

Holtec Engineers P. Ltd. Vs. Central Board of Direct Taxes

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Court : Delhi

Decided On : Mar-21-1979

Reported in : (1980)14CTR(Del)53; [1979]120ITR696(Delhi)

Judge : V.S. Deshpande, C.J. and; N.N. Goswamy, J.

Acts : [Income Tax Act, 1961](#) - Sections 80MM

Appeal No. : C.W. No. 587 of 1974

Appellant : Holtec Engineers P. Ltd.

Respondent : Central Board of Direct Taxes

Advocate for Def. : B.N. Kirpal and ; M.L. Verma, Adv.

Advocate for Pet/Ap. : J.D. Jain, Adv

Judgement :

Goswamy, J.

1. This judgment will dispose of Civil Writ Petitions Nos. 587, 588, 589, 683 and 361 of 1974.
2. These petitions are directed against the order of the Central Board of Direct Taxes whereby the Board refused to grant approval to the agreements under Section 80MM of the I.T. Act, 1961.

3. The question to be decided in these petitions is whether the services rendered by the petitioner-company as mentioned in the agreements amount to technical services as contemplated by Section 80MM of the Act. Section 80MM is as follows :

' 80MM. (1) Where the gross total income of an assessed, being an Indian company includes any income by way of royalty, commission, fees or any other payment (not being income chargeable under the head ' Capital gains ') received by the assessed from any person carrying on a business in India in consideration for--

(i) the provision of technical know-how which is likely to assist in the manufacture or processing' of goods or materials, or in the installation or erection of machinery or plant for such manufacture or processing, or in the working of a mine, oil well or other source of mineral deposits, or in the search for, or discovery or testing of, mineral deposits or the winning of access to them, or in carrying out any operation relating to agriculture, animal husbandry, dairy or poultry farming, forestry or fishing, or

(ii) rendering services in connection with the provision of such technical know-how, under an agreement entered into by the assessed with such person on or after the 1st day of April, 1969, and approved by the Board in this behalf, there shall, in accordance with and subject to the provisions of this section, be allowed a deduction from such income of an amount equal to 40% thereof, in computing the total income of the assessed :

Provided that the application for such approval is made to the Board before the 1st day of October of the relevant assessment year :

Provided further that approval of the Board shall not be necessary in the case of any such agreement which has been approved for the purposes of the deduction under this Sub-section by the Central Government before the 1st day of April, 1972, and every application for such approval of any such agreement pending with the Central Government immediately before that day shall stand transferred to the Board for disposal.

(2) For the purposes of this section ' provision of technical know-how ' means,--

(i) the transfers of all or any rights (including the granting of a license) in respect of a patent, invention, model, design, secret formula or process or similar property;

(ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or similar property;

(iii) the use of any patent, invention, model, design, secret formula or process or similar property ;

(iv) the imparting of any information concerning industrial, commercial or scientific knowledge, experience or skill,

(3) The provisions of sub-section (1) shall not apply in relation to any income in respect of which the assessed is entitled to the deduction specified in section 80-O.'

4. In C.W. No, 587 of 1974, M/s, Orissa Cements Ltd. required the petitioner-company to carry out the study to suggest ways and means by which the life of the brick lining in the burning zone of the Unax and Folax kiln should be extended at least 8 to 9 months in the case of alumina brick and 12 to 15 months in the case of basic bricks. The assessed was further asked to suggest the ways and means to completely avoid the dust rushes in the Folax kiln. The petitioner-company accepted this and submitted two detailed study reports. In para. 4 of the first report the petitioner made the following recommendations :

' 4.0. Recommendations:

4.1. The kiln operation of the kilns at Rajgangpur under the existing conditions appears to be very good and there is little scope for improvement on this account.

4.2. In our opinion, the dust rushes occurring in the kiln are attributable to periodic lowering of the burning zone temperature of kiln as a result of ingress of excess of comparatively cold secondary air from the Folax cooler into the kiln. This inference is supported by :

(i) Existence of a positive pressure in the kiln hood, and (ii) the capacities of the fans fitted on the cooler, an exhaust fan of 750 m³/min capacity, is obviously too small to exhaust a cooler with a total cooling air capacity of 1450 m³/min. 4.3. We are, therefore, of the opinion that it will be necessary to redesign the fan capacities for the present kiln output and provide adequate capacities to raise the kiln output at a later date when steady operating conditions are obtained after elimination of dust rushes.

4.4. Since any adjustment such as change in the grate speed of opening and closing of a fan damper affects the temperature and quantity of secondary air going into the kiln, and consequently the burning zone temperature and air to fuel ratio, it is essential that the cooler operation should be augmented by proper instrumentation and loop control to minimise the fluctuations in the burning zone temperature.

4.5. It will also be necessary to install continuous O₂ and CO analyser for kiln flue gases and radiation pyrometer for recording burning zone temperature to control the excess air for satisfactory burning conditions and the burning zone temperature.

