SUPREME COURT OF INDIA

B.L.Passi

Vs.

Commissioner of Income Tax, Delhi

C.A.No.3892 of 2007.

(R.K.Agrawal and Abhay Manohar Sapre,JJ.,)

24.04.2018

JUDGMENT

R.K.Agrawal,J.,

1. The above appeal has been filed against the judgment and order dated 13.12.2006 passed by the High Court of Delhi in I.T. Appeal No. 1198 of 2006 whereby the Division Bench of the High Court dismissed the appeal filed by the appellant herein against the order dated 10.10.2005 passed by the Income Tax Appellate Tribunal, Delhi Bench (in short 'the sig„a.ureN0.veriTribunal') in ITA No. 1603/D/2002.

2. Brief facts:

> "(a) The Appellant herein filed return disclosing income of Rs. 57,40,360/- for the Assessment Year (AY) 1997-98 while claiming deduction of Rs. 58,87,045/- under Section 80-O of the Income Tax Act, 1961 (in short 'the IT Act') on a gross foreign exchange receipt of Rs. 1,17,74,090/- received from Sumitomo Corporation, Japan. Sumitomo Corporation was interested in supplying dies for manufacturing of body parts to Indian automobile manufacturers and entered into a contract with the Appellant under which the services of the Appellant herein were engaged by using his specialized commercial and industrial knowledge about the Indian automobile industry. Sumitomo Corporation also agreed to pay remuneration at the rate of 5% of the contractual amount between Sumitomo Corporation and its Indian customers on sales of its products so developed. The Appellant claimed to have supplied to Sumitomo Corporation the industrial and commercial knowledge, information about market conditions and Indian manufacturers of automobiles and also technical assistance as required by the Corporation.
>
> (b) The case of the Appellant was selected for scrutiny by the Income Tax Department, Delhi and in response to notice under Section 143(2) of the IT Act, the Appellant along with others attended the assessment proceedings from time to time

justifying the claim under Section 80-O of the IT Act. The Assessing Officer, vide order dated 27.03.2000 under Section 143(3) of the IT Act assessed the total income at Rs. 1,18,43,060/- and determined the sum payable by the assessee to the tune of Rs. 43,25,960/-. Being aggrieved by the order dated 27.03.2000, the Appellant preferred an appeal being No. 272/01-02 before the Commissioner of Income Tax (Appeals)-XXVI, New Delhi. The Appellate Authority, vide order dated 20.02.2002, partly allowed the appeal and held that the Appellant is entitled to deduction under Section 80-O of the IT Act. Being aggrieved by the order dated 20.02.2002, the Revenue went in appeal before the Tribunal. The Tribunal, vide order dated 10.10.2005, allowed the appeal filed by the Revenue. The Appellant approached the High Court by filing I.T. Appeal No. 1198 of 2006 challenging the order of the Tribunal dated 10.10.2005 which was dismissed on 13.12.2006 by a Division Bench of the High Court.

(c) Aggrieved by the judgment and order dated 13.12.2006, the Appellant has filed this appeal by way of special leave before this Court.

3. Heard Mr. Lakshmikumaran, learned counsel for the Appellant and Mr. K. Radhakrishnan, learned senior counsel for the Respondent and perused the records.

Point(s) for consideration:-

4. The sole point for consideration before this Court is whether the Appellant is entitled to deduction under Section 80-O of the IT Act under the facts and circumstances of the present case?

Rival contentions:-

5. Learned counsel for the Appellant contended that the Appellant has fulfilled all the conditions as envisaged under Section 80-O of the IT Act inasmuch as he was providing specialized, industrial and commercial knowledge relating to the Indian automobile industry and also detailed information about the industry in India. Learned counsel further contended that the Appellant is enjoying a very good professional reputation amongst manufacturers and traders and having a vast experience of the Indian automobile industry. The services so rendered by the Appellant were in fact rendered and the payment was received for having rendered those services. Learned counsel finally contended that the High Court committed an error in considering it a principal-agent relationship and the order passed by the High Court is liable to be set aside.

6. Learned senior counsel for the Respondent submitted that in order to claim deduction under Section 80-O of the IT Act, the information must be concerning industrial, commercial or scientific knowledge, experience or skill, which is made available to the non-resident party and it is difficult to hold from the material on record that the Appellant was having any information concerning industrial, commercial or scientific knowledge, experience or skill or he ever had in possession of any blue prints. Learned senior counsel further submitted that the manner or circumstances under which the proposed multipurpose vehicles of Telco under

SAFARI project were finalized are not clear and no documents have been produced on record for the same. Learned senior counsel finally submitted that the decision rendered by the High Court was right and no interference is sought for by this Court.

7. In rejoinder, learned counsel for the appellant contended that the agreement between the parties satisfies the ingredients of Section 80-O of the IT Act entitling the Appellant to get the benefit of deduction as the services rendered by the appellant were in the nature of industrial and commercial knowledge to a foreign enterprise.

