

IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH :: PANAJI

BEFORE SHRI R.S. SYAL, HON.VICE-PRESIDENT &
SHRI PARTHA SARATHI CHAUDHURY, HON.JUDICIAL MEMBER
(Through virtual hearing)

ITA No.238, 239, 241 & 242/PAN/2018
(A.Y. 2010-11, 2011-12, 2014-15 & 2015-16)

ITO, Ward-1, Udupi.	vs	M/s. Udupi Urban Development Authority, Bannanje, Udupi.
		PAN : AAALC 0600 J
Appellant		Respondent

Assessee by	:	Shri K.S. Balasubramanya, FCA
Revenue by	:	Shri N. Shrikanth, DR
Date of hearing	:	07/07/2023
Date of pronouncement	:	11/07/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

These appeals preferred by the Revenue emanates from the separate orders for A.Ys. 2010-11 & 2011-12 and combined order for A.Ys. 2014-15 & 2015-16 passed by the Commissioner of Income Tax (Appeals), Manguluru, all dated 27.03.2023 as per the grounds of appeals on record.

2. At the very outset, the parties herein conceded that the facts and circumstances and the issues involved in all these appeals are absolutely identical and similar and, therefore, all these appeals were heard together and were disposed of by this consolidated order.

3. Ld.DR opening his arguments submitted that for the purpose of

adjudication, ITA No.238/PAN/2018 for A.Y. 2010-11 may be taken as lead case. He further submitted that in all these cases, Id. CIT(A) has given relief to the assessee placing reliance on the notification of Govt. of Karnataka, dated 10/03/2006. Ld.DR further submitted that this notification was not sent to the AO for his comments and the Id.CIT(A) without calling for any remand report, had *suo motu* given relief, based on this notification. It was further submitted by the Id.DR that the AO must also be given an opportunity to verify the applicability of this notification to the facts of the assessee's case and, therefore this matter may be remanded back to the file of the AO for adjudication as per law.

4. Ld.AR, on the other hand, could not demonstrate whether the said notification was sent to the AO for his comments regarding the applicability of the said notification to the facts of the assessee's case. Ld.AR simply supported the findings of the Id. CIT(A).

5. We have heard the rival submissions and considered the facts and circumstances in this case. We find that at para 5.16, the Id.CIT(A) had relied on the Government of Karnataka Notification no. UDD 522 MyAaPra 2005, dated 10/03/2006, however, as rightly submitted by the Id.DR, the Id. CIT(A) had not called for any report from the AO regarding the applicability of the said notification to the facts of the assessee's case and have simply given relief to the assessee based on this notification. The principles of natural justice

demands that any government order, notification, circular etc. if it is relied on by the first appellate authority, the concerned Assessing Officer should also be given an opportunity to give his submissions and comments on the applicability of such circular, notifications etc. In this regard before us, it is very clear and precise that the Id. CIT(A) has passed his decision on the aforesaid notification of the Government of Karnataka, but has not allowed the AO to put on record his comments/views on the subject matter. That, even the Id.AR was unable to demonstrate whether his jurisdictional Assessing Officer was referred to on this issue by the Id. CIT(A). We are of the considered view that in the interest of natural justice, Id. CIT(A) should have given an opportunity to the AO to place his comments on the applicability of the said notification. In view thereof, we set aside the order of the Id. CIT(A) and remand the matter to the file of the AO for adjudication as per law, verifying the applicability of the said notification of Government of Karnataka vis-a-vis- facts of the assessee's case and come out with speaking order complying with the principles of natural justice. ITA No.238/PUN/2018 is allowed for statistical purposes.

6 At the outset, the parties herein conceded that facts and circumstances and issues involved in all these appeals are absolutely identical and similar, and therefore, our decision in ITA No. 238/PAN/2018 for A.Y. 2010-11 shall apply *mutatis mutandis* to the

remaining appeals. Therefore, ITA Nos.239, 241 & 242/PAN/2018 stands similarly allowed for statistical purposes.

7. In the combined result, appeals of the Revenue are allowed for statistical purposes.

Order pronounced in open Court on 11th July, 2023.

Sd/-
(R.S. SYAL)
VICE-PRESIDENT

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 11th July, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, Panaji Bench, Panaji.
6. Guard File.

By Order

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Senior Private Secretary
ITAT, Pune.