IN THE HIGH COURT OF KARNATAKA AT BENGALURU

[THE PR. COMMISSIONER OF INCOME TAX CENTRAL AND ANOTHER VS. M/S BHARAT BEEDI WORKS PVT LTD]

16.04.2026
(VIDEO CONFERENCING / PHYSICAL HEARING)

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
and
HON'BLE MR. JUSTICE K. V. ARAVIND

ORAL ORDER IN

ITA.Nos.54/2026, 55/2026, 56/2026

ON I.A.No.1/2026

(PER: HON'BLE MR. JUSTICE K.V. ARAVIND)

These appeals are filed by the Revenue, assailing the order dated 21.04.2025 passed by the Income Tax Appellate Tribunal, 'B' Bench, Bengaluru.

These appeals have been filed with a delay of 150 days. The affidavits accompanying the applications sufficiently explain the cause for delay. No objections have been filed opposing the applications for condonation of delay.

It is explained that the pendency of the miscellaneous petition before the Tribunal, and the subsequent issuance of a corrigendum, resulted in the delay. The delay has been satisfactorily explained and the explanation is acceptable. Accordingly, accepting the cause shown, the delay of 150 days in filing these appeals is hereby condoned.

Heard Sri. Y.V. Ravi Raj, learned Senior Standing Counsel appearing for the appellants, and Sri. K.K. Chaithanya, learned Senior Counsel appearing on behalf of the learned counsel Sri. Tata Krishna for the respondent, on admission.

The appeal in ITA.No.54/2026 is admitted to consider the following substantial questions of law:

(i) *Whether under the facts and circumstances of the case and in law, the Tribunal is right in setting aside the order of assessment passed under section 153A of the Act holding that the approval u/s 153D of the Act was given mechanically?*

(ii) *Whether under the facts and circumstances of the case and in law, the Tribunal is right in interpreting the directions given by the JCIT to the AO as lack of satisfaction on the part of JCIT to give approval u/s 153D of the Act when in fact it shows the application of mind of the approving authority while granting approval?*

(iii) Whether under the facts and circumstances of the case and in law, the Tribunal was right in not appreciating that while examining the validity of approval granted u/s 153D of the Act, the word 'approval' has not been defined under the Income Tax Act, 1961?

The appeal in ITA.No.55/2026 is admitted to consider the following substantial questions of law:

(i) Whether under the facts and circumstances of the case and in law, the Tribunal is right in setting aside the order of assessment passed under section 143(3) of the Act holding that the approval u/s 153D of the Act was given mechanically?

(ii) Whether under the facts and circumstances of the case and in law, the Tribunal is right in interpreting the directions given by the JCIT to the AO as lack of satisfaction on the part of JCIT to give approval u/s 153D of the Income Tax Act when in fact it shows the application of mind of the approving authority while granting approval?

(iii) Whether under the facts and circumstances of the case and in law, the Tribunal was right in not appreciating that while examining the validity of approval granted u/s 153D of the Act, the word 'approval' has not been defined under the Income Tax Act, 1961?

The appeal in ITA.No.56/2026 is admitted to consider the following substantial questions of law:

(i) *Whether under the facts and circumstances of the case and in law, the Tribunal is right in setting aside the order of assessment passed under section 143(3) r.w.s. 153A of the Act holding that the approval u/s 153D of the Act was given mechanically?*

(ii) *Whether under the facts and circumstances of the case and in law, the Tribunal is right in interpreting the directions given by the JCIT to the AO as lack of satisfaction on the part of JCIT to give approval u/s 153D of the Income Tax Act when in fact it shows the application of mind of the approving authority while granting approval?*

(iii) *Whether under the facts and circumstances of the case and in law, the Tribunal was right in not appreciating that while examining the validity of approval granted u/s 153D of the Act, the word 'approval' has not been defined under the Income Tax Act, 1961?*

ORAL ORDER IN ITA.No.57/2026

ON I.A.No.3/2026

This appeal is filed by the Revenue, assailing the order dated 10.07.2025 passed by the Income Tax Appellate Tribunal, 'A' Bench, Bengaluru.

