

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 25th DAY OF AUGUST, 2014

PRESENT

THE HON' BLE MR. JUSTICE N.KUMAR

AND

THE HON' BLE MRS. JUSTICE RATHNAKALA

Income Tax Appeal No 842 OF 2008

c/w

Income Tax Appeal No.339 OF 2010

In Income Tax Appeal No 842 OF 2008:

BETWEEN

1.THE COMMISSIONER OF INCOME TAX
C R BUILDING
QUEENS ROAD
BANGALORE

2.THE ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE-12(2)
C.R. BUILDING
QUEENS ROAD
BANGALORE

... APPELLANTS

(BY SRI K V ARAVIND, ADVOCATE)

AND

M/S SAP LABS PVT LTD
138, EXPORT PROMOTION
INDUSTRIAL PARK
WHITEFIELD
BANGALORE

... RESPONDENT

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

...

This Income Tax Appeal is filed under Section 260-A of Income Tax Act, 1961 praying to formulate the substantial questions of law and to allow the appeal and set aside the Order dated 30-04-2008 passed by the ITAT, Bangalore in ITA No. 799/BNG/2007 and confirm the order passed by the Assistant Commissioner of Income Tax , Circle-12(2), Bangalore.

In Income Tax Appeal No.339 OF 2010

BETWEEN

1.THE COMMISSIONER OF INCOME TAX
C R BUILDINGS
QUEENS ROAD
BANGALORE-560 001.

2.THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE-12(3)
BANGALORE

... APPELLANTS

(BY SRI E.I. SANMATHI, ADVOCATE)

AND

M/S SAP LABS PVT LTD
No.138, EXPORT PROMOTION
INDUSTRIAL PARK
WHITEFIELD
BANGALORE-560 009

... RESPONDENT

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

...

This Income Tax Appeal is filed under Section 260-A of Income Tax Act, 1961 praying to formulate the substantial questions of law and to allow the appeal and set aside the Order dated 22-04-2010 passed by the ITAT, Bangalore in ITA No. 1193/BANG/2009 for the assessment year 2002-03.

These Income Tax Appeals coming on for Hearing this day, N. Kumar J., delivered the following:

JUDGMENT

The revenue has preferred these appeals challenging the order passed by the Tribunal which has set aside the order passed by the Appellate Commissioner under Section 263 of the Income Tax Act (hereinafter referred to as 'the Act').

2. The assessee in ITA No. 842/2008 filed its return of income for the assessment year 2002-03 on 31st October, 2002. The same was processed under Section 143(1) of the Income Tax Act. The assessee received notices dated 1st of April, 2004 under Section 148 of the Act and 12th April 2004 under Section 92CA of the Act from the Transfer Pricing Officer seeking details about the international transactions entered into by the assessee with the

group companies on a reference made by the Assessing Authority. At the time of issue of notice under Section 92CA of the Act, no valid return was pending on the basis of which notice under Section 92CA of the Act could have been issued. Since no notice under Section 143(2) of the Act was issued pursuant to filing of the original return, the assessment is deemed to have become final. In reply to the notice issued under Section 148 of the Act, the assessee filed a letter dated 21st April, 2004 requesting the Assessing Authority to treat the return filed on 31-10-2002 as return in compliance with the notice under Section 148 of the Act. In fact the Transfer Pricing Officer on 20.1.2005 passed an order under Section 92CA of the Act accepting the pricing of the Assessing Authority. However, the Commissioner of Income Tax invoking his power under Section 263 of the Act initiated proceedings and set aside the order of the Assessing Authority on the ground that it is erroneous and prejudicial to the

interest of the revenue. It is against that order, the assessee preferred an appeal to the Tribunal.

3. The Tribunal has held that when two views are possible and when the Transfer Pricing Authority has accepted valuation by the Assessing Authority determining the arm's length price, the Commissioner had no jurisdiction to interfere with the said order under Section 263 of the Act and moreover on the day the reference was made by the Assessing Authority, there was no return pending for consideration and therefore, the Tribunal has set aside the order of the Commissioner. It is against the said order, the revenue is before this Court.

4. From the aforesaid facts, it is clear that on the day the reference was made by the Assessing Authority to the Transfer Pricing Authority, there was no return pending for consideration by him and therefore, the very reference was bad. Even

otherwise, the said Transfer Pricing Authority did not find fault with the adjudication of determining arms length price by the Assessing Authority. In those circumstances, the Commissioner committed an error in exercising his power under Section 263 of the Act and the Tribunal was justified in interfering with the said order. Therefore, we do not see any merit in appeal No. 842/2008. Accordingly, it is dismissed.

5. Consequently, the impugned order which is the subject matter of ITA 339/2010 which is a consequential order is also dismissed.

Sd/-
Judge

Sd/-
Judge

Nsu/-

**THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'B'**

**BEFORE DR. O.K NARAYANAN, VICE PRESIDENT AND
SMT. P MADHAVI DEVI, JUDICIAL MEMBER**

ITA No.1173 /Bang/2009
(Asst. Year - 2002-03)

SAP Labs India Pvt. Ltd.,
No.138, Export Promotion
Industrial Park,
Whitefiled, Bangalore-560 066.

