

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF JULY 2021

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

I.T.A. NO.43 OF 2017

BETWEEN:

M/S. TRIMM EXPORTS PRIVATE LIMITED
REP. BY ITS DIRECTOR
SRI. PATHI R. SAMPATH KUMAR
PLOT # 285, KACHANAYAKANAHALLI VILLAGE
BOMMASANDRA 1ST PHASE
JIGANI INDUSTRIAL AREA, ANEKAL TALUK
BANGALORE-560105
PAN:AAACT6673R.

... APPELLANT

(BY SRI. A. SHANKAR, SR. COUNSEL AND
SRI. V. CHANDRASHEKAR, ADV., FOR
SRI. M. LAVA, ADV.,)

AND:

THE DEPUTY COMMISSIONER OF INCOME-TAX
CIRCLE-12(4), BMTc BUILDING
80 FEET ROAD, 6TH BLOCK
KORAMANGALA, BANGALORE-560095.

... RESPONDENT

(BY SRI. K.V. ARAVIND, ADV.)

THIS I.T.A. IS FILED UNDER SECTION 260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 08.09.2016 PASSED IN ITA NO.1646/BANG/2013, FOR THE ASSESSMENT YEAR 2009-10, PRAYING TO:

I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE AND THE ANSWER THE SAME IN FAVOUR OF THE APPELLANT.

II. ALLOW THE APPEAL AND SET ASIDE THE FINDINGS TO THE EXTENT AGAINST THE APPELLANT IN THE ORDER PASSED BY THE ITAT, BENGALURU BENCH 'A' BENGALURU IN ITA NO.1646/BANG/2013 DATED 08.09.2016 FOR THE ASSESSMENT YEAR 2009-10 (ANNEXURE-A) & ETC.

THIS I.T.A. COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act', for short) has been filed by the assessee. The subject matter of the appeal pertains to the Assessment Year 2009-10. The appeal was admitted by a Bench of this Court vide order dated 25.10.2017 on the following substantial questions of law:

a) Whether the Tribunal was justified in law in not accepting that the compensation amount of Rs.one Crore paid by the appellant is not

deductible under Section 48 of the Income Tax Act, 1961 and consequently passed a perverse order on the facts and circumstances of the case?

b) Whether the Tribunal erred in law in holding the transaction was not genuine without appreciating the material on record which clearly indicates that the appellant had paid compensation for surrender of land by the tenant and consequently passed a perverse order on the facts and circumstances of the case?

c) Whether the Tribunal was justified in law in not adjudicating the issue of levy of interest under Section 234B and 234C of the Act, 1961 on the facts and circumstances of the case?

2. Facts leading to filing of this appeal briefly stated are that the appellant is a private limited company registered under the Companies Act, 1956 engaged in the business of printing and finishing of silk sarees and fabrics. The assessee filed its return of income for the Assessment Year 2009-10 declaring the total income of Rs.18,94,000/-. The case of the appellant was selected for scrutiny and the Assessing Officer issued a notice under Section 143(2) of the Act. The assessee filed a reply to the aforesaid notice on

07.10.2010. The Assessing Officer by an order dated 30.08.2011 determined total income of the assessee at Rs.1,27,64,292/- after setting off unabsorbed depreciation. The Assessing Officer also disallowed the amount of compensation to the extent of Rs.1 Crore paid by the assessee to M/s Pathi Prints (hereinafter referred to as 'the lessee' for short) to vacate the leased premises and to surrender vacant possession to the assessee. The assessee filed an appeal before the Commissioner of Income Tax (Appeals), which was dismissed by an order dated 03.09.2013. The assessee thereupon filed an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as 'the tribunal' for short). The tribunal by an order dated 08.09.2016 has affirmed the order passed by the Commissioner of Income Tax (Appeals). In the aforesaid factual background, this appeal has been filed.

3. Learned Senior counsel for the assessee submitted that the assessee had leased out the premises vide lease deed dated 22.02.1996 for a period of 40 years to M/s Pathi Prints. The assessee wanted to sell the premises

leased out to the aforesaid lessee. Therefore, the assessee entered into a deed of cancellation on 23.03.2009 with M/s Pathi Prints and the assessee agreed to pay a compensation of Rs.1 Crore to the lessee to cancel the lease and to hand over the vacant possession of the property. It is further submitted that the assessee thereafter, sold the portion of the property vide registered sale deed dated 13.05.2009 for a consideration of Rs.2.5 Crores and the lessee was a consenting witness to the aforesaid sale deed. It is also argued that the lessee occupied another portion of the property belonging to the assessee vide lease deed dated 01.04.2009. It is further submitted that the Assessing Officer cannot bring to tax the rental income from the property and simultaneously claim that compensation paid to the lessee for vacating the premises is not a genuine transaction. It is submitted that the findings, which are recorded by the Assessing Officer are perverse and the Commissioner of Income Tax (Appeals) and the tribunal has affirmed the same without any application of mind. It is also urged that the tax planning is permissible under the provisions of the Act. In support of aforesaid submissions, reliance has been placed

on decisions in '**CIT VS. MISS PIROJA C. PATEL**', (2000) 242 ITR 582 (BOM.), '**CIT VS. T. SREENIVASA RAO**', (1987) 166 ITR 593 (AP), '**UOI VS. AZADI BACHAO ANDOLAN**', (2003) 261 ITR 222 (MADRAS).

4. On the other hand, learned counsel for the revenue has invited the attention of this court to para 9.11 to 9.27 of the order passed by the Assessing Officer. It is further submitted that the assessee did not shift the premises and the Assessing Officer has recorded a finding of fact that the lessee was in possession of the premises leased out to him even after the sale. Therefore, the transaction in question has rightly been held to be non genuine. It is further submitted that the aforesaid finding is a finding of fact, which does not suffer from any infirmity and therefore, no interference is called for in this appeal.

5. We have considered the submissions made by learned counsel for the parties and have perused the record. The issue which arises for consideration in this appeal is whether an amount of Rs.1 Crore paid as compensation by the appellant to the lessee can be claimed as expenses

incurred in connection with transfer of the capital asset. The assessee was the owner of land measuring 1,07,810 square feet. Out of the aforesaid land, the assessee had executed a lease deed in favour of the lessee on 22.02.1996 for a period of 40 years in respect of land measuring 29,845 square feet. The assessee in the previous years had offered income to tax under the head 'House Property', which was taxed by the Assessing Officer under the 'Rental Income'. For the Assessment Year 2007-08, the assessee had offered a sum of Rs.10,05,000/- under the head 'Income from House Property', which was assessed to tax by the Assessing Officer. Thereafter, a deed of cancellation was executed between the assessee and the lessee on 23.03.2009. The lessee was paid a sum of Rs.1 Crore to cancel the lease and to hand over vacant possession of the property. Thereafter, by a registered sale deed dated 13.05.2009, the land measuring 29,845 square feet was sold for a consideration of Rs.2,50,00,000/- to third party. The aforesaid sale deed contains a reference to the lease deed executed in favour of the lessee as well as recital as to delivery of possession. The lessee is a consenting witness in the sale deed. The

Assessing Officer had inspected the premises of the assessee. In the inspection report it was stated that assessee and the lessee were in occupation of remaining portion of land measuring 77,965 square feet. The aforesaid fact was also affirmed by partner of the lessee that the lessee is in possession of the remaining portion of the land. The aforesaid inspection report nowhere discloses that the lessee is in possession of the land, which was sold vide registered sale deed dated 13.05.2009 to third parties. However, the Assessing Officer held that the claim of the assessee that the lessee was in possession in capacity as tenant in respect of 29,845 square feet of land and subsequent payment of compensation of Rs.1 Crore to the lessee, is not genuine. The aforesaid finding has been affirmed by the Commissioner of Income Tax (Appeals) as well as by the tribunal. However, it is pertinent to mention here that the assessee for the Assessment Year 2007-08 had offered an income of Rs.10,05,000/- from the lessee under the head of 'House Property', which was accepted by the Assessing Officer and the aforesaid rental income was taxed. Subsequently, it is

not open for the Assessing Officer to deny the existence of the aforesaid transaction in the subsequent Assessment Year.

6. It is pertinent to note that lease deed was executed in the year 1996 in favour of the lessee and was cancelled in the year 2009 after a period of 13 years. The reference to the lease deed is found even in the registered sale deed dated 13.05.2009. The lessee had offered the amount received by it as income in its return. The amount was paid by the assessee and was an expenditure incurred wholly and exclusively for transfer of an asset and therefore, it is deductible under Section 48 of the Act. The findings recorded by the authorities under the Act is perverse. For the aforementioned reasons, substantial question of law Nos.1 and 2 are answered in favour of the assessee and against the revenue.

In the result, the order dated 08.09.2016 passed by the tribunal in relation to Assessment Year 2009-10 to the extent it pertains to substantial questions of law involved in this appeal are hereby quashed.

In the result, appeal is allowed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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