

Karnataka High Court M/S Ge India Technology Centre Pvt ... vs Deputy  
Commissioner Of Income Tax on 27 February, 2013 Author: D.V.Shyendra  
Kumar Gowda IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 27TH DAY OF FEBRUARY, 2013

PRESENT

THE HON'BLE MR. JUSTICE D V SHYLENDRA KUMAR

AND

THE HON'BLE MR. JUSTICE B SREENIVASE GOWDA

ITA No.226 of 2012

BETWEEN:

GE INDIA TECHNOLOGY CENTRE PVT. LTD. HAVING ITS REGIS-  
TERED OFFICE AT 122, EPIP, WHITEFIELD ROAD HOODI VILLAGE,  
WHITEFIELD BANGALORE - 560 066 ... APPELLANT

[By Sri T S Amarkumar, Adv. &  
Sri Pawan Sharma, Adv. for  
M/s Lawyers Inc., Advs.]

AND:

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE-11(3), 14/3, 5TH  
FLOOR R P BHAVAN, NRUPATHUNGA ROAD BANGALORE - 560 001 ...  
RESPONDENT

[By Sri K V Aravind, Adv.]

THIS APPEAL IS FILED UNDER SECTION 260-A OF THE

INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED 20.06.2012  
PASSED IN ITA NO. 950/BANG/2011, FOR THE ASSESSMENT YEAR  
2007-08, PRAYING TO SET ASIDE THE SAID ORDER OF THE TRIBUNAL  
AND ETC.,

THIS APPEAL COMING ON FOR ORDERS, THIS DAY,

SHYLENDRA KUMAR, J., DELIVERED THE FOLLOWING: 2

## JUDGMENT

Though the matter has come up for orders regarding vacating the interim order dated 1.8.2012, with the consent of learned counsel for the parties, the matter is taken up for disposal. 2. This appeal by the Assessee under section 260-A of the Income Tax Act, 1961 [for short 'the Act'] directed against the remand order dated 20.06.2012 passed by the Income Tax Appellate Tribunal, Bangalore, 'B' Bench, in ITA No.950/Bang/2011 relating to assessment year 2007-08. 3. Under the impugned order, the Tribunal remanded the matter to the assessing authority to re-examine the matter in the light of certain Judgments which had been relied upon by the assessee as supporting the case of the assessee and relating to the questions of eligibility/entitlement of the exemption under section 10-A of the Act. 4. The appeal had been admitted by this court overruling certain office objections and had been admitted on 1.8.2012 to consider the following substantial questions of law. a) Whether, on the facts and circumstances of the case and law, the Tribunal erred in remanding the issue of determination of the Appellant's eligibility to claim deduction under Section 10A/80-IB(8A) of the Act back to the Respondent? b) If the answer to above substantial question of law is in the negative and against the Appellant then: Whether, on the facts and circumstances of the case and law, the Tribunal was justified in remanding the issue of eligibility of the Appellant to claim deduction under Section 10A/80-IB(8A) of the Act to the Respondent for his fresh consideration when the remand was made solely because the Respondent had not considered the judgments relied upon by the Appellant? 5. There was initially interim stay granted and on that day and later on 25.10.2012, further interim order was passed on IA No.2/2012 filed by the appellant - assessee as under: "Heard the learned counsel for the appellant as also the respondent. Objections, if any, to IA No.2/2012 within four weeks from today. In the meantime, interim stay of Annexure-T." 6. Annexure-T filed along with IA No.2/2012 is the letter dated 16.10.2012 addressed to the assessee by the Assessing Officer calling upon the assessee to pay outstanding tax within seven days. 7. It is thereafter the revenue has come up with application in IA No.1/2013 seeking for vacating the interim order dated 1.8.2012 etc. 8. In this background, the matter is now listed for orders today. 9. Appearing on behalf of the assessee, submission of Sri. Amarkumar, learned counsel is that the Tribunal's order is not sustainable; that it should be set aside and the matter should be remanded to the Tribunal for fresh examination on the merits of the appeal filed by the assessee before it; that there is no need for the Tribunal to remand the matter as the Assessing Officer had no role to play on this aspect and the matter has to be decided by the Tribunal. 10. Appearing on behalf of the revenue, submission of Sri. K.V. Aravind, learned standing counsel for the respondent - revenue is also to the same effect that the remand order is not sustainable as for no reason, the matter is remanded to the Assessing Officer; that the Assessing Officer had no role to play as this was a case involving transfer pricing and it was scrutinized by the Dispute Resolution Panel comprising of three Commissioners and the order passed by the assessing authority is following the directions issued by the

Dispute Resolution Panel; that the remand order is clearly not sustainable and to this extent, learned counsel for respondent - revenue is also agreeable for the order of the Tribunal being set aside and to be remanded to the Tribunal for examination of the appeal of the assessee on merits. 11. In the result, this appeal is allowed. The order of the Tribunal is set aside and is remanded to the Tribunal for examination of the appeal of the assessee on merits. 12. As the matter is being remanded to the extent of setting aside the same, we do not answer the question as no further issue arises once the remand order is set aside and the matter is remanded to the Tribunal. 13. With the appeal being allowed in this manner and the order of the Tribunal is set aside and remanded, all interim orders passed earlier gets dissolved. 14. The Tribunal is directed to expedite the hearing of the appeal which is now remanded to the Tribunal for examination on merits. Sd/- JUDGE Sd/- JUDGE AN/-