



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF JUNE, 2023

PRESENT

THE HON'BLE MR. JUSTICE P.S.DINESH KUMAR

AND

THE HON'BLE MR. JUSTICE T.G. SHIVASHANKARE GOWDA

INCOME TAX APPEAL NO. 528 OF 2019

C/W

INCOME TAX APPEAL NO. 127 OF 2020

INCOME TAX APPEAL NO. 131 OF 2021

IN I.T.A No.528 OF 2019

BETWEEN:

AQUARELLE INDIA LIMITED
NO.570, NEW NO.22
32ND CROSS, 11TH MAIN
JAYANAGAR 4TH BLOCK
BANGALORE
KARNATAKA-560 011
REPRESENTED HEREIN BY ITS
DIRECTOR
MR. SATHISHA P

...APPELLANT

(BY SHRI. T. SURYANARAYANA, SENIOR ADVOCATE FOR
MS. TANMAYEE RAJKUMAR, ADVOCATE)

AND:

1. DEPUTY COMMISSIONER OF
INCOME-TAX CIRCLE-1(1)(1)
BANGALORE
BMTc BUILDING
KORAMANGALA 6TH BLOCK
BENGALURU-560 085





2. PRINCIPAL COMMISSIONER
OF INCOME-TAX
BANGALORE
BMTc BUILDING
KORAMANGALA 6TH BLOCK
BENGALURU-560 085

...RESPONDENTS

(BY SHRI. E.I. SANMATHI, STANDING COUNSEL)

THIS ITA IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 03.04.2019 PASSED IN ITA NO.2737/BANG/2017 FOR THE ASSESSMENT YEAR 2013-14 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE TRIBUNAL DATED 03.04.2019 FOR ASSESSMENT YEAR 2013-14 PASSED IN ITA NO.2737/BANG/2017 (ANNEXURE-D) AND ETC.

IN I.T.A No.127 OF 2020

BETWEEN:

AQUARELLE INDIA LIMITED
NO.94 & 95, NEW NO.113
BULL TEMPLE ROAD
BASAVANAGUDI
BANGALORE-560 019
REPRESENTED HEREIN BY ITS
DIRECTOR
MR. SATHISHA P

...APPELLANT

(BY SHRI. T. SURYANARAYANA, SENIOR ADVOCATE FOR
MS. TANMAYEE RAJKUMAR, ADVOCATE)

AND:

1. DEPUTY COMMISSIONER OF
INCOME-TAX CIRCLE-1(1)(1)
BANGALORE
BMTc BUILDING
ROOM NO.215, 2ND FLOOR
KORAMANGALA 6TH BLOCK
BENGALURU-560 085



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ITA No. 528 of 2019
C/W ITA No. 127 of 2020
ITA No. 131 of 2021

2. ASSISTANT COMMISSIONER
OF INCOME-TAX CIRCLE-1(1)(1)
BANGALORE
BMTc BUILDING
ROOM NO.215, 2ND FLOOR
KORAMANGALA 6TH BLOCK
BENGALURU-560 085

3. PRINCIPAL COMMISSIONER
OF INCOME-TAX
BANGALORE
BMTc BUILDING
KORAMANGALA 6TH BLOCK
BENGALURU-560 085

...RESPONDENTS

(BY SHRI. E.I. SANMATHI, STANDING COUNSEL)

THIS ITA IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 06.03.2020 PASSED IN ITA NOS.192/BANG/2019 AND 984/BANG/2019 (ANNEXURE-D) FOR THE ASSESSMENT YEARS 2015-16 AND 2016-2017 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND ALLOW THE APPEAL AND SET ASIDE THE COMMON ORDER DATED 06.03.2020 PASSED BY THE TRIBUNAL IN ITA NOS.192/BANG/2019 AND 984/BANG/2019 (ANNEXURE-D) TO THE EXTENT QUESTIONED HEREIN AND ETC.

