IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF NOVEMBER 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

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

I.T.A. NO.142 OF 2013

BETWEEN:

HEWLETT-PACKARD INDIA SALES
PRIVATE LIMITED
NO.24, SALARPURIA ARENA
HOSUR MAIN ROAD
ADUGODI, BANGALORE-560030
REP. HEREIN BY ITS
INDIA TAX DIRECTOR
MR. MANOJ BAVLE.

... APPELLANT

(BY SRI. T. SURYANARAYANA, ADV., FOR
SRI. V. VINAY GIRI, ADV.,)

AND:

1. THE COMMISSIONER OF INCOME-TAX
C.R. BUILDING, QUEEN'S ROAD
BANGALORE-560001.

2. THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE-11(4), C.R. BUILDING
QUEEN'S ROAD, BANGALORE-560001.

... RESPONDENTS

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

- - -

THIS ITA IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 09.11.2012 PASSED IN ITA

NO.683/BANG/2010 FOR THE ASSESSMENT YEAR 2004-05, PRAYING TO:

(I) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN.

(II) ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE ITAT DATED 9-11-2012 IN ITA NO.683/BANG/2010 TO THE EXTENT QUESTIONED HEREIN, IN THE INTEREST OF JUSTICE AND EQUITY.

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 assessee. The subject matter of the appeal pertains to the Assessment year 2004-05. The appeal was admitted by a bench of this Court vide order dated 09.07.2013 on the following substantial question of law:

(i) Whether, on the facts, in the circumstances and on the grounds urged, the Tribunal was justified in confirming the order passed by the CIT(A) and thereby the order passed by the 2nd Respondent in holding that the Appellant was not entitled to claim

depreciation on leased assets under Section 32 of the Act?

(ii) Whether on the facts, in the circumstances and on the grounds urged, the Tribunal was right in holding that the lease is in the nature of a finance lease and that therefore it is the lessee who is the de facto owner of the leased equipment who is entitled to claim depreciation and not the Appellant?

2. Facts leading to filing of this appeal briefly stated are that the assessee earned lease rentals from certain assets being equipments which were leased out to various persons in 2003-04. In terms of the lease agreements entered into by the lessees, the assessee was the owner of the equipments and the lessees had no right or interest in the equipments during or after the period of lease. The assessee filed the return of income for the Assessment Year 2004-05, in which deduction to the tune of Rs.7,27,04,961/- was claimed on account of depreciation on assets given on lease under Section 32

of the Act. The Assessing Officer by an order dated 29.12.2008 held that the assessee is not entitled to claim depreciation on assets leased by it on the ground that it was the lessee and not the lessor.

3. The assessee thereupon filed an appeal before the Commissioner of Income Tax (Appeals) who by an order dated 13.01.2010 by placing reliance on assessee's own case in respect of Assessment Year 2002-03 dismissed the appeal preferred by the assessee. The assessee approached the Income Tax Appellate Tribunal (hereinafter referred to as 'the tribunal' for short) by filing an appeal. The tribunal by order dated 09.11.2012 inter alia held that the lease in question is a finance lease and the lessee being de facto owner and user of the equipment is not entitled to claim depreciation. In the aforesaid factual background, this appeal has been filed.

4. Learned counsel for the assessee submitted that the substantial questions of law involved in this appeal is squarely covered by decision of the Supreme Court in I.C.D.S. LTD. VS. COMMISSIONER OF INCOME-TAX AND ANOTHER , (2013) 350 ITR 527 (SC). It is further pointed out that the tribunal in case of the assessee for the Assessment Year 2002-03 by an order dated 30.10.2015 had permitted deduction under Section 32 of the Act on the depreciation on assets given on lease. Subsequently, the tribunal by placing reliance on its aforesaid order for the Assessment Year 2003-04, by an order dated 25.02.2019 took the similar view in favour of the assessee. It is also pointed out that being aggrieved by the order passed by the tribunal in respect of Assessment Year 2003-04, the revenue has filed an appeal, a copy of which produced for our perusal and it was pointed out that no ground with regard to claim of assessee for deduction under Section 32 of the Act has been taken in the aforesaid appeal. In other words, it is

pointed out that the revenue has accepted the claim of the assessee for deduction under Section 32 of the Act on depreciation on assets which were leased out for the Assessment Years 2002-03 and 2003-04. It is also urged that in view of the decision in RADHASOAMI SATSANG VS. CIT, 193 ITR 321 (SC), the revenue cannot be permitted to alter its position.

5. On the other hand, learned counsel for the revenue submitted that the finding recorded by the tribunal is a finding of fact and therefore, no substantial questions of law are involved. It is also pointed out that no finding has been recorded by the tribunal as to agreements and the nature of transaction entered by the assessee is one and the same, it requires determination and therefore, the matter deserves to be remitted to the tribunal. It is also contended that the tribunal has to examine the issue afresh in terms of law laid down by the Supreme Court in I.C.D.S. Ltd. supra. It is also urged that the lease is only a finance lease as per the

agreement as recorded by the tribunal, therefore, assessee is not entitled for depreciation.

6. We have considered the submissions made by learned counsel for the parties and have perused the record. The clauses of the agreement in the case before the Supreme Court in I.C.D.S Ltd. supra and in the case of the assessee with regard to ownership, inspection, re possession of the vehicle of the equipment on default, delivery of equipment on expiration of lease and ownership at the end of the lease period are similar. From perusal of clause 8.1 of the agreement, it is evident that the lessee has to ensure the equipment showing the assessee's name as owner and in terms of clause 11 no alteration or improvements to the equipment can be made by the lessee without prior consent from the assessee. Thus, the assessee alone can claim the depreciation allowance. The aforesaid clauses have been interpreted by the Supreme Court in I.C.D.S. Ltd. supra and it has been held that the assessee is

entitled to benefit of depreciation *on leased assets* under Section 32 of the Act. Thus, the questions of law involved in the appeal are no longer res integra and are squarely covered by the decision of the Supreme Court in I.C.D.S. Ltd. supra.

7. For yet another reason the substantial questions of law have to be answered in favour of the assessee. The Supreme Court in ***RADHASOAMI SATSANG Vs. COMMISSIONER OF INCOME-TAX' (1992) 60 TAXMAN 248 (SC)*** has held that even though principles of res judicata do not apply to income tax proceedings, but where a fundamental aspect permeating through the different Assessment Years has been found as the fact one way or the other and the parties have allowed the position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in subsequent year. In the instant case, the revenue has accepted the claim of the assessee for

depreciation under Section 32 of the Act for the Assessment Year 2002-03 and 2003-04. Therefore, the revenue cannot be allowed to take a different stand for the Assessment Year 2004-05.

8. In view of preceding analysis, the substantial questions of law are answered against the revenue and in favour of the assessee. In the result, the order of the Tribunal dated 09.1.2012 in sofar as it pertains to the rejection of the claim of the assessee for depreciation in respect of leased assets under Section 32 of the Act is hereby quashed and the assessee is held entitled to depreciation in respect of leased assets under Section 32 of the Act.

Accordingly, the appeal is allowed.

Sd/-
JUDGE

Sd/-
JUDGE

ss