Discussion:-

8. The Appellant has claimed to have vast experience of the Indian automobile industry and has acquired substantial expertise and experience and is in a position to supply specialized commercial and industrial information about the automobile industry to any foreign enterprise looking for developing its market in India. The Appellant struck a deal with the Sumitomo Corporation, Japan with regard to the information about the market conditions existing in the Indian automobile industry, specific information regarding manufacturers of automobiles in India, about the market position, credibility and the product acceptance of each of those manufacturers, to provide pre-information regarding the proposal to launch any new product by any of the manufacturers in India, to provide suggestions for development of automobile parts/dies for manufacture of automobile body parts conforming to the specific needs of the manufacturers of automobiles in India, to provide services and support as may be reasonably required in connection with the development and manufacture of the products in Japan for sale in India and to advise the Sumitomo Corporation of legal laws and regulations applicable in India relating to the importation and/or sale of its products in India etc.

9. The services so rendered by the Appellant were required to be used by Sumitomo Corporation for establishing its business in the Indian automobile industry and he received a sum of Rs. 1,17,73,940/- on account of technical and industrial knowledge and professional services rendered by him in relation to the SAFARI project of TELCO. It is his claim that the Sumitomo Corporation bagged the order from TELCO in respect of SAFARI project as a result of use of specialized, commercial and industrial knowledge and professional services rendered by him.

10. The Appellant filed the income tax return declaring an income of Rs. 57,40,360/- which was selected for scrutiny by the Income Tax Department. While computing the income, a deduction of Rs. 58,87,045/- was claimed under Section 80-O of the Act on the gross receipts of Rs. 1,17,74,090/- received from Sumitomo Corporation of Japan in convertible foreign exchange in the name of M/s Pasco International wherein the Appellant was the sole proprietor. It was further explained that he had received the above amount in convertible foreign exchange as consideration for providing specialized industrial and commercial knowledge relating to the Indian automobile industry including therein the detailed information about the industry, analyzing the government policies relating to Indian automobile industry and also to identify opportunities for supply of products of M/s

Sumitomo corporation to various customers in India and hence he is entitled to claim deduction under Section 80-O of the IT Act which had been claimed in the return of income filed. However, the Assessing Officer, by order dated 27.03.2000, disallowed the claim of deduction of Rs. 58,87,045/- under Section 80-O of the Act while holding that the Appellant's services do not qualify for deduction under the relevant Section.

11. In the above backdrop, it is essential to quote Section 80-O (unamended) of the IT Act which reads as under:-

> "80-O.Deduction in respect of royalities etc. from certain foreign enterprises.--1) Where the gross total income of an assessee, being an Indian company or a person (other than a company) who is resident in India, includes any income by way of royalty, commission, fee or any similar payment received by assessee from the Government of a foreign state or foreign enterprise in consideration for the use outside India of any patent, invention, model, design, secret formula or process or similar property right, or information concerning industrial, commercial or scientific knowledge, experience or skill made available of provided or agreed to be made available of provided to such Government or enterprise by the assessee, or inconsideration of technical or professional services rendered or agreed to be rendered outside India to such Government or enterprise by the assessee, and such income received in convertible foreign exchange outside India, or having been converted into convertible foreign exchange outside India, is brought into India, by or on behalf of the assessee in accordance with any law for the time being in force for regulating payments and dealings in foreign exchange, there shall be allowed, in accordance with and subject to provisions of this section, a deduction of an amount equal to fifty percent of income so received in , or brought into, India, in computing the total income of the assessee: Provided that such income is received in India within a period of six months from the end of the previous year, or where the Chief Commissioner or Commissioner is satisfied (for reasons to be recorded in writing) that the assessee is, for reasons beyond his control, unable to do so within the said period of six months, within such further period as a Chief Commissioner may allow in this behalf:
>
> Explanation for the purposes of this section:-
>
> (i) "Convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purpose of the law for the time being in force for regulating payments and dealing in foreign exchange.
>
> (ii) "foreign enterprise" means a person who is non resident.
>
> (iii) Services rendered or agreed to be rendered outside India shall include services rendered from India but shall not include services rendered in India."

12. Provisions similar to Section 80-O of the Act were originally in the former Section 85-C of the Income Tax Act, 1961 which was substituted by Finance (No. 2) Act, 1971. Section 80-O was inserted in place of Section 85C which was deleted by the Finance (No. 2) Act, 1967. While moving the bill relevant to the Finance Act No. 2 of 1967, the then Finance Minister highlighted the fact that fiscal encouragement needs to be given to Indian industries to encourage them to provide technical know-how and technical services to newly developing countries. It is also seen that the object was to encourage Indian companies to develop technical know-how and to make it available to foreign companies so as to augment the foreign exchange earnings of this country and establish a reputation of Indian technical know-how for foreign countries. The objective was to secure that the deduction under the section shall be allowed with reference to the income which is received in convertible foreign exchange in India or having been received in convertible foreign exchange outside India, is brought to India by and on behalf of taxpayers in accordance with the Foreign Exchange Regulations.