The appeal has been filed with a delay of 67 days. The affidavit accompanying the application sufficiently explains the cause for delay. No objections have been filed opposing the application for condonation of delay.

It is explained that the pendency of the miscellaneous petition before the Tribunal, and the subsequent issuance of a corrigendum, resulted in the delay. The delay has been satisfactorily explained and the explanation is acceptable. Accordingly, accepting the cause shown, the delay of 67 days in filing the appeal is hereby condoned.

Heard Sri. Y.V. Ravi Raj, learned Senior Standing Counsel appearing for the appellants, and Sri. K.K. Chaithanya, learned Senior Counsel appearing on behalf of the learned counsel Sri. Tata Krishna for the respondent, on admission.

The appeal is admitted to consider the following substantial questions of law:

(i) *Whether under the facts and circumstances of the case and in law, the order passed by the Tribunal in the Miscellaneous Application and the subsequent corrigendum passed, does not amount to reviewing its original order?*

(ii) Whether under the facts and circumstances of the case and in law, the Tribunal has not erred in treating the valid revised return of income filed during the assessment proceedings?

(iii) Whether under the facts and circumstances of the case and in law, the order passed by the Tribunal in Miscellaneous Application is contrary to the provisions of law as the same will result in granting the refund of taxes paid by the Respondent Assessee on its revised income declared filed during the assessment proceedings?

(iv) Whether under the facts and circumstances of the case and in law, the order passed by the Tribunal in Miscellaneous Application is contrary to the provisions of law as the validity of the assessment proceedings conducted and the revised return of income filed by the Respondent could not have been set aside?

(v) Whether under the facts and circumstances of the case and in law, setting aside an order of assessment on the ground of invalid approval obtained under section 153D of the Act would consequently, result in invalidating the assessment proceedings conducted under the Act?

ORAL ORDER IN ITA.No.59/2026
ON I.A.No.2/2026

This appeal is filed by the Revenue, assailing the order dated 10.07.2025 passed by the Income Tax Appellate Tribunal, 'A' Bench, Bengaluru.

The appeal has been filed with a delay of 69 days. The affidavit accompanying the application sufficiently explains the cause for delay. No objections have been filed opposing the application for condonation of delay.

It is explained that the pendency of the miscellaneous petition before the Tribunal, and the subsequent issuance of a corrigendum, resulted in the delay. The delay has been satisfactorily explained and the explanation is acceptable. Accordingly, accepting the cause shown, the delay of 69 days in filing the appeal is hereby condoned.

Heard Sri. Y.V. Ravi Raj, learned Senior Standing Counsel appearing for the appellants, and Sri. K.K. Chaithanya, learned Senior Counsel appearing on behalf of the learned counsel Sri. Tata Krishna for the respondent, on admission.

The appeal is admitted to consider the following substantial questions of law:

(i) *Whether under the facts and circumstances of the case and in law, the order passed by the Tribunal in the Miscellaneous Application and the subsequent corrigendum passed, does not amount to reviewing its original order?*

(ii) Whether under the facts and circumstances of the case and in law, the Tribunal has not erred in treating the valid return of income filed in response to notice under section 153A of the Act as a 'revised return' filed during the assessment proceedings?

(iii) Whether under the facts and circumstances of the case and in law, the order passed by the Tribunal in Miscellaneous Application is contrary to the provisions of law as the same will result in granting the refund of taxes paid by the Respondent Assessee on its declared income filed in the return in response to notice under section 153A of the Act?

(iv) Whether under the facts and circumstances of the case and in law, the order passed by the Tribunal in Miscellaneous Application is contrary to the provisions of law as the validity of the proceedings conducted under section 153A and the return of income filed by the Respondent have not been set aside?

(v) Whether under the facts and circumstances of the case and in law, setting aside an order of assessment on the ground of invalid approval obtained under section 153D of the Act would consequently, result in invalidating the proceedings conducted under section 153A of the Act?

ORAL ORDER IN ITA.No.61/2026

ON I.A.No.2/2026

This appeal is filed by the Revenue, assailing the order dated 21.04.2025 passed by the Income Tax Appellate Tribunal, 'B' Bench, Bengaluru.

