IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF AUGUST 2016

PRESENT

THE HON'BLE MR.JUSTICE JAYANT PATEL

AND

THE HON'BLE MR.JUSTICE S.N.SATYANARAYANA

INCOME TAX APPEAL No.787/2009

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX
   C R BUILDING, QUEENS ROAD
   BANGALORE

2. THE ASSISTANT COMMISSIONER OF INCOME-TAX
   CENTRAL CIRCLE-1(4)
   C.R.BUILDING
   QUEENS ROAD
   BANGALORE ...APPELLANTS

(BY SRI.K V ARAVIND & SRI.JEEVAN J NEERALGI, ADVOCATES)

AND:

SRI. SURESH JAIN
NO.21/5 , CRAIG PARK ROAD
M G ROAD, BANGALORE ...RESPONDENT

(BY SRI.A SHANKAR & SRI.M LAVA, ADVOCATES)

THIS ITA IS FILED U/S.260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 30/06/2009 PASSED IN ITA NO.54/BNG/2007, FOR THE BLOCK ASSESSMENT PERIOD 1/4/1990 TO 27/7/2000, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA NO.54/BNG/2007,DATED 30/06/2009, CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-I(4), BANGALORE IN THE INTEREST OF JUSTICE.

THIS ITA COMING ON FOR HEARING THIS DAY, ***JAYANT PATEL J.***, DELIVERED THE FOLLOWING:

JUDGMENT

The appellant-revenue has preferred the present appeal by raising the following substantial questions of law vide order dated 14.6.2010 which reads as under:

> "1. Whether the Appellate Authorities were correct in deleting the addition of Rs.42,53,000/- being deposits through demand drafts in the bank account of M/s.Maruti Buildtech Pvt.Ltd., holding that the demand drafts were purchased out of withdrawal of RS.50 lakhs from the bank

account with Canara Bank, GKVK Branch in the name of the assessee without appreciating that the nexus between the two transactions has not been established by the assessee and the circuitous route of introducing money in the books of the company through the farmers who were apparently persons of no means to establish their case as held by the Assessing Officer?

2. Whether the Appellate Authorities were correct in deleting the addition of Rs.8,90,000/- being investment in Craig Park Residence on the basis of VDIS declarationwhen the VDIS declaration was not a valid one as the assessee had not paid the taxes within the due date and no certificate was issued?

3. Whether the Appellate Authorities were correct in deleting the addition of Rs.36,61,575/- being investment in Maruthi Build Tech Pvt.Ltd., merely on the ground that the deposits were made in the bank account of the company which is reflected in the accounts even though the source of these deposits has not been explained

and the books of accounts of the assessee were not found to be maintained on the date of search?

4. Whether the Appellate Authorities were correct in holding that the sum of Rs.5,50,000/- should be taken for the purchase of the apartment at Museum Road instead of taking the subsequent undervalued amount of Rs.10,27,385/- which reflected the correct market value, when the assessee had paid the differential stamp duty?

5. Whether the Appellate Authorities failed to appreciate that at the time of search the assessee had not maintained books of accounts and the books of accounts were prepared later on for the purpose of compulsory audit under Section 142(2A) of the Act, two years after the search and ought to have appreciated the various discrepancies and inadequacies mentioned in the audit report which was detected in the course of search?"

2. The short facts of the case appear to be that there was block assessment made by the assessing officer vide order dated 24.1.2003 and in the said block assessment order, it was found that the demand drafts purchased by assessee were not sufficiently explained to the tune of Rs.42,53,000/-. Further investment of Rs.8,19,000/- in the residence purchased has also not been disclosed earlier. He found that sums of RS.36,61,575/- investment in the Maruthi Technology has not been properly explained and the investment of Rs.10,27,385/- in Museum Road Apartment has been undervalued and, hence, ultimately, he assessed undisclosed income of Rs.1,34,42,930/- in the respective block period from 1.4.1990 to 27.7.2000.

3. The matter was carried in the appeal before CIT(Appeals) and the CIT (Appeals) vide order dated 2.7.2007 found that the demand draft of Rs.42,53,000/- purchased by the assessee were

sufficiently explained as the amount of Rs.50 lakhs was withdrawn from the Company's Bank Account. Further, the investment of Rs.8,90,000/- was already disclosed earlier in the VDIS Scheme. He also found that a sum of Rs.36,61,575/- as investment in Maruthi Technology, credit was explained by the assessee and he also found that sum of Rs.10,27,385/- and the investment in the Museum Road Apartment has been undervalued was not acceptable. The valuation made in the registration for Rs.5,50,000/- was held to be acceptable and consequently the appeal was allowed.

4. The matter was carried in appeal by the Revenue before the Tribunal and the Tribunal found that, demand draft of Rs.42,53,000/- purchased by the assessee was found to be established as the assessee had withdrawn the sum of Rs.50 lakhs from the Company's account. The Tribunal also found that the investment of Rs.8,90,000/- in a residence purchased

at Craig Park was already disclosed in the VDIS scheme. The Tribunal also found that the investment of Rs.36,61,575/- in Maruthi Technology has also been explained. The Tribunal also found that a sum of Rs.10,27,385/- undervaluation was not acceptable and ultimately the appeal of the revenue has been dismissed. Under the circumstances, the present appeal before this Court.

