

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.2739/Bang/2017 : Asst.Year 2013-2014

ITA No.208/Bang/2019 : Asst.Year 2014-2015

ITA No.209/Bang/2019 : Asst.Year 2015-2016

Sri.Mukesh Gupta No.182, 3 rd Main, 12 th Cross RMV, 2 nd Stage, Bangalore – 560 094. PAN : AANPG1383P.	v.	The Deputy Commissioner of Income-tax, Circle 6(1)(2) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.S.V.Ravishankar, Advocate

Respondent by : Sri.Chetan R. Addl.CIT-DR

Date of Hearing : 02.12.2021	Date of Pronouncement : 07.12.2021
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ORDER

Per George George K, JM

These appeals at the instance of the assessee are directed against three orders of the CIT(A) (for ITA No.2739/Bang/2017, CIT(A)'s order dated 06.10.2017, for ITA Nos.208 and 209/Bang/2019, CIT(A)'s orders are dated 20.11.2018). The relevant assessment years are 2013-2014 to 2015-2016. Common issue is raised in these appeals, hence, they were heard together and are being disposed of by this consolidated order.

2. The common issue raised for all the three assessment years is that whether the Income Tax Authorities is justified in treating income received by the assessee from company as salary income instead of professional income claimed by the

assessee, thereby disallowing the interest paid to M/s.Sundaram BNP Paribas Home Finance Limited. For assessment year 2015-2016, apart from the above issue, the assessee has raised grounds regarding disallowance u/s 14A of the I.T.Act.

3. We shall first adjudicate the common issue, which is raised for assessment years 2013-2014 to 2015-2016.

4. The facts pertaining to the common issue for assessment year 2013-2014 are as follows:-

During the course of assessment proceedings, the Assessing Officer noticed that the assessee had credited a sum of Rs.66 lakh as professional income. It was further noticed that the assessee had claimed interest expenditure of Rs.45,26,956 as deduction from the professional charges of Rs.66 lakh. The A.O. vide letter dated 18.03.2016, directed the assessee to explain why professional income of Rs.66 lakh received from M/s.Smile Electronics Limited (SML) (assessee is a Director in SML) should not be treated as income from salary. Further, the assessee was directed to explain how interest expenditure could be deducted from Rs.66,00,000 received from SML. The assessee filed explanation vide his letter dated 23.03.2016. The assessee explained that he is a financial expert and was advising SML on financial management. It was submitted that professional fees cannot be treated as salary income in absence of employee-employer relationship. In this context, the assessee relied on various

judicial pronouncements. Further, as regards the expenditure of Rs.45,26,956, it was submitted that the assessee had borrowed money by mortgaging his property and amounts so borrowed were advanced to SML. It was stated that the assessee did not receive any interest on the amounts advanced to SML. It was contended that interest paid on borrowed funds is an allowable deduction as per the judgment of the Hon'ble Apex Court S.A.Builders Limited v. CIT reported in 288 ITR 1 (SC), since SML had utilized the funds so advanced for the purpose of the business.

5. The A.O., however, rejected the contentions of the assessee. The A.O. held that the assessee has not rendered any professional or technical services to the company. It was further held by the A.O. that the amount so received by the assessee from SML even if it is taken as professional charges, the assessee has not been able to prove the nexus of interest expenditure with the receipt from the company for claiming the deduction.

6. Aggrieved by the order of assessment, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer. The relevant finding of the CIT(A) for assessment year 2013-2014, reads as follows:-

“9. Perusal of assessment order shows that before AO, appellant did not provide details and nature of professional and technical services rendered to the company. The appellant failed to proof nexus between providing the loan taken on his

name to the company. Therefore according to the AO, there was conflict of interest in appellant's claims, i.e. getting paid for professional services and claiming loan taken on his name as expenses of the company.

10. It may be noted that even during appellate proceedings, appellant has failed to provide details and nature of professional and technical services rendered by him to the company. Further, appellant had also claimed interest expenditure of Rs.45,26,956/- and the same was reduced from income received by him from Smile Electronics Pvt. Ltd. However, since appellant failed to establish with any documentary evidence details and nature of professional and technical services rendered by him to the company, AO's action of holding Rs.66,00,000/- as income from salary is found to be in order. Hence, no interference in assessment order is called for since no infirmity arose."

7. Similar orders were passed for assessment year 2014-2015 and 2015-2016. Aggrieved by the order of the CIT(A), the assessee has preferred these appeals before the Tribunal. The learned AR has filed a paper book comprising of 32 pages *inter alia* enclosing therein copies of the computation of income and financials for the relevant assessment years, copies of the proceedings of Central Excise Authorities in the case of the company etc. The learned AR by referring to the Central Excise proceedings (refer pages 1 to 18 of the paper book), contended that when one arm of the revenue, namely, Central Excise has treated the payment made by the company to the assessee as professional fees, the Income Tax Department has erred in re-characterizing the same as salary income. As regards the allowability of interest, the learned AR reiterated the submissions made before the Income Tax Authorities.

