

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 4TH DAY OF FEBRUARY, 2010

PRESENT

THE HON'BLE MR.JUSTICE D V SHYLENDRA KUMAR

AND

THE HON'BLE MR.JUSTICE N ANANDA

Income Tax Appeal No.168 of 2009

&

Income Tax Appeal No.170 of 2009

Between:

1. THE COMMISSIONER OF INCOME-TAX
TDS, NO.59, HMT BHAVAN,
4TH FLOOR, BELLARY ROAD,
GANGANAGAR,
BANGALORE - 560 032.
2. THE INCOME-TAX OFFICER-TDS,
WARD-16(2), NO.59, HMT BHAVAN,
4TH FLOOR, BELLARY ROAD,
GANGANAGAR,
BANGALORE - 560 032.

... COMMON
APPELLANT

[BY SRI ARAVIND, JR. STANDING COUNSEL FOR
SRI M V SESHACHALA, SR. STANDING COUNSEL]

And:

M/S. ELBIT MEDICAL DIAGNOSTICS LTD.,
NO.6/1 & 6/2,
INFANTRY ROAD,
BANGALORE.

... COMMON
RESPONDENT

THESE APPEALS ARE FILED UNDER SEC. 260-A OF I.T.ACT,
1961 ARISING OUT OF ORDER DATED 26.11.2008 PASSED IN ITA
NO 501/BANG/2008, FOR THE ASSESSMENT YEAR 2004-05 AND ITA
NO.502/BANG/2008, FOR THE ASSESSMENT YEAR 2005-06 AND
ETC..

THESE APPEALS COMING ON FOR ADMISSION, THIS DAY, D V
SHYLENDRA KUMAR.J., DELIVERED THE FOLLOWING:

JUDGMENT**RE: ITA NO.168 OF 2009:**

This appeal by the revenue under section 260-A of the Income Tax Act, 1961 [for short 'the Act'] is directed against the order of the Tribunal as well as the Appellate Commissioner for the assessment year 2004-05 who are of the view that certain payments made by the assessee were not in the nature of salary which would attract the provisions of section 192 of the Act for deduction of tax at source but was in the nature of contractual payment, in which event, it attracted deduction in terms of section 194 of the Act.

2. The first appellate authority – the Commissioner and second appellate authority – the Tribunal having taken differing view from that of the assessing authority, the revenue is in appeal before us under section 260-A of the Act.



3. Submission of Sri Aravind, learned junior standing counsel appearing for the appellant – revenue is that the nature of work and the nature of service provided for by the persons who are Directors and who are available at the premises of the assessee for considerably long duration indicated that it was more in the nature of employment than in the nature of contractual service etc.,.

4. While the duration spent at the premises by itself is not the criteria to come to the conclusion that there is employer – employee relationship, the appellate commissioner – the Tribunal which had occasion to examine the contract having opined that it is more in the nature of payment for contractual service and not in the nature of employment, there is no justifiable or worthwhile reason made out to accept the submissions or to interfere with such finding.

5. There is no need for admitting this appeal for further examination and accordingly this appeal is dismissed.



RE: ITA NO.170 OF 2009:

6. This appeal is also dismissed following the Judgment rendered in ITA No.168 of 2009 in respect of the very assessee for the assessment year 2005-06.

Sd/-
JUDGE

Sd/-
JUDGE

AN/-