

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF NOVEMBER 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

I.T.A. NO.410 OF 2012

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX
C.R. BUILDING, QUEENS ROAD
BANGALORE.
2. THE DEPUTY COMMISSIONER OF INCOME-TAX
CIRCLE-1(1), PUNE.
3. THE DY. COMMISSIONER OF INCOME-TAX
CIRCLE-11(3), BANGALORE.

... APPELLANTS

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

AND:

M/S. GE MEDICAL SYSTEMS (I) (P) LTD.,
NO.122, (PART-1), EPIP
WHITE FIELD ROAD, BANGALORE-560066.

... RESPONDENT

(BY SRI. PERCY PARDIWALA, SR. COUNSEL FOR
SRI. PAI DHUNGAL ANKUR, ADV.)

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THIS ITA IS FILED UNDER SECTION 260-A OF I.T. ACT,
1961 ARISING OUT OF ORDER DATED 13.07.2012 PASSED IN ITA
NO.769/BANG/2010 FOR THE ASSESSMENT YEAR 2000-01,
PRAYING TO:

(I) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN.

(II) ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE ITAT, BANGALORE IN ITA NO.769/BANG/2010 DATED 13-07-2012 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-1(1), PUNE, IN THE INTEREST OF JUSTICE AND EQUITY.

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

JUDGMENT

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the revenue. The subject matter of the appeal pertains to the Assessment year 2000-01. The appeal was admitted by a bench of this Court vide order dated 21.02.2013 on the following substantial questions of law:

(i) Whether the Appellate Authorities were correct in holding that the assessee is entitled to claim deduction in respect of expenditure incurred toward payment of voluntary retirement compensation of the employees taken over from M/s. Elpro International when the same was not incurred

solely and exclusively for the purpose of business?

(ii) Whether Appellate Authorities were correct in failing to take into consideration that the business of M/s. Elpro International continue and taking over of the employees eligible for voluntary retirement was a device to avoid tax and recorded a perverse finding?

2. Facts leading to filing of this appeal briefly stated are that the assessee is in the business of manufacture and marketing of x-ray medical equipments and other allied activities. The assessee filed its return of income for the Assessment Year 2000-01. In the profit and loss account, the assessee had written off an amount of Rs.7,41,13,368/- being compensation paid towards voluntary retirement scheme (hereinafter referred to as 'the scheme' for short). The Assessing Officer by an order dated 24.03.2005 inter alia held that assessee was a joint venture company of M/s G.E.Pacific Singapore and M/s. Elpro International, which is an

Indian company. It was further held that 51% of shares in the joint venture company were held by M/s G.E.Pacific Singapore, whereas, 49% of the shares were held by M/s. Elpro International and as per the agreement, the assessee took over the employees of M/s. Elpro International and thereafter, immediately introduced the scheme and huge amount was paid towards retirement benefits and the employees taken over by the assessee never rendered services to the assessee. The Assessing Officer, therefore, disallowed the entire compensation paid towards the scheme of Rs.7,41,13,368/- as the same was not incurred wholly and exclusively for the purpose of business of the assessee.

3. The assessee thereupon filed an appeal before the Commissioner of Income Tax (Appeals) who by an order dated 18.02.2010 allowed the appeal preferred by the assessee and held that the assessee is entitled to deduction in respect of payments made to

the employees under the scheme. Thereupon the revenue approached the Income Tax Appellate Tribunal (hereinafter referred to as 'the tribunal' for short) by filing an appeal. The tribunal by an order dated 13.07.2012 by placing reliance on its earlier order upheld the order passed by the Commissioner of Income Tax (Appeals). In the aforesaid factual background, this appeal has been filed.

4. Learned counsel for the revenue submitted that the tribunal ought to have appreciated that the transaction between the assessee and M/s. Elpro International was only purchase of shares and therefore, expenditure incurred by the assessee under the scheme was not in the course of business of the assessee. It is further submitted that liability of payment of the amount under the scheme was of M/s. Elpro International, which amounts to third party liability in the nature of personal expenditure. It is also argued that the scheme was floated in view of services rendered by the employees to

M/s. Elpro International and not to the assessee and therefore, the expenditure is not the liability of the assessee and was not incurred for the purpose of business of the assessee. It is urged that taking over of the employees of M/s. Elpro International was not required for the assessee and the same was an arrangement to discharge the liability of M/s. Elpro International. It is also urged that expenditure incurred under the scheme was not incurred for the purposes of business of the assessee so as to constitute expenditure under Section 37(1) of the Act and the transaction between the assessee and the M/s. Elpro International was not transfer of the entire business. It is contended that liability under the scheme is not attached to the shares but to M/s. Elpro International and the aforesaid company continued its business. Therefore, expenditure incurred under the scheme is of M/s. Elpro International. It is also pointed out that judgments relied on behalf of the assessee and referred to by the tribunal deal with

the issue viz., whether the expenditure incurred under the scheme is capital or revenue in nature and therefore, is of no assistance to the assessee.

