

Karnataka High Court Smt U Lakshmi Lr Of Late T.V. Umesh ... vs The
Deputy Commissioner Of Income ... on 19 August, 2014 Author: N.Kumar
And Rathnakala 1

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 19TH DAY OF AUGUST 2014

PRESENT

THE HON'BLE MR. JUSTICE N.KUMAR

AND

THE HON'BLE MRS.JUSTICE RATHNAKALA

INCOME TAX APPEAL NO.729 OF 2008

C/W ITA NOS.726 OF 2008, 727 OF 2008, 728 OF 2008, 439 OF 2009, 440 OF
2009, 441 OF 2009 AND 442 OF 2009

BETWEEN :

SMT.U.LAKSHMI LR OF LATE T.V.UMESH GUPTA 28/D, 37TH CROSS
8TH BLOCK, JAYANAGAR BANGALORE - 560 082 ... APPELLANT
IN ITA NO.729/2008 SRI.T.V.JAYAWANT 28/D, 37TH CROSS 8TH
BLOCK, JAYANAGAR BANGALORE - 560 082 ... APPELLANT IN
ITA NO.726/2008 SRI.T.V.MUKUND C/O TRUST PACK NO.2/1, 3RD
CROSS MYSORE ROAD BANGALORE - 560 026 ... APPELLANT IN
ITA NO.727/2008 SRI.N.PRASHANTH 22/2, OPP. BUGAL ROCK POLICE
STATION ROAD 2

BASAVANAGUDI BANGALORE - 560 004 ... APPELLANT IN ITA
NO.728/2008 SRI.T.V.VISWANATH GUPTA 490/2/1, 39TH CROSS 8TH
BLOCK, JAYANAGAR BANGALORE - 560 082 .. APPELLANT IN ITA
NO.439/2009 SRI.N.GOWRISHANKAR 289, 7TH MAIN, 4TH BLOCK
JAYANAGAR BANGALORE - 560 082 .. APPELLANT IN ITA NO.440/2009
SRI.N.JAGANNATH NO.67, 'ANNAPOORNA' H.B.SAMAJA ROAD BASA-
VANAGUDI BANGALORE - 560 004 .. APPELLANT IN ITA NO.441/2009
SRI.G.RAVISHANKAR 289, 'NANJUNDA KRUPA' 7TH MAIN, 4TH
BLOCK JAYANAGAR BANGALORE - 560 082 .. APPELLANT IN ITA
NO.442/2009

(BY DR.R.B.KRISHNA, ADV.)

AND :

THE DEPUTY COMMISSIONER OF INCOME-TAX CIRCLE 3(1), 4TH
FLOOR UNITY BUILDINGS ANNEXE MISSION ROAD BANGALORE -
560 027 ... COMMON RESPONDENT

(BY SRI.K.V.ARAVIND, ADV.) —

ITA Nos.729/08, 726/08, 727/08 and 728/08 are

filed under Section 260A of I.T.Act, 1961 arising out of Order dated 11.3.2008
passed in ITA 3

Nos.653/Bang/2007, 752/Bang/2007, 751/Bang/2007 and 753/Bang/2007, re-
spectively for the assessment year 2002-03 praying to formulate the substantial
questions of law stated therein, allow the appeal and set aside the appellate or-
der passed by the ITAT, Bangalore in ITA Nos.653/Bang/2007, 752/Bang/2007,
751/Bang/2007 and 753/Bang/2007, respectively dated 11.3.2008, in the inter-
est of justice.

ITA Nos.439/09, 440/09, 441/09 and 442/09 are

filed under Section 260A of I.T.Act, 1961 arising out of Order dated 8.5.2009
passed in ITA Nos.796/Bang/2007, 794/Bang/2007, 797/Bang/2007 and
795/Bang/2007, respectively for the assessment year 2002-03 praying to
formulate the substantial questions of law stated therein, allow the appeal
and set aside the appellate order passed by the ITAT, Bangalore in ITA
Nos.796/Bang/2007, 794/Bang/2007, 797/Bang/2007 and 795/Bang/2007,
respectively dated 8.5.2009, in the interest of justice.