8. The learned Departmental Representative strongly supported the findings of the Income Tax Authorities.

9. We have heard rival submissions and perused the material on record. The issue to be decided are two folds, namely, (i) whether the receipt from company is to be assessed as professional income or salary income; (ii) whether the interest expenditure was allowable as a deduction. The assessee has not submitted the details of nature of professional and technical services rendered to the company. Even before the Tribunal, no efforts were made by the learned AR to substantiate the claim that the amount received by the assessee from the company are professional charges. A director may have dual capacity. He may be both director as well as employee. This principle is enumerated in the judgment of the Hon'ble Apex Court in the case of Ram Prashad v. CIT reported in (1972) 86 ITR 122 (SC). The relevant observation of the Hon'ble Apex Court reads as follows:-

"Though an agent as such is not a servant, a servant is generally for some purposes his master's implied agent, the extent of the agency depending upon the duties or position of the servant. It is again true that a director of a company is not a servant but an agent inasmuch as the company cannot act in its own person but has only to act through directors who qua the company have the relationship of an agent to its capacity. A managing director may have a dual capacity. He may both be a director as well as an employee. It is, therefore, evident that in the capacity of a managing director he may be regarded as having not only the capacity as persona of a director but also has the persona of an employee, or an agent depending upon the nature of his work and the terms of his employment. Where he is so employed, the relationship between him as the managing director and the company may be similar to a person who is employed as a servant or an agent, for the term " employee " is facile enough to cover any of these relationships. The nature of his employment may be determined by the articles of association of a company and/or the agreement, if any, under which a contractual relationship between the director and the company has been brought about, whereunder the director is constituted an employee of the company, if such be the case, his remuneration will be assessable as salary under section 7. In other

words, whether or not a managing director is a servant of the company apart from his being a director can only be determined by the articles of association and the terms of his employment.”

9.1 Any remuneration paid to director apart from sitting fees is taxable under the head salary. As per section 2(78) of the Companies Act, 2013, “remuneration” is defined as any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under Income-tax Act. There are limits prescribed as per section 197 of the Companies Act for payment of managerial remuneration to a director of the company. However, exception is when remuneration is paid for professional services rendered by a director. In the instant case, the Articles of Association or the terms of the agreement, whereby the assessee receives remuneration from the company is not on record. When an assessee insists that he is rendering professional / technical services to a company, the burden is on him to prove the same. As mentioned earlier, the assessee has not furnished any evidence to prove that the services rendered by him to the company are of professional in nature. The treatment in the company’s books of account that the remuneration paid to the assessee are professional charges and deduction of tax at source is made u/s 194J of the Act is not the determinative factor to decide in the hands of the assessee whether the remuneration is salary income or income from business or profession. Therefore, we have no hesitation to hold that the receipt from company is nothing but salary income. Moreover, the interest expenditure cannot be deducted from the amount

received from the company because there is no nexus between them. Only such expenditure which has been incurred wholly and exclusively to earn a particular income is allowable as a deduction from such income. In the instant case, there is no relation whatsoever between the interest expenditure from a mortgaged loan and the payment received for rendering certain services. Advancing interest free loans to the employer company cannot be a ground for claiming deduction of interest expenditure from the salary income received from it.

9.2 The reliance placed by the learned AR on the judgment of the Hon'ble Apex Court in the case of S.A.Builders (supra), is misplaced. The assessee in the case of S.A.Builders case, borrowed funds and lent the same to the sister concern, which was a subsidiary of assessee. The Hon'ble Apex Court held that money advanced to sister concern is out of commercial expediency and incurred for the purpose of business of the assessee. In the instant case, the assessee has not proved that there was commercial expediency in advancing money to SML and was for the purpose of business of the assessee. Therefore, assessee's claim for deduction of interest expenditure from the income received from SML is not correct. Hence, the judgment of the Hon'ble Apex Court in the case of S.A.Builder's case is clearly distinguishable.

9.3 The reliance placed by the learned AR on the judgment of the Hon'ble Calcutta High Court in the case of CIT v. Rajeev Lochan Kaneria reported in (1994) 208 ITR 616 (Cal) is also

misplaced. In the facts of the said case, there was a categorical finding that investment in shares was admittedly the business of the assessee and interest expenditure on borrowed funds is an allowable business expenditure of the assessee. In the instant case, it is not established that funds borrowed and diverted to SML are out of commercial expediency and for the purpose of assessee's business. For the aforesaid reasoning, the common issue raised for assessment years 2013-2014 to 2015-2016, is dismissed.

10. Apart from above common issue, for assessment year 2015-2016, the assessee has also raised grounds relating to disallowance u/s 14A of the Act. The A.O. noticed that the assessee was in receipt of dividend income of Rs.1,09,291, which was claimed as exempt. During the course of assessment proceedings, the assessee was asked to explain the details of the expenditure incurred on the exempt income. In response, the learned AR contended that the assessee has not incurred any expenditure for earning exempted income. However, the contention of the assessee was rejected and the A.O. by applying the provisions of section 14A of the Act r.w. Rules 8D of the I.T.Rules, computed the disallowance of Rs.4,03,283.

10.1 Aggrieved, the assessee filed appeal to the first appellate authority. The CIT(A) partly allowed the appeal of the assessee. The CIT(A) restricted the disallowance u/s 14A of the Act to

the exempted income earned during the relevant assessment year.

10.2 Aggrieved by the CIT(A)'s order, the assessee has raised this issue before the Tribunal. The learned AR reiterated the submissions made before the Income Tax Authorities.

10.3 The learned Departmental Representative was duly heard.

10.4 We have heard rival submissions and perused the material on record. The CIT(A) has granted partial relief to the assessee by reducing the disallowance u/s 14A of the Act from Rs.4,03,283 to Rs.1,09,291. The CIT(A) has relied on various judicial pronouncements in granting relief to the assessee. The assessee has not made out a case that the CIT(A)'s order is erroneous. Therefore, we confirm the CIT(A)'s order as correct and in accordance with law. It is ordered accordingly.

11. In the result, appeals are dismissed.

Order pronounced on this 07th day of December, 2021.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 07th December, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A) NFAC, Delhi.
4. The Pr.CIT, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore