IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF AUGUST, 2024

PRESENT

THE HON'BLE MR JUSTICE S.G.PANDIT

AND

THE HON'BLE MR JUSTICE C.M. POONACHA

INCOME TAX APPEAL NO. 12 OF 2020

BETWEEN:

1. THE PR. COMMISSIONER OF INCOME TAX
CIT (A),
5TH FLOOR, BMTC BUILDING,
80 FEET ROAD,
KORAMANGALA
BENGALURU-560095

2. THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE-1(1)(1)
2ND FLOOR, BMTC BUILDING,
80 FEET ROAD,
KORAMANGALA
BENGALURU-560095

...APPELLANTS

(BY SRI E.I. SANMATHI., ADVOCATE FOR
SRI SUSHAL TIWARI N, ADVOCATE)

Digitally signed by BHARATHI S
Location: HIGH COURT OF KARNATAKA

AND:

M/S ALLEGIS SERVICES INDIA PVT LTD
COMMERCE @ MANTRI LEVEL-3
BANNERGHATTA ROAD
BENGALURU-560076
PAN AAFCA0825M

...RESPONDENT

(BY SRI. T SURYANARAYANA, SENIOR COUNSEL FOR
SMT. TANMAYEE RAJKUMAR.,ADVOCATE)

THIS ITA / INCOME TAX APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE, ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BENGALURU IN ITA NO.2199/BANG/2018 DATED 05/04/2019 FOR ASSESSMENT YEAR 2012-2013 ANNEXURE-D CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE- 1(1)(1), BENGALURU AND ETC.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S.G.PANDIT
and
HON'BLE MR JUSTICE C.M. POONACHA

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE C.M. POONACHA)

The present appeal is filed by the revenue under Section 260-A of the Income Tax Act, 1961[1] challenging the order dated 5.4.2019 passed in ITA No.2199/Bang/2018 by the Income-Tax Appellate Tribunal, Bengaluru[2], for the Assessment Year 2012-2013, wherein the appeal filed by the revenue challenging the order dated 27.4.2018 by the Commissioner of Income-Tax (Appeals)-1, Bengaluru, has been dismissed.

[1] Hereinafter referred to as the 'Act, 1961'
[2] Hereinafter referred to as 'ITAT'

2. This Court, by order dated 12.10.2020 has admitted the above appeal to consider the following substantial questions of law:

> *"1. Whether on the facts and circumstances of the case, the Tribunal is perverse in not considering the fact that the assessee had filed the return of income on 30.11.2012 which is subsequent to the judgment of the Hon'ble High Court in the case of M/s. Samsung Electronics Co. Ltd.,?*
>
> *2. Whether on the facts and circumstances of the case, the Tribunal is right in law in setting aside the disallowance made by assessing authority under section 40(a)(ia) of the Act even though the assessee had failed to deduct TDS on payment of Rs.19,50,43,544 to non residents towards purchase of shrinked wrapped software attracting section 9(1)(vi) of the Act?"*

3. Heard the submissions of learned counsels Sri E.I.Sanmathi along with Sri Sushal Tiwari for the revenue and learned Senior Counsel Sri T.Suryanarayan Rao appearing along with Sri Tanmayee Rajkumar for the assessee.

4. It is submitted by the learned Senior Counsel for the assessee that the substantial questions of law which have been framed for consideration in the above appeal are covered by the judgment of the Hon'ble Supreme Court in the case of ***Engineering Analysis Centre of Excellence***

(P.) Ltd., v. Commissioner of Income-tax[3]. It is further contended that the questions that arise in the present appeal are covered by the judgment of a coordinate Bench of this Court in the case of ***Allegis Services (India) Private Ltd., v. The Deputy Commissioner of Income Tax, Circle 1(1)(1), Bangalore & anr.,[4]***. Hence, he seeks for dismissal of the above appeal.

5. Per contra, learned counsel for the revenue submits that Review Petitions have been filed before the Hon'ble Supreme Court seeking review of its judgment in the case of ***Engineering Analysis Centre of Excellence (P.) Ltd.,[3]*** and that all the Review Petitions have not be considered. However, he does not dispute the fact that substantial question of law No.1 is covered by a coordinate Bench judgment of this Court in the case of ***Allegis Services (India) Private Ltd.,[4]***. It is further submitted that substantial question of law No.2 is peculiar to the facts of each case.

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[3] (2021) 125 taxmann.com 42(SC)
[4] Judgment dated 17.4.2021 passed in ITA No.40/2019

6. In view of the submission made, as noticed above, the present appeal is disposed of having regard to the undisputed position that the same is covered by a coordinate Bench judgment of this Court in the case of ***Allegis Services (India) Private Ltd.,***[4]. Hence, substantial questions of law are answered in favour of the assessee and against the revenue.

Sd/-
(S.G.PANDIT)
JUDGE

Sd/-
(C.M. POONACHA)
JUDGE

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List No.: 1 Sl No.: 0