13. Now coming to the facts of the case at hand, it is evident from record that the major information sent by the Appellant to the Sumitomo Corporation was in the form of blue prints for the manufacture of dies for stamping of doors. Several letters were exchanged between the parties but there is nothing on record as to how this blue print was obtained and dispatched to the aforesaid company. It is also evident on record that the Appellant has not furnished the copy of the blue print which was sent to the Sumitomo Corporation neither before the Assessing Officer nor before the Appellate authority nor before the Tribunal. The provisions of Section 80-O of the IT Act mandate the production of document in respect of which relief has been sought. We, therefore, have to examine whether the services rendered in the form of blue prints and information provided by the Appellant fall within the ambit of Section 80-O of the IT Act or any of the conditions stipulated therein in order to entitle the assessee to claim deduction.

14. In New Encyclopaedia Britannica, where the term "technical assistance" had been considered, it has been stated that technical assistance may involve sending experts into the field to teach skills and to help solve problems in their areas of specialisation, such as irrigation, agriculture, fisheries, education, public health, or forestry. In New Webster's Dictionary of the English Language the word "technical" means what is characteristic of a particular art, science, profession, or trade and the word "technology" means the branch of knowledge that deals with the industrial arts and sciences; utilisation of such knowledge; the knowledge and means used to produce the material necessities of a society.

15. In *J.K. (Bombay) Ltd. vs. Central Board of Direct Taxes and Another*[1] the interpretation of technical assistance has been described as under:-

> "We have shown above that adopting the wider meaning of the word "technical" would defeat the object of Section 80-O by enabling the remuneration for management or running of a foreign company to be eligible for deduction under Section 80-O. On the other hand, the narrower meaning of the word "technical" seems to be more in keeping with the object of the section. It has to be remembered

> that the word "technology" which has affinity with the word "technical" is concerned with the control of material environment by man. This is done by two means. Firstly, by the use of tools, and, secondly, by the application of reason to the properties of matter and secondly, by the application of reason to the properties of matter and energy. It would appear, therefore, that it would be reasonable to think that technical services should include the use of tools and machinery in addition to the use of reason. Managerial services which do not include any use of tools and machinery may not be regarded as technical services."

16. The blue prints made available by the Appellant to the Corporation can be considered as technical assistance provided by the Appellant to the Corporation in the circumstances if the description of the blue prints is available on record. The said blue prints were not even produced before the lower authorities. In such scenario, when the claim of the Appellant is solely relying upon the technical assistance rendered to the Corporation in the form of blue prints, its unavailability creates a doubt and burden of proof is on the Appellant to prove that on the basis of those blue prints, the Corporation was able to start up their business in India and he was paid the amount as service charge.

17. Further, with regard to the remuneration to be paid to the Appellant for the services rendered, in terms of the letter dated 25.01.1995, it has been specifically referred that the remuneration would be payable for the commercial and industrial information supplied only if the business plans prepared by the Appellant results positively. Sumitomo Corporation will pay to PASCO International service charges equivalent to 5% (per cent) of the contractual amount between Sumitomo and its customers in India on sales of its products so developed. From a perusal of the above, it is clear that the Appellant was entitled to service charges at the rate of 5% (per cent) of the contractual amount between Sumitomo Corporation and its customers in India on sales of its products so developed but there is nothing on record to prove that any product was so developed by the Sumitomo Corporation on the basis of the blue prints supplied by the Appellant as also that the Sumitomo Corporation was able to sell any product developed by it by using the information supplied by the Appellant. Meaning thereby, there is no material on record to prove the sales effected by Sumitomo Corporation to its customers in India in respect of any product developed with the assistance of Appellant's information and also on as to how the service charges payable to Appellant were computed.

18. In view of the foregoing discussion, we are of the considered opinion that in the present facts and circumstances of the case, the services of managing agent, i.e., the Appellant, rendered to a foreign company, are not technical services within the meaning of Section 80-O of the IT Act. The Appellant failed to prove that he rendered technical services to the Sumitomo Corporation and also the relevant documents to prove the basis for alleged payment by the Corporation to him. The letters exchanged between the parties cannot be claimed for getting deduction under Section 80-O of the IT Act.

19. Before parting with the appeal, it is pertinent to mention here that it is settled law that the expressions used in a taxing statute would ordinarily be understood in the sense in which

it is harmonious with the object of the Statute to effectuate the legislative animation. The Appellant was a managing agent and the High Court was right in holding the principal agent relationship between the parties and there is no basis for grant of deduction to the Appellant under Section 80-O of the IT Act.

20. In view of the above, the appeal is dismissed with no order as to costs.

Judgment Referred.

[1]*(1979) 118 ITR 312 (Del.)*