IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JANUARY, 2025

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

INCOME TAX APPEAL NO. 275 OF 2024

BETWEEN:

M/S ABS FUJITSU GENERAL PVT LTD.,
NO 63/4, BASAVA SADANA,
VISHWANTHA RAO ROAD,
MADHAVANAGAR, BANGALORE 560 001.
KARNATAKA.
(REP BY ITS DIRECTOR
MR. VINOD SALADI S/O PRAKASH RAO SALADI,
AGED ABOUT 50 YEARS.

…APPELLANT

(BY SRI. NARENDRA KUMAR J JAIN., ADVOCATE FOR
SMT. GEETHA RANI K.,ADVOCATE)

AND:

Digitally signed by SHARADA VANI B
Location: HIGH COURT OF KARNATAKA

DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE 1 (1)(1), BANGALORE.
BMTC BUILIDNG, 80 FEET ROAD,
KORAMANGALA, BANGALORE 560 095.

…RESPONDENT

(BY SRI.DILIP M.,ADVOCATE)

THIS ITA FILED UNDER SECTION 260-A OF THE INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 04.07.2024 PASSED IN ITA NO.845/BANG/2024, ASSESSMENT YEAR 2021-22, PRAYING TO A) FORMULATE THE SUBSTANTIAL QUESTION OF LAW AS STATED ABOVE AND B) ALLOW THE APPEAL AND SET ASIDE THE IMPUGNED ORDER OF THE INCOME TAX

APPELLATE TRIBUNAL, BENGALURU C BENCH BEARING IN ITA NO.845/BANG/2024 FOR THE ASSESSMENT YEAR 2021-22 DATED 04.07.2024 TO THE EXTENT PREJUDICIAL TO THE APPELLANT. ORIGINAL ORDER OF THE TRIBUNAL IS ENCLOSED HEREWITH AS ANNEXURE A, AND ETC.,

THIS ITA COMING ON FOR ADMISSION THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
and
HON'BLE MR JUSTICE G BASAVARAJA

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

Appeal by the Assessee has raised the following substantial questions of law:

> *"I. Whether in the facts and circumstances of the case, the Tribunal committed an error of law in dismissing, the appeal of the assessee on the ground that there is no sufficient cause to condone the delay without giving due consideration to the material and evidence on record demonstrating sufficient cause for the delay in filing the appeal before CIT(A)?*
>
> *II. Whether the findings of ITAT are perverse as they are based on incorrect appreciation of evidence and without appreciating that there was sufficient cause for delay in filing appeal before CIT(A). The ITAT has erred in not exercising judicial discretion*

vested in it in accordance with established legal principles.

III. Whether in the facts and circumstances of the case, the Tribunal erred in not appreciating the fact that disallowance of contingent liability under Section 37 of the Act, is unjustified as no deduction for same was claimed, thus leading to substantial injustice to the Appellant?."

2. Learned Panel Counsel on request appears for the sole Respondent-Revenue and opposes the Appeal contending that the questions framed do not have elements of substantial law.

3. Having heard the learned counsel for the parties and having perused the Petition papers, we are of the considered opinion that, first of the questions framed has the characteristics of the substantial question of law and therefore, Appeal merits admission on that basis. At this stage, learned advocates appearing for the parties in all fairness submit that Appeal after being admitted, need not be kept for an indefinite period of time and that, its disposal on the first question of law would do justice to both the sides. We agree with this submission.

4. Learned counsel appearing for the Appellant – Assessee is justified in submitting that ordinarily delay in Appeals of the kind needs to be addressed with some amount of leniency inasmuch as, in several Appeals filed by the Revenue, that approach has been adopted by this Court itself. He also adds that after all, condoning delay would not add additional merits to the case of Appellant, be it before this Court or before the Tribunal and that dismissing Appeal on the sole ground of delay would cause heart burn to the Assesses. We agree with this view too.

In the above circumstances, the substantial question of law as to justifiability of not condoning delay, needs to be answered in favour of the Assessee & accordingly it is. Therefore, we are of the considered opinion that the delay brooked in filing the first Appeal needs to be condoned and in the peculiar facts of the case, the matter be remitted to the portals of ITAT for consideration of the Appeal on merits.

Ordered accordingly and Appeal stands disposed off, keeping open all contentions of the parties.

Costs made easy.

Sd/-
(KRISHNA S DIXIT)
JUDGE

Sd/-
(G BASAVARAJA)
JUDGE

Bsv
List No.: 1 Sl No.: 25