
(1996) 03 KL CK 0044

In the High Court Of Kerala

Case No : Income-tax Reference No. 37 of 1991

Cochin Refineries Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 04-03-1996

Acts Referred:

Income Tax Act, 1961 — Section 9(1)

Citation : (1996) 135 CTR 193 : (1996) 222 ITR 354

Hon'ble Judges : V.V. Kamat, J;G. Sivarajan, J

Bench : Division Bench

Advocate : C.N. Ramachandran Nair and Antony Dominic, for the Appellant;
P.K.R. Menon and N.R.K. Nair, for the Respondent

Judgement

V.V. Kamat, J.—Cochin Refineries Ltd., the assessee, prays for a reference and consequent direction of the following two questions :

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the amount of Rs. 7,69,614 paid by Cochin Refineries Limited to Foster Wheeler Energy Corporation of U. S. A. constituted "fees for technical services" and, therefore, constituted income assessable to tax in India in the hands of Foster Wheeler Energy Corporation of U. S. A. ?

2. If the amount paid to Foster Wheeler Energy Corporation, U. S. A. constituted fee towards technical services, whether the amounts of Rs. 1,19,303 and Rs. 38,271 should not be excluded from the amount assessable as representing reimbursement of expenses incurred by them which was not its income ?"

2. The facts are very narrow. Cochin Refineries Ltd. requested Foster Wheeler Energy Corporation to evaluate whether coke produced from a blend of vacuum bottoms and clarified oil from Bombay High crude is suitable for making anode for aluminium industry. This was because there was no provision for carrying out such a test in India and as such the job had to be entrusted to the foreign

company.

3. The required tests were carried out and the conclusions were reported to the assessee, Cochin Refineries Ltd. Obviously, the tests were carried out in the U. S. A. in regard to which the assessee made payment of Rs. 7,69,614. The question is whether this payment would have to be understood by way of fees for technical services. u/s 9 of the Income Tax Act, 1961, incomes have been statutorily deemed to accrue or arise in India.

4. The Tribunal placed reliance on the Explanation to Clause (vii) of Sub-section (1) of Section 9 of the Act to hold that the amount paid would have to be deemed as "fees for technical services" and ruled that such tax would have to be deducted at source.

5. In regard to this amount of Rs. 7,69,614 there is a dispute with regard to the two payments of Rs. 1,19,303 and Rs. 38,271 which were payments in the nature of reimbursement of the payments made to the personnel of the said consultant, Foster Wheeler Energy Corporation, U. S. A., and these two payments were also deemed to be forming part of fees for technical services.

6. Reading the above provisions, especially the Explanation to Clause (vii) of Sub-section (1) of Section 9 of the Act, such deeming situation floats on the surface. With advantage the Tribunal has quoted the said Explanation which is as follows :

"For the purposes 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"."

7. The Tribunal would have to be endorsed with regard to the conclusions drawn in regard thereto that the payment in question (Rs. 7,69,614) would have to be deemed as amounting to "fees for technical services" because any consideration paid for the rendering of any technical service would have to be understood that way only. There appears to be no dispute that the services rendered by the foreign company, Foster Wheeler Energy Corporation, would be in the nature of technical services and would, therefore, consequently be covered fully by the above Explanation.

8. Even with regard to the two payments of Rs. 1,19,303 and Rs. 38,271 in the nature of reimbursement of payments made to the personnel, no different situation would be available because these payments would be part and parcel in the process of advice of a technical character and would fall for coverage only within the meaning of the above Explanation.

9. For the above reasons question No. 1 will have to be answered in the affirmative, in favour of the Revenue and against the assessee, whereas question

No. 2 will have to be answered in the negative, in favour of the Revenue and against the assessee. We answer accordingly.

10. A copy of this judgment shall be caused to be sent to the Income Tax Appellate Tribunal, Cochin Bench, under the seal of the court and the signature of the Registrar. Order accordingly.