

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 15TH DAY OF JULY 2014

PRESENT

THE HON'BLE MR.JUSTICE N. KUMAR

AND

THE HON'BLE MR. JUSTICE B. MANOHAR

I.T.A. Nos. 556 OF 2013 AND 105 OF 2014

C/W

I.T.A. Nos. 574 OF 2013 AND 103 OF 2014

I.T.A. Nos. 575 OF 2013 AND 106 OF 2014

I.T.A. Nos. 576 OF 2013 AND 104 OF 2014

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE
C R BUILDING, QUEENS ROAD
BANGALORE
2. THE ASST. COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE-1(2)
C R BUILDING, QUEENS ROAD
BANGALORE-560001

...COMMON APPELLANTS

(BY SRI. K V ARAVIND, ADV.)

AND

M/S ITTINA PROPERTIES (P) LTD
NO. 380, OPPL CPWD QUARTERS

3RD BLOCK, KORAMANGALA
BANGALORE-560034

... COMMON RESPONDENT

(BY SRI. A SHANKAR & M LAVA, ADV.)

ITA Nos. 556/13 & 105/14 ARE FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 07/06/2013 PASSED IN ITA NO.265/BANG/2012 AND C.O.NO. 52/BANG/2012 DATED:07/06/2013 FOR THE ASSESSMENT YEAR 2006-2007 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE; ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BANGALORE IN ITA NO.265/BANG/2012 AND C.O.NO.52/BANG/2012 DATED 07/06/2013 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-1(2), BANGALORE; AND ETC.

ITA Nos. 574/13 & 103/14 ARE FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 07/06/2013 PASSED IN ITA NO. 130/BANG/2012, FOR THE ASSESSMENT YEAR 2005-2006 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, BANGALORE IN ITA NO.130/BANG/2012 AND C.O.NO.35/BANG/2012 DATED 07/06/2013 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE ASST. COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-1(2), BANGALORE; AND ETC.

ITA Nos. 575/13 & 106/14 ARE FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 07/06/2013 PASSED IN ITA NO.129/BANG/2012 AND C.O.NO.34/BANG/2012, FOR THE ASSESSMENT YEAR 2004-2005 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, BANGALORE IN ITA NO.129/BANG/2012 AND C.O.NO.34/BANG/2012 DATED:07/06/2013 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-1(2), BANGALORE; AND ETC.

ITA Nos. 576/13 & 104/14 ARE FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 07/06/2013 PASSED IN ITA NO.131/BANG/2012 AND C.O.NO. 36/BANG/2012, FOR THE ASSESSMENT YEAR 2007-2008 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE; ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BANGALORE IN ITA NO. 131/BANG/2012 AND C.O.NO.36/BANG/2012 DATED 07/06/2013 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-1(2),BANGALORE; AND ETC.

THESE ITAs. COMING ON FOR ADMISSION THIS DAY, N. KUMAR J. DELIVERED THE FOLLOWING:

JUDGMENT

The assessee in all these 4 cases is one and the same and the assessment order relates to 4 assessment years. As the Tribunal has disposed of all the appeals before it by a common order, they are taken up for consideration together and also disposed of by a common order.

2. The Revenue has raised the following 4 substantial questions of law:

- (1) *Whether the CIT(A) was correct in law in interpreting the provisions of Section 2(22)(e) of the IT Act by holding that the amount cannot be assessed as deemed dividend in the hands of the assessee?*

- (2) *Whether on the facts and circumstances of the case, the CIT(A) erred in law in interpreting Section 2(22)(e) of the IT Act which was introduced to forestall the manipulation of likelihood of closely held companies and distributing their profits not by way of dividends but by way of loans and advances to escape tax?*
- (3) *In view of the ground No.2 above, whether the CIT(A) is correct in holding that deemed dividend that arose under Section 2(22)(e) of the IT Act should be taxed in the hands of the shareholder only and not in the hands of the concern as per Board's Circular No. 495 dated 22/08/87?*
- (4) *Whether CIT(A) was right in deleting the addition made u/s 80IB even though the assessee has not filed the prescribed Form No. 10CCB along with the return of income as stipulated under the Act?*

3. Insofar as question Nos. 1 and 2 are concerned, this court in the case of **THE CHIEF COMMISSIONER OF INCOME TAX-III & ANR. VS. M/S. SARVA EQUITY PVT. LTD.** in ITA Nos. 322/12 and connected matters decided on 8/1/2014, has held as under:

“17. Section 2(22)(e) of the Act is designed to strike balance, i.e., advance or loan to a shareholder and that the word shareholder can mean only a registered shareholder. A beneficial owner of shares whose name does

not appear in the Register of shareholders of the Company cannot be stated to be a shareholder. He may be beneficially entitled to the share but he is certainly not a shareholder. In other words, it is only the person whose name is entered in the Register of the shareholders of the Company as the holder of the shares who can be said to be a shareholder qua Company and not the person beneficially entitled to the shares. We are therefore, of the view that it is only where a loan is advanced by the Company to the registered shareholder and the other conditions set out in Section 2(22)(e) of the Act are satisfied, that amount of loan would be liable to be regarded as deemed dividend within the meaning of this section.

