

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 07TH DAY OF DECEMBER 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

I.T.A. NO.66 OF 2012

BETWEEN:

1. COMMISSIONER OF INCOME
TAX-III, CENTRAL REVENUE
BUILDINGS, QUEENS ROAD,
BANGALORE - 560 001.
2. THE ASSISTANT
COMMISSIONER OF INCOME TAX,
CIRCLE-2 (1),
BANGALORE

... APPELLANTS

(BY SRI.E.I.SANMATHI, ADV.,)

AND:

M/S SHRIRAM CHITS (KAR)
PVT LTD NO.259/31,
1ST FLOOR, 10TH CROSS,
WILSON GARDEN,
BANGALORE.

... RESPONDENT

(BY SRI. M.V. SHESHACHALA SENIOR COUNSEL FOR
SRI. BALRAM R.RAO., ADVOCATE FOR RESPONDENT)

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THIS ITA IS FILED UNDER SECTION 260-A OF I.T. ACT,
1961 ARISING OUT OF ORDER DATED 31.10.2011 PASSED IN ITA

NO.1386/BANG/2010 & ITA NO.1547/BANG/2010 FOR THE ASSESSMENT YEAR 2005-06, PRAYING TO:

(I) DECIDE THE FOREGOING QUESTION OF LAW AND/OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT.

(II) SET ASIDE THE ORDER OF THE INCOME-TAX APPELLATE TRIBUNAL DATED:31.10.2011 IN ITA NO.1386/BANG/2010 & ITA, NO.1547/BANG/2010 FOR THE ASSESSMENT YEAR 2005-16.

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

JUDGMENT

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the revenue. The subject matter of the appeal pertains to the Assessment year 2005-06. The appeal was admitted by a bench of this Court vide order dated 31.07.2012 on the following substantial questions of law: bad debts

a) Whether in the facts and circumstances of the case, the tribunal is justified in law in dismissing Revenue's appeal on disallowance of bad debts written off while such issue in the assessee's own case was remitted to the file of the Assessing Officer by the Hon'ble High Court in the A.Y. 1998-99

with a direction to reconsider the issue in the light of provision of section 145(1)/(2) of the Act?

b) Whether in the facts and circumstances of the case, the tribunal is justified in law in dismissing Revenue's appeal on disallowance of bad debts written off without appreciating that the assessee has not furnished any details of such bad debts whatsoever despite giving sufficient opportunity?

c) Whether in the facts and circumstances of the case, the tribunal is justified in law in dismissing Revenue's appeal on disallowance of bad debts written off while such issue in the assessee's own case was remitted to the file of the Assessing Officer by the Hon'ble High Court in the assessment year 1998-99 with a direction to reconsider the issue in the light of provision of section 145(1)/(2) of the Act?

d) Whether in the facts and circumstances of the case, the tribunal is

justified in law in dismissing Revenue's appeal on bid loss claimed by assessee of Rs.1,61,77,897/- in computation but not debited to the profit and Loss account and a sum of Rs.5,79,57,847/- debited to P & L account as loss on own bidding even when the assessee has been following mercantile system of accounting and therefore the business loss pertaining to the year of account alone can be claimed as expenditure and bid loss pertaining of the entire chit periods was rightly disallowed by the assessing authority?

2. Facts leading to filing of this appeal briefly stated are that the assessee is engaged in the chit business. The assessee filed the return of income for the Assessment Year 2005-06 on 31.10.2005 declaring a business loss of Rs.2,96,35,074/-. The return was processed under Section 143(1) of the Act and was subsequently taken up for scrutiny and notices under Section 143(2) and 142(1) were issued to the assessee. The Assessing Officer by an order dated 24.12.2007

inter alia disallowed the claim of bid loss to the extent of Rs.7,41,35,744/- on the ground that the aforesaid claim pertains to beyond the relevant Previous Year and assessee is following hybrid system of accounting. It was also held that despite several opportunities being afforded to the assessee, the assessee failed to produce the books of accounts to substantiate the aforesaid loss.

3. The assessee thereupon filed an appeal before the Commissioner of Income Tax (Appeal). The Commissioner of Income Tax (Appeals) relied on the judgment of the tribunal in the case of assessee and by order dated 06.09.2010 held that bid loss is an allowable deduction. The Commissioner of Income Tax (Appeals) with regard to the bad debts placed reliance on decision of the Supreme Court in TRF LTD. VS. CIT, 323 ITR 396 (SC) and held that an addition made to the bad debts was contrary to the aforesaid decision. Accordingly, the deduction was allowed. The revenue thereupon filed an appeal before the Income Tax Appellate Tribunal

(hereinafter referred to as 'the tribunal' for short). The tribunal by an order dated 31.10.2011 by placing reliance on its earlier decision, which was based on the judgment of the Supreme Court held that the claim of the assessee with regard to bid loss is an allowable deduction. It was further held that in view of decision of TRF Ltd., the deduction regarding bad debts is permissible. However, the Assessing Officer was directed to verify the claim of the assessee. In the aforesaid factual background, this appeal has been filed.

