

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE MR. JUSTICE RAJESH RAI K

INCOME TAX APPEAL NO. 225 OF 2021

BETWEEN:

- (1) PR. COMMISSIONER OF INCOME TAX
BMTc COMPLEX
KORAMANGALA, BANGALORE.
- (2) THE ASSISTANT COMMISSIONER
OF INCOME, CIRCLE-6(3)(1)
BENGALURU.

...APPELLANTS

(BY SRI. SANMATHI E. I., ADV. AND
SRI NIRMAL MATHERW, ADV.)

AND:

SHRI RAVI SHANKAR SHETTY
NO.289, 1ST FLOOR, 15TH MAIN
RMV EXTENSION
BENGALURU - 560 080.

...RESPONDENT

(BY SRI. A SHANKAR, SR. COUNSEL A/W
SRI MADHUSUDHAN U.A., ADV. FOR
SRI S ANNAMALAI, ADV.)

THIS APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 08.10.2020 PASSED IN ITA NO.28/BANG/2020, FOR THE ASSESSMENT YEAR 2015-2016, PRAYING TO 1) DECIDE THE FOREGOING QUESTION OF LAW AND /OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE COURT AS DEEMED FIT AND ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDER ON **12.06.2026** COMING ON THIS DAY, **S.G.PANDIT J.,** PRONOUNCED THE FOLLOWING:



CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
AND
HON'BLE MR. JUSTICE RAJESH RAI K

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE S.G.PANDIT)

This Income Tax Appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') is filed by the Revenue, challenging the order of the Income Tax Appellate Tribunal, Bengaluru Bench (hereinafter referred to as 'the Tribunal') dated 08.10.2020 in ITA No.28/Bang/2020 for the assessment year (hereinafter referred to as 'AY') 2015-16.

2. The brief facts giving rise to the appeal are as follows:

The assessee/respondent herein is involved in the business of procurement of lands and real estate. A return of income (hereinafter referred to as 'ITR') was filed by the assessee declaring total income of Rs.25,74,540/- for the AY 2015-16. The assessee's case for AY 2015-16 was selected for scrutiny and notices under sections 143(2) and 142(1) of the Act were issued to the assessee. The

issue before the assessing officer(hereinafter referred to as 'AO') pertained to advances received by the assessee to the tune of Rs.21,89,22,200/-, outstanding as on 31.03.2015, which is money received from Metro Corp and M/s Metro Corp Infrastructure Ltd., for procuring lands at Doddaballapur and Chikkaballapur, vide agreement dated 10.02.2006. The assessment order under section 143(3) of the Act was passed by the AO on 28.12.2017, wherein, an addition of Rs.21,11,00,000/- was made under section 56(2)(ix) of the Act.

3. Challenging the assessment order passed by the AO, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) (hereinafter referred to as 'CIT(A)'), which came to be dismissed vide order dated 25.11.2019. Challenging the order of the CIT(A), the assessee filed an appeal before the Tribunal. The Tribunal allowed the appeal filed by the assessee vide impugned order dated 08.10.2020, holding that the conditions prescribed under section 56(2)(ix) of the Act are not satisfied and consequently, the addition under the

said section cannot be allowed to stand. Aggrieved by the Order of the Tribunal, the Revenue is in appeal under section 260A of the Act.

4. This appeal was admitted on 09.11.2021 to examine the following substantial questions of law:

- i. Whether on the facts and in the circumstances of the case, the Tribunal's order can be said as perverse by deleting the addition of Rs.21,11,00,000 made by assessing authority in the hands of the assessee without appreciating the fact that the Advance received by the assessee was utilized for purchase of assets in his name and not for procuring land on behalf of promoter and said amount is shown as outstanding in the books of assessee without any claim being made by promoters for nearly 8 years regarding advance given to the assessee which invariably amounts to forfeiture, thus satisfying the condition laid down under Section 56(2)(ix)(a) of the Act?*
- ii. Whether on the facts and in the circumstances of the case and in law, the impugned order is perverse in Tribunal failed to appreciate that assessing authority rightly made addition in terms of section 56(2)(ix)(a) of the nature as Act as assessee utilized the sum advanced for purchase of assets in own name and no attempt/negotiations were made*

by the assessee to transfer such capital asset to the promoter?

