

A.S. Mani Vs. Union of India

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Court : Karnataka

Decided On : Jul-25-2003

Reported in : [2003]131TAXMAN717(Kar)

Appeal No. : W.P. No. 27215 of 1999 Connected with Nos. 23605-606 of 2001 25 July 2003

Appellant : A.S. Mani

Respondent : Union of India

Advocate for Def. : Mr. Palkhivala

Advocate for Pet/Ap. : Sarangan, K.S. Ramabhadran and K.R. Prasad, *for the Assessee* Seshachala R.B. Krishna, *for the Revenue*

Judgement :

ORDER

Sri A.S. Mani, an expert in Marketing in the Petroleum sector is knocking the doors of this court in the light of an adverse endorsement issued by the Ministry of Finance dated 2-6-1999.

2. The admitted facts are as under :

M/s. Oil tanking, a Foreign Company entered into an agreement with the petitioner in the matter of providing consultancy services. There are various clauses seen in

the agreement. An application was made to the government in the matter of approval of the agreement. The agreement was approved subject to a condition. The conditional approval reads as under :

'The approval for exemption is limited proportionally to the stay and work abroad with the total amount received by applicant.'

3. On receipt of the same, the petitioner sought for reconsideration. In the absence of any positive response, the petitioner is knocking the doors of this court for justice.

4. Respondents have entered appearance. They oppose the prayers.

5. Writ Petition Nos. 23605-606/2001 are filed by Sri B.K. Sinha seeking for a writ of certiorari to quash Annexure 'C' dated 17-8-2000 and Annexure 'E' dated 19-2-2001. M/s. Italab (Japan) Ltd., entered into an agreement with the petitioner in the matter of availing the services of the petitioner in the light of his expertise in the International market. An application was filed seeking for approval under section 80RRA(2)(ii) of the Income Tax Act. It was rejected in terms of Annexure 'C'. A representation was made in terms of Annexure 'E'. The same was rejected in terms of Annexure 'E'. The reason for rejection is that 'no visits abroad for rendering services outside India are envisaged in the Agreement.'

6. Respondents have entered appearance. A detailed counter is filed. They say that the benefits in terms of section 80RRA is available only in the event of a physical outside service by a Technocrat or a technician.

7. Sri Sarangan, learned Senior counsel and Sri K.R. Prasad, learned senior counsel appear for the petitioners. They took me through the pleadings to contend that a case is made out for my interference in these proceedings. They refer to me the object of the Act, Statutory provisions and the case laws on the subject.

8. Per contra, Dr. Krishna and Sri Seshachala, learned departmental counsel invite my attention to the provisions to contend that without physical working outside India, no benefits can be granted. Judgments are cited by him.

9. After hearing the learned counsel, I have perused the material on record.

10. The Income Tax Act provides for certain deductions in respect of certain income. Chapter VI-A deals with various types of deductions. In the case on hand, we are concerned with sections 80-O, 80R, 80RR, 80RRA.

11. Section 80-O provides for deduction in respect of royalties etc., from certain Foreign Enterprises. In section 80, it is categorically stated that 'in consideration for the use outside India of any patent, invention, design etc.' In such circumstances, deductions are permitted by a slab system in section 80-O of the Act.

12. Section 80R provides for deduction in respect of remuneration from certain foreign sources in the case of professors, teachers etc. Here again, the legislature has used the word 'any remuneration received by him outside India from any University or other educational institution established outside India or any other association or body established outside India for any service rendered by him during his stay outside India in his capacity as a professor, teacher or research worker in such University, institution or body is entitled for deduction from such remuneration on a slab basis.

13. Section 80RR is deduction in respect of professional income from foreign sources in certain cases. It refers to an author, playwright, artist etc. Here again, it is seen that deduction is permissible in respect of any income derived by him in exercise of his profession from a government of a foreign state. A certificate is required to be furnished in the prescribed form.

14. Section 80RRA with which we are concerned provides for deduction in respect of remuneration received for services rendered outside India. For proper understanding, it is necessary to cull out the section itself :

'Deduction in respect of remuneration received for services rendered outside India. Where the gross total income of an individual who is a citizen of India includes any remuneration received by him in foreign currency from any employer (Being a foreign employer or an Indian concern) for any service rendered by him

outside India, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the individual, a deduction from such remuneration (of an amount equal to 75 per cent of such remuneration, as is brought into India by, or on behalf of, the assessee in convertible foreign exchange within a period of six months from the end of the previous year or (within such further period as the competent authority may allow in this behalf)'

15. A combined reading of all these provisions would show that deduction is permissible in certain circumstances. Section 80-O(iii) provides for services rendered or agreed to be rendered outside India shall include services render from India but shall not include services rendered in India. This would mean that service outside India cannot take into its compass the service rendered in India. In the case of professors under section 80R, deduction is permissible in the event of service being rendered during the stay outside India. In the case of professional income in respect of artists etc., deduction is permissible out of the income derived by them from the government of a foreign state etc.