5. On the other hand, learned Senior counsel for the assessee submitted that in case of the assessee itself, the Pune Bench of Income Tax Appellate Tribunal by an order dated 22.06.2007, had answered the issues involved in this appeal in favour of the assessee and against the aforesaid decision, the revenue had preferred an appeal before the High Court of Bombay viz., I.T.A.No.904/2009, which has been dismissed by the High Court of Bombay vide order dated 16.08.2018 for want of prosecution. It is urged that an inference can be drawn that the revenue has accepted the view taken by the Pune Bench of the tribunal in case of the assessee. Learned Senior counsel for the assessee has also invited our attention to the facts mentioned in paragraphs 2.1, 3, 4 and 5 of the order passed by the Pune Bench of the tribunal. It is further submitted that

after the introduction of the scheme, 153 employees had opted for the scheme, out of which 119 employees were the employees of erstwhile M/s. Elpro International and rest of the employees were original employees of assessee. It is pointed out that the scheme was formulated for all the original employees and the compensation, which was paid under the scheme was not only for past services but for remaining years of service with the assessee and therefore, the same was rightly treated to the revenue expenditure incurred on the ground of commercial expediency and was incurred wholly and exclusively for the purposes of business of the company. It is also urged that expenses under the scheme were incurred by the company to save the expenses and were incurred by the assessee on the ground of commercial expediency in order to facilitate carrying on the business and the same was allowable as expenditure under Section 37(1) of the Act. In support of aforesaid submissions, reliance has been placed on

the decisions in **'SENAIRAM DOONGARMALL VS. COMMISSIONER OF INCOME-TAX', (1961) 42 ITR 392 (SC), 'COMMISSIONER OF INCOME-TAX VS. BHOR INDUSTRIES LTD.', (2003) 128 TAXMAN 626 (BOMBAY), 'EMPLOYERS IN RELATION TO THE MANAGMEENT OF INDIANN CABLE CO. VS. WORKMEN', (1974) 3 SCC 11, 'SASSOON J. DAVID AND CO. P. LTD. VS. COMMISSIONER OF INCOME-TAX, BOMBAY', 118 ITR 261 (SC) ' COMMISSIONER OF INCOME-TAX, CENTRAL CIRCLE VS. NOVELL SOFTWARE DEVELOPMENT (I) (P.) LTD.', (2013) 35 TAXMANN.COM 414 (KARNATAKA), 'COMMISSIONER OF INCOME-TAX AND ANOTHER VS. INFOSYS TECHNOLOGIES LTD. (2012) 349 ITR 606 (KARN), 'THE COMMISSIONER OF INCOME TAX, BANGALORE-1 VS. M/S G.E. MEDICAL SYSTEMS INDIA PVT. LTD., ITA NO.904/2009 and 'THE G.E.MEDICAL SYSTEMS INDIA (P) LTD. PUNE**

VS. DCIT, CIR 1(1), PUNE, ITA NO.1073 & 1074/PN/2003.

6. We have considered the submissions made by learned counsel for the parties and have perused the record. Section 37(1) of the Act provides that any expenditure not being expenditure of the nature described in Sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee, laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession." M/s G.E.Pacific was incorporated in Singapore and another company viz., M/s. Elpro International, in India. The aforesaid two companies entered into a joint venture agreement on 09.12.1993, as a result of which the assessee came into existence with an object of carrying on the business of manufacturing and distribution of x-ray equipments. In

the aforesaid joint venture company, M/s G.E.Pacific Singapore and M/s. Elpro International held shares in the ratio of 51% and 49% respectively. The agreement dated 09.03.1993 contained a clause that existing business of the Indian company viz., M/s. Elpro International would be taken over by the assessee for certain monetary consideration. A share purchase agreement was executed on 28.05.1997 and under the aforesaid agreement, M/s G.E.Pacific Singapore decided to purchase 49% shares of the assessee for a consideration of 63,00,00 U.S.Dollars. In the aforesaid agreement it was also provided that the assessee company shall take over certain assets of M/s. Elpro International and 184 employees of the aforesaid company shall also be taken over by the assessee. A separate agreement termed as Equipments Sales and Employees Absorption Agreement. The agreement was also executed between assessee and M/s. Elpro International. This agreement is part of share purchase

agreement. Under the said agreement, the employees were given a choice of continuity of service and it was also provided that their service shall be considered from the date they have joined M/s. Elpro International. Thereafter, in July 1997, the assessee formulated the scheme. Under the scheme, a sum of Rs.4,33,67,658/- was paid as retirement benefit to the employees who availed benefit of the scheme. Under the scheme, compensation was paid not only for past services but also for remaining years of service with the company. The employees had also filed a complaint against the assessee under the Labour Laws and therefore, the assessee had to offer a scheme to avoid any kind of future problems.

7. It is pertinent to mention here that the scheme was admittedly sanctioned by the Chief Commissioner for the exemption under Section 10(10C) of the Act and it was a contractual obligation and was an ascertained liability. It is also pertinent to mention here

that the genuineness of the scheme was not doubted by any of the authorities, rather the same was approved by Chief Commissioner of Income Tax. The Commissioner of Income Tax (Appeals) as well as the tribunal held that payment of compensation under the scheme was to induce workmen to retire prematurely and the decision of the assessee was purely on the ground of commercial expediency to curtail the expenditure in future and to facilitate for carrying on the business. Thus, the expenditure incurred under the scheme has been treated as revenue expenditure. It is pertinent to mention that Supreme Court in '**EMPLOYERS IN RELATION TO THE MANAGEMENT OF INDIAN CABLE CO.** supra has also held that expenditure incurred by the company under the scheme has to be treated as an item of expenditure incurred by the company on the ground of commercial expediency and the same is allowable under Section 37(1) of the Act. In view of aforesaid enunciation of law by the Supreme Court, the expenses incurred by the

assessee under the scheme have been incurred solely and exclusively for the purposes of business and are entitled for deduction under Section 37(1) of the Act.

8. Similar view has been taken by the Pune Bench of the Tribunal in the case of the assessee and against the aforesaid decision, the revenue has filed an appeal, which was dismissed for want of prosecution on 16.08.2018. Therefore, an inference can safely be drawn that the revenue has accepted the decision of the Pune Bench of Tribunal taken in the case of assessee itself.

In view of preceding analysis, the substantial questions of law framed by a bench of this court are answered against the revenue and in favour of the assessee.

In the result, we do not find any merit in this appeal, the same fails and is hereby dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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