4. Learned counsel for the revenue submitted that the Commissioner of Income Tax (Appeals) as well as the tribunal has placed reliance on earlier decision of the tribunal, which was subject matter of challenge before this court at the instance of the revenue in I.T.A.No.920/2008 and the same was disposed of by this court vide order dated 09.01.2015 and had remitted the matter to the assessing authority with the liberty to the assessee to produce evidence in respect of issue

pertaining to bid loss. In this connection, our attention has been invited to para 5 of the aforesaid judgment. It is contended that in the instant case, the assessee has not been able to substantiate its claim for bid loss by producing the relevant material. It is further submitted that the assessee has failed to furnish the factual information with regard to the quantification of the amount of bid loss to the extent of Rs.7,20,32,155/-. Therefore, in the facts situation of the case, the matter deserves to be remitted to the Assessing Officer for decision afresh in accordance with law.

5. On the other hand, learned counsel for the assessee submitted that its claim for allowing expenditure in the year pricing itself and not carrying it for the entire duration of the chits scheme stands concluded by judgment of the Supreme Court in Taparia Tools vs. JCIT, 372 ITR 605 (SC). It is also pointed out that for Assessment Years 2010-11, 2011-12, 2012-13 and 2013-14, the revenue has already accepted the

method of accounting of claiming bid loss during the year of pricing. It is also pointed out that in respect of Assessment Year 2017-18, the Assessing Officer has accepted the claim of bid loss and the matter stands concluded by the decision of the Supreme Court and since, no factual adjudication requires, therefore, there is no need for remand.

6. We have considered the submissions made by learned counsel for the parties and have perused the record. The Commissioner of Income Tax (Appeals) has placed reliance on the decision of the tribunal in the case of the assessee passed in I.T.A.No.601/Bang/2007 for the Assessment Year 2003-04. The tribunal had passed the aforesaid order by placing reliance on decision of Madras High Court in Bilahari Investments vs. CIT, 288 ITR 39. The aforesaid decision was affirmed by the Supreme Court in 299 ITR SC 1. In view of the aforesaid decision of the Supreme Court, the Commissioner of Income Tax (Appeals) taking into account the fact that

the tribunal itself has allowed the claim of the assessee for Assessment Year 2003-04 has accepted the assessee's claim for deduction on account of bid loss for a sum of Rs.7,41,35,744/-. The aforesaid order has been affirmed by the tribunal. The tribunal while dealing with the claim of the assessee for bid loss has held as follows:

As regard ground No.2, we find that the issue is covered by the decision of the ITAT in the assessee's own case for the Assessment Year 2003-04 and the department has followed its own case for the earlier year only to keep the issue alive on the ground that an appeal has been filed before the Hon'ble High Court of Karnataka. Since, the issue is covered by the decision of the tribunal in the assessee's own case and because an appeal is pending in the higher forum, it will not lose its precedential value. Therefore, we do not find any reason to interfere with the order of the CIT(A). This ground is accordingly rejected.

7. Thus, subsequently the very foundation of the

order passed by the tribunal has disappeared as subsequently the order, on which it has placed reliance has been set aside by this court vide judgment dated 09.01.2015 passed in I.T.A.No.920/2008 (CIT VS. SHRIRAM CHITS (Karn.) PVT. LTD., BANGALORE, 375 ITR 289). Admittedly, In the instant case, the Assessing Officer has recorded a finding that the assessee has failed to substantiate its claim by producing evidence. However, the aforesaid aspect of the matter has neither been considered by the Commissioner of Income Tax (Appeals) nor the tribunal. The impugned order insofar as it pertains to allowing the claim of the assessee for bid loss is quashed. The matter is remitted to the Assessing Officer and the assessee is granted an opportunity to substantiate its claim for deduction of bid loss by adducing cogent material. Needless to state that the Assessing Officer shall decide the aforesaid issue in the light of decision of the Supreme Court in case of Taparia Tools vs. JCIT, 372 ITR 605 (SC).

In view of preceding analysis, it is not necessary for us to answer the substantial questions of law. In the result, the appeal is disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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