

IN THE HIGH COURT OF KARNATAKA AT BENGALURU**DATED THIS THE 31ST DAY OF OCTOBER, 2025****PRESENT****THE HON'BLE MR JUSTICE D K SINGH****AND****THE HON'BLE MR JUSTICE RAJESH RAI K****ITA NO 283 OF 2022****BETWEEN**

SRI MUKESH GUPTA
S/o SRI. G.S.GUPTA
AGED ABOUT 65 YEARS
No. 1832, 3RD MAIN,
12TH CROSS, RVM 2ND STAGE
BENGALURU - 560 094.
PAN: AANPG1383P

...APPELLANT

(BY SRI. CHANDRASEKHAR V, ADVOCATE)

AND

THE DEPUTY COMMISSIONER OF
INCOME TAX, CIRCLE 6(1)(2)
BMTc BUILDING, 6TH BLOCK
KORAMANGALA, 80 FEET ROAD
BENGALURU - 560 095.

...RESPONDENT

(BY SRI. RAVI RAJ Y.V, ADVOCATE)

THIS ITA / INCOME TAX APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, PRAYING TO i. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND ANSWER THE SAME IN FAVOUR OF THE APPELLANT. ii. TO HOLD THE TRIBUNAL ORDER TO THAT EXTENT HELD AGAINST THE APPELLANT AS BAD IN LAW, IN THE COMMON ORDER PASSED BY THE INCOME TAX APPELLANT TRIBUNAL, BENGALURU "A" BENCH, IN ITA NO. 2739/BANG/2017; ITA NO. 208-209/BANG/2019 DATED: 07/12/2021 FOR THE ASSESSMENT YEARS 2013-2014, 2014-2015 AND 2015-2016 RESPECTIVELY,

ANNEXURE-A AND CONSEQUENTLY SET ASIDE THE OBSERVATION OF THE TRIBUNAL AND ETC.

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT ON 17.10.2025 COMING ON FOR PRONOUNCEMENT THIS DAY, **RAJESH RAI K, J.**, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE RAJESH RAI K

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE RAJESH RAI K)

1. The above appeal is filed by the appellant/assessee under Section 260-A of the Income Tax Act, 1961 (for brevity, "**the IT Act**"), against the common order dated 07.12.2021 passed in ITA.No.2739/Bang/2017 for the assessment year 2013-14, ITA.No.208/Bang/2019 for the assessment year 2014-15 and in ITA.No.209/Bang/2019 for the assessment year 2015-16 respectively (Annexure-A), by the Income Tax Appellate Tribunal, Bench 'A', Bengaluru (for brevity, "**the Appellate Tribunal**").

2. The facts of the case are that, the assessee, an individual filed return of income for the assessment years 2013-14, 2014-15 and 2015-16 on various dates. The returns of income were selected for scrutiny. The receipt of Rs.66,00,000/-from M/s. Smile Electronics Limited, in which the assessee was a Director, was treated as salary rejecting the claim of

professional/technical service fee. The Assessing Officer held that in the absence of details regarding the nature of professional/technical services rendered to the company, the receipt of the same cannot be considered as income from profession/business.

3. Insofar as the interest of Rs.45,26,956/- claimed as expenditure against the receipt of Rs.66,00,000/-, the Assessing Officer held that there is no nexus of incurring interest expenditure for rendering professional service/business to M/s. Smile Electronics Limited. The Assessing Officer further held that unless expenditure is incurred in the course of the business or professional service, the assessee is not entitled to deduction, merely due to it being incurred on the amount borrowed and advanced to M/s. Smile Electronics Limited. Accordingly, the Assessing Officer disallowed both the claims.

4. Aggrieved by the same, the assessee preferred appeal before the Commissioner of Income Tax (Appeals) (for brevity, "**the CIT(A)**"). The CIT(A) concurring with the view of the Assessing Officer, rejected the appeals insofar as these two grounds are concerned.

