

SUPREME COURT OF INDIA

Societe Generale

Vs.

Commissioner of Income-Tax

(S.P.Bharucha, Y.K. Sabharwal and B.N. Kumar JJ.)

26.07.2001

ORDER

1. These appeals by special leave impugn the judgment and order of the Authority for Advance Rulings (see [1999] 236 ITR 103) established under Chapter XIX-B of the Income-tax Act, 1961, The question that the Authority was called upon to answer, at the behest of the appellant, read thus (page 106) :

"In the light of Article 26 of the agreement for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and on capital entered into by the Government of the Republic of India and the Government of the French Republic, whether the applicant is chargeable to tax in respect of income earned from business, as computed under article 7 of the treaty from the assessment year 1996-97, at the rate applicable to a domestic company, in so far as is beneficial to the applicant."

2. Before the Authority the Revenue contended that the Authority did not have jurisdiction to decide the question in view of the fact that assessment proceedings in respect of the appellant relating to the assessment year 1996-97 were pending when the application before the Authority was filed, and attention was drawn to Section 245R of the Act, the proviso whereof states that the Authority shall not allow an application where the question raised in it is already pending before an income tax authority or the Appellate Tribunal or any court. The Authority came to the conclusion that the appellant could not : "be heard to say that even though the assessment proceedings are pending, determination of the rate of tax which is an integral part of the assessment process is not pending". The Authority was, therefore, of the view that the preliminary objection raised on behalf of the Revenue was "of some substance". However, the Authority did not dispose of the application on that preliminary ground and it went on to decide it. The decision went against the appellant.

3. The same objection is raised before us on behalf of the Revenue. The objection has been argued for some time and now Mr. Dastur, learned counsel for the appellant applies for leave to withdraw the application before the Authority. He submits that the issue regarding the rate of tax payable by the appellant for the assessment year 1996-97 and subsequent assessment

years shall be raised by the appellant before the authorities and that, having regard to his withdrawal of the application itself, the order thereon should be set aside.

4. The learned Solicitor-General, fairly, states that this may be done and that no objection shall be raised on behalf of the Revenue to the issue of the rate of tax being raised by the appellant before the authorities. He also states that the Revenue will not rely upon the impugned judgment of the Authority before the authorities.

5. On the application of Mr. Dastur, learned counsel for the appellant, the application before the Authority for Advance Rulings (A. A. R. No. 362 of 1997) is dismissed as withdrawn. Consequently, the impugned judgment and order is set aside.

6. The appellant shall be at liberty to raise the issue of the rate at which it is liable to pay tax before the authorities, the Tribunal and the courts thereafter and they shall come to a decision thereon independently of and without reference to the impugned judgment of the Authority.

7. The civil appeals are allowed accordingly.

8. No order as to costs.