The appeal has been filed with a delay of 153 days. The affidavit accompanying the application sufficiently explains the cause for delay. No objections have been filed opposing the application for condonation of delay.

It is explained that the pendency of the miscellaneous petition before the Tribunal, and the subsequent issuance of a corrigendum, resulted in the delay. The delay has been satisfactorily explained and the explanation is acceptable. Accordingly, accepting the cause shown, the delay of 153 days in filing the appeal is hereby condoned.

Heard Sri. Y.V. Ravi Raj, learned Senior Standing Counsel appearing for the appellants, and Sri. K.K. Chaithanya, learned Senior Counsel appearing on behalf of the learned counsel Sri. Tata Krishna for the respondent, on admission.

The appeal is admitted to consider the following substantial questions of law:

(i) *Whether under the facts and circumstances of the case and in law, the Tribunal is right in setting aside the order of assessment passed under 153A of the Act holding that the approval u/s 153D of the Act was given mechanically?*

(ii) *Whether under the facts and circumstances of the case and in law, the Tribunal is right in interpreting the directions given by the JCIT to the AO as lack of satisfaction on the part of JCIT to give approval u/s 153D of the Income Tax Act when in fact it shows the application of mind of the approving authority while granting approval?*

(iii) *Whether under the facts and circumstances of the case and in law, the Tribunal was right in not appreciating that while examining the validity of approval granted u/s 153D of the Act, the word 'approval' has not been defined under the Income Tax Act, 1961?*

ORAL ORDER IN ITA.Nos.57 & 59/2026

ON I.A.No.1/2026

Heard Sri. Y.V.Ravi Raj, learned Senior Standing Counsel for the appellants and Sri. K.K.Chaithanya, learned Senior Counsel for the respondent on I.A. for stay.

These appeals are filed by the Revenue, impugning the order passed by the Income Tax Appellate Tribunal, 'A' Bench, Bengaluru, in M.A. No.33/Bang/2025 and M.A.

No.34/Bang/2025 pertaining to the Assessment Years 2019–20 and 2020–21.

The appeals filed by the assessee were disposed of by the Tribunal by order dated 21.04.2025. Subsequently, the Tribunal entertained the above miscellaneous applications. Though the Tribunal rejected the said applications, it issued certain directions therein. The said order passed on the miscellaneous applications is the subject matter of these appeals.

Sri. Y.V. Ravi Raj, learned Senior Standing Counsel appearing for the appellants, submits that the assessee filed its return of income on 30.09.2019 for the Assessment Year 2019–20 declaring an income of Rs.99,05,19,990/-. In respect of the Assessment Year 2020–21, the assessee filed its return of income on 31.12.2019 declaring an income of Rs.106,64,35,620/-. Thereafter, the assessee filed a revised return on 29.10.2020 for the Assessment Year 2019–20 declaring an income of Rs.119,34,27,450/- and, for the Assessment Year 2020–21, on 09.02.2021 declaring an income of Rs.127,24,20,580/-.

It is further stated that, for the Assessment Year 2019–20, in response to the notice issued under Section 153A

of the Act, the assessee filed a return admitting an income of Rs.119,34,27,450/-. The same was taken up for scrutiny, and the assessment was completed on 29.09.2021. It is submitted that the assessments were completed under Section 153A of the Income Tax Act, 1961 (for short, 'the Act') for the Assessment Year 2019–20 and under Section 143(3) of the Act for the Assessment Year 2020–21, with approval under Section 153D of the Act. Both the assessment orders were passed with prior approval, as required under Section 153D of the Act.

It is submitted that the Tribunal, by order dated 21.04.2025, set aside the assessment orders for want of approval under Section 153D of the Act. According to the learned counsel, what was set aside were only the additions made over and above the returned income. However, in the order passed on the miscellaneous applications, the Tribunal directed refund of tax on the admitted income. It is contended that the same is contrary to the law laid down by the Hon'ble Supreme Court and the provisions of the Act.

Sri. K.K. Chaithanya, learned Senior Counsel appearing for the respondent-assessee, submits that once the order of assessment made pursuant to the notice issued under Section

153A of the Act, the assessee would be entitled to refund of the taxes paid on the said return. It is submitted that the Tribunal, while considering the miscellaneous applications, merely clarified the aforesaid position.

