IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JULY, 2024

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

INCOME TAX APPEAL NO. 372 OF 2022

BETWEEN:

1. THE PR. COMMISSIONER OF INCOME TAX,
   5th FLOOR, BMTC BUILDING,
   80 FEET ROAD, KORAMANGALA
   BENGALURU - 560 095.

2. THE ASST. COMMISSIONER OF INCOME TAX,
   CIRCLE -4(3)(1), 2nd FLOOR,
   BMTC BUILDING, 80 FEET ROAD,
   KORAMANGALA, BENGALURU - 560 095.

...APPELLANTS

(BY SRI. Y.V. RAVIRAJ, STANDING COUNSEL A/W
SRI. DILIP M, ADVOCATE)

AND:

Digitally signed by SHAKAMBARI
Location: HIGH COURT OF KARNATAKA

BELLANDUR CHIKKAGURAPPA JAYARAMAREDDY,
NO.11, 1st CROSS ROAD,
MICO LAYOUT, BTM II STAGE,
BENGALURU - 560 076,
PAN: AASPJ 162IN.

...RESPONDENT

(BY SRI. MADHUSUDHAN U.A, ADVOCATE)

THIS INCOME TAX APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 05/01/2022 PASSED IN ITA NO.1322/BANG/2019, FOR THE ASSESSMENT YEAR 2014-2015 PRAYING TO I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN. II. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME TAX APPELLATE TRIBUNAL,

BENGALURU IN ITA NO. 1322/BANG/2019 DATED 05/01/2022 FOR ASSESSMENT YEAR 2014-2015 ANNEXURE-C AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASST. COMMISSIONER OF INCOME TAX, CIRCLE-4(3)(1), BENGALURU.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, **KRISHNA S DIXIT J.,** DELIVERED THE FOLLOWING:

JUDGEMENT

This appeal by the Revenue seeks to call in question the Tribunal's Order dated 05.01.2022 concerning the Assessment Year 2014-15 whereby, the Assessee's Appeal in ITA No.1322/Bang/2019 came to be allowed and Assessee has been granted to relief by reversing the order of Commissioner (Appeals).

2. The appeal has been presented with the following substantial questions of law:

> *1. "Whether, on the facts and in the circumstances of the case and law, the Tribunal is right in law in holding that the assessee has proved that 2nd proviso to Section 50C(1) is satisfied since assessee has paid part of sale consideration on the date of MOU on 8/4/2013 and in view of this, he guidance value has to be computed as prevailing on the date of MOU and therefore same is allowable ignoring that MOU relied upon by assessee is an unregistered document which is not valid document for purpose of Transfer of Property as MOU dated*

8/4/2013 does not create any title in favour of assessee"?

2. Whether, on the facts and in the circumstances of the case and law, the Tribunal's order can be said as perverse in nature in setting aside disallowance of Capital Gains ignoring the findings and materials brought on record by assessing authority and which has been rightly upheld by Commissioner of Income Tax (Appeals)?"

3. A Co-ordinate bench of this Court had directed notice and accordingly, the same having been served, the assessee is represented by his Senior Counsel Shri A.Shankar, who opposes the appeal contending that the questions framed above do not arise in the matter inasmuch as the provisions of Section 50-C of the Income Tax Act, 1961, as they were for the relevant Assessment Year, although, the provisos have been introduced in the later financial years, do not support them.

4. Having heard the learned Counsel for the parties and having perused the appeal papers, we are broadly in agreement with the submission of learned Senior Advocate representing the assessee inasmuch as Parliament in it's wisdom has injuncted that the date of the agreement itself should be kept in view and not the date on which the same has

been registered, subject to all just exceptions into which argued case of the appellant does not fit.

5. Section 50-C (1) of the Act reads as under:

"50C. [Special provision for full value of consideration in certain cases. [Inserted by Act 20 of 2002, Section 24 (w.e.f. 1.4.2003).]

(1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted] [Inserted by Act 21 of 1998, Section 23 (w.r.e.f. 1.4.1998).][or assessed or assessable] [Substituted by Act 33 of 2009, Section 25, for certain words (w.e.f. 1.10.2009).][by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted] [Inserted by Act 20 of 2002, Section 24 (w.e.f. 1.4.2003).] [or assessed or assessable] [Substituted by Act 33 of 2009, Section 25, for certain words (w.e.f. 1.10.2009).][shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

[Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a [bank account or through such other electronic mode as may be prescribed] [Inserted by Act 20 of 2002, Section 24 (w.e.f. 1.4.2003).], on or before the date of the agreement for transfer.]
(Third Proviso not being relevant is not produced)"

The text of the provisions of Section 50-C is as clear as *Gangetic waters.* In the fact matrix of the case, it leaves no discretion with the Revenue to adopt any date other than the date of agreement in question.

In view of the above, the appeal being not meritorious, is liable to be and accordingly *rejected*, costs having been made easy.

Sd/-
JUDGE

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