IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF SEPTEMBER 2015

PRESENT

THE HON'BLE MR.JUSTICE N.KUMAR

AND

THE HON'BLE MR.JUSTICE RAVI MALIMATH

RP.NO.290 OF 2011
IN
ITA NO.401 OF 2009
A/W
ITA.NO.398 OF 2009
C/W
ITA.NO.400 OF 2009

RP.NO.290/2011:
BETWEEN:

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

2. THE DEPUTY COMMISSIONER OF
   INCOME TAX (TDS),
   CIRCLE – 18(2),
   C.R.BUILDING,
   QUEENS ROAD,
   BENGALURU. ... PETITIONERS

(BY SRI K.V.ARAVIND, ADVOCATE)

AND :

M/S.SALARPURIA PROPERTIES PVT.LTD.,
NO.100, MONEY TERRACE,
K.H.ROAD, (DOUBLE ROAD),
BENGALURU – 560 027. ... RESPONDENT

(BY SRI K.K.CHYTHANYA, ADVOCATE)

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THIS RP IS FILED UNDER ORDER 47 RULE 1 OF CPC, PRAYING TO REVIEW THE ORDER DATED 28.02.2011 PASSED IN ITA.NO.401/2009.

ITA.NO.398/2009:
BETWEEN:

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

2. THE DEPUTY COMMISSIONER OF
   INCOME TAX (TDS),
   CIRCLE – 18(2),
   C.R.BUILDING,
   QUEENS ROAD,
   BENGALURU. ...APPELLANTS

(BY SRI K.V.ARAVIND, ADVOCATE)

AND :

M/S.SALARPURIA PROPERTIES PVT.LTD.,
NO.100, MONEY TERRACE,
K.H.ROAD, (DOUBLE ROAD),

BENGALURU – 560 027. ... RESPONDENT

(BY SRI K.K.CHYTHANYA, ADVOCATE)

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THIS ITA IS FILED UNDER SECTION 260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 27.2.2009 PASSED IN ITA.NO.1123/Bang/2008, FOR THE ASSESSMENT YEAR 2003-04, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED THEREIN AND ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BENGALURU IN ITA.NO.1123/Bang/2008, DATED 27.2.2009 AND CONFIRM THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE – 18(2), BENGALURU.

ITA.NO.400/2009:
BETWEEN:

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

2. THE DEPUTY COMMISSIONER OF
   INCOME TAX (TDS),
   CIRCLE – 18(2),
   C.R.BUILDING,
   QUEENS ROAD,
   BENGALURU. ... APPELLANTS

(BY SRI K.V.ARAVIND, ADVOCATE)

AND :

M/S.SALARPURIA PROPERTIES PVT.LTD.,
NO.100, MONEY TERRACE,

K.H.ROAD, (DOUBLE ROAD),
BENGALURU – 560 027. ... RESPONDENT
(BY SRI K.K.CHYTHANYA, ADVOCATE)

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THIS ITA IS FILED UNDER SECTION 260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 27.2.2009 PASSED IN ITA.NO.1125/Bang/2008, FOR THE ASSESSMENT YEAR 2005-06, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED THEREIN AND ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BENGALURU IN ITA.NO.1125/Bang/2008, DATED 27.2.2009 AND CONFIRM THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-18(2), BENGALURU.

THIS RP A/W ITAs COMING ON FOR FURTHER ORDERS THIS DAY, N.KUMAR J., DELIVERED THE FOLLOWING:

JUDGMENT

The common ground urged in this Review Petition and the appeals is that the appeals were rejected by holding that the payments are not made in the nature of dividends while recording the said finding, the Court did not notice second portion of Section 2(22) (e) and explanation 3 of the Act. In terms of the said provision if any member of the assessee Company is a member or a

partner having substantial interest, the payments made amounts to deemed dividend. The term 'substantial' referred to in sub-Clause(3) has been explained in explanation (iii) to Section 2(22)(e) of the Act. Therefore, the said Review Petition is filed seeking for review of the order passed by this Court.

2. We have heard the learned counsel appearing for the parties. The said contention was considered by this Court in the case of CHIEF COMMISSIONER OF INCOME TAX vs. SARVA EQUITY (P) LTD., reported in (2014) 225 TAXMAN 0172(KARNATAKA). At para-16 it is held as under:-

> *"16. In the present case, we are concerned with the second limb of Section 2(22)(e) of the Act namely, to any concern, like the respondent-assessee, in which such shareholder is a member or a partner and in which he has a substantial interest. The respondent assessee is admittedly not a shareholder of M/s.Ittina. It is not even the*

case of the assessee that it is a shareholder of M/s.Ittina, though, shareholders of the respondent-assessee and M/s.Ittina are common and/or members of the same family. In this backdrop when we look at the provisions contained in Section 2(22)(e) of the Act, the intendment of the Legislature is clear, which means to tax dividend in the hands of shareholders. The deeming provisions, as observed by Delhi High Court, as it applies to the case of loans/advances by a Company to a concern in which its shareholders have substantial interest, is based on the presumption that the loans or advances would ultimately be made available to the shareholders of the Company giving the loan or advances. Loan or advance given to the shareholders or to a concern, under normal circumstances would not qualify as dividend, but it is so made by legal fiction created under Section 2(22)(e) of the Act. Thus, the definition of dividend has been enlarged, and that loan or advances given under the conditions specified under this provision would also be treated as dividend. The fiction,

however, is not to be extended for enlarging the concept of shareholders. Dividend is to be given by any company, to its shareholders. Thus, in the second category under Section 2(22)(e) of the Act, loan or advances given to a concern, like the assessee in the present case, which is admittedly not a shareholder of the payee company, under no circumstances, could be treated as shareholder receiving dividend. As observed by Delhi High Court, if the intention of the Legislature was to tax such loan or advance as deemed dividend at the hands of deeming shareholder, then the legislature would have inserted deeming provision in respect of shareholder as well. The legislature has not done so."

As the said question is also answered against the Revenue in the aforesaid Judgment, we do not see any ground to review the order. Accordingly, the Review Petition is rejected and the other two Appeals are

dismissed recording the finding against the revenue on the said question of law raised in those cases.

SD/-
JUDGE

SD/-
JUDGE

Rsk/-