IN I.T.A No.131 OF 2021

BETWEEN:

M/S. AQUARELLE INDIA PRIVATE LIMITED
NO.94 & 95, NEW NO.113
BULL TEMPLE ROAD
BASAVANAGUDI
BANGALORE-560 019
REPRESENTED HEREIN BY ITS
DIRECTOR
MR. SATHISHA P

...APPELLANT

(BY SHRI. T. SURYANARAYANA, SENIOR ADVOCATE FOR
MS. TANMAYEE RAJKUMAR, ADVOCATE)



AND:

1. THE DEPUTY COMMISSIONER OF
INCOME-TAX CIRCLE-1(1)(1)
BANGALORE
BMTc BUILDING
KORAMANGALA 6TH BLOCK
BENGALURU-560 085

2. PRINCIPAL COMMISSIONER
OF INCOME-TAX
BANGALORE
BMTc BUILDING
KORAMANGALA 6TH BLOCK
BENGALURU-560 085

...RESPONDENTS

(BY SHRI. E.I. SANMATHI, STANDING COUNSEL)

THIS ITA IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 20.12.2019 PASSED IN ITA NO.28/BANG/2018 FOR THE ASSESSMENT YEAR 2014-15 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE TRIBUNAL DATED 20.12.2019 PASSED IN ITA NO.28/BANG/2018 (ANNEXURE-D) FOR ASSESSMENT YEAR 2014-15 TO THE EXTENT QUESTIONED HEREIN AND ETC.

THESE ITAs, COMING ON FOR *FINAL HEARING*, THIS DAY, **P.S.DINESH KUMAR, J.**, DELIVERED THE FOLLOWING:

JUDGMENT

These three appeals are by the Assessee. ITA No.528/2019 has been filed challenging order dated April 3, 2019 in ITA No.2737/Bang/2017 for the assessment year 2013-14, ITA No.127/2020 has been filed challenging order dated March 06, 2020 in ITAs No.192/Bang/2019 &



984/Bang/2019 for the assessment years 2015-16 & 2016-17 and ITA No.131/2021 has been filed challenging order dated December 20, 2019 in ITA No.28/Bang/2018 for the assessment year 2014-15, passed by the ITAT¹, 'B' Bench, Bengaluru.

2. Heard Shri.T.Suryanarayana, learned Senior Advocate for the Assessee and Shri.E.I.Sanmathi, learned Standing Counsel for the Revenue.

3. Shri Suryanarayana submitted that in the batch of these appeals, though five questions are admitted, the following two questions arise for consideration. The same is not disputed by Shri Sanmathi. The said questions of law read as follows:

(a) a new regular workman is required to be employed for a period of 300 days or more in the previous year in which he is employed, for computing the entitlement of the deduction under Section 80JJAA of the Act?

(b) the Tribunal was right in holding that the Appellant was not entitled for the deduction under Section 80JJAA of the Act in respect of new regular employees, employed on permanent

¹ Income Tax Appellate Tribunal



basis, solely on the ground that they were employed for less than 300 days during the relevant previous year?

4. Learned Senior Advocate submitted that assessee is in the business of manufacturing apparels. It employs workmen routinely. In order to encourage employment of workmen, the Parliament has introduced Section 80JJ-AA in the Act² to extend incentive. According to him, in addition to deduction of expenses paid towards wages, the employer would also be entitled for deduction of tax payable on 30% of the wages. He submitted that the A.O.³ has taken a view in these cases that workmen were not employed for a period of 300 days in the previous year and therefore not entitled for the said benefit. CIT(A)⁴ as also the ITAT have upheld the view taken by the A.O.

5. Placing reliance on *CIT, LTU Vs. Texas Instruments India (P.) Ltd.*,⁵ Shri Suryanarayana contended that this Court has exhaustively considered the issue involved in these appeals and held that if a restrictive interpretation is given to

² Income Tax Act, 1961

³ Assessing Officer

⁴ Commissioner of Income Tax (Appeals

⁵ [2021]127 taxmann.com 59 (Karnataka) paras 16.8 to 16.11



Section 80JJ-AA of the Act, then in case of an employee employed on and after 5th June of a particular year, the assessee would not be entitled to claim deduction.

