Blue Star Ltd. Vs. Central Board of Direct Taxes, New Delhi, and Others

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Court : Mumbai

Decided On : Apr-04-1990

Reported in : [1990]185ITR561(Bom)

Judge : T.D. Sugla, J.

Acts : Income Tax Act 1961 - Sections 80-O, 80HHB and 80HHB(1)

Appeal No. : Writ Petition No. 2883 of 1987

Appellant : Blue Star Ltd.

Respondent : Central Board of Direct Taxes, New Delhi, and Others

Advocate for Def. : G.S. Jetly, Adv.

Advocate for Pet/Ap. : S.J. Mehta, Adv.

Judgement :

T.D. Sugla, J.

1. By this petition under article 226 of the Constitution of India, the petitioner has challenged the validity and legality of the orders/letter dated June 11, 1987, issued by the Central Board of Direct Taxes, Foreign Tax Division, New Delhi, refusing to approve the petitioner's agreement dated November 15, 1985, with Van Leeman, Holland (Pipe and Fittings) (for short 'foreign concern'), for the supply of technical

know-how. The Board, it may be stated, had refused to approve the agreement on the ground that the supply of technical know-how to the foreign party amounted to execution of any work undertaken forming part of a foreign project undertaken by any other person in pursuance of a contract entered into by such other person with the Government of a foreign State/foreign enterprise within the meaning of section 80HHB(1)(b) of the Income-tax Act, 1961.

2. The petitioner made certain averments in the petition. The respondents, for reasons best known to them, did not till this day file any affidavit-in-reply even though the petition was admitted in September, 1987. In the circumstances, the court will have to proceed on the basis of unrebutted averments, in terms of the unrebutted averments, the petitioner supplied to the foreign concern technical know-how under an agreement dated november 15, 1985, after getting the same approved by the consultant of the foreign project. The foreign concern supplied the equipment and other material necessary for the setting up of the foreign project. It is not clear as to who had undertaken the execution of the foreign project. By its explanation dated February 10, 1986, the petitioner informed the Board as under :

'The project has been executed and all the work related to the project has been carried out by the foreign party.'

3 In the same letter, it was stated :

'Our role has been limited to supplying information which enabled the foreign party to carry out the project and execute the work.'

4. By a subsequent explanation dated March 20, 1987, which is given after the petitioner's vice-president and company secretary met the Deputy Secretary of the Board. The petitioner attempted to clarify that the foreign party/concern to whom the petitioner had supplied technical know-how had no connection with the installation and erection of plant for the foreign project. In the circumstances, it has to be taken that the facts are not clear and undisputed.

5. The court's jurisdiction in writ matters is limited. It is extraordinary, special and discretionary. The court would like to exercise the jurisdiction in cases where there

is no dispute about the facts and the impugned order suffers from a patent error of law.

6. All the same, the court does not agree with Shri Jetley, learned counsel for the Revenue, that the provisions of section 80HHB(1)(b) are attracted whenever an Indian company does something in execution of any work with a foreign concern if that something forms part of a foreign project in any manner. To my mind, it is implicit in the clause that the Indian company undertakes any work for a foreign concern and that foreign concern enters into a contract for the execution of foreign project. In other words, clause (a) and (b) of section 80HHB(1) cover cases where the Indian company undertakes the execution of foreign project direct and also where the Indian company undertakes any work for some person who, in turn, undertakes to execute the foreign project.

7. Before concluding, it may be mentioned that reference was made to the objects and the speech of the Finance Minister while introducing section 80HHB in the Income-tax Act. The objects and the Finance Minister's speech are relevant only when the provision itself is not clear and ambiguous. When a provision is unambiguous and is capable of two meanings, it is not necessary to refer to the Finance Minister's speech or to the objects in introducing the section.

8. Considering the facts of the case in this background, on facts stated by the petitioner in its representation dated February 10, 1987, the Board's conclusion that the petitioner supplied technical know-how to a foreign concern and the work formed part of a foreign project undertaken by the said foreign concern appears to be justified. If, on the other hand, the denial of the statement in its subsequent letter dated March 20, 1987, is to be taken as its face value. The conclusion may not be justified. Thus, to say the least, the facts in this case are not undisputed. All the same, the approval of the agreement under section 80-O can be granted depending on the answer to the question whether the agreement falls within this section. The Board does not appear to have examined the agreement from that point of view at all. In the circumstances, it is considered fair and in the interest of justice that the Board again examines the facts of the case and takes a proper decision after ascertaining and/or verifying the facts in the light of the provisions of

section 80-O.

9. In the result, the petition is allowed to this extent. Rule is made absolute in terms of prayer (a). No order as to costs.