The objections filed by the assessee, however, pertain to the merits of the matter, which would require consideration while answering the admitted questions of law.

If we examine the sequence of events, for the Assessment Year 2019–20, the assessee filed its return of income under Section 139(1) of the Act on 30.09.2019 declaring an income of Rs.99,05,19,990/-. A revised return was filed on 29.10.2020 declaring an income of Rs.119,34,27,450/-. A notice under Section 153A of the Act came to be issued on 03.11.2020 pursuant to the search conducted under Section 132 of the Act on 26.02.2020. The Assessing Officer considered the return filed in response to the notice under Section 153A of the Act and completed the assessment by determining the income at Rs.119,87,89,350/-, with approval as required under Section 153D of the Act.

Similarly, for the Assessment Year 2020–21, the assessee filed its return under Section 139(1) of the Act on 31.12.2019,

subsequent to the search conducted under Section 132 of the Act on 26.02.2020. The assessee revised the return under Section 139(5) of the Act on 09.02.2021. In the original return, the assessee declared an income of Rs.106,64,35,620/-, whereas in the revised return, it declared an income of Rs.127,24,20,580/-. The said return was selected for scrutiny, and an order of assessment came to be passed under Section 143(3) of the Act on 29.09.2021 assessing the income at Rs.128,58,02,802/-.

The Tribunal, by order dated 21.04.2025, set aside both the assessment orders, holding that the approval granted under Section 153D of the Act was mechanical and, therefore, unsustainable. The said orders are the subject matter of appeals in this batch.

However, while considering the miscellaneous applications, the Tribunal, by order dated 10.07.2025, observed that when the entire assessment is set aside, the Assessing Officer cannot make use of the revised return and that the assessee is automatically entitled to refund of taxes. This observation made by the Tribunal is being interpreted by the assessee to seek refund of the taxes paid on the return of

income filed in response to the notice issued after the search, in other words, the admitted income.

For the Assessment Year 2019–20, the admitted income is Rs.119,34,27,450/-, whereas the assessed income is Rs.119,87,89,350/-. The addition made is the difference between the two amounts, namely, Rs.53,61,900/-. Similarly, for the Assessment Year 2020–21, the admitted income is Rs.127,24,20,580/-, whereas the assessed income is Rs.128,58,02,802/-. The addition made is the difference between the two amounts, namely, Rs.1,33,82,222/-. As a consequence of setting aside the assessment, the assessee would, at best, be entitled to a refund of the excess tax paid on the assessed income over and above the returned income. However, it is sought to be contended that the entire tax paid on the admitted income is liable to be refunded.

The said contention, in our view, is contrary to clause (b) of the proviso to Section 240 of the Act, as also the law laid down by the Hon'ble Supreme Court in the case of ***CIT v. Shelly Products*, (2003) 261 ITR 367 / 2003 SCC OnLine SC 642**.

Section 240 of the Income Tax Act, 1961, reads as under:

> ***"Refund on appeal, etc.***
>
> ***240.*** *Where, as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due to the assessee, the Assessing Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf:*
>
> ***Provided*** *that where, by the order aforesaid,—*
>
> *(a) an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund, if any, shall become due only on the making of such fresh assessment;*
>
> *(b) the assessment is annulled, the refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee."*

In ***CIT v. Shelly Products*** (supra), while interpreting clause (b) of the proviso to Section 240, the Hon'ble Supreme Court has held as under:

> ***16.*** *Section 139 of the Act mandates every person to furnish a return of the total income during the previous year if the income is chargeable to tax. Section 140-A provides for self-assessment and lays down that any tax payable on the basis of any return required to be furnished under Section 139 or Section 148, after taking into account the amount of tax, if any, already paid, shall be paid by*

the assessee together with interest payable under any provision of the Act for any delay in furnishing return or for any default or delay in payment of advance tax. Thus an assessee who has defaulted or delayed the payment of advance tax or the instalment of advance tax, is liable to pay interest. The provisions of the Act, therefore, cast an obligation on the assessee to pay the advance tax by making the deposits in instalments as required by the provisions of the Act, and after taking into account the tax paid in advance, to pay the balance of the tax and interest, if any payable, while filing the return of income. Similar is the provision with regard to the income tax deducted at source. It cannot, therefore, be contended that the deposit of advance tax or deduction of income tax at source is not authorised by law in view of the clear mandatory provisions of the Act. The question is whether the charge itself fails if there is no computation of total income by the assessing officer and whether as a consequence thereof the tax paid as advance tax or self-assessment tax or tax deducted at source, cannot be retained by the Department without violating the provisions of Article 265 of the Constitution of India.