5. We have heard Mr.Jeevan J.Neeralgi, learned counsel for the appellant-revenue and Mr.Shankar, learned counsel appearing for respondent-assessee.

6. As such, in our view all questions are in the arena of appreciation of the evidence and the material on record. Whether to consider the explanation as sufficient or not on the basis of material produced on record is essentially a question of fact to be concluded on the basis of the material produced on record after appreciation of the evidence. The acceptance of the

explanation in our view, can be said as a finding of fact for which the Tribunal is the ultimate fact finding authority. Hence, so far as question nos. 1, 2 and 3 are concerned, they can rather said to be based on the finding of fact. It is true that, if any finding of fact is perverse to the record, it may result into substantial questions of law but, the learned counsel appearing for the appellant-Revenue has not been able to show any finding of the Tribunal for concurring with the view of the CIT(A) on the question of fact as perverse or contrary to the material on record.

7. Under these circumstances, we find that the findings of the Tribunal so far as they relate to question nos. 1 to 3 being essentially in the domain of the finding of fact and not perverse to the record, such would not arise for further consideration. Hence, suffice it to observe that, no interference is called for to the order of the Tribunal to that extent in this regard.

8. The aforesaid would take us to examine question No.4. A perusal of the order passed by the Assessing Officer shows that the undervaluation is considered of Rs.10,27,385/- only on the premise that in the District Valuation Report for the purpose stamp duty or valuation was made and the difference between the price shown at the time of registration at Rs.5,50,000/- and valuation made by the District Valuation reporter was considered as undisclosed investment for the purpose of addition in the undisclosed income. CIT(A) in the appeal found that the said finding is based on presumption and not based on facts and hence, deleted the addition made. The Tribunal in the impugned order after considering the submissions of both the sides at para.9.2 observed thus:

> "9.2. After going through the rival submission and material available on record, we are not

inclined to interfere with the findings of CIT(A). It is undisputed that this property belong to of M/s.Maruthi Build Tech Pvt.Ltd.,, in which the assessee is a Managing Director. The purchase of property in question is recorded in the books of the said company. The books were also subject to audit by the IT department u/s.142(2A) and the audited statements of the said company evidenced that the purchase of the said flat is recorded in the books of the company. The addition in question is based on valuation for the purpose of stamp duty paid for registration after a gap of 5 years cannot be the said valid basis for making addition in question. The ACIT has only estimated the market rate on the date of registration of the property and came to a conclusion that the assessee has actually paid the difference in cash. Once the investment has been reflected in the books of accounts of M/s. Maruthi Build Tech Pvt.Ltd., assumption based valuation for the purpose of stamp duty is not justifiable. The CIT(A) has rightly deleted the same. We uphold the same."

9. The aforesaid shows that the Tribunal has taken into consideration that purchase of property in question is recorded in the books of accounts subject to audit under Section 142(2A) of the Income Tax Act, 1961 wherein, in the audited accounts, purchase of the said property is recorded in the books of the company. The valuation for the purpose of stamp duty paid for registration of the property is at the gap of five years and the same cannot be valid basis for making addition in question and hence, the ultimate view taken by CIT(A) has been confirmed and no interference is made.

10. At this stage, we may usefully refer to the decision of Delhi High Court in case of *Commissioner of Income Tax vs. Bajrang Lal Bansal reported at 2011(335) ITR 575 (Delhi)* wherein the question arose as to whether on the basis of valuation report, the undisclosed income can be assessed or not in absence of an incriminating evidence to suggest that any excess payment than

mentioned in the register deed was paid or accepted. The Delhi High Court in the above referred decision ultimately held as under:

> "Moreover, in the present case, no evidence much less incriminating was found as a result of the search to suggest that the respondent-assessee had made any payment over and above the consideration mentioned in the return of the respondent-assessee.

11. Ultimately the Court found that no substantial questions of law had arisen in the said matter. We may state that there should be independent evidence for passing or receiving of the consideration found by the authority in addition to the amount mentioned in the registered sale deed. The valuation report can be used in corroboration but not as the primary evidence to treat as any undisclosed income. No such primary evidence is surfaced or transpired in the present proceedings.

12. Under these circumstances, we find that the ultimate decision taken by the Tribunal and the view of the CIT (Appeal) cannot be said to be illegal. Hence, question no.4 is answered accordingly against the Revenue and in favour of the assessee.

13. So far as question No.5 is concerned, we find that it ordinarily falls in the arena of appreciation of the books of accounts. When CIT(Appeals) as well as Tribunal have not found any discrepancy to discard the books of accounts prepared for the purpose of compulsory audit under Section 142(2A) of the Act, we do not find that such would result into raising any substantial questions of law as sought to be canvassed. Hence, question no.5 in our view cannot be said to be as falling under the scope of judicial scruitiny by way of any substantial questions of law. In the result, the appeal fails.

14. The above referred question nos. 1 to 3 and 5 not arising as substantial questions of law. Such would

not make the order of the Tribunal as contrary to law. So far as question no.4 is concerned, we have already answered earlier against the revenue and in favour of the asseesee.

15. Hence, no interference deserves to be made to the order passed by the Tribunal. The appeal fails. Dismissed accordingly.

Sd/-
JUDGE

Sd/-
JUDGE

Sk/-