IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF SEPTEMBER 2016

PRESENT

THE HON'BLE MR.JUSTICE JAYANT PATEL

AND

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

ITA NO.243 OF 2016

BETWEEN

M/S GANGAGEN BIOTECHNOLOGIES PVT LTD
12, 5TH CROSS, RAGHAVENDRA LAYOUT
OPP.MEI LTD., TUMKUR ROAD
YESHWANTHPUR, BANGALORE-560022
REPRESENTED BY ITS CHIEF OPERATING OFFICER
DR. JAYASHEELA M
AGED 66 YEARS
S/O SRI NARSIMHA MURTHY
MANUR

...APPELLANT

(BY KUM.JINITHA CHATTERJEE, ADVOCATE FOR
SRI.S PARTHASARATHI, ADVOCATE)

AND

THE INCOME-TAX OFFICER
WARD 3(1)(2)
BANGALORE ...RESPONDENT

(BY SRI.K V ARAVIND, ADVOCATE)

THIS ITA IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 28/12/2015 PASSED IN ITA NO.1087/BANG/2015, FOR THE ASSESSMENT YEAR 2007-08 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE, ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT DATED 28/12/2015 BEARING ITA NO.1087/BANG/2015 FOR THE ASSESSMENT YEAR 2007-08 AND PASS SUCH OTHER SUITABLE ORDERS AS THIS HON'BLE COURT DEEMS FIT TO GRANT ON THE FACTS AND CIRCUMSTANCES OF THE CASE IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, ***JAYANT PATEL J.***, DELIVERED THE FOLLOWING:

ORDER

Admit.

2. Mr.K.V.Aravind, learned Counsel for the respondent waives notice of admission.

3. With the consent of learned Advocates appearing for both the sides, appeal is finally heard.

4. The present appeal is preferred by the assessee raising the following substantial questions of law:

1. Whether the Tribunal is justified in setting aside the matter to the assessing officer for

fresh computation of income by following Chennai Tribunal decision in S.R.A.Systems Ltd (supra) ignoring the binding decision of jurisdictional High Court in CIT vs Yokogawa (supra)?

2. Whether the Tribunal is justified in directing the assessing officer to follow the decision of another Tribunal as against the decision of the jurisdictional Tribunal in the Appellant's own case?

5. We have heard Ms.Jinitha Chatterjee, learned Counsel for Mr.Parthasarathi, learned Counsel for the appellant and Mr.K.V.Aravind, learned Counsel for the respondent.

6. The short facts are that on 17.12.2009 the Assessing Officer passed an order for assessment under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act for short). The matter was carried in appeal before the CIT (Appeals) and the CIT (Appeals)

vide order dated 27.05.2015 allowed the appeal in favour of the assessee. The matter was further carried before the Tribunal and the Tribunal while considering the matter as per the observations made in para-6 for the purpose of declining the claim of the appellant-assessee relied upon the decision of Chennai Bench of Tribunal in case of ***S.R.A. Systems Ltd.*** in ITA No.1547/Mds/2012 dated 21.02.2014 and thereafter the Tribunal has remanded the matter to the Assessing Officer for fresh consideration in light of the decision of the Chennai Bench of the Tribunal in case of ***S.R.A. Systems Ltd.*** (supra).

7. During the course of hearing, the decision of this Court in case of ***Commissioner of Income Tax and Anr. Vs. Yokogawa India Ltd. & Ors.*** for the purpose of consideration of the exemption under Section 10A of the Act, was brought to the notice of the

Tribunal. However, the Tribunal did not consider the same for the purpose of extending the benefit to the appellant-assessee but rather relied upon the decision of the Tribunal in the case of ***S.R.A. Systems Ltd.*** (supra).

8. Whereas the learned Counsel appearing for the respondent-Revenue is not in a position to dispute that since the matter pertains to post-amendment of Section 10A of the Act, the issue was required to be considered not in light of the decision of Chennai Bench in case of ***S.R.A. Systems Ltd.*** (supra), but what was rather required to be considered was the decision of this Court in case of ***Yokogawa India Ltd.*** reported at **(2012) 341 ITR 0385**.

9. It appears to us that in any case when the Tribunal decided the matter by the impugned order on 28.12.2015, the decision of this Court in case of ***Yokogawa India Limited*** was already pronounced and

it could also be said that there was a binding decision for the post-amendment period for interpretation and the benefit available under Section 10A of the Act.

10. However, as the Tribunal in paragraph-7 of the impugned order remitted the matter to the Assessing Officer for fresh consideration, we find that the interference to that extent may not be required, but further direction issued by the Tribunal that the matter will have to be considered in light of the decision of Chennai Bench of the Tribunal in case of ***S.R.A. Systems Ltd.*** (supra) cannot be maintained when there was already a binding decision of this Court in case of ***Yokogawa India Limited*** (supra).

11. Under the above circumstances, we find it appropriate to issue the following direction:

(i) The impugned judgment and order of the Tribunal so far as making observations that the case is covered by the decision of Chennai Bench of the Tribunal in case of

S.R.A. Systems Ltd. (supra) shall stand set aside. However, the ultimate direction issued by the Tribunal for remitting the matter to the Assessing Officer for fresh consideration is not interfered, but there shall be further direction that the matter will be required to be considered by the Assessing Officer in light of the observations made by this Court in its decision in case of ***Yokogawa India Ltd.*** (supra) and not as per the decision of Chennai Bench of the Tribunal in case of ***S.R.A. Systems Ltd.*** (supra).

12. The appeal is allowed to the aforesaid extent. No order as to costs.

Sd/-
JUDGE

Sd/-
JUDGE

JT/-