19. *It further held that when the assessee files his return under Section 139 and pays tax under Section 140-A by way of self-assessment claiming allowance of the advance tax or tax deducted at source in the amount of tax payable according to him, there is clear admission of the liability that*

has arisen under the Act to pay the tax on the total income as is computed by the assessee and duly quantified in the return. The procedure of assessment by the Income Tax Officer is essentially to check the computation of total income done by the assessee. Therefore the acceptance of the proposition canvassed by the assessee would produce a startling result where, though according to the assessee he is liable to pay the tax as per the return filed by him and has in fact paid the tax in accordance with the provisions of Section 140-A of the Act and the assessing officer did not find it necessary to assess the total income since he may have accepted the return on expiry of the period during which the regular assessment is required to be made, the entire tax amount, admittedly payable under the Act would be required to be refunded. The scheme of the Act clearly indicates that the liability to pay income tax chargeable under Section 4(1) of the Act does not depend upon the assessment being made by the Income Tax Officer but depends on the enactment by any Central Act prescribing rate or rates for any assessment year. Thus, as soon as the rates are prescribed by the appropriate legislation, the liability to pay tax arises on the total income which is to be computed by the assessee in accordance with the provisions of the Act. By the process of self-assessment, the assessee is required to pay tax on the basis of his return and such tax is treated as assessed tax. Therefore, until it is disturbed by any further regular assessment, it

remains as tax levied and collected in accordance with law.

20. *So far as the amendment to Section 240 is concerned, the Full Bench of the Gujarat High Court rejected the contention of the assessee that the proviso to Section 240 brought in by way of an amendment could not be given retrospective effect. It was held that Section 240 even as it stood before the addition of the proviso, made the refund of any amount becoming due as a result of an order passed in appeal or other proceeding under the Act subject to other provisions in the Act. There is no indication in Section 240 as it stood prior to the addition of the proviso that the entire amount of tax which was properly chargeable under the Act was required to be refunded. Clearly, therefore, the provision contained in clause (b) of the proviso to Section 240 only makes explicit what was always implicit, namely, to refund the amount which exceeded the tax which was properly chargeable under the Act. In sum and effect it was held that clause (b) of the proviso to Section 240 which was brought in by an amendment with effect from 1-4-1989 was only clarificatory of the law.*

33. *Having considered the authorities on the subject, we find ourselves in agreement with the view of the Gujarat High Court in Saurashtra Cement and Chemical Industries Ltd. [(1992) 194 ITR 659 (Guj) (FB)] The question that falls for our consideration in these appeals is whether on the*

failure or inability of the authorities to frame a regular assessment after the earlier assessment is set aside or nullified, the tax deposited by an assessee by way of advance tax or self-assessment tax, or tax deducted at source is liable to be refunded to the assessee, since its retention by the Revenue would result in breach of Article 265 of the Constitution which prohibits the levy or collection of any tax except by authority of law. The Revenue does not dispute the position that if an assessment is framed, which is later nullified in appeal or revision or other proceedings, any amount paid by way of income tax pursuant to the order of assessment, over and above the advance tax and self-assessment tax is undoubtedly refundable under Section 240 of the Act. The only dispute is with regard to the refund of the advance tax and self-assessment tax which is paid by the assessee on his own assessment of his liability and is based on the return of income filed by him. According to the Revenue, the tax so paid represents the admitted liability of the assessee, and failure or inability to frame another assessment after the earlier assessment is set aside or nullified in appropriate proceedings, does not entitle the assessee to claim refund because to this extent the assessee has admitted his liability to pay tax in accordance with law. The tax liability is computed on the basis of the relevant Finance Act laying down the rate or rates at which the tax is payable and provides for other matters relevant to the computation of tax. Thus the tax is required to be

paid in advance by the assessee, even before assessment is made, and he himself is required to compute his liability having regard to the rates and exemptions applicable. Thus, both the levy and collection of tax is in accordance with law.

