

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10<sup>TH</sup> DAY OF JUNE, 2021

PRESENT

THE HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE MR. JUSTICE NATARAJ RANGASWAMY

I.T.A. NO.29 OF 2019

BETWEEN:

1. THE PR. COMMISSIONER OF INCOME TAX,  
5<sup>TH</sup> FLOOR, BMTC BUILDING,  
80 FEET ROAD, KORMANGALA,  
BENGALURU-560095.
2. THE DY. COMMISSIONER OF INCOME-TAX,  
CIRCLE-3(1)(2),  
PRESENT ADDRESS  
JCIT, SP. RANGE-3,  
ROOM NO.228, 2<sup>ND</sup> FLOOR,  
BMTC BUILDING, 6<sup>TH</sup> BLOCK,  
80 FEET ROAD, KORMANGALA,  
BENGALURU-560095.

...APPELLANTS

(BY SRI. ARAVIND K.V., ADVOCATE)

AND:

M/S. GOLDMAN SACHS SERVICES PVT. LTD.,  
CRYSTAL DOWNS, EMBASSY GOLF LINKS,  
BUSINESS PARK,  
OFF INTERMEDIATE RINK ROAD,  
BENGALURU-560071.  
PAN: AACCG 2435N.

...RESPONDENT

(BY SRI. T. SURYANARAYANA, ADVOCATE)

THIS APPEAL IS FILED UNDER SECTION 260-A OF THE INCOME TAX ACT, 1961, ARISING OUT OF THE ORDER DATED: 12.09.2018 PASSED IN C.O.NO.21/BANG/2017, FOR THE ASSESSMENT YEAR 2011-2012 PRAYING THIS HON'BLE COURT TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED IN THE APPEAL AND ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BENGALURU, IN C.O.NO.21/BANG/2017 DATED 12.09.2018 FOR THE ASSESSMENT YEAR 2011-2012 ANNEXURE-D CONFIRMING THE ORDER OF THE DRP AND CONFIRM THE ORDER PASSED BY THE JOINT COMMISSIONER OF INCOME TAX, SP.RANGE-3, BENGALURU.

THIS APPEAL COMING ON FOR HEARING THIS DAY, **NATARAJ RANGASWAMY J.**, DELIVERED THE FOLLOWING:

### **JUDGMENT**

This appeal under Section 260-A of the Income Tax Act, 1961 is filed by the revenue challenging the order of the Income Tax Appellate Tribunal, Bangalore Bench 'B', Bangalore, in C.O. No.21/Bang/2017 dated 12.09.2018 in respect of the assessee for the assessment year 2011-12 by which it confirmed the order of the Dispute Resolution Panel-1.

2. This appeal was admitted on the following substantial question of law:

“Whether on the facts and in the circumstances of the case, the Tribunal is right in

law in setting aside the disallowance made under section 14A read with Rule 8D(iii) of the Act even when same is contrary to the provisions of the Act and against legislative intent as prescribed in Circular No.5/2014 issued by CBDT?"

3. The facts reveal that the assessee filed its revised return of income for the assessment year 2011-12 declaring a total income of Rs.10,46,73,667/-. The return of income was taken up for scrutiny and the assessing officer passed a draft assessment order dated 05.03.2015 and proposed to recompute the total income of the assessee by disallowing the claim of Rs.75,730/- which was the exempt income claimed under Section 14A of the Income Tax Act, 1961 (henceforth referred to as 'the Act').

4. The assessee filed its objections before the Dispute Resolution Panel-1, who rejected the same by its directions dated 08.12.2015. Later, the assessing officer passed the final assessment order dated 27.01.2016 recomputing the total income of the assessee at Rs.104,749,400/- by disallowing the exempt income under

Section 14A of the Act. Being aggrieved by the aforesaid order of the Dispute Resolution Panel-1, the revenue filed an appeal to the Tribunal. The assessee filed its cross-objections. The Tribunal in terms of its order dated 12.09.2018, dismissed the appeal and partly allowed the cross-objection. In so far as the disallowance under Section 14A of the Act is concerned, the Tribunal partly allowed the cross-objection filed by the assessee by following a decision rendered by coordinate Bench of the Tribunal in the case of the assessee itself for the assessment year 2010-11. The order of the Tribunal for the assessment year 2010-11 was challenged before this court in ITA No.495/2017. This Court dismissed ITA No.495/2017 in terms of the order dated 28.08.2018.

5. It is not in dispute that a similar substantial question of law came up for consideration before this Court in ITA No.133/2015 and this Court answered the said question of law against the revenue and in favour of the assessee.

6. In view of the fact that the substantial question of law framed by this Court in the present appeal is no longer *res integra*, but is substantially answered by this Court in ITA No.133/2015, the question of law framed by this Court in the present appeal is answered against the revenue and in favour of the assessee.

Hence, the appeal is dismissed. However, the other substantial questions of law proposed by the revenue in this appeal are kept open as the said questions of law are pending consideration before this Court in ITA No.28/2019.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**