

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19th DAY OF JANUARY 2015

PRESENT

THE HON'BLE MR. JUSTICE N.KUMAR

AND

THE HON'BLE MR. JUSTICE B.VEERAPPA

I.T.A. NO.794/2009

BETWEEN :

M/s.Mallige Medical Centre Pvt. Ltd.,
No.31/32, Crescent Road,
Bangalore – 560 001,
Represented by its
Managing Director,
Dr.A.C.Sreeram,
Aged about 67 years,
Son of late Sri.A.Chowdappa.

...APPELLANT

(By Sri.S.Parthasarathy &
Smt.Jinita Chatterjee, Adv.)

AND :

The Joint Commissioner
Of Income-tax, Range-5,
Bangalore.

...RESPONDENT

(By Sri.K.V.Aravind, Adv.)

.

This I.T.A. is filed under Section 260A of the Income Tax Act, 1961, arising out of order dated 21.08.2009 passed in ITA No.400/BNG/2009, for the Assessment year 2005-2006, praying to :

- (i) formulate the substantial questions of law stated therein,
- (ii) Allow the appeal and set-aside the order passed by the Income Tax Appellate Tribunal, Bangalore in I.T.A. No.400/BNG/2009 dated 21.08.2009, in the interest of justice and equity.

This I.T.A. coming on for *hearing*, this day, **N.Kumar J.**, delivered the following:

JUDGMENT

The assessee has preferred this appeal against the impugned order, where it has been held that the disallowance of expenditure of Rs.5,00,000/- spent for the education of Dr.Gauri Sriram is justified as the said amount spent on her did not accrue any benefit to the assessee company.

2. The assessee is a private limited company running a hospital. The assessee filed return of income for the assessment year 2005-06 on 31.10.2005 declaring a total income of Rs.94,43,461/-. The assessee claimed deduction in a sum of Rs.5,00,000/- spent for the higher education of Dr.Gowri S. D/o. Dr.A.C. Sriram and Mrs.Kala Sriram, who are Managing Director and Executive Director of the Company. The exemption was claimed on the ground that their daughter was committed to work for the assessee after successful completion of her studies. It is not in dispute that after successful completion of studies, she has come back and working in the said assessee – company. She was paid a sum of Rs.20,000/- per month as salary before she was sent for higher studies. After returning, she is being paid Rs.30,000/- per month. The Assessing Authority dis-allowed the

assessee's claim on the ground that the expenditure incurred by the father, of his natural love and affection for his children, meeting the cost of their education cannot become a business expenditure, merely because he is the owner or Director of the business in which, the son or daughter subsequently takes part.

3. Aggrieved by the said order, the assessee preferred an appeal to the Commissioner of Income Tax (Appeals), which upheld the said finding of the assessing authority. In the second appeal, for the same reasons, the Tribunal also upheld the said finding and dismissed the appeal. Aggrieved of these three concurrent findings, the assessee is before this Court.

4. The substantial questions of law, which arise for consideration is as under:

1. *Whether in law, the Tribunal is justified in saying that the expenditure did not enure*

any benefit to the Appellant and the benefit was only to the daughter of the MD of the Appellant company and thus the same was not to be allowed under Section 37(1) of the Act, without considering the argument of the Appellant that the daughter of MD was the employee of the Appellant and on getting higher education had served the Appellant Company in pursuance of the contract?

- 2. Whether the law, the Tribunal was correct in holding that the expenditure incurred towards higher education of a professional whose services were available to the Appellant was not in business prudence to justify for allowance under Section 37(1) of the Act?*
- 3. Whether in law, the provisions of Section 40A was applicable when the expenditure was in business prudence incurred for the benefit of the Appellant whose value was not proved to be excessive?*

5. We have heard the learned counsel for the parties. This Court had an occasion to consider the said question in the case of **Commissioner of Income Tax and another V/s. RAS Information Technologies (P) Ltd.**, reported in **(2011) 238 CTR (Kar) 76**. After noticing Section 37(1) of the Act, it was held as under at paras 8 and 9:

8. *Thus, once the expenses incurred is not a capital expenditure or an expenditure incurred for personal expenses of the assessee or the said expenditure is for which is not an offence or is not prohibited by law and was not spent in advertising in any souvenir, brochure, tract, pamphlet or the like published by a political party, the assessee is entitled to the benefit of deduction under Section 37 of the Act. In other words, the money spent by an assessee either in sponsoring a student or towards educational expenses of a student in a discipline, in which*

the assessee is carrying on its business, is a valid expenditure and is entitled to deduction.

9. *In the instant case, the son of the managing director is an engineering graduate. Assessee is a consulting agency in manufacturing and engineering industry. They have sponsored the candidature of Sri Arun Srinivasan, to pursue his post-graduation course in engineering. In that regard, they have entered into a written contract. While pursuing the studies, the student has rendered services, which is acknowledged by the assessee. Merely because in the agreement there was a clause that in default of his rendering services, he would return the sponsored money with interest, the genuineness of the agreement cannot be doubted. On the contrary, it only shows that the assessee had taken precaution to see that the interest of the assessee was protected by imposing such a condition on the student. Even otherwise, when the assessee is running an engineering*

and consulting services earning profits and in pursuance of its business or profession, it laid out certain monies for education of a student in the very same field, such an expenditure cannot be held to be unlawful or prohibited by law. Having regard to the quantum of amount spent it cannot also be said that it is a device to avoid payment of tax or to reduce the tax by such a device of sponsoring a student's studies abroad. In the facts and circumstances of the case keeping in mind the amount extended towards the educational expenses and the nature of the education and also other attending circumstances, we are satisfied that the amount expended by the assessee is not a device to avoid payment of tax or reduce payment of tax and this expenditure is a bona fide in that view of the matter, we do not find any merit in these appeals."

6. In the instant case, before expenditure was incurred, the daughter had acquired a degree in

medicine. She was employed. Apart from the fact that she is the daughter of the Managing Director and the Chief Executive, she was an employee of the assessee. She was sent outside the country for acquiring higher educational qualification, which would improve the services, which the assessee is giving to its patients. It is in this context, the sum of Rs.5,00,000/- is spent. That is not in dispute. After acquiring the degree, she has come back and she is working with the assessee. She was paid Rs.20,000/- per month as salary, before she was sent to higher education and after returning she is being paid Rs.30,000/- per month. Merely because she happens to be the daughter of the Managing Director and the Chief Executive, it cannot be said that the money is spent by her parents out of love and affection for higher education of their daughter. She was an employee of the assessee, in the field, in which, she has acquired degree. They wanted her to

specialize in Radiological Investigations and therefore, she was sent abroad for acquiring the knowledge. After acquiring the additional knowledge, she has come back and she is working with the assessee. Therefore, there is a direct nexus between the expenses incurred towards her education, with the business, which the assessee is carrying on. In that view of the matter, following the aforesaid judgment, we hereby set-aside the impugned orders passed by all the three authorities and direct the assessing authority to allow deduction of the said expenses. The substantial questions of law is answered in favour of the assessee and against the revenue. Accordingly, we pass the following order:

(a) Appeal is ***allowed***.

(b) The impugned orders are set-aside.

(c) The Assessing authority is directed to allow the deduction of Rs.5,00,000/- as claimed by the assessee.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

SPS