35. *What then is the effect of the failure to make an order of assessment after the earlier assessment made is set aside or nullified in appropriate proceedings? If the Assessing Authority cannot make a fresh assessment in accordance with the provisions of the Act it amounts to deemed acceptance of the return of income furnished by the assessee. In such a case the Assessing Authority is denuded of its authority to verify the correctness and completeness of the return, which authority it has while framing a regular assessment. It must accept the return as furnished and shall not in any event raise a demand for payment of further taxes. Accepting the income as disclosed in the return of income furnished by the assessee, it must refund to the assessee any tax paid in excess of the liability incurred by him on the basis of income disclosed. Even if the tax paid is found to be less than that payable, no further demand can be made for recovery of the balance amount since a fresh assessment is barred. In other words, the tax paid by the assessee must be accepted as it is, and in the event of the tax paid being in excess of the tax liability duly computed on the basis of return furnished and the rates applicable, the excess shall*

be refunded to the assessee, since its retention may offend Article 265 of the Constitution.

36. *We cannot lose sight of the fact that the failure or inability of the Revenue to frame a fresh assessment should not place the assessee in a more disadvantageous position than in what he would have been if a fresh assessment was made. In a case where an assessee chooses to deposit by way of abundant caution advance tax or self-assessment tax which is in excess of his liability on the basis of return furnished or there is any arithmetical error or inaccuracy, it is open to him to claim refund of the excess tax paid in the course of assessment proceeding. He can certainly make such a claim also before the authority concerned calculating the refund. Similarly, if he has by mistake or inadvertence or on account of ignorance, included in his income any amount which is exempted from payment of income tax, or is not income within the contemplation of law, he may likewise bring this to the notice of the Assessing Authority, which if satisfied, may grant him relief and refund the tax paid in excess, if any. Such matters can be brought to the notice of the authority concerned in a case when refund is due and payable, and the authority concerned, on being satisfied, shall grant appropriate relief. In cases governed by Section 240 of the Act, an obligation is cast upon the Revenue to refund the amount to the assessee without his having to make any claim in that behalf. In appropriate cases therefore, it is*

> *open to the assessee to bring facts to the notice of the authority concerned on the basis of the return furnished, which may have a bearing on the quantum of the refund, such as those the assessee could have urged under Section 237 of the Act. The authority concerned, for the limited purpose of calculating the amount to be refunded under Section 240 of the Act, may take all such facts into consideration and calculate the amount to be refunded. So viewed, an assessee will not be placed in a more disadvantageous position than what he would have been, had an assessment been made in accordance with law.*

What is set aside is only the order of assessment and, consequently, the additions made over and above the admitted income. Therefore, the observations made by the Tribunal that the assessee would be automatically entitled to refund of taxes paid on the return of income cannot be *prima facie* accepted at this stage.

The observations made by the Tribunal, insofar as they relate to the refund of tax on the admitted income, we are at this stage *prima facie* of the opinion that they are contrary to the law laid down by the Hon'ble Supreme Court in ***Shelly Products*** (supra) and are also contrary to clause (b) of the

proviso to Section 240 of the Act. The Revenue has made out a *prima-facie* case for grant of the interim relief sought.

In light of the above, we pass the following:

ORDER

(i) No refund of tax shall be issued to the extent of the admitted income i.e., Rs.119,34,27,450/- for the Assessment Year 2019-20 and Rs.127,24,20,580/- for the Assessment Year 2020-21, during the pendency of these appeals.

The observations made herein above are only for disposal of these applications and the same would not prejudice the contentions of both the parties. All contentions are kept open to be agitated and considered in appeal.

Accordingly, I.A.No.1/2026 stands disposed off.

(S.G.PANDIT)
JUDGE

(K. V. ARAVIND)
JUDGE

NC/SMJ
LIST NO.: 2 SL NO.: 2