IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF SEPTEMBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

INCOME TAX APPEAL No. 289 OF 2021

BETWEEN:

1. PR. COMMISSIONER OF INCOME TAX-2,
   BMTC COMPLEX,
   KORAMANGALA,
   BANGALORE.

2. THE ASSISTANT COMMISSIONER
   OF INCOME TAX,
   CIRCLE -4 (1) (1),
   BENGALURU.

...APPELLANTS

Digitally signed by VALLI MARIMUTHU
Location: HIGH COURT OF KARNATAKA

(BY SRI SANMATHI E I., SENIOR STANDING COUNSEL)

AND:

1. M/S KARNATAKA POWER CORPORATION LIMITED,
   No.82 SHAKTHI BHAVAN,
   RACE COURSE ROAD,
   BENGALURU-560001.

...RESPONDENT

(BY SRI A. SHANKAR, SENIOR ADVOCATE FOR
SRI ANNAMALAI S., ADVOCATE)

THIS ITA/ INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961 ARISING OUT OF ORDER DATED 11.01.2021 PASSED IN ITA No.282/BANG/2017, FOR THE ASSESSMENT YEAR 2002-2003 PRAYING TO DECIDE THE FOREGOING QUESTION OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT. SET ASIDE THE APPELLATE ORDER DATED 11.01.2021 PASSED BY THE INCOMETAX APPELLATE TRIBUNAL 'A' BENCH, BENGALURU, AS SOUGHT FOR, IN THE RESPONDENT - ASSESSEE'S CASE IN APPEAL PROCEEDINGS No.282/BANG/2017 (ANNEXURE-A) , FOR THE ASSESSMENT YEAR 2002-2003.

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 K. V. ARAVIND

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE K.V. ARAVIND)

The revenue is in appeal challenging the order in ITA No.282/Bang/2017 for the Assessment Year 2002-03 dated 11.01.2021.

2. The following substantial questions of law are admitted on 04.02.2022.

> *"(i) Whether on the facts and in the circumstances of the case, the tribunal is right in law in holding that computation of deduction under Section 80I was never the subject matter of issue in any proceeding and as such limitation under Section 154(7) of the Act would*

have to be reckoned from the date of original assessment order dated 0.02.2005 passed under Section 143(3) of the Act and as such rectification order passed by assessing authority dated 28.03.2012 would be barred by limitation ignoring that entire assessment has merged with appellate order where under the statute, the appellate authority is given plenary jurisdiction over the entire order, irrespective of the appeal being restricted to only a part of the order of the lower authority?

(ii) Whether the order passed by tribunal can be said as perverse in law in holding that rectification order passed by assessing authority is barred by limitation when the said order has been passed to rectify the mistake occurred and ignoring law regarding merger of orders in appellate orders and jurisdiction of assessing authority to rectify the same?"

3. The assessee filed return of income on 30.10.2002 declaring an income of Rs.246,40,54,707/-. The Assessing Officer completed the assessment under Section 143(3) of the Income Tax Act, 1961 (for short 'the Act') dated 10.02.2005. The said order was subjected to revision under Section 263 of the Act by the Commissioner of Income Tax in respect of two issues.

(i) Donation of Assets of Rs . 2,18,08,292/-.

(ii) Loss of assets of Rs . 2,19,73,292/-.

In exercise of power under Section 263 of the Act, the Commissioner set aside the assessment order and directed the

Assessing Officer to recompute the loss as per the directions. The order under Section 263 of the Act was carried in appeal by the assessee before the Income Tax Appellate Tribunal, Bangalore Benches "A', Bangalore (for short ITAT'). However, the ITAT did not interfere with the direction issued to the Assessing Officer.

4. The Assessing Officer giving effect to the order of the Commissioner under Section 263 of the Act and the order of the ITAT passed order under Section 143(3) read with Section 254 of the Act on 20.10.2011. The Assessment Order dated 20.10.2011 determined the tax liability in conformity with the directions of the Commissioner. Thereafter, the Assessing Officer issued notice under Section 154 of the Act to rectify the order dated 20.10.2011 insofar as the deduction granted under Section 80IA of the Act of Rs.80.55 Crores. The Assessing Officer, under an order dated 28.03.2012, rectified the order of assessment dated 20.10.2011, withdrawing the deduction of Rs . 80.55 Crores under Section 80IA of the Act.