. Appellant

Vs.

The Dy. Commissioner of Income-tax,
Circle-12(3),
Bangalore.

. Respondent

ITA No.1193 /Bang/2009
(Asst. Year - 2002-03)

The Dy. Commissioner of Income-tax,
Circle-12(3),
Bangalore.

. Appellant

Vs.

SAP Labs India Pvt. Ltd.,
No.138, Export Promotion
Industrial Park,
Whitefiled, Bangalore-560 066.

. Respondent

Revenue B by : Smt. Swathi S Patil, Commissioner
of Income-tax

Assessee by : Shri Chavali S Narayan, Chartered Accountant

ORDER

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PER DR. O.K NARAYANAN, VICE PRESIDENT

These two appeals are cross-appeals filed by the assessee and the Revenue respectively. The relevant assessment year is 2002-03. These cross-appeals are directed against the orders of the CIT(A) - IV at Bangalore dated 16/09/2009. The assessment in this case has been completed u/s 143(3) read with sec. 263 of the Income-tax Act 1961.

2. The original assessment in this case was completed u/s 143(3) read with sec. 147. The CIT on going through the records of the case held that the assessment order was erroneous and prejudicial to the interest of the Revenue. Therefore, CIT set aside the assessment order with a direction to make a fresh assessment in the light of his observation and to compute the arms length price in the international transactions and after giving the assessee an opportunity. This revision order passed by the CIT was taken in appeal before the Income-tax Appellate Tribunal, Bangalore Benches. The ITAT, Bangalore 'B' Bench through its order dated 30.4.2008 passed in ITA No.799/Bang/2007 held that the assessment order could not be held as erroneous and prejudicial to the interest of the Revenue and, therefore, the CIT has no jurisdiction to pass a revision order u/s 263.

Accordingly the Tribunal set aside the revision order passed by the CIT.

3. The Assessing Officer, meanwhile, even after the Tribunal has set aside the revision order passed by the CIT, passed consequential assessment order in the light of the revision order passed by the CIT u/s 263. When the Assessing Officer passed the revised assessment order, it was known that the revision order itself has been quashed by the Tribunal and there was no said order surviving. The Assessing Officer had nothing before him to revise the assessment. But, still the said legal causality was made out by the Assessing Officer.

4. When the said assessment order was taken in first appeal, obviously, the CIT(A) held that the assessing authority had no jurisdiction to act upon the revision order passed by the CIT u/s 263, as the said order has already been set aside by the Tribunal. Accordingly, CIT(A) allowed the appeal filed by the assessee and annulled the revised assessment erroneously framed by the assessing authority. In the above context, the contention of the Revenue is that the CIT has erred in setting aside the revised assessment order and CIT(A) should have restored the matter back to the Assessing Officer.

The contentions raised by the assessee in the appeal are that the CIT has not addressed the grounds raised by the assessee before him regarding future consequence, if any, that may arise out of the jurisdictional high court reversed the order of the Tribunal.

5. We heard both sides in detail. The CIT(A) has rightly allowed the appeal filed by the assessee and set aside the revision assessment. The appeal filed by the Revenue is, therefore, liable to be dismissed. Regarding the contentions of the assessee pertaining to the consequences that may arise in future those arguments and contentions are premature. We are not to entertain anticipatory bail petitions. Therefore, we find the appeal filed by the assessee is non-est. The said appeal is also liable to dismissed.

6. By the by, we are very much astonished to observe that the Assessing Officer has passed a revised assessment order even after knowing that the revision order passed by the CIT has been set aside by the Tribunal. The action of the Assessing Officer could be treated as assault on the rule of law. His action amounts to contempt of court as well. The Revenue could have preferred to file an appeal before the Jurisdictional High Court against the order of the Tribunal setting

aside the revision order passed by the CIT. If such an appeal has been already filed, well and good. Otherwise, Revenue has no remedy when the Tribunal has set aside the revision order of the CIT. The said order no more exists and the Assessing Officer has no substratum to build a second round of revised assessment. We do not think that all these matters are unknown to the Assessing Authority.

7. But giving due consideration to the explanations offered by the learned senior officers appearing for the Revenue and also for the reason that the Assessing Officer might have prompted to act in a haste, only in public interest, we do not proceed further in this matter. But we wish that before jumping into such controversial games, the Assessing Officer ought to have taken advice from his seniors.

In result, the appeal filed by the assessee as well as the Revenue are dismissed.

Order pronounced on **Thursday** the **22nd** day of **April**, **2010**, at Bangalore.

Sd/-
(P MADHAVI DEVI)
JUDICIAL MEMBER
Vms.

Sd/-
(DR. O.K NARAYANAN)
VICE PRESIDENT

Copy to :

1. The Assessee
2. The Revenue
- 3.The CIT concerned.
- 4.The CIT(A) concerned.
- 5.DR
- 6.GF
- 7..GF, ITAT, New Delhi.

By order

Asst. Registrar, ITAT, Bangalore.