

Ongc Vs. Asstt. Cit

Ongc Vs. Asstt. Cit

SooperKanoon Citation : sooperkanoon.com/75195

Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Sep-08-2006

Judge : D Singh, R Singh

Appellant : Ongc

Respondent : Asstt. Cit

Judgement :

1. These two appeals field by the assesseees against the respective orders of CIT (Appeals)-I, Dehradun passed in Appeal No.259/DDN/2000-01, dated 21-5-2004 and Appeal No. 343/ DDN/2001-02, dated 24-5-2004, involving the identical issue on identical facts, were heard together and are being disposed off by this common order for the sake of convenience.

The Ld. Commissioner (Appeals)-I, Dehradun has erred in law and on the facts and circumstances of the case in rejecting the appellants contention that the receipts of the non-resident were taxable under Section 44BB of the Income Tax Act, 1961 (Act) and no as fees for technical services under Section 44D, read with Section 115 of the Act." 3. Since the facts involved in both these appeals are identical except variation in amounts, we are only stating the brief facts from the appeal of the assesseees relating to assessment year 1998-99. The assessee filed a return of income in this case on 23-11-1998 declaring a total income of Rs. 86,610. The assessee was engaged in exploration, extraction and production of mineral oil. During the relevant previous year, the non-resident was paid a sum of US 23,000 equivalent to Rs. 8,26,390 against a memorandum of undertaking

dated 15-4-1997 by the assessee ONGC for imparting training on "Ceased Hole and Production Log Evaluation" and on "Ceased Hole and Production Log Analysis".

4. According to the assessee since the consideration for providing training are not fee for technical services and the same is covered under the provisions of Section 44BB of the Income Tax Act as per the CBDT Instruction No. 1862, dated 22-10-1990 but the assessing officer was of the opinion that the services and activities by NRC were technical in nature and are covered under the provisions of Section 44D, read with Section 115A of the Income Tax Act.

5. On appeal before the Commissioner (Appeals), the assessee contended that this training was in connection with the exploration, extraction and production of mineral oil and, therefore, receipt in this respect was chargeable to tax under the provisions of Section 44BB of the Act and in support thereof he relied upon the decision of ITAT in the case of Agland Investment Services Inc. v. Income Tax Officer (1985) 22 Taxman 9 (Delhi) and CBDT Instruction No. 1862, dated 22-10-1990.

However, the Commissioner (Appeals) disagreeing with the submissions of the assessee held that on simple reading the terms of the contract shows that the contract was not for providing "services or facilities as contemplated under Section 44BB and was to conduct training programmes at Ahmedabad for ONGC officers so Section 44D read with Section 115A were applicable and hence he upheld the order of the assessing officer.

6. We have considered the rival submissions of both the parties, perused the records and carefully gone through the orders of the tax authorities below.

7. In this case undisputedly a non-resident was engaged by ONGC for imparting training on "Ceased Hole and Production Log Evaluation" and on "Ceased Hole and Production Log Analysis". As per Instruction No.1862, the CBDT with regard to the definition of "fee for technical service" in Explanation 2 to Section 9(1)(vii) of the Income Tax Act, 1961 made following clarification: The Expression fees for technical services has been defined in Explanation 2 to Section 9(1)(vii) of the

Income Tax Act, 1961 as under: Explanation 2-For the purpose of this clause, "fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining, or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries".

2. The question whether prospecting for, or extraction or production of, mineral oil can be termed as mining operations, was referred to the Attorney General of India for his opinion. The Attorney General has opined that such operations are mining operations and the expressions mining project or like project occurring the Explanation 2 to Section 9(l)(vii) of the Income Tax Act would cover rendering of services like imparting of training and carrying out drilling operations for exploration or exploitation of oil and natural gas.

3. In view of the above opinion, the consideration for such services will not be treated as fees for technical services for the purpose of Explanation 2 to Section 9(1)(vii) of the Income Tax Act, 1961.

Payments for such services to a foreign company, therefore, will be income chargeable to tax under the provisions of Section 44BB of the Income Tax Act, 1961 and not under the special provisions of the taxation of fees for technical services contained in Section 115A, read with Section 44D of the Income Tax Act, 1961." 8. From this clarification issued by the CBDT, now it is clear that the consideration paid for rendering all services like imparting of training and carrying out drilling operations for exploration or exploitation of oil and natural gas will not be treated as fees for technical services for the purpose of Explanation 2 to Section 9(l)(vii) of the Income Tax Act and so payment of such services to a foreign company would, therefore, be income chargeable to tax under the provisions of Section 44BB of the Income Tax Act, 1961 and not under the provisions of the taxation of fees for technical services contained in Section 115J read,with Section 44D of the Income Tax Act, 1961 which means that the amount received by the NRI, assessee, for imparting training was not covered within the

meaning of technical services and, hence, the assessing officer was not justified in assessing the income of the assessee under Section 44D read with Section 115A against shown by the assessee under Section 44BB of the Incometax Act. Hence, the orders of the tax authorities below in this regard are set aside and ground of appeals taken by the assessee is allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com