5. Heard Sri. Sanmathi E I and Sri. Nirmal Mathew, learned counsel for the Revenue and Sri. A Shankar, learned senior counsel for Sri. Madhusudhan U A and Sri. S Annamalai, learned counsel for the assessee.

6. Learned senior standing counsel for the Revenue, Sri. Sanmathi E I has submitted that the Tribunal erred in holding that the conditions prescribed in section 56(2)(ix) of the Act are not satisfied. It is submitted that the advances received by the assessee have been utilized for the purchase of assets in the assessee's name and not for the purpose of procuring lands on behalf of the promoter. It is submitted that the said advance received is shown in the books of accounts of the assessee as outstanding, without any claim being made for nearly 8 years as on the date of the assessment order and hence, the same amounts to a virtual forfeiture under 56(2)(ix) of the Act. It is submitted that the advances received by the assessee are in the nature of

trade advances for the transfer of capital asset and having not returned the same and having utilized the same, the advances acquire the nature of income in the hands of the assessee under 56(2)(ix) of the Act. Thus, it is prayed that the appeal filed by the Revenue be allowed by answering the substantial questions of law in favor of the Revenue.

7. *Per contra*, learned senior counsel Sri. A Shankar on behalf of the assessee has submitted in favor of the order passed by the Tribunal and contended that the Tribunal has rightly allowed the appeal filed by the assessee. It is contended on behalf of the assessee that the provisions of section 56(2)(ix) would not be attracted to the facts of the present case. It is submitted that in the present case there is no negotiation for the transfer of a capital asset and there is no forfeiture, and hence, it is submitted that the 2 of the conditions to attract section 56(2)(ix) of the Act are not satisfied. It is further submitted that the advances received by the assessee was for the purpose of identifying, procuring and acquiring lands, which would amount to 'stock in trade' and not

'capital asset'. Hence, it is submitted that on this count as well, the provisions of section 56(2)(ix) are not attracted. The learned senior counsel has relied on the decisions of the Hon'ble Apex Court and various High Courts in support of his contentions and the same shall be referred to in the course of this judgment, if necessary. Thus, it is prayed that the appeal filed by the Revenue be dismissed.

8. Having heard the learned counsel for the parties and having perused the appeal papers as well as the materials on record, we are not inclined to interfere with the order passed by the Tribunal for the reasons recorded hereunder:

It is an admitted fact that, as on 31.03.2015, the assessee had received advances to the tune of Rs.21,89,22,200/-, which were outstanding amounts, substantially received by the assessee from Metro Corp and M/s Metro Corp Infrastructure Ltd., vide agreement dated 10.02.2006 for procuring lands at Doddaballapur and Chikkaballapur. The AO has sought to treat the said advances as virtually forfeited by the said Metro Corp and

M/s Metro Corp Infrastructure Ltd for the reason that, for nearly 8 years, there has been no claim made seeking refund of the said amount. The said advances received have been sought to be added as income of the assessee for the AY 2015-16 under Section 56(2)(ix) of the Act. Section 56(2)(ix) of the Act reads as under: -

"56. (1).....

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely: -

XXXXXXXXX

*(ix) any sum of money received as an advance or otherwise **in the course of negotiations for transfer of a capital asset, if,—***

*(a) **such sum is forfeited; and***

(b) the negotiations do not result in transfer of such capital asset."

9. A plain reading of the aforesaid provision would indicate that any sum of money received as an advance or otherwise in the course of negotiations for transfer of capital asset shall be chargeable to income tax under the head 'Income from Other Sources', if such sum is forfeited

and the negotiations do not result in the transfer of such capital asset. Thus, in order to make an addition under section 56(2)(ix), the receipt of a sum of money either as advance or otherwise in the course of negotiation for transfer of a capital asset, is a *sine qua non*. Further, such sum of money received in the course of transfer of such capital asset has to be forfeited and the negotiation should not result in transfer of such capital asset. The legislature has consciously employed the conjunction 'and' and hence, both the conditions, i.e. forfeiture and negotiation that does not result in transfer of such capital asset, has to be satisfied.

