exemptions) has not found anything wrong in the accounts for the Assessment year 1997-98. It is pertinent to mention here that view taken by the assessing officer is one of the two plausible views and therefore, in view of law laid down by the Supreme Court in the case of **MALABAR INDUSTRIAL CO. LTD.**, supra, the proceeding under Section 263 of the Act cannot be upheld. The tribunal has therefore, rightly set aside the proceeding under Section 263 of the Act initiated against the assessee.

In view of preceding analysis, the substantial question of law is answered against the revenue. In

the result, we do not find any merit in this appeal, the same fails and is hereby dismissed.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

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