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Court : Mumbai

Decided On : Jun-23-1986

Reported in : (1986)57CTR(Bom)268; [1987]165ITR668(Bom)

Judge : R.R. Jahagirdar, J.

Acts : [Income Tax Act, 1961](#) - Sections 80J and 80-O

Appeal No. : Writ Petition No. 538 of 1982

Appellant : Petron Engineering Construction (Pvt.) Ltd. and Another

Respondent : Central Board of Direct Taxes and Others

Judgement :

R.A. Jahagirdar, J.

1. The first petitioner (hereinafter referred to as 'the petitioner') is a private limited company which is a party to an agreement between itself and a company known as Toyo Engineering India Ltd., the latter being a company organised and existing under the laws of India. It has its registered office at United Commercial Bank Building on Parliament Street at New Delhi. As its name itself indicates, it is an Indian company and there cannot be any dispute about the same.

2. Under the said agreement, Toyo Engineering India Ltd. (hereinafter called 'TEIL') engaged the petitioner company for a project which was a State sponsored project at Iraq. It is called the Project of Storage Terminal of State Organisation for Oil Project. The petitioner was to render several services to TEIL under the agreement and for services so rendered, the petitioner was to receive payment as per the agreement. The terms of the payment and the schedule of payment have been spelt out in great detail in this agreement.

3. The petitioner thereafter made an application to the first respondent-Board under section 80-O of the Income-tax Act, 1961. This section provides that certain income received in the circumstances mentioned in section 80-O of the Income-tax Act shall be deducted while computing the total income of the assessee mentioned in the said section. This application made by the petitioner was rejected by the first respondent-Board's Foreign Tax Division by its order dated January 5, 1982, which is the subject-matter of challenge in this petition under article 226 of the Constitution. The first respondent-Board rejected the application on the ground, among others, that the agreement mentioned in section 80-O ought to have been with a foreign enterprise or with a foreign Government. In the instant case, TEIL being an Indian company, it was not contemplated by the provisions of section 80-O of the Income-tax Act.

4. Mr. Ashar, the learned advocate appearing in support of the petition, has rightly contended that this part of the reasoning contained in the order of the first respondent-Board is incorrect inasmuch as section 80-O does not require the agreement to be with a foreign Government or a foreign enterprise. What is contemplated under section 80-O is that the assessee concerned should have an agreement - with whom it is not specified. Secondly, under that agreement, the assessee must have made available to a foreign State or a foreign enterprise some patent invention, secret formula, etc., or some services. Thirdly, in consideration of making available to the foreign State or foreign enterprise the invention, patent, etc., or the services, payment must be received by the assessee from the Government of a foreign State or a foreign enterprise. Section 80-O itself does not mention that the agreement to render services, etc., should be with any particular Government or with a particular type of enterprise. To this extent Mr.

Ashar's submission is correct.

5. However, as Mr. Parekh, the learned advocate appearing for the respondents, has rightly pointed out, the third of the conditions summarised by me above is not satisfied in the case of the petitioner. In other words, the petitioner is not receiving by way of royalty, commission, fees or any similar payment from the Government of a foreign State or a foreign enterprise. If one looks at the agreement to which I have already made a reference above, it is clearly seen that the payment is being made merely in foreign currency and in a foreign country but TEIL which is, beyond dispute, an Indian company. For example, in article 3 of the agreement, it is specifically stated as follows :

'The contract price to be paid by TEIL to the contractor under this contract is attached herewith.'

6. It is clear that it is TEIL which used to pay the contract price as mentioned in article 3. The contract price and terms of payment forming part of the agreement state :

'The price to be paid by TEIL to the contractor for the work under the contract shall be the following man-hour rate basis.

7. Under the sub-heading 'Contract price and Terms of Payment', there is a clause, being clause 4, which states :

'The contract price defined in 1 above shall be paid by TEIL to the contractor in the banks named by the contractor and accepted by TEIL...'

8. In the entire agreement, there is no mention of any payment being made by a foreign Government or a foreign enterprise to the petitioner. It has not been shown to me that there is any other arrangement which is legal and which provides for the payment to the petitioner by any foreign Government or by a foreign enterprise for the services rendered by the petitioner to a foreign Government or a foreign enterprise. The petitioner, therefore, cannot claim deduction under section 80-O of the Income-tax Act.

9. Reliance placed by Mr. Ashar on the judgment of Pratap J., in Gannon Dunkerley & Co. Ltd. v. CBDT : [1986]159ITR162(Bom) (Writ Petition No. 1044 of 1981 decided on 10th June, 1985) is, in my opinion misplaced. On the facts of this case, it is abundantly clear that the most important requirement of section 80-O of the Income-tax Act is not satisfied at all.

10. In the result, the petition must fail. Rule is discharged, with no order as to costs.

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