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Court : Allahabad

Decided On : Apr-27-2005

Reported in : [2006]154TAXMAN51(All)

Appeal No. : IT Reference No. 185 of 1993 Ra Nos. 103 to 114 of 1993 In IT Appeal Nos. 2915, 2921 to 2927 and

Appellant : Cit, Meerut

Respondent : J. Batte

Judgement :
ORDER

Prakash Krishna, J.

The Income Tax Appellate Tribunal, New Delhi, has referred the following two questions of law under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for opinion of this Court :

'1. Whether the Income Tax Appellate Tribunal was legally correct to treat the Continental Shelf to the Exclusive Economic Zone as not forming part of India priorto 1-4-1983 for the purpose of Income Tax Act, 1961 ?

2. Whether the ITAT was justified in holding that the income earned by the respondent-contractor for services rendered prior to 1-4-1983 on a rig located in

the off-shore areas outside the territorial waters of India, was not chargeable to tax under the Income Tax Act, 1961 for the assessment year 1983-84 ?'

2. Briefly stated the facts giving rise to the present reference is as under :

The reference relates to the assessment years 1982-83 and 1983-84.

3. The respondent-assessees are foreign nationals and non-residents. They rendered services on the rigs while they were outside 12 nautical miles limit from the Indian shore. They claimed that salary or remuneration received by them could not be taxed in India as they were earned outside India. The assessing officer brought to their notice Notification issued under sections 6(6) and 7(7) of the Territorial Waters Continental Shelf Exclusive Economic Zone and other Maritime Zones Act, 1976, whereby the Central Government had extended the Income Tax Act to the Continental Shelf and Exclusive Economic Zone of India. The assessees claimed that the Notification was effective from 1-4-1983 and, therefore, could not apply to assessment year 1983-84. The assessing officer, however, held that the salary income was taxable in assessment year 1983-84.

4. In appeal, the Commissioner (Appeals) held that the assessing officer was not justified in assessing the income of the non-resident-assessees in assessment year 1983-84 by applying Notification No. GSR-304 (E), dated 31-3-1983 retrospectively. He followed the detailed reasons given by him in the case of one of the group cases, namely, Mr. A. Mackenzee C/o M/s. Atwood Oceanic International S.A., Bombay.

On further appeal by the revenue, the Tribunal upheld the appellate order and, thus, dismissed the revenue's appeals.

5. Heard the learned standing counsel for the revenue. Nobody has appeared on behalf of the respondent-assessee.

6. The learned standing counsel for the department submitted that in view of the Notification dated 30-3-1983 extending the applicability of the said Act to the Continental Shelf also will cover the income earned during the previous year relevant to the assessment year 1983-84.

7. We have carefully considered the aforesaid submission of the learned counsel for the department. It is appropriate to reproduce the Notification No. GSR 304(E), dated 31-3-1983 (Gazette of India, Entry No. 117 dated 31-3-1983, Part 11, section 3(i) :

'In exercise of the powers conferred by clause (a) of sub-section (6) of section 6, and clause (a) of sub-section (7), of the Territorial Zones Act, 1976 (80 of 1976), the Central Government hereby extends the Income Tax Act, 1961 (43 of 1961), to the Continental Shelf of India and the Exclusive Economic Zone of India with effect from the First day of April, 1983 subject to the restriction and notification that the said Act shall apply only in respect of income derived by every person from all or any of the following activities, namely;

(a) the prospecting for or extraction or production of mineral oils in the continental shelf of India or the exclusive economic zone of India;

(b) the provision of any services or facilities or supply of any ship, aircraft, machinery or plant (whether by way of sale or hire) in connection with any activities referred to in clause (a);

(c) the rendering of services as an employee of any person engaged in any of the activities referred to in clause (a) or clause (b).

Explanation.For the purpose of this notification, 'mineral oil'includes petroleum and natural gas.'

8. We find that the aforesaid notification has been subject-matter of consideration by different High Courts. In McDermott International Inc. (No. 1) v. Union of India : [1988]173ITR155(Bom) , the Bombay High Court has held as follows :

'. . . that when it was sought to tax income arising in the previous year relevant to the assessment year from which the Income Tax Act was made applicable, an express provision had to be made to cover income accruing in the previous year. In the absence of such an express provision, income accruing in an accounting year in which the Income Tax Act was not applicable, could not be brought to tax simply because from the relevant assessment year, the Income Tax Act was made applicable. The relevant assessment year for the period was 1-4-1983, to 31-3-1984, when the Income Tax Act was applicable. But, income-tax is actually levied on income which accrued during the previous accounting year which is 1-4-1982, to 31-3-1983. As the territory in which income arose was beyond 12 nautical miles, the Income Tax Act was not applicable to such income during the accounting year. Income-tax, therefore, could not be levied on income which accrued during the period when the territory in which it accrued was not governed by the Income Tax Act, 1961.'

9. The aforesaid judgment has been following by the Division Bench of Madras High Court in CIT v. Ronald William Trikard : [1995]215ITR638(Mad) , and has been held as follows :

'. . . that the Tribunal was right in holding that the continental shelf and exclusive economic zone were not part of India prior to the Notification of the Government of India GSR No. 304(E), File No. 5147/F. No. 133(79)/ 82 TPL, dated 31-3-1983, in view of the provisions of section 6(6) and section 7(7) of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, and, consequently, the salary income earned by the assessee prior to 1-4-1983, was not ckargeable to tax under the Income Tax Act, 1961, in the assessment year 1983-84.'

10. The learned standing counsel could not persuade us to take a contrary view and we find no good reason to dissent with the aforesaid judgment of the Madras High Court.

11. Respectfully following the aforesaid two judgments we are of the opinion that the Tribunal was right in holding that the notification of extension of Income Tax Act to the Continental Shelf was not applicable for the assessment year 1983-84 and the salary paid to the assessee for the lay off period outside India was not chargeable under section 9(1)(ii) of the Act.

12. We answer both the questions referred to us in affirmative, i.e., in favour of the assessee and against the revenue. There shall be no order as to costs.