

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 21ST DAY OF JUNE 2018

PRESENT

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MRS.JUSTICE S.SUJATHA

I.T.A. Nos.401/2016 & 429-431/2016

BETWEEN :

BANGALORE INTERNATIONAL
AIRPORT LTD., PRESENTLY AT
ADMINISTRATION BUILDING
ALPHA – 2, DEVANAHALLI-560300.
PAN: AABCB8973D
REPRESENTED HEREIN BY
ITS AUTHORISED REPRESENTATIVE
Mr. AKSHAY RAM APTE.

...APPELLANT

(BY SRI VIVEK HOLLA, ADV.)

AND :

THE INCOME TAX OFFICER
[INTERNATIONAL TAXATION]
WARD 19[1], BANGALORE
PRESENTLY AT:
BMTC BUILDING, 80 Ft. ROAD
KORAMANGALA
BANGALORE-560095.

...RESPONDENT

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

THESE INCOME TAX APPEALS FILING UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 30.03.2016, PASSED IN ITA Nos.536 TO 539/BANG/2006, FOR THE ASSESSMENT YEAR 2006-2007, PRAYING TO, a] DECIDE THE FOREGOING QUESTION OF LAW

AND OR SUCH OTHER OF LAW AS MAY BE FORMULATED BY THIS HON'BLE COURT AS IT DEEM FIT. B]. SET ASIDE THE ORDER DATED 30.03.2016 PASSED BY THE ITAT, BENGALURU BENCH, 'B' IN I.T[IT]A Nos.536 TO 539/BANG/2006 [ASSESSMENT YEAR 2006-07] AND TO GRANT SUCH OTHER RELIEF AS THIS HON'BLE COURT DEEMS FIT IN THE INTEREST OF JUSTICE.

THESE APPEALS COMING ON FOR ADMISSION, THIS DAY, **Dr. VINEET KOTHARI, J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

Mr. Vivek Holla, Adv. for Appellant – **Assessee**.

Mr. K.V.Aravind, Adv. for Respondent – **Revenue**.

The Assessee has filed these appeals against the Order passed by the Income Tax Appellate Tribunal on **30.03.2016** in **I.T.A. Nos.536-539/Bang/2006** for Assessment Year 2006-07, holding that the Order passed by the Assessing Authority u/s. 195[2] of the Income Tax Act, 1961 ['Act' for short] does not fall within the category of appealable orders as per the provisions of Section 246 & 246A of the Act before the learned Commissioner of Income Tax [Appeals]. Holding so, the learned Tribunal quashed the Order passed by the learned Commissioner of Income Tax [Appeals] and

dismissed the Appeal filed by the Assessee before the Tribunal itself. The relevant Paragraph-12 of the Order of the learned Tribunal is quoted below for ready reference:

“12. The order passed under Section 195[2] does not fall in the category of appealable orders as per the provisions of Section 246 & 246A of the Act, therefore, the remedy against the order passed under Section 195(2) does not lie before the appellate authorities by filing the appeal. Since the CIT [Appeals] has no jurisdiction to entertain and decide the appeal against the order passed under Section 195[2], therefore, the order passed by the CIT [Appeals] without having jurisdiction over the subject is not sustainable. Even if the order passed by the CIT [Appeals] is not sustainable for want of jurisdiction it would not effect the enforceability of the order passed under Section 195[2] by the Assessing Officer. The learned Authorised Representative of the assessee has placed

*reliance on the decision of the Special Bench of the Tribunal in the case of Mahindra & Mahindra [supra], however, we find that the issue before the Special bench was not regarding the validity or maintainability of the appeal but it was only in respect of the limitation period for passing the order under Section 201 & 201A of the Act. The Special Bench in the said case drawn the analogy of the reasonable time limit for passing the order under Section 201 & 201A of the Act by considering the time specified in the Act in respect of the assessment or re-assessment in the case of recipient. Therefore, the said decision is not at all relevant or applicable on this point. **When the appeal against the impugned order under Section 195(2) of the Act is not maintainable for want of jurisdiction as well as for want of the provision of the remedy in appeal, then the appeal filed by the assessee before the Tribunal would not survive.** Accordingly, when the assessee cannot seek a remedy through appellate process, the present appeals of the assessee cannot be*

entertained for lack of jurisdiction of the CIT [Appeals] as well as of this Tribunal. Hence the appeals filed by the assessee deserve dismissal. We make it clear that a considerable time has lapsed in pursuing the wrong remedy by the assessee without any objection up till this stage, therefore the assessee may pursue the appropriate remedy as per law against the impugned order passed under Section 195[2] of the Act. Since we have dismissed the appeals of the assessee on legal issue, therefore we do not propose to go into the merits of the issue in these appeals and the same are left open.

13. In the result, the appeals of the assessee are dismissed.”

2. Learned Counsel for the Revenue fairly submitted that the provisions of Section 248 of the Act which separately provides for an appeal by a person denying the liability to deduct tax at source in certain cases is appealable before the learned Commissioner [Appeals], was not brought to the notice of the learned

Tribunal and therefore the Tribunal has fallen into error of holding that said appeal before the Commissioner of Income Tax [Appeals] was not maintainable u/s. 246, 246A of the Act.

3. The provisions of Section 248 of the Act before and after its amendment with effect from 1.6.2007 by Finance Act, 2017 are quoted below for ready reference:

Before Amendment:

“248. Appeal by a person denying liability to deduct tax –

Any person having in accordance with the provisions of sections 195 and 200 deducted and paid tax in respect of any sum chargeable under this Act, other than interest, who denies his liability to make such deduction, may appeal to the Commissioner [Appeals] to be declared not liable to make such deduction.”

After Amendment:

“248. Appeal by a person denying liability to deduct tax in certain cases -

Where under an agreement or other arrangement, the tax deductible on any income, other than interest, under section 195 is to be borne by the person by whom the income is payable, and such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income, he may appeal to the Commissioner [Appeals] for a declaration that no tax was deductible on such income.”

4. From a bare perusal of the Order passed by the learned Tribunal, we are of the opinion that the aforesaid provisions of Section 248 of the Act having a vital bearing on the issue raised before the learned Tribunal has not been noticed by the learned Tribunal and therefore the Order passed by the learned Tribunal suffers from infirmity and is per incurium and the same deserves to be set aside and the matter remanded back

to the learned Tribunal to reconsider the said case in view of the aforesaid quoted provision of Section 243 of the Act.

The Appeals of the Assessee are allowed. The matter is remitted back to the learned Tribunal for deciding the Appeal afresh in accordance with law. No order as to costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

AN/-