18. We do not find any reason to take a view other than the one taken by the Delhi and Bombay High Courts in the aforementioned judgments nor could the Senior counsel appearing for the revenue persuaded us to take differing view. In the circumstances, we find no reason to interfere with the concurrent finding of facts recorded by the two authorities below namely the Appellate Authority and the Tribunal. In the circumstances, we answer the question as formulated by us in favour of the respondent-assessee and against the revenue.”

In that view of the matter, the said substantial questions of law are answered in favour of the assessee and against the Revenue.

4. Insofar as question Nos. 3 and 4 are concerned, it relates to the assessee complying with the requirements provided under Sub-sec.(1) of Sec.80 IB before it could claim the benefit provided under Sec. 80 IB. The said provision came on the statute book by Finance Act 2004, with effect from 1/4/2005. The plan which is sanctioned in this case is of 16/3/2004 ie., prior to the said provision coming into force. This court in more than one case has held that the said provision is prospective in nature and it has no application to house products which was approved by the local authority prior to 1/4/2005. In that view of the matter, the benefit under Sec. 80 IB cannot be denied to the assessee on the ground that he does not comply with the terms of Sec.80 IB(10).

5. It is submitted on behalf of the assessee that they have complied with the said statutory requirement also. As the said provision has no application to the facts of the case, the question of going to the question whether those statutory requirements have been complied with or not,

would not arise and the Tribunal rightly extended the said benefit. In that view of the matter, we do not see any merit in the appeals and the said questions of law are answered in the sense that the said provision has no application to the facts of this case.

6. One of the project has been sanctioned subsequent to the Act. The point of controversy is regarding the date on which the project was completed to be eligible for the benefit of the said provision. The Revenue contends, the completion certificate issued by the Village Panchayat is not valid and therefore the assessee is not entitled to the said benefit. Admittedly the plan is sanctioned by the BDA. The BDA has not issued any completion certificate. The reason being, in the BDA Act or the Karnataka Municipal Corporation Act, there is no provision for issue of completion certificate. The provision in the Karnataka Municipal Corporation Act is for issuance of occupancy certificate. When the statute does not provide for issue of a completion certificate, if the

authorities were insisting on such certificate, the assessee has gone to the Village Panchayat within whose limits the property is situated and has obtained the completion certificate and has produced the same for availing the benefit. Whether that certificate would satisfy the requirement of law need not be gone into in these proceedings because, when the statute does not provide for issue of such a certificate, if the Revenue insists on such certificate, the assessee would be left with no option except to get such certificate with some authority which would be called as a local authority. In the facts of this case, we are of the view that the Tribunal has recorded a finding that the building was completed within the stipulated period and therefore *de hors* this certificate issued by the Panchayat after the building is completed, the assessee is entitled to the said benefit. In that view of the matter, we do not see any merit in these appeals. Accordingly the appeals are dismissed.

7. The finding of the Tribunal is solely on the facts of these cases and it cannot be cited as a precedent nor the judgment rendered, because we are also confining on the facts of these cases.

8. It is unfortunate that when the Parliament has extended the benefit of exemption from payment of Income Tax to a builder who undertakes group housing activity, the department is not willing to extend the benefit on the pretext that the production of completion certificate is a condition precedent for extending the benefit. Neither under the BDA Act nor under the Karnataka Municipal Corporation Act nor under the Karnataka Municipalities Act, there is any provision for issuance of a completion certificate. There is a provision for sanction of a plan, issue of a license, issue of a commencement certificate and issue of an occupancy certificate. In those circumstances, if the Revenue were to insist on production of a completion certificate, they are asking the assessee to do something which is impossible and which is not proper

in law. It is high time the Revenue, keeping in mind the relevant law governing the State of Karnataka, would suitably amend the law or issue appropriate circulars enabling the assesseees to comply with the legal requirement so that they could have the benefit extended to them by the Parliament.

**SD/-
JUDGE**

**SD/-
JUDGE**

Rd/-