16. Insofar as section 80RRA is concerned, it is seen that deduction is permissible in respect of an individual who is a citizen of India for the remuneration received by him in Foreign currency from an employer for any services rendered by him outside India. The words 'any services rendered by him outside India is debated, discussed, explained or interpreted by the counsel on either side. Section 80RRA stands slightly on a different footing. In the case of section 80RR, it specifically provides for deduction from his playwright from the income derived by him in the exercise of his profession from the government of a foreign state. In respect of section 80-O, it provides for inclusion of service in India. Section 80R specifically provides for outside India. At the outset, it is to be noticed that these deductions are beneficiary piece of statutory provisions providing for certain benefits in certain circumstances. The rigidity in the case of a charging section is not to be mechanically applied while considering the beneficiary deduction provisions.

17. Parties have cited several case laws. The Supreme Court in CBDT v. Aditya V. Birla : [1988]170ITR137(SC) considered the meaning to be given to the word remuneration/employer/employee. That was a case in which the court was dealing

with an agreement entered into between Sri Aditya V. Birla and Oil tanking Company Ltd., Thailand. Thailand Company was engaged in the business of manufacturing and selling staple fibres at Bangkok in Thailand. It entered into with Aditya V. Birla in agreement in the light of Aditya Birla Company described as a technician holding a Bachelor Degree from MIT, USA. An application was filed to the Central Government for approval under section 80RRA. It was rejected. It was successfully challenged in the High Court. The Central Government went in appeal to the Supreme Court. The Supreme Court, after noticing these provisions ruled that 'there is no warrant in the section to restrain the remuneration received from a Foreign employee only to the salary received by an employee'. It also ruled that 'an analysis of section 80RRA reveals that in order to be entitled to deductions at the rate enumerated in the section by the respondent, the sum must be (i) remuneration (ii) received by him in foreign currency (iii) from any employer (being a foreign employer or an Indian concern) for any service rendered by him outside India.' And the Supreme Court also ruled that 'Mr. Palkhivala, appearing for the respondent, pointed out that the object of section 80RRA of the Act was manifestly to encourage, firstly, earning of foreign exchange by India, secondly, bringing that currency by Indian nationals from abroad to India and, thirdly to improve the status of the Indians abroad and increasing the market of Indian technicians. It appears to us to be plausible objects in the present socio-economic context.'

18. The Delhi High Court in the case of C.S. Mathur v. CBDT(Del) had considered this provision in the Judgment in : [1999]235ITR769(Delhi) . That was a case of a Chartered Accountant being engaged in providing provisional services to foreign clients. An application was made and the said application was allowed in the light of Aditya V Birla's case (supra). The Delhi High Court ruled as under :

'Section 80-O as it originally stood, underwent a change by the Finance (No. 2) Act of 1991 (with effect from 1-4-1992). The provision which applied earlier to an Indian company only was extended in its application to non-corporate taxpayer residents in India. The concession became available in relation to professional services as well as for technical services rendered to foreign enterprises from India. Earlier it was a requirement of prior approval of the tax authorities in this regard which was done away with. These amendments became applicable in

relation to the assessment year 1992-93 and subsequent years. Parliament also clarified by way of the Explanation that services rendered or agreed to be rendered outside India shall include services rendered from India but shall not include services rendered in India.' (p. 773)

We do not find any warrant for the proposition that the amendment in section 80-O was brought in so as to nullify the effect of the law laid down by the Bombay High Court in the case of Aditya V Birla (supra). In our opinion, the interpretation placed by the Supreme Court on the term 'employment' as occurring in section 80RRA, still holds the field and we find no reason to make a departure therefrom :

'Parliament was well aware of the two provisions in the statute book. It was also aware of the law laid down by the High Court and the Supreme Court in the case of Aditya V. Birla (Supra). Nothing prevented Parliament from making a specific provision of repeal so as to get rid of the situation created in the field of law by the decision of the Supreme Court in Aditya V. Birla (Supra). It cannot be said that the amendment introduced in section 80-O by the Finance (No. 2) Act of 1991, is so inconsistent with the provisions of section 80RRA as to rebut the presumption against implied repeal. It cannot be said that section 80-O has either impliedly repealed section 80RRA or the former has an overriding effect on the latter provision to the extent to which it confers a similar benefit on the assessee like the petitioner. In our opinion, the theory of extending and conferring on the assessee the higher of the two benefits spelt out by the two provisions would apply.' (p. 778)