6. He submitted that this Court has held that period of 300 days mentioned in Section 80JJAA of the Act cannot be taken into consideration for the previous year relevant to assessment year. With these submissions he prayed for allowing these appeals.

7. Opposing the appeal, Shri Sanmathi submitted that proviso for relevant assessment year is unambiguous to the effect that a workman would fall under a definition of 'regular workmen' only if he had worked for 300 days during the previous year. He further contended that benefit under Section 80AA-JJ of the Act being in the form of an incentive can be extended only when an assessee fully complies with statutory provision. He submitted that Form No.10DA which is required to be filed under Section 80JJ-AA of the Act also does not have any column in respect of an employee employed during the preceding year. Thus, intention of the



Revenue is unambiguous to the effect that employee ought to have compulsorily worked for 300 days. Thus, supporting the order passed by the A.O., Shri Sanmathi sought for dismissal of these appeals.

8. We have carefully considered rival submissions and perused the records.

9. Undisputed facts of the case in these appeals are, employees in respect of whom assessee has claimed benefit under Section 80JJ AA of the Act are regular employees who have worked for more than 300 days from 2nd year of their employment and onwards. Revenue's contention is that in the first year of their employment, which is previous year relevant to the assessment year, the employee had not worked for 300 days.

10. Shri Suryanarayana pointed out that Section 80AAJJ of the Act has come into effect from 1998 and has been substituted with effect from 01.04.2017. Adverting to the proviso as it stood relevant for the assessment years in question in these appeals, he pointed out that the word 'new'



makes a distinction between the employees already on the role of assessee and the new workmen who were employed from time to time. He urged that such of those employees who had worked for already 300 days would fall within the definition of 'regular workmen'. Parliament has subsequently amended the period of 300 days to 240 days in case of other industries and 150 days in the case of apparel industries, by inserting a proviso with effect from 01.04.2017. In substance, he contended that Revenue's stand that employee must have worked for 300 days in the year preceding the assessment year under consideration is unsustainable in law.

11. We may record that Section 80JJ-AA is an incentive extended to the industries. In *Texas Instruments*, this court has held that if an employer were to have the workmen on or after 5th June, he would not be entitled for claiming the benefit. It is also noted that in another similar case, *Bosch Ltd, Vs. Asst. CIT*⁶ the ITAT has held that the assessee therein was entitled to the benefit of the said

⁶ [2016] 74 taxmann.com 161



provision so long as employee had worked for 300 days, even if the said period was split into two blocks namely, assessment year or financial year. It was contended by Shri Suryanarayana that this view taken by the ITAT has been accepted by the Revenue and this submission was not controverted by Shri Sanmathi.

12. After considering the aspect of working for 300 days in the previous year, this Court in *Texas Instruments* has held that period of 300 days could be taken into consideration both in the previous and succeeding years for the purpose of availing the benefit under Section 80JJAA of the Act and it is not required that workmen works for 300 days in the previous year relevant to assessment year.

13. We may further record that Parliament itself has reduced the period of employment to 240 days in the case of other industries and 150 days in the case of apparel industries.



14. In view of above discussion, the order passed by the A.O. and confirmed by the appellate authorities is unsustainable in law. Hence the following:

ORDER

- i) Appeals ***allowed***;
- ii) a) Order dated April 3, 2019 in ITA No.2737/Bang/2017 passed by the ITAT⁷, 'B' Bench, Bengaluru for the assessment year 2013-14 challenged in ITA No.528/2019;
- b) Order dated March 06, 2020 in ITAs No.192/Bang/2019 & 984/Bang/2019 passed by the ITAT⁸, 'B' Bench, Bengaluru, for the assessment years 2015-16 & 2016-17 challenged in ITA No.127/2020; and
- c) Order dated December 20, 2019 in ITA No.28/Bang/2018 passed by the ITAT, 'B' Bench,

⁷ Income Tax Appellate Tribunal

⁸ Income Tax Appellate Tribunal



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Bengaluru, for the assessment year 2014-15
challenged in ITA No.131/2021, are set aside.

- iii) Questions of law are answered in favour of the
assessee and against the revenue.

No costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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List No.: 2 Sl No.: 33