5. On further appeal, the Appellate Tribunal recorded a finding that the amount of Rs.66,00,000/- was in the nature of salary by the Company and in the absence of any services rendered, such receipt cannot be considered as income from profession/business. The Appellate Tribunal further held that interest expenditure of Rs.45,26,956/- is not an allowable expenditure in the absence of nexus of such expenditure to the business/profession carried on by the assessee. Against the said order, the assessee is before this Court.

6. This appeal was admitted on 01.08.2022 to consider the following substantial questions of law:

- i) Whether the Tribunal was justified in holding that the appellant had not demonstrated that he has rendered professional services, when the company has paid professional fees for services rendered and fortified by the deduction of TDS by the company and thus has passed a perverse order, on the facts and circumstances of the case.
- ii) Whether the Tribunal was justified in disregarding the additional evidence, in so far as the orders of the service tax department, which has held the services rendered by the appellant, as professional in nature and not to be treated as

salary and has passed a perverse order, on the facts and circumstances of the case.

- iii) Whether the tribunal was justified in holding that there was no commercial expediency Involved in availing loan to invest in the company and thus the interest incurred could not be set off against the professional income earned, which is contrary to the authorities relied upon and thus has passed a perverse order, on the facts and circumstances of the case.
- iv) Without prejudice, whether the Tribunal was not justified in not granting the claim of interest of Rs.45,26,956/- for the assessment 2013-14, Rs. 37,30,917/- for the assessment year 2014-15 and Rs. 41,37,978/- for the assessment year 2015-16 as loss arising from business and consequently set off the same against the alleged income from salary on the facts and circumstances of the case.
- v) Without prejudice, the authorities below ought to have allowed the deduction of interest as a separate source and allowed set off against the income determined by them on the facts and circumstances of the case.

7. Heard the learned counsel Sri. Chandrashekar V. for the appellant and the learned counsel Sri Ravi Raj Y.V. for the respondent and perused the entire appeal papers.

8. The learned counsel for the appellant/assessee contended that the order of the Tribunal is perverse for the reason that the Tribunal has failed to appreciate that after the revenue has held proceedings under Section 206 of the IT Act, the amount received by the assessee partakes the character of the professional charges and thus, it is not open to the revenue to take different contention in the assessment proceedings as both the provisions are highly interlinked.

9. He further contended that the payment received by the assessee was as professional charges and that the same is liable for service tax on reverse charge basis, for which the amount has already been discharged by the company and consequently, holding the same as salary by the I.T. Department in the hands of the appellant is unsustainable in law.

10. According to the learned counsel, there is nothing on record to indicate that the appellant was an employee and as such his income is from the business and not from salary.

11. He also contended that it is the duty of the Assessing Officer to demonstrate the relationship between the appellant and the company as that of the employee and employer and

the said onus cannot be shifted on the appellant to prove the same. Without prejudice to these contentions, he has also submitted that if the department is not accepting that the salary falls under the ambit of income from business, even then the loss arising out of income from other sources is required to be allowed to set off against the alleged determination of salary income on the facts and circumstances of the case.

12. Lastly, the learned counsel submits that the director/share holder, helping the company squarely falls within the ambit of commercial expediency. In such circumstances, the Tribunal has grossly erred by affirming the orders dated 06.10.2017, 20.11.2018 and 22.11.2018 passed by the CIT(A) in ITA No-47/C-6(1)(2)/CIT(A)-6/16-17, ITA No-161/CIT(A)-6/18-19 and ITA No.e-Fil/ CIT(A)-6/18-19, wherein it was held that the assessee has not rendered any professional or technical services to the company and even if it was considered as the amount paid to the assessee for providing professional/technical services, the assessee has failed to prove the nexus between the interest expenditure and the company's receipts for claiming the deduction. Based on these submissions, he prays to allow the appeal.