These appeals coming on for Admission this day,

N.KUMAR J., delivered the following:

JUDGMENT

These appeals are preferred by the assesseees against the common order passed
by the Tribunal affirming the findings recorded by the Courts below declining
to allow the expenditure claimed by the appellants. 2. The assesseees are
individuals. They were promoters and founder Directors / Shareholders of
Kwality Biscuits Pvt. Ltd. (hereinafter referred to as the 'KBL', for short)
which was engaged in the business of manufacturing, selling, marketing
and distributing biscuits / bakery products. On 29.3.2001, the promoters /
assesseees and KBL entered into agreements with Britannia Industries Ltd.
(hereinafter referred to as the 'BIL', for short). One agreement was regarding
assignment and transfer of intellectual property assets, second agreement deals
with sale of the entire share holdings of the promoters in KBL to BIL and the

third agreement was regarding covenants by the promoters not to compete with BIL in the biscuit business of KBL and for these services, they received certain payments. These receipts were offered to tax under the head 'Profits and Gains of Business or Profession', claiming certain expenses incurred in relation to such income. One such expenditure was a payment made to M/s.Akerrald Investments Ltd. which was disallowed on the ground that there is no nexus between the payment made for the services rendered by them and the consultancy services for which they received the payment. Aggrieved by the said order, the assessee preferred appeals to the Commissioner of Income Tax (Appeals). The appeals were dismissed. The second appeals preferred by the assessee to the Tribunal also met the same fate. It is thereafter that they have preferred these appeals. 3. The two substantial questions of law which arise for consideration in all these appeals are as under: (1) Whether the Tribunal was right in upholding the disallowance of payment made to M/s.Akerrald Investments Ltd. when such expenditure have been incurred to earn the consultancy fee received by the assessee? (2) Whether levy of interest under Section 234- D is legal and proper when the assessment has been made under Section 147 of the Act? 4. The Assessing Officer, in his assessment order, has clearly set out the terms and conditions of the agreement entered into between the assessee and BIL. The nature of consultancy services to be rendered and the promoters' obligations are discussed. Similarly, the BIL's obligations are also set out. The total consideration agreed to be paid for consultancy services to these promoters is 4 Crores. The mode of payment is also clearly set out. Clause 6.7 of the agreement reads as under: "BIL shall pay and reimburse, and procure KBL to pay and reimburse, to the promoters all reasonable expenses incurred in connection with rendering the consultancy services and achievement of the performance parameters." 5. The case of the assessee is that in order to render consultancy services and achieve performance parameters, all of them entered into an agreement with M/s.Akerrald Investments Ltd. who in turn submitted a report giving analyses about the biscuit market in Pakistan, Nepal, Srilanka, Bangladesh and Maldives. The said report analyses the biscuit and confectionery market in Pakistan, Nepal, Srilanka, Bangladesh and Maldives. The sizes of the various markets have been estimated broadly on the available data on population and consumption and GDP per capita figures. The analysis of each market encapsulates its estimated size, factors inhibiting or promoting growth, the major suppliers, key success factors, and barriers to development presented for manufacturers of biscuits and confectionery products in each of the countries. Local customs tariffs and other regulations, including investment incentives, foreign ownership limitations, and other relevant measures are also discussed. It is their specific case, on the basis of the said report, they in turn submitted their report. Each Director has submitted a separate report for manufacture and sale of

biscuits and confectionery in South-east Asian countries and for other considerations. All of them have paid a sum of 80 Lakhs as the fee for the services rendered by M/s. Akerrald Investments Ltd. All submitted their report as part of consultancy services and therefore, the expenditure incurred by them by way of fee paid to M/s. Akerrald Investments Ltd. is in the nature of expenditure incurred by them, which requires to be deducted from their income. All the three authorities, after going through these agreements, have concurrently held in the first place, there was no obligation on the part of the assesseees to have such a report from M/s. Akerrald Investments Ltd. Even if they have obtained such report, there is no nexus between the said report and a consultancy service they were expected to render under the agreement between them and BIL. Even otherwise, in terms of Clause 6.7 of the agreement between the assesseees and BIL, the said expenditure has to be incurred by BIL and not by the promoters and therefore, held that the said amount, said to have been paid by the assessee to M/s. Akerrald Investments Ltd. is not eligible for deduction. Infact, the consultancy service was only for the period from 1.10.2000 to 30.9.2001. The report of M/s. Akerrald Investments Ltd. is dated 28.9.2001, two days prior to the expiry of the period of consultancy service. Under these circumstances, we are of the view that there is no illegality in the findings recorded by the three authorities and no case for interference is made out. Thus, the first substantial question of law is answered in favour of the revenue and against the assesseees. 6. Though, on the date of formulation of the second question as the law stood, the second substantial question of law had some relevance, in view of the subsequent amendment making it retrospective, there is no substance in the said question of law. The assesseees are liable to pay the interest. In that view of the matter, we do not see any merit in these appeals. Accordingly, all these appeals are dismissed. Sd/- JUDGE Sd/- JUDGE RV