



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

INCOME TAX APPEAL NO. 186 OF 2023

BETWEEN:

1. THE PR. COMMISSIONER OF INCOME TAX,
5TH FLOOR, BMTC BUILDING,
80 FEET ROAD, KORMANGALA,
BENGALURU -560 095.
2. THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE -6(1)(2), PRESENT ADDRESS,
ACIT, CIRCLE-6 (1) (1), 2ND FLOOR,
BMTC BUILDING, 80 FEET ROAD,
KORAMANGALA, BENGALURU -560 095.

...APPELLANTS

(BY SRI. Y V RAVIRAJ., ADVOCATE FOR
SRI. M DILIP.,ADVOCATE)

AND:

M/S SWETHA REALMART LLP.,
(SUCCESSOR IN INTEREST OF
M/S SWETHA HEALTH RESEARCH PVT LTD),
NO.7 SAMYAKT UTTARADHI MUTT ROAD,
NEAR NATIONAL COLLEGE, SHANKARAPURAM,
BENGALURU-560 004.
PAN-AAHCS 94861.

...RESPONDENT

(BY SRI. K K CHYTHANYA., SENIOR COUNSEL FOR
SRI. TATA KRISHNA.,ADVOCATE)

THIS ITA / INCOME TAX APPEAL UNDER SEC.260-A OF
THE INCOME TAX ACT, 1961, PRAYING TO I. FORMULATE THE
SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE AND II.

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Location: HIGH
COURT OF
KARNATAKA



ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU IN ITA NO. 2435/BANG/2019 DATED 09/12/2021 FOR ASSESSMENT YEAR 2016-2017 ANNEXURE-C AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASST. COMMISSIONER OF INCOME-TAX, CIRCLE-6(1)(1), BENGALURU AND III. TO PASS SUCH OTHER SUITABLE ORDERS AS THIS HONBLE COURT DEEMS FIT TO GRANT IN THE FACTS AND CIRCUMSTANCES OF THE CASE IN THE INTEREST OF JUSTICE AND EQUITY.

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 RAMACHANDRA D. HUDDAR

ORAL JUDGMENT

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

This appeal by the Revenue calls in question Tribunals Order dated: 09.12.2021 whereby Assessee's ITA No.2435/Bang/2019 for the Assessment Year 2016-17 having been allowed, relief has been accorded to him.

2. The appeal has been structured on the following substantial question of law:

"1. Whether on the facts and the circumstances of the case and in law, the Tribunal's order can be said as perverse in nature holding that assessee had not claimed depreciation on the shed located in asset and the sale made was composite in nature ignoring that Tribunal itself



has made finding that sheds on land in question was depreciable asset, therefore, holding non-application of section 50 of the Act on the footing that depreciation was claimed by the assessee is immaterial based on Supreme court decision relied upon by Tribunal in case of Sakthi Metal Depot V/s CIT (reported in (2021) 130 taxmanc.com 238 (SC))”?

2. "Whether Tribunal's order can be said as perverse in nature in not appreciating that assessing authority and CIT(A) rightly computed short term capital gain amounting to Rs.16,34,94,975/- by observing that description of the property given in both partnership deed and sale deed, it is established that property in question was not only vacant land but also had constructed building which was shown in Schedule of assets under Land and Building”?"

3. Having heard the learned Panel Counsel appearing for the Revenue and the learned Senior Advocate representing the Assessee we decline indulgence in the matter inasmuch as Section 50 of the Income Tax Act, 1961 is not invocable when at no point of time any depreciation is allowed in respect of subject property, even if arguably the same is a depreciable asset. The said provision employs the expression '*asset forming a part of a block of assets in respect of which depreciation has been*



allowed'. Thus, unless that incident happens, Assessee does not fit into the precincts of this provision the asset was not subjected to depreciation, is not in dispute. This fact matrix and legal reasoning has animated impugned order of the Tribunal.

4. The heavy reliance by the learned Sr. Panel Counsel appearing for the Revenue on **SAKTHI METAL DEPOT vs. COMMISSIONER OF INCOME TAX**¹ does not come to his aid inasmuch as at para 2 in the reproduction, the first line itself says that in that case the building in question has undergone depreciation. It hardly needs to be stated that there need be perennial claim for depreciation. Even one single incident of allowing depreciation may attract the said provision. That being the position, the ratio does not come to the aid of Revenue.

¹ (2021) 130 TAXMANN.COM 238



In the above circumstances, we answer the Substantial Questions of Law raised in the appeal, against the Revenue and eventually in favour of the Assessee. Appeal is liable to be dismissed and accordingly it is, costs having been made easy.

Sd/-
(KRISHNA S DIXIT)
JUDGE

Sd/-
(RAMACHANDRA D. HUDDAR)
JUDGE

Snb/
List No.: 1 Sl No.: 18