19. The Bombay High Court in Taru Jethmal Lalvani v. Under Secretary, Ministry of Finance (Department of Revenue) (1996) 185 ITR 418 has considered this very question. In that case, the petitioner entered into an agreement with a foreign company. Approval was rejected. The High Court notices the Bombay High Court in Aditya V Birla's case (supra) and thereafter ruled as under :

'On going through the provisions of section 80RRA carefully, it is seen that the section does not require rendering of any service outside India as a technician. What it requires, inter alia, is that the services must be rendered outside India and the person who renders such services is a technician within the meaning assigned to it in Explanation (c) thereto. . . .' (p. 420)

20. The Delhi High Court in the case of Mahendra Raj v. Joint Secretary, Government of India : [2002]257ITR569(Delhi) has noticed Aditya V. Birla's case and thereafter ruled as under :

'On a bare perusal of the section, it will be clear that the petitioner fell within its contemplation. What had obviously escaped the attention of the respondents, and had resulted in their erroneous interpretation of the section, was the absence of the use of the words 'employee' and/or 'salary'. The wording of the section, as also its palpable purpose i.e., attracting the repatriation of funds/remunerations earned by Indian citizens abroad and thereby augmenting our foreign currency holding, make it abundantly clear that the incentive is neither restricted to the remittance of salaries alone, nor to the cases of employees only. Had this been the intendment, these words could have been used by the Act. This section also provides relief to an Indian citizen against double taxation.' (p. 570)

21. From these judgments, what is clear to this court is that to claim exemption under section 80RRA, it is unnecessary for a technician to be physically outside India for the purpose of deduction. In these days of technological development, one can render service without physically going outside India in terms of section 80RRA. Section 80RRA only provides for deduction for any service rendered by him outside India. Rendering service outside India need not be physical outside service as contended by the respondents. If this argument is accepted, the very object of beneficial deduction is defeated in terms of the Supreme Court Judgment. No narrow interpretation is possible in such cases. Any narrow interpretation would result in the country losing foreign exchange in addition to losing his service as technician whose service is otherwise available to this country notwithstanding rendering service outside India. In the light of the beneficial deduction provision and in the absence of any specific intention of the legislature in seeking service physically outside India it is not possible for this court to accept the argument of the revenue. The legislature in its wisdom has stated in other provisions with regard to stay outside. Those words are missing in section 80RRA. In these circumstances, I have no hesitation in holding that the petitioners are right in their submissions in the case on hand. Taking an overall view, I would rather lean in favour of the assessee. In these circumstances, I have no hesitation

in rejecting the contention of the respondent's contention of physical stay outside India for the purpose of deduction in the terms of section 80RRA.

22. These various Judgments of various courts support my view. The narrow interpretation so placed by the revenue is consistently rejected in one form or other by all courts. I am unable to accept the 'restricted' arguments as pleaded by Dr. Krishna appearing for the revenue in the case on hand.

23. Dr. Krishna, learned counsel however invites my attention to the history of deductions. He filed a memo explaining the case on hand. Section 80RRA came into effect on 1-4-1975 in terms of the Finance (No. 2) Act, 1977. The benefit was extended to the Indian employees working abroad. The Finance Act of 1987 increased the deduction from 50 per cent to 70 per cent of the foreign exchange brought into effect from 1-4-1991. The provision to sub-section (1) was deleted. The Finance Act of 1996 amended the section deduction with foreign deduction remitted into India. Dr. Krishna, refers to section 80 to contend that notwithstanding the availability of section 80, section 80RRA was introduced and on this basis, he wants the court to give a narrow interpretation to the section. It is to be noticed at this stage that Explanation is available in section 80-O and no Explanation is seen in section 80RRA. Therefore, I am not able to accept the argument of Dr. Krishna in the light of difference between section 80-O and section 80RRA.

24. The Supreme Court in the case of 1997 SCC 31 has ruled that beneficial notification has to receive beneficiary interpretation to an assessee in the given circumstances. Taking into consideration, the object, the, wordings and the legislative intention and the case laws, I hold that to earn deduction physical stay outside or physical work outside is not necessary in the given set of circumstances. Annexure 'A' in W.P. No. 27215/99 insofar as limiting approval with regard to work abroad is set aside. Similarly in the connected writ petition, the endorsement at Annexures 'C' and 'E' are set aside. A direction is issued to the Central Government to approve the agreement unconditionally and a further direction is given to the department to provide deduction in terms of section 80RRA to these petitioners.

25. In the normal circumstances, I would have awarded costs but the legal niceties involved in the case on hand compel me not to impose costs and burden the revenue.

26. Ordered accordingly.

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