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ITXA-72-2016
ITXA-76-2016 (SR.5)
Tuesday, 24.7.2018

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 72 OF 2016
WITH
INCOME TAX APPEAL NO. 76 OF 2016

Monitron Security Pvt. Ltd.Appellant

V/s.

Commissioner of Income Tax-14,
Mumbai

....Respondent

* * * * *

Ms. Aarti Sathe, Advocate for the appellant.

**CORAM :- M.S. SANKLECHA, &
SANDEEP K. SHINDE, JJ.**

DATE :- 24TH JULY, 2018.

P.C. :-

1. These two Appeals under Section 260-A of the
Income Tax Act, 1961 (the Act), challenge the order dated

5th March, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned common order dated 5th March, 2015 is in respect of Assessment Year 2008-09 and 2009-10. Thus, the two appeals.

2 The appellant urges only the following identical question of law in both the appeals for our consideration:

“(a) Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in law in upholding disallowance of the royalty payment made to G4S NAMESA by the appellant on the ground that the same was not incurred wholly and exclusively for the purpose of business under Section 37 of the Act ?

3 The respondent-assessee is engaged in the business of providing various expert advisory and other security related services across the globe since over last four decades. The respondent had for Assessment Year 2008-09 and 2009-10 claimed as revenue expenditure the amount paid to its Associate Company, M/s. G4S Regional

Consultancy Services, Bahrain (M/s. G4S, NAMESA) for providing various expert advisory and other security related services and knowhow inter-alia including use of trademarks as evidenced by agreement dated 27th December, 2007. The Assessing Officer disallowed the claim of the respondent as revenue expenditure in both the Assessment Years. However, he treated the amounts paid to G4S Namesa as amounts paid for usage of trade name. Consequently, the Assessing Officer treated the same as capital expenditure and allowed depreciation on the same.

4. Being aggrieved, the respondent preferred an appeal to the Commissioner of Income-Tax (Appeals), (CIT(A)). By order dated 10th August, 2011 and 11th April, 2012 for Assessment Year 2008-09 and 2009-10 respectively, the CIT(A) held that the expenditure could neither be considered as Revenue or Capital. This, after noting the fact that the Assessing Officer had held that the

respondent had not used any trademark and disallowed the above expenditure, while inadvertently allowing depreciation on the same. It was further found that the business of providing manpower securities to its clients was carried out by the respondent for last many years. Further, during the hearing the respondent had failed to explain the technical knowhow, operational process, finance manuals, risk management which had been acquired from M/s. G4S NAMESA and as to how that knowledge has been used in its business. In the above said circumstances, the appeals of the respondent were dismissed.

5. Being aggrieved, the respondent carried the issue in Appeal to the Tribunal. The impugned order of the Tribunal holds that though the respondent has produced the copy of the agreement dated 27th December, 2007 under which it claims to have acquired technical know-how, but the respondent was not able to

establish how the agreement was put to use in the business of the assessee. In the aforesaid circumstances, the impugned order holds that as the respondent had failed to explain how the agreement dated 27th December, 2007 entered into by it with M/s. G4S NAMESA had facilitated its business. Thus, upholding the view of the CIT (A), that the expenses cannot be allowed as business expenditure because it was not expended wholly and exclusively for business purposes.

6. Ms. Sathe, Learned Counsel appearing in support of the Appeal, states that various modules of ERP (Enterprise Resource Planning) such as Incident Report Format was used to manage the various incidents at the clients premises on daily basis. This, it was submitted was evidence of user of the technical know-how in business. It was further submitted that the Delhi High Court in **Commissioner of Income Tax Vs. G4S Securities System (India) Pvt. Ltd. (ITA No. 1943 of 2010)**

rendered on 11th July, 2011, had upheld the view of the Tribunal that similar expenditure should be allowed as Revenue expenditure. Therefore, it is submitted that the impugned order needs to be interfered with and the Appeal ought to be admitted.

7. We find that, CIT (A) and the Tribunal have both rendered finding of fact that the respondent-assessee has not led any evidence before it to establish the manner in which the technical knowhow as acquired from G4S NAMESA has been used in the business of the respondent. The authorities have also held that the Incident Report Format produced on account of ERP obtained from an Associated Enterprise to whom the payment was made, was infact being carried out by the appellant even prior to entering into an agreement dated 27th December, 2007 with G4S. The concurrent finding recorded is that the assessee had offered no explanation as to the manner in which the agreement had helped the assessee to carry out

its business. These are findings of facts. Thus, mere entering into an agreement with it being actually put to use cannot lead to the conclusion that the payment made under the Agreement was for knowledge to be used in its business. The decision of the Delhi High Court in *G4S Securities Systems* (supra) would have no application to the present facts. In that case, the Tribunal had come to a finding of fact that the payment made under the agreement therein was allowable as Revenue expenditure. In this case, both the CIT (A), as well as, the Tribunal have concurrently come to the finding of fact that the respondent has not established as to how the technical knowhow has infact been utilised in the running of its business. Therefore, the aforesaid decision will have no application to the facts of the present case.

8. Therefore, the proposed question of law does not give rise to any substantial question of law. This is so as, the impugned order of the Tribunal has upheld the

Rane

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finding of fact rendered by the CIT (A) and the same is not shown to be perverse in any manner.

9 Accordingly, both the **Appeals are dismissed.**

No order as to costs.

(SANDEEP K. SHINDE, J)

(M.S. SANKLECHA, J)