5. This order of rectification was the subject matter of appeal before the Commissioner of Income Tax (Appeals) (for short 'CIT(A)'). The CIT(A), by order dated 22.11.2016, rejected the appeal. The assessee further aggrieved preferred an appeal before the ITAT. The ITAT under impugned order held that the order under Section 154 of the Act dated 28.03.2012 is barred by limitation under Section 154(7) of the Act.

6. Sri.E. I. Sanmathi, learned Senior Standing Counsel appearing for the appellant-revenue submits that the order of assessment dated 10.02.2005 was subjected to revision under Section 263 of the Act. The order under revision was carried in appeal by the assessee before the ITAT. The Assessing Officer in conformity with the directions under Section 263 of the Act and the findings of the ITAT, passed order under Section 143(3) read with Section 254 of the Act on 20.10.2011. It is submitted that in the order dated 20.10.2011, the Assessing Officer has wrongly allowed deduction under Section 80IA to the extent of Rs.80.55 Crores. As the mistake is apparent from the record, the Assessing Officer was justified in invoking

Section 154. It is submitted that as the order sought to be rectified is the order dated 20.10.2011, the limitation under Section 154(7) of the Act is to be computed from that order. It is submitted that the ITAT committed an error in computing the limitation from the original order dated 10.02.2005.

7. Per contra, Sri. A. Shankar, learned Senior counsel appearing for the respondent-assessee, submits that in the original Assessment Order dated 10.02.2005, deduction under Section 80IA of Rs.80.55 Crores was allowed. The said assessment order was subjected to review under Section 263 of the Act only insofar as two issues. The Assessing Officer is empowered to pass an order giving effect to revision order under Section 263 and the order of the ITAT only in respect of those two issues subject matter of the order under Section 263.

8. It is the submission of learned Senior Counsel that under the guise of rectifying the order dated 20.10.2011, the Assessing Officer is attempting to withdraw the benefit under Section 80IA, granted in the order dated 10.02.2005**.** Hence, the rectification sought to be made is to the order dated 10.02.2005 and not the order dated 20.10.2011 as contended

by the revenue. Hence, it is submitted that the ITAT is justified in reckoning the limitation under Section 154(7) from the date of the first order, i.e., 10.02.2005. It is submitted that if the limitation of 4 years is computed from 10.02.2005, the order of rectification dated 28.03.2012 is completely barred by limitation.

9. Having considered the submissions of learned counsel for the parties, there are two assessment orders on record. First, the original assessment under Section 143(3) dated 10.02.2005. Second order is dated 20.10.2011 passed pursuant to the direction of the Commissioner under Section 263 and the order of the ITAT dated 16.05.2008. The assessee has declared income of Rs.246,40,54,707/-. In the original assessment order dated 10.02.2005, the additions were made only in relation to Rs.83,59,608/- towards provision for bad debts. The said order of assessment was subjected to revision under Section 263. The order under Section 263 is in respect of two issues. Firstly, donation of assets of Rs.2,18,08,292/-. Secondly, loss of assets of Rs.2,19,73,292/-.

10. The deduction claimed by the assessee under Section 80IA in the original return of income was not disturbed in the Assessment Order dated 10.02.2005. Though the Assessing Officer is contending that the mistake has crept in the order dated 20.10.2011, in-effect, the Assessing Officer is attempting to rectify the order dated 10.02.2005. The scope of rectification under Section 154 to rectify the order dated 20.10.2011 cannot go beyond the subject issues of 263 order. Undisputedly, deduction under Section 80IA was not subject matter of either 263 proceedings or in appeal before the ITAT.

11. In that view, the only inference that can be drawn is that the deduction allowed in the order of assessment dated 10.02.2005 is sought to be rectified under the guise of rectifying the order dated 20.10.2011. As the order sought to be rectified is dated 10.02.2005, the limitation under Section 154(7) is to be reckoned from 10.02.2005. If the limitation of 4 years as prescribed under Section 154(7) is computed from 10.02.2005, the rectification order dated 28.03.2012 is barred by limitation. The ITAT appreciating the order that is sought to be rectified has rightly held that the limitation has to be

computed from 10.02.2005 i.e., date of the first Assessment Order.

12. In that view of the matter, we find no justification in the contention urged by the revenue. The appeal is meritless and, accordingly, it is dismissed.

Substantial questions of law are answered in favor of the assessee and against the revenue.

Sd/-
(S.G.PANDIT)
JUDGE

Sd/-
(K. V. ARAVIND)
JUDGE

VBS
List No.: 1 Sl No.: 37