4.6. We have gone over the various calculations involved in determining output limitations of your sieve kiln and taking into consideration the Chemical composition, raw material fed and the fuels used, we have arrived at the conclusion that once your dust rushes problem is successfully resolved and the kiln settles down to steady operation conditions with proper automatic control of Folax cooler, your kiln is capable of producing between 725 to 759 TPD on sustained basis.

4.7. The best source of hot air for drying coal in the coal mill is to. second or third compartment (depending upon the available temperature of a reciprocating grate cooler when the latter is available. However this arrangement, in case of Rajgangpur works, would involve major alterations. We would, therefore, suggest loop control for the damper on the hot air line from the kiln hood.

4.8. The stabilisation of the burning conditions in the kiln by adopting measures described in paras. 4'4 to 4'6 will definitely lead to an improvement in the lining life as the basic bricks in the burning zone will not be subjected to the temperature fluctuations which they are experiencing at present. A properly designed gradient air cooling of burning zone kiln external shell will further help in prolonging lining life as it will help in restraining coating.

4.9. It is our experience that the problem of dust rushes can be eased to some extent by speeding up the kiln without any increase in its output. We may emphasise here that this is, at best, a temporary solution and has to be brought about very carefully, taking into consideration the kiln exhaust gas temperature, the temperature gradient within the kiln, etc. In case you decide to implement this short-term solution, we suggest that you utilise the services of our Chief Engineer, Plant Commissioning and Operations, who will assist and guide your staff in its successful implementation. Under favorable conditions, his presence at Rajgangpur need not exceed two weeks.'

5. In the second report submitted on January 20, 1971, the petitioner-company made the following recommendations for the work staff of M/s. Orissa Cements Ltd.

' 5.0. Summing up of the recommendations conveyed to work staff.

5.1. The location of the secondary air thermocouple should be at the throat of the cooler. The thermocouple should be aspirated type for closer indication to the actual secondary air temperature.

5.2. Continuous O₂/CO analyser should be installed at the earliest with its own recorder.

5.3. The location of the gas sampling probe should be such that representative samples of exhaust gases are obtained. This should be as close to the kiln inlet as possible.

5.4. Continuous Hood draft transmitter should be installed and its indication should be installed and its indication should be recorded.

- 5.5. Two colour radiator pyrometers with recorders should be installed for Burning Zone temperature record.
- 5.6. The chain density of Folax kiln should be increased to decrease the dust losses and improve the heat exchange.
- 5.7. Proper dust collecting system should be installed to reduce the dust losses.
- 5.8. The proper air distribution in the Folax cooler should be worked out. New fan of required capacities should be added and the cooler must be properly loop-controlled.
- 5.9. The possibility of replacing the existing single cyclone cooler exhaust gas dust collector with more efficient type of dust collector should be investigated.'
6. The petitioner-company along with their application for approval submitted the agreement by way of letters and the reports mentioned above to the Central Board of Direct Taxes. The CBDT by a non-speaking order dated November 29, 1973, refused to approve the agreement on the ground that the agreement does not satisfy the requirements of law and the objectives behind section 80MM.
7. In Civil Writ No. 588 of 1974, M/s. Panyam Cements & Minerals Ltd. by their letter dated March 9, 1979, required the petitioner-company to submit a report for improving the performance of their third plant right from raw mill up to clinker production. The petitioner-company was required to submit a report to suggest broadly the improvements to be carried out in the following sections so that a sustained out-put of 700 tonnes per day may be achieved :
1. Raw Mill Output.
 2. Blending Silos-Blending and Extractor.
 3. Kiln out-put.
 4. Fuller Cooler performance.
 5. Electrostatic Precipitator performance.

6. Coal Mill.

7. Poor Brick life in the kiln.'

8. The petitioner-company by their letters dated July 29, 1970, and July 17, 1970, accepted the offer of M/s. Panyam Cements & Minerals Ltd. and by their detailed report made the following proposals for improvement :

'7.2 Proposals for improvement,

7.21 As an interim measure the water spray should be tried out as a means to reduce the very high temperature observed at the waste gas fan inlet.

7.22 Install new CO meter, which we understand you are endeavoring to obtain from abroad.

7.23 Install additional O₂ meter--which is being ordered out--at the ESP. This will give added protection/indication of false air entering the preheated system.

7.24 Install gas conditioning tower through which all gas, both from Raw Mill drying circuit by-pass and coming directly from preheated, before all the waste gas enters the ESP. Detailed proposal will be submitted by Holtec.'

9. By a second agreement evidenced by the same dates, i.e. July 17, 1970. and July 29, 1970, the petitioner-company was required to submit a report giving the techno-economic possibilities for converting two wet process kilns of M/s. Panyam Cements and Mineral Industries Ltd, to dry process. The petitioner-company after carrying out complete operational and technical studies of kilns Nos. 1 and 2 prepared a scheme for conversion of the said kilns from wet process to dry process. This report indicated an increase from 500 TPD to 675-865 TPD with a capital investment of Rs. 190.40 lakhs.

