



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JANUARY, 2025

PRESENT

THE HON'BLE MRS JUSTICE K.S.MUDAGAL

AND

THE HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

R.P. NO.364 OF 2023

IN

I.T.A. NO.24 OF 2018

BETWEEN:

M/S BANGALORE PHARMACEUTICAL
AND RESEARCH LABORATORY PVT. LTD.
NO.163, RESERVOIR STREET
BASAVANAGUDI, BANGALORE
REP. BY ITS MANAGING DIRECTOR
SRI.S.T.RAGHAVENDRA MADY

...PETITIONER

(BY SRI.BALARAM R. RAO, ADV.)

AND:

DY.COMMISSIONER OF INCOME TAX
PRESENTLY CIRCLE 1(1)(2), PREVIOUSLY
CIRCLE - 11(2), BMTC BUILDING
80 FEET ROAD, KORAMANGALA
BANGALORE - 560 095

... RESPONDENT

(BY SRI.M.DILIP, STANDING COUNSEL)

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MALA K N

Location: HIGH COURT
OF KARNATAKA

THIS RP IS FILED UNDER ORDER XLVII RULE 1 READ
WITH SECTION 114 OF THE CODE OF CIVIL PROCEDURE 1908
PRAYING TO REVIEW THE JUDGMENT PASSED BY THE HON'BLE
COURT IN ITA NO.24/2018, DATED 12.06.2023 TO THE EXTENT
AS DEEMED FIT BY THIS HON'BLE COURT TO MEET THE ENDS
OF JUSTICE.

THIS PETITION HAVING BEEN RESERVED FOR ORDERS ON
20.01.2025 COMING ON FOR PRONOUNCEMENT THIS DAY,
T.G.SHIVASHANKARE GOWDA, J., MADE THE FOLLOWING:



CORAM: HON'BLE MRS. JUSTICE K.S.MUDAGAL
AND
HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

CAV ORDER

(PER: HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA)

This Review Petition is filed by the assessee under Order XLVII Rule 1 read with Section 114 of the Code of Civil Procedure, 1908, seeking review of the order dated 12.06.2023 passed in I.T.A.No.24/2018.

2. The Assessee has filed I.T.A.No.24/2018 under Section 260A of the Income Tax Act, 1961, against the order dated 13.01.2017 passed by the Income Tax Appellate Tribunal, Bengaluru ('ITAT' for short) in I.T.A.No.560 & 1025/Bang/2014 for the assessment year 2010-11.

3. This Court had admitted the appeal to consider the following substantial questions of law:

"1. Whether the Tribunal in law as well as facts was right in holding that when income from house property held as inventory is assessed to tax under the head "Income From House Property" as in the instant case,



the corresponding interest on borrowals for acquiring the said house property cannot be allowed under the head income from house property and is to be allowed as a deduction under "profits and gains of business and profession"?

2. Whether the Tribunal in law as well as facts correct in restricting the deduction for interest on borrowed funds u/s 24 only for the period after the building was let out, while clause (b) of Section 24 permits deduction of interest payable on borrowed capital during the previous year?

3. Whether the Tribunal has erred in giving the AO directions to verify the end use of the funds by the developer and not whether the borrowed funds have been used by appellant to acquire the property from which rental income was obtained.

4. Whether the Tribunal in law as well as facts of the case correct in confirming the order of the AO wherein sum of Rs.15.50 Lakhs paid to M/s Sheshanka Financial Services Pvt. Ltd., has been disallowed as an "accommodation entry"?

5. Whether the Tribunal was right in not considering ground no.3 raised before them in Form 36 with regard to disallowance of interest of Rs.66,66,733 paid to M/s Pratibha Realtors Pvt Ltd., under the head provisions when the liability to pay the same had crystallized during the Financial year ended 31.03.2010?



4. When the matter was taken up for hearing, submission was made on behalf of both sides that the ITAT has remanded the matter for the limited purpose of verification of facts on grounds No.1 and 2. As regards ground No.3 regarding disallowance of interest of Rs.41,55,000/-, the ITAT has not recorded any finding. As regards ground No.4, the ITAT has remitted the matter to the Assessing Officer. After remand, the Assessing Officer has passed an order on 28.09.2017 holding all the issues against the assessee. The assessee has challenged the order of the Assessing Officer before the National Faceless Appeal Centre, New Delhi ('NFAC' for short) in Appeal No.CIT(A), Bengaluru-1/10187/2017-18 and the same is pending. In the assessment order, the Assessing Officer has recorded at para-6.6 that the ITAT has not directed the Assessing Officer to allow the assessee's claim of interest. The observation of the ITAT shows that the Assessing Officer has decided the matter based on ITAT's observations and not independently by applying



his mind and it was prayed that appeal may be allowed and NFAC may be directed to consider the assessee's appeal on merits, uninfluenced by the orders passed by the ITAT.

5. We have heard the arguments of Sri.Balram R.Rao, learned counsel for the assessee and Sri.M.Dilip, learned standing counsel for the Revenue.

6. Learned Standing counsel appearing for the Revenue has submitted that NFAC may consider the appeal on merits uninfluenced by the order passed by the ITAT.

7. The sum and substance of the argument on behalf of both sides is that the appeal before the NFAC has to be determined purely on merits uninfluenced by the observations or order passed by the ITAT. Accordingly, this Court at para-6 has referred to the observations made by the Assessing Officer and ultimately in the light of the submission made by both sides, it was held that the ends of justice would be met



by directing the NFAC to dispose of Appeal No.CIT(A), Bengaluru-1/10187/2017-18, which is filed against the assessment order dated 28.09.2017 uninfluenced by the order passed by ITAT in accordance with law.

8. It is the contention of the learned counsel for the assessee that the substantial question of law No.4 regarding confirmation order of Assessing Officer to a tune of Rs.15.50 lakhs paid to M/s.Sheshanka Financial Services Pvt.Ltd., which has been disallowed as an 'accommodation entry' is correct and it requires a finding before this Court.

9. Learned standing counsel for the Revenue contended that the appeal before the NFAC has to be considered purely on merits without referring to any of the observations recorded by the ITAT. Hence, whatever observations that require to be urged has to be urged before the NFAC and the review is not permissible on a point which is not argued in the appeal sought to be reviewed. The assessee has given



an option to urge all the contentions before the NFAC and review is not permissible.

10. We have carefully perused the order of this Court dated 12.06.2023 and also the submissions made on behalf of the assessee as well as the Revenue.

11. On consideration of the submissions made by Sri.Balram, learned counsel for the assessee, it is thus clear that the assessee intended to safeguard his right by making a new submission in the review petition and wants to re-argue the case on merits. As we noticed that the interest of the assessee has been safeguarded as the NFAC is required to decide the appeal purely on merits uninfluenced by the order of the ITAT, we do not find any ground for reviewing the order impugned as it amounts to allowing the parties to re-argue the case. The assessee is having every right to question the order of the NFAC after adjudication of the appeal on merits.



12. We do not find any ground for review of the order of this Court. Hence, we pass the following;

ORDER

The Review Petition is dismissed.

**SD/-
(K.S.MUDAGAL)
JUDGE**

**SD/-
(T.G.SHIVASHANKARE GOWDA)
JUDGE**

KNM
List No.: 1 SI No.: 1