<u>THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN</u>

AND

<u>THE HON'BLE SRI JUSTICE N. TUKARAMJI</u>

<u>I.T.T.A.Nos.256, 257, 259, 261, 262, 263, 264, 265, 266, 268, 269, 270, 271, 272, 273, 274, 275, 279, 281, 283, 284 and 294 of 2022</u>

<u>COMMON JUDGMENT</u>: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

This order will dispose of the above batch of income tax appeals.

2. Heard Mr. Dwarakanath, learned Senior Counsel representing Mr. Karthik Ramana Puttam Reddy, learned counsel for the assessees/appellants and Ms. K.Mamata Choudary, learned Standing Counsel, Income Tax Department and Ms. Sapna Reddy, learned counsel representing Mr. J.V.Prasad, learned Standing Counsel, Income Tax Department for the respondents.

3. All the related appeals have been filed under Section 260A of the Income Tax Act, 1961 (briefly referred to hereinafter as 'the Act') assailing the common order dated 21.03.2022 passed by the Income Tax Appellate Tribunal,

Hyderabad Bench ‘A’, Hyderabad (briefly referred to hereinafter as ‘Tribunal’) disposing of the following appeals corresponding to the relevant assessment years:

Sl.No. & Appellant	**ITA No.**	**Asst. Year**
1. Dakshin Infrastructures Private Limited, Hyderabad.	651/Hyd/2020	2012-13
2. Kapil Property Developers Limited, Hanumakonda.	652/Hyd/2020	2013-14
3. Kapil Foods and Structures Private Limited, Warangal.	653/Hyd/2020	2012-13
	654/Hyd/2020	2013-14
4. Nalgonda Realtors Private Limited, Secunderabad.	655/Hyd/2020	2012-13
	656/Hyd/2020	2013-14
	657/Hyd/2020	2017-18
5. Ujwala Publications and Developers Pvt. Ltd., Warangal.	658/Hyd/2020	2012-13
	659/Hyd/2020	2013-14
6. M/s. Indur Avenues and Foods Private Limited, Nizamabad.	666/Hyd/2020	2012-13
	667/Hyd/2020	2013-14
7. M/s.Kausalya Management Services and Structures Private Limited, Karimnagar.	668/Hyd/2020	2012-13
	669/Hyd/2020	2013-14
	691/Hyd/2020	2017-18
8. Indur Developers and Agencies Private Limited, Vijayawada.	670/Hyd/2020	2012-13
	671/Hyd/2020	2013-14
	672/Hyd/2020	2016-17
9. Kausalya Agro Farms & Developers Private Limited, Hyderabad.	673/Hyd/2020	2012-13
	674/Hyd/2020	2013-14
	675/Hyd/2020	2014-15
	676/Hyd/2020	2017-18

10. Kausalya Shelters Private Limited, Karimnagar.	678/Hyd/2020	2013-14
	679/Hyd/2020	2014-15
	680/Hyd/2020	2017-18
11. M/s. Kausalya Avenues Private Limited, Karimnagar.	681/Hyd/2020	2012-13
	682/Hyd/2020	2013-14
	683/Hyd/2020	2016-17
	684/Hyd/2020	2017-18
	685/Hyd/2020	2018-19
12. Kapil Infra Avenues Private Limited, Vijayawada.	686/Hyd/2020	2012-13
	687/Hyd/2020	2013-14
13. Preethi Foods and Villas Private Limited, Khammam.	688/Hyd/2020	2012-13
	689/Hyd/2020	2013-14
	690/Hyd/2020	2017-18

4. Learned Senior Counsel for the appellant has proposed the following questions as substantial questions of law:

1. Whether on the facts and in the circumstances of the case, the Tribunal is correct in upholding the jurisdiction of the assessing officer in initiating reassessment under Section 147 of the Act overlooking the contention of the appellant that the first proviso to Section 147 of the Act is not applicable since there is full and true disclosure of all material facts necessary for assessment?

2. Whether the Tribunal misdirected itself in dealing with a contention based on Section 153-A read with Section 153-C of the Act as if the reassessment is challenged based on

the material recovered at the time of search of a group concern?

3. Whether the Tribunal failed to appreciate that the reasoning given in appeal of **Indur Developers and Agencies Private Limited** (ITA No.672/Hyd/2020 dated 21.3.2022) formed the basis for decision in this appeal and hence, it cannot be construed as a concession by a group entity?

4. Whether the Tribunal was justified in remanding the matter for *de novo* examination to verify whether the borrowings and advances made by the appellant contain interest stipulation or not when it is clearly admitted by the appellant in the assessment proceedings that borrowings had interest stipulation while there was no such stipulation for advances given to sister concerns?

5. Whether the remand direction of the Tribunal is wholly unnecessary when, for the purpose of Section 37 of the Act, the interest on borrowings is a revenue expenditure and is admissible for deduction irrespective of the fact whether the advances made out of such borrowings yielded interest thereon?

6. Whether it is within the power of the Tribunal to undo the relief granted by the CIT(A) when the Department has not chosen to challenge the order of the CIT(A) either through a separate appeal or through cross objections?

5. Upon going through the common order passed by the Tribunal and as agreed to by learned counsel for the

parties, the appeals are taken up for final disposal at the stage of admission hearing itself.

6. In one bunch of appeals, the sole ground raised by the assessees before the Tribunal was disallowance of interest expenditure under Section 36(1)(iii) of the Act made by the assessing officer and partly affirmed by the first appellate authority. As a matter of fact, first appellate authority had granted limited relief to the assessees. For the balance relief, appeals were filed by the assessees before the Tribunal.

7. In another batch of appeals, we find that the ground urged before the Tribunal was validity of reopening of assessment proceedings under Section 147 of the Act.

8. However, we find from the order dated 21.03.2022 that instead of adjudicating on the grounds raised by the assessees before the Tribunal, Tribunal had remanded the appeals to the file of the assessing officer. In paragraph 46 of the common order, Tribunal has held that assessing officer has to examine the assessees' fund position as well as the

clinching issue as to whether the corresponding borrowings claimed to have been carrying no interest involving plotted land buyers, afresh and in light of all the evidence on wholesome basis only.

9. We are afraid Tribunal was required to adjudicate on the grounds which were urged before it by the assessees/appellants. Remanding the matter in its entirety to the assessing officer has caused serious prejudice to the appellants in as much as even those reliefs which have been granted by the first appellate authority would now stand nullified in view of the Tribunal's direction to the assessing officer to re-do the whole exercise in its entirety.

10. We may also mention that no cross-appeals were filed by the revenue against the order of the first appellate authority granting substantial relief to the assessees/ appellants.

11. That being the position, we set aside the common order of the Tribunal dated 21.03.2022 and direct the

Tribunal to hear the appeals before it on the limited grounds urged by the appellants, namely, disallowance of interest expenditure under Section 36(1)(iii) of the Act to the extent disallowed by the first appellate authority as well as the validity of the re-assessment proceedings.

12. The questions framed are accordingly answered in favour of the appellants/assessees and against the revenue.

13. Consequently, the appeals are allowed. However, there shall be no order as to costs.

14. As a sequel, miscellaneous applications pending, if any, in this Appeal, shall stand closed.

UJJAL BHUYAN, CJ

N.TUKARAMJI, J

Date: 02.02.2023
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