10. In this case also the petitioner-company along with their application for approval submitted the agreements by way of letters and the reports mentioned above to the CBDT for approval of the agreements under Section 80MM. The CBDT again by a non-speaking order dated November 29, 1973 (annex. P-1 to the petition) refused to approve the agreements on the ground that the agreements

did not satisfy the requirements of law and the objectives behind Section 80MM of the Act.

11. For the purpose of construction the significant features of section 80MM are as under :

(i) There has to be an agreement between an Indian company and any person carrying business in India ;

(ii) the said agreement must be having the provision of technical know-how which is likely to assist in the manufacture or processing of goods or materials, or in the installation of erection or machinery or plant for such manufacture or processing ; and

(iii) if the agreement is for rendition of service, the service must be in connection with the provisions of aforesaid technical know-how, which must fall in either of the clauses of Sub-section (2) of Section 80MM.

12. The perusal of the agreements and the reports submitted by the petitioner-company leave no manner of doubt that the agreements in both the writ petitions were for rendition of services of technical nature. The reports submitted by the petitioner-company show that a specialised technical knowledge or information was imparted by the petitioner-company and thus the requirements of Section 80MM were fully satisfied. In view of this, the impugned orders of the Board dated November 29, 1973, are quashed and the Central Board of Direct Taxes is directed to pass fresh orders in the light of the observations made above. Civil Writ Petition No. 683 of 1974.

13. In this petition also the agreement is similar to the agreements in the two petitions. The scope of work to be carried out by the petitioner-company is contained in its letter dated 24-12-1969. Paragraph 3 of the said letter is as follows
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' 3. Holtec's scope of work

3.1. Detailed engineering including intensive study of the kiln nos. 5 & 6: installations, preparation of general arrangement drawings for introduction of automatic control of pressure and temperature drops across the calcinator, provisions of efficient and adequate dust collecting system and dust feed back complete with modifications to the induced draft installations, requisite modifications to clinker cooler and provisions of controls.

3.2. Drawing out detailed specifications for mechanical and electrical equipment and instrumentations leading to issue of tenders.

3.3. Evaluation of bids and submission of recommendation for purchase of equipments.

3.4. Electrical design, single line diagram, installation drawings for power and instrumentation including mimic panels.

3.5. Preparation of general assembly and sub-assembly drawings based on machinery equipment selected and finalised.

3.6. Capital estimates based on actual quotations together with the economics to facilitate your obtaining management's approval to proceed with the implementation.

3.7. It is understood that while giving us the assignment you will not curtail any portion of the scope of work just because that part of the work can be conveniently carried out within your organisation. '

14. M/s. A. C. C. Ltd. accepted the offer of the petitioner-company by their letter dated April 27, 1970, which is annex. P-5 to the petition. Thus the contract was concluded on April 27, 1970. After making the study the petitioner-company submitted a detailed report by their letter dated January 20, 1971. On perusal of the agreement and the report we are satisfied that for the reasons stated in our judgment for the aforesaid two writ petitions the requirements of Section 80MM were fully satisfied in this petition also. The only other contention raised by the learned counsel for the respondent was that the application for approval was submitted to the Board beyond the period of limitation as prescribed by proviso to

section 80MM. The agreement was concluded on April 27, 1970, while the application for approval was filed on 24-12-1971. We, however, find that this was not the ground on which the approval was refused by the Board. The Board has merely refused approval by a non-speaking order and by saying that the Board considers that it does not satisfy the requirements of law and the objectives behind it. Since we are quashing the order and sending the matter back to the Board for passing a fresh order it will be open to the Board to consider the question of limitation also. For these reasons, the impugned order of the Board dated November 29, 1973, is quashed and the Central Board of Direct Taxes is directed to pass fresh orders in the light of the observations made above. Civil Writ Petitions Nos. 589 & 361 of 1974.

15. In these two petitions, the petitioner-company entered into agreements with M/s. K. C. P. Ltd., Mauritius Project and M/s. J. & K. Minerals Ltd., respectively. In both the cases the scope of the work to be undertaken by the petitioner was to conduct a preliminary feasibility study of raw materials based on information and other analytical data. There is nothing to show that the objectives for which the feasibility report had to be submitted matured at all or not. As we read Section 80MM of the Act we are of the opinion that it is implicit in the said section that the provision of technical know-how must directly assist in the manufacture or processing of goods or material or in the installation or erection of machinery or plant for such manufacture or processing or in any one or more of the other operations or activities specified in Sub-section (1) of Section 80MM. On perusal of the agreements and the reports submitted by the petitioner-company, we are not satisfied that the agreement, in any way, fulfilled these requirements. The job assigned to the petitioner-company has got a very remote relationship, if any, with the manufacture or transfer of technical know-how. As such we are of the opinion that the Board was justified in rejecting the applications for approval and the decision of the Board does not call for any interference by this court. Accordingly, these two writ petitions are dismissed with no order as to costs.