10. Admittedly, the assessee is engaged in the business of identifying, procuring and facilitating acquisition of lands for real estate projects. The material on record would indicate that the amounts received from Metro Corp and M/s Metro Corp Infrastructure Ltd. were not in the nature of advances paid in the course of negotiations for transfer of any capital asset belonging to the assessee. On the contrary, the said amounts were

entrusted to the assessee for the purpose of locating, procuring and acquiring lands required for the business projects of the said concerns. Thus, the relationship between the parties was not that of a transferor and transferee negotiating the transfer of a capital asset, but one where funds were made available to the assessee for carrying out a business activity. In the ordinary course of the assessee's business, the lands proposed to be acquired would partake the character of stock-in-trade and not capital assets. Section 2(14) of the Act defines 'capital asset' to mean property of any kind held by an assessee, whether or not connected to the business or profession, but does not include stock-in-trade. Hence, the said advances cannot be said to have been received in the course of transfer of a capital asset; rather, they pertain to transactions involving stock-in-trade. Thus, the first limb of section 56(2)(ix), i.e. receipt of advance in the course of transfer of capital asset, would not be satisfied.

11. Since the transaction itself was not one involving negotiation for transfer of a capital asset, the

question of examining forfeiture would, strictly speaking, not arise. Nevertheless, even on the issue of forfeiture, the Revenue's contention cannot be accepted. As on 31.03.2015, the said advance received by the assessee continued to be treated as liability in the hands of the assessee. Section 56(2)(ix) uses the expression 'forfeited'. In the case on hand, there is no such forfeiture. The learned senior counsel for the assessee, on the other hand, has also submitted that some of the money received by the assessee has been returned back to Metro Corp and M/s Metro Corp Infrastructure Ltd. Be that as it may.

12. It has been contended on behalf of the revenue that due to lapse of time, the sum of money received has been virtually forfeited. Mere efflux of time cannot amount to forfeiture unless there is material to demonstrate that the recipient has become entitled to retain the advance absolutely. An identical argument pertaining to cessation of the liabilities due to lapse of time was posed by the Revenue in ***CIT V. ALVARES & THOMAS***, reported in ***2016 SCC ONLINE KAR 9215*** and the coordinate bench

of this court, while rejecting the argument of the Revenue, although in the context of section 41 of the act, in paragraphs 8 and 9 held as under:

"8. Examining of the facts of the present case reveals that, it is not the case of the Department that, any benefit in respect of such trading liability was taken by the assessee but, the Revenue contends that since the burden was not discharged of existence of the liability, it be treated as cessation of the liability and therefore, section 41(1) could be invoked. Further, stand of the Revenue is that, when in respect of debt in question, confirmation was called for, a letter was produced of the creditor with its address but, when the same was verified, the report was that, the party could not be traced and therefore, it was not verifiable.

9. In our view, even if we accept the contention of the Revenue that the party could not be traced and therefore debt could not be verified then also, by no stretch of imagination can it be held that it would satisfy the requirement of cessation of liability. In legal parlance, merely because the creditor could not be traced on the date when the verification was made, the same is not a ground to conclude that there was cessation of the liability. Cessation of the

liability has to be cessation in law, of the debt to be paid by the assessee to the creditor. The debt is recoverable even if the creditor has expired, by the legal heirs of the deceased creditor. Under the circumstances, in the present case, it can hardly be said that the liability had ceased. If the liability had not ceased or the benefit was not taken by the assessee in respect of such trading liability, in our view, the conditions precedent were not satisfied for invoking section 41(1) of the Act in the instant case."

13. In complete agreement with the view of the coordinate bench in **ALVARES & THOMAS** (supra), as on 31.03.2015, the said advance cannot be regarded as forfeited merely because eight years have elapsed and no claim for refund has been made by the parties, for the reason that the said advances are being treated as liabilities in the books of accounts of the assessee as on 31.03.2015 and the same is confirmed by Metro Corp and M/s Metro Corp Infrastructure Ltd., as pointed out by the Tribunal in para 7.3 of the impugned order.

14. Thus, for the reasons recorded hereinabove, the substantial questions of law are answered in favor of the assessee and against the Revenue. Income Tax Appeal stands dismissed. No order as to costs.

**Sd/-
(S.G.PANDIT)
JUDGE**

**Sd/-
(RAJESH RAI K)
JUDGE**

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CT:bms