13. In order to buttress his argument, he has relied upon the decision of the Hon'ble Supreme Court in the case of **COMMISSIONER OF INCOME-TAX Vs. DURGA KUMAR NANDA -[1995] 211 ITR 639 (ORISSA).**

14. On the other hand, learned counsel for the respondent - revenue supported the impugned order passed by the Tribunal and submitted that since the appellant has failed to produce the details of nature of professional and technical services rendered to the company and failed to prove that there was commercial expediency in advancing money to the company and it was for the purpose of business of the assessee, the Tribunal has rightly passed the impugned order. Hence, he prays to reject the claims of the appellant.

15. We have carefully perused the order passed in ITA No-47/C-6(1)(2)/CIT(A)-6/16-17, ITA No-161/CIT(A)-6/18-19 and ITA No.e-Fil/ CIT(A)-6/18-19 by the CIT(A) and the order passed by the Tribunal and also considered the submissions of learned counsel for the respective parties.

16. On careful perusal of the materials on record, even though the Assessing Officer granted sufficient opportunity to

the assessee to place the details/materials and nature of professional and technical services rendered by the assessee to the company, the assessee has failed to produce the same. Without placing any document, the assessee cannot claim that he has rendered the services as a financial expert to the Company and he has received the professional fee and not the salary.

17. Further, the assessee had also been failed to prove the nexus of providing the loan to the Company which was taken in his own name. Hence, it is rightly observed by the Assessing Officer that getting paid by the Company as professional service and claiming that the loan has been taken in his own name leads to the conflict of interest. Further the Assessing Officer and the CIT(A) have rightly considered that when the charges towards professional and technical service rendered is considered as salary, it would be more beneficial for the assessee than the disallowance of interest expenditure. The Tribunal while dismissing the appeals observed in the impugned order in Para 6 to 10-10.4 as under:

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 Justic and technical services rendered to the company. The appellant ailed 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, Le 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, professional and technical services rendered by him to the appellant has failed to provide details and nature of company. Further, appellant had also claimed interest expenditure of Rs. 45,26,956/- and the same was reduced from Smile Electronics Pvt. 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 to decide in the hands of the assessee whether the remuneration is salary income or income from business or aforesaid. Therefore, we have no hesitation to hold that the receipt from company is nothing but salary income. Moreover, 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 1.T.Rules, computed the disallowance of Rs.4,08,283.

10.1 Aggrieved, the assessee filed appeal to the first appellate authority. The CIT(A) partly allowed the appeal of the assessee. 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."

18. The judgment relied upon by the learned counsel for the appellant in the case of ***Durga Kumar Nanda*** cited supra does not apply to the facts and circumstance of this case for the simple reason that, in the instant case, the assessee has failed to place any details and nature of professional and technical services rendered to the company and also failed to prove

nexus with the business carried on by the assessee and raising of loan by mortgaging the assessee's property and advancing it to the company to claim interest as expenditure incurred against the business/professional income. In such circumstance, the findings in the above judgment cannot be applied to the facts and circumstance of this case.

19. The Appellate Tribunal has rightly held that in the absence of proof of services rendered to the company, the receipt cannot be considered as income from profession/business. The Appellate Tribunal on analysis of facts, has rightly held that receipt of Rs.66,00,000/- is salaried income. The Appellate Tribunal further rightly held that the deduction of tax at source as professional charges is not the determinative factor for taxation under heads of the income.

20. The Appellate Tribunal has also rightly held that interest expenditure of Rs.45,26,956/- has no nexus with the business carried on by the assessee to claim as expenditure against the business/professional income. The mere raising of loan by mortgaging the assessee's property and advancing it to the company itself would not be considered as the expenditure incurred for the purpose of business/profession.

21. The assessee has not placed any material to contradict the finding of the Appellate Tribunal on both the issues. In the absence of such material in contra, there is no reason to differ from the view taken by the Appellate Tribunal.

22. In view of the preceding analysis, the substantial questions of law are answered against the assessee and in favour of the Revenue. Accordingly, the appeal is ***dismissed***.

**SD/-
(D K SINGH)
JUDGE**

**SD/-
(RAJESH RAI K)
JUDGE**

PKS