

Continental Construction Ltd. Vs. Union of India (Uoi) and ors.

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Court : Delhi

Decided On : May-24-1990

Reported in : [1990]185ITR230(Delhi)

Judge : B.N. Kirpal and; C.L. Chaudhry, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 80O and 80HHB; [Constitution of India](#) - Articles 14, 19(1) and 226

Appeal No. : Civil Writ No. 1170 of 1986

Appellant : Continental Construction Ltd.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : D.K. Jain, Adv.

Advocate for Pet/Ap. : N.A. Palkhiwala, Sr. Adv. and; Bishamber Lal, Adv

Judgement :

Kirpal, J.

1. The challenge in this writ petition is to the validity of Section 80HHB of the Income-tax Act as being violative of Articles 14 and 19(1) of the Constitution.
2. The case was listed for hearing along with Income-tax References Nos. 110 to 112 of 1987 (Continental Construction Ltd, v. CIT : [1990]185ITR178(Delhi) ,

wherein the question which arose was whether the petitioner was entitled to the benefits of Section 80-O of the Income-tax Act or not. The case of the Department was that the agreements which had been entered into by the petitioner fell within the purview of Section 80HHB and not Section 80-O.

3. By a separate judgment pronounced by us today in Income-tax References Nos. 110 to 112 of 1987 (Continental Construction Ltd. v. CIT : [1990]185ITR178(Delhi) , we have answered the questions of law in favor of the Revenue by holding that the petitioners were not entitled to the benefit of Section 80-O.

4. During the course of arguments, we were informed that, despite the contention of the Department that the case of the petitioner fell under Section 80HHB, still the benefit under the said provision has not been accorded to the petitioner. The reason for this is that the petitioner has not complied with the provisions of Section 80HHB(3). According to the petitioner, the conditions prescribed under Section 80HHB(3) were not complied with because till the introduction of Section 80HHB in the Income-tax Act, the petitioner was getting the benefit of Section 80-O in terms of such types of agreements. The petitioner, therefore, did not create reserve accounts as contemplated by Section 80HHB(3) though foreign exchange was repatriated from abroad.

5. In our opinion, it will be extremely unfair not to give the benefit to the petitioner under Section 80HHB. The petitioner, admittedly, has executed projects which would entitle it to the benefit of Section 80HHB and there was bona fide reason for the petitioner in not complying with the provisions of Section 80HHB(3) because the Central Board of Direct Taxes had accorded approval to the agreements under Section 80-O and, therefore, the petitioner naturally expected that relief would be granted under Section 80-O. We have, however, held that, on the facts of the present case, the petitioner was entitled to the relief not under Section 80-O but under Section 80HHB and this is what in fact was argued before us by learned counsel for the Department. This being so, the Income-tax Department should not stand on mere technicalities and must give an opportunity to the petitioner to fulfill the requirements of Section 80HHB(3) and, on such compliance within a

reasonable time, it should grant the benefit to the petitioner under that provision.

6. No serious contention was raised before us with regard to the validity of Section 80HHB and we have no hesitation in holding that the said provision is valid.

7. The writ petition is disposed of in the aforesaid terms. There will be no order as to costs.

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