IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH 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. 338 OF 2017

C/W

INCOME TAX APPEAL NO. 379 OF 2017

IN ITA No.338/2017

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-11(1),
PRESENT ADDRESS, CIRCLE-1(1)(2),
2ND FLOOR, BMTC BUILDING,
80 FEET ROAD,KORAMANGALA,
BENGALURU-560095.

...APPELLANTS

(BY SRI Y V RAVI RAJ, ADVOCATE)

AND:

M/S. AGNUS HOLDINGS PVT. LTD.,
STAR-2, OPP. IIMB BILEKAHALL,
BANNERGHATTA ROAD,
BENGALURU 560076
PAN:AAHCS 6660A

...RESPONDENT

(BY SMT PRATIBHA R, ADVOCATE)

Digitally signed by BHARATHI S
Location: HIGH COURT OF KARNATAKA

THE ITA / INCOME TAX APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BENGALURU IN ITA NO. 529/BANG/2014 DATED13/10/2016 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE DY. COMMISSIONER OF INCOME TAX, CIRCLE-1(1)(1), BENGALURU AND ETC.

IN ITA No.379/2017

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-11(1),
   PRESENT ADDRESS, CIRCLE-1(1)(1),
   2ND FLOOR, BMTC BUILDING,
   80 FEET ROAD, KORAMANGALA,
   BENGALURU-560095.

…APPELLANTS

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

AND:

M/S AGNUS HOLDINGS PVT LTD
STAR-2, OPP. IIMB BILEKAHALL,
BANNERGHATTA ROAD,
BENGALURU-560076.
PAN:AAHCS 6660A.

…RESPONDENT

(BY SMT PRATIBHA R., 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 THEREIN, AND ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BENGALURU IN ITA NO. 668/BANG/2014 DATED 13/10/2016 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND

CONFIRM THE ORDER PASSED BY THE DY. COMMISSIONER OF INCOME TAX, CIRCLE-1(1)(1), BENGALURU AND ETC.

THESE APPEALS, 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)

ITA No.338/2017 is filed by the Revenue under Section 260 A of the Income Tax Act, 1961[1], challenging the order dated 13.10.2016 passed in ITA.No.529/Bang/2014 by the Income-Tax Appellate Tribunal, Bengaluru[2].

2. ITA.No.379/2017 is filed by the Revenue under Section 260A of the IT Act, challenging the order dated 13.10.2016 passed in ITA.No.668/Bang/2014 by the Tribunal.

3. The relevant facts necessary for consideration of the present appeals are that the assessee carries on the

[1] Hereinafter referred to as 'IT Act'
[2] Hereinafter referred to as 'Tribunal'

business of investment and finance and trading in shares. The assessee filed returns for the assessment year 2009-10 declaring loss of ₹26,67,78,608/- and the assessing authority made disallowance under Section 141A of the IT Act and rejected the claim of forfeiture of money, paid towards share warrant as capital loss. Being aggrieved the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) -I[3], wherein the said appeal was partly allowed. Being aggrieved the assessee preferred ITA.No.529/Bang/2014. The revenue also preferred ITA.No.668/Bang/2014. The Tribunal by its order dated 13.10.2016 partly allowed the appeal of the assessee as well as the revenue. Being aggrieved the assessee has preferred the present appeal.

4. This Court vide order dated 07.11.2017 admitted the above appeal to consider the substantial questions of law formulated in the memorandum of appeal which are as under:

i. "Whether on the facts and in the circumstances of the case, the Tribunal is right in law in setting aside

[3] Hereinafter referred to as 'Commissioner Appeals'

the disallowance made under Section 14A of the Act by following its earlier order in case of assessee itself which has not reached finality and even when the assessing authority rightly made said disallowance in compliance with Rule 8D of I.T. Rules read with Section 14A of the Act?

ii. *Whether on the facts and in the circumstances of the case, the Tribunal is right in law in setting aside the disallowance of shore term capital loss made by assessing authority by following its earlier order which has not reached finality and when assessing authority rightly rejected the said claim as the assessee had failed to explain correctness of said claim and failed to substantiate with any materials?"*

5. Heard submissions of learned Senior panel Counsel for the appellant - Revenue Sri. Y.V. Ravi Raj and Smt. Prathibha. R., for the respondent.

6. It is forthcoming from the aforementioned, that the present appeal is confined to the disallowance made under Section 14A of the IT Act with regard to the disallowance of short term capital loss.

7. With regard to the said aspect it is relevant to note that the Tribunal while considering ground Nos.2 to 7

with regard to the disallowance under Section 14A of the IT Act has noticed that an identical issue was considered by the Tribunal in the assessee's own case for the assessment year 2010-11 vide order dated 30.11.2015 passed in ITA.No.1612/Bang/2014. The relevant portion of said order dated 30.11.2015 has been extracted by the Appellate Tribunal at para No.5 of its order dated 13.10.2016. In view of the similar orders passed, the Tribunal set aside the finding of the assessing officer and remanded the matter to the assessing officer to consider the said issue on similar direction.

8. A Coordinate Bench of this Court in the case of ***DEPUTY COMMISSIONER OF INCOME -TAX V/S BPL SANYO FINANCE LTD[4].,*** has answered a similar question in favour of the assessee and against the revenue.

9. Hence, by following the above decision i.e., ***BPL SANYO FINANCE LTD[4]*** the substantial questions of law framed in the present appeals are answered in favour of the assessee and against the revenue.

[4] (2009) 312 ITR 63

10. In view of the aforementioned the above appeals are dismissed.

Sd/-
(S.G.PANDIT)
JUDGE

Sd/-
(C.M. POONACHA)
JUDGE

PNV
List No.: 1 Sl No.: 45