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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Sep-15-1989

Reported in : (1990)32ITD538(Mum.)

Judge : S Kapur, N Prabhu

Appellant : inspecting Assistant

Respondent : General Electric Co.

Judgement :

1. The first ground in this departmental appeal is that the learned CIT(A) erred in holding that royalty income of Rs. 5,14,786 should be taxed at 40% and not at 53.75% as was done by the ITO. 2. The assessee had contended before the ITO that the amount was liable to be taxed at 40% only in terms of the provisions of Section 115A(l)(b). The ITO, however, rejected this claim. He observed that the payment was under an agreement dated 16-4-73. The same was merely amended in 1979 and, therefore, it cannot be considered as an agreement entered into after the cut off date which is 1-4-1976. He for that reason taxed the assessee at effective rate of 53.75%. The CIT(A), however, held that the agreement was with M/s. Bharat Heavy Electricals Ltd. Originally the agreement was signed in 1973. The same was extended for an additional period of five years and the royalty received by non-resident company was as per the new agreement. He was of the view that the payment was under the agreement entered into after 31-3-1979 and, therefore, effective rate of tax would be only 40%. The department is aggrieved.

3. We have heard the parties to the dispute and in our opinion the order passed by the CIT(A) is eminently reasonable. The agreement entered into by the assessee was for a period of five years, but option was given to extend the same. A fresh agreement came into effect in 1979 on exercising such an option. Though fresh lease was under the provisions of the old agreement under which the life of the agreement could be extended, the same cannot be regarded as an agreement entered into by the assessee with the Indian company in 1973. These two agreements are different in material details. The consideration under the new agreement was 2% royalty, whereas under the old agreement the Indian party was required to pay in all 7.3% by way of service charges.

The product, for which technical know-how was granted by the non-resident assessee viz., capacitors, was to be manufactured by applying a developed and improved technology. The countries to whom the product could be sold have also been enlarged. Similarly, the manner of arriving at the net compensation payable has also been materially altered. There are many other alterations in the new agreement. Though the technology is for the manufacturing capacitors, the renewal of the agreement entered into in 1973 was on terms which were in many respects different from the terms contained in the original agreement. This agreement had also received approval of the Government of India. In such circumstances, we are of the view that the agreement entered into 1979 is a different agreement and, therefore, the effective rate of tax on the royalty received would be only 40%. The CIT(A)'s order in this regard is confirmed.

4. The second ground of appeal is that the CIT(A) was in error in deleting the addition of Rs. 7,74,073 made by the ITO on protective basis. The impugned amount has already been taxed on an accrual basis in an earlier year and it is an admitted fact that the same has been included only on a protective basis. We have confirmed the addition of this amount in an earlier year on accrual basis; there would, therefore, be no justification for including this amount once again on cash basis for the year under consideration. For that reason we uphold the order of the CIT(A).