

Gammon India Ltd. Vs. Central Board of Direct Taxes and Others

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Court : Mumbai

Decided On : Mar-23-1990

Reported in : (1990)85CTR(Bom)174; [1990]184ITR458(Bom)

Judge : T.D. Sugla, J.

Acts : [Income Tax Act, 1961](#) - Sections 80, 80-O, 80HHB and 80HHB(5)

Appeal No. : Writ Petition No. 1330 of 1987

Appellant : Gammon India Ltd.

Respondent : Central Board of Direct Taxes and Others

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

Advocate for Pet/Ap. : P.V. Irani, Adv.

Judgement :

T.D. Sugla, J.

1. By this petition under article 226 of the Constitution of India, the petitioner has challenged the validity of the orders/letters dated March 5, 1986, and August 20, 1986, issued by the Central Board of Direct Taxes, Foreign Tax Division, New Delhi, refusing to approve of agreement dated July 25, 1981, with the Ministry of Planning of the Republic of Iraq. The agreement is primarily for construction of a

bridge. The construction of the bridge, admittedly, involved rendering of technical services. The petitioner applied to the Board for approval of the agreement under section 80-O of the technical services mentioned in exhibit C to the application. The Board refused to approve the agreement on the ground that the services contemplated under the agreement were of the nature covered by section 80HHB.

2. Section 80-O requires approval of the agreement by the Central Board of Direct Taxes. Section 80HHB was inserted in Chapter VI-A-heading 'C' of the Income-tax Act with effect from April 1, 1983. Apart from the fact that, on the face of it, the section is not applicable to the agreements entered into prior to April 1, 1983, this court held in *Trading Engineers (International) P. Ltd.* : [1989]176ITR317(Bom) , that section 80HHB is applicable from the assessment year 1983-84 onwards only. Even otherwise the question whether an agreement qua certain activities is or is not to be approved under section 80-O is to be decided with reference to the provisions of section 80-O, more so when the agreement is entered into prior to the period covered by the assessment year 1983-84 as in the present case. It is not necessary in this case to consider whether, in view of section 80HHB(5), this position will obtain in the case of an agreement covering the period for the assessment year 1983-84 and onwards because sub-section (5) provides that if an agreement is covered by section 80HHB, no relief will be available to an assessee in respect of that agreement under any other provisions of Chapter VI-A heading 'C'.

3. The impugned orders/letters of the Board dated March 5, 1986, and August 28, 1986, show that the Board has not examined the agreement qua the certain services from the point of view of section 80-O. What was considered was whether the agreement was covered by the provisions of section 80HHB assuming that section 80HHB was applicable and also if the agreement was covered by section 80HHB, the agreement could not automatically be treated as converted by section 80-O. In this case, both the assumptions are wrong. In the circumstances, though it is open to the Board to say that the agreement contemplates services which are not covered by section 80-O, this conclusion could not have been arrived at on the ground of the agreement falling within the provisions of section 80HHB.

4. In the above view of the matter, it is considered fair and in the interests of justice that the impugned order/letters of the Board are set aside and the Board is directed to dispose of the petitioner's application dated September 26, 1983, with reference to section 80-O on merits. Since the matter is pending for quite some time, the Board is further directed to dispose of the application within six months hereof. The rule is made partly absolute. No order as to costs.

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