
(2006) 01 MAD CK 0142
In the Madras High Court
Case No : Tax Case No. 47 of 2002

Commissioner of Income Tax

APPELLANT

Vs

Best and Crompton Engineering Ltd.

RESPONDENT

Date of Decision : 03-01-2006

Acts Referred:

Income Tax Act, 1961 — Section 154, 35B, 90, 91

Citation : (2006) 284 ITR 225

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : Pushya Sitaraman, for the Appellant; None, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—At the instance of the Revenue, the Tribunal has referred the following question of law arising out of the order dt. 11th Sept., 1997 in ITA No. 2158/Mds/1990 for the opinion of this Court :

Whether on facts and in the circumstances of the case, the Tribunal is right in law in holding that the assessee is entitled for relief u/s 91 of the IT Act, 1961, without taking into account the weighted deduction allowed u/s 35B of the IT Act, in respect of the Iranian income ?

2. The facts leading to the above question of law are as under:

The respondent-assessee is a company in which public are substantially interested. The relevant assessment year is 1981-82. The corresponding accounting year ended on 31st March, 1981. The respondent-assessee is a resident company. The said resident company earned income in Iran for which there was no DTAA, The respondent-company earned income from Iran amounting to Rs. 25,61,426 on which tax of Rs. 10,29,564 was paid in Iran. In terms of Section 91 of the IT Act, the respondent-assessee claimed a double taxation relief which was allowed by the AO by the original order dt. 28th Oct., 1987. Later, the AO revised the assessment u/s 154 of the Act and passed an order on 2nd Jan., 1990 deducting the weighted deduction u/s 35B amounting to

Rs. 20,00,056 from Iranian income and worked out the double taxation relief on the sum of Rs. 5,61,370.

3. Aggrieved by the order, the respondent-assesses filed an appeal to the CIT(A). The CIT(A) held that the weighted deduction allowed u/s 35B should not be deducted from the Iranian income, while computing the relief for double taxation and further directed to recompute the double Income Tax relief on the foreign income of Rs. 25,61,426.

4. Aggrieved by the order of the first appellate authority, the Revenue filed an appeal to the Tribunal. The Tribunal held that the order of the CIT(A) was correct, relying on the decision of the Supreme Court in the case of K.V.A.L.M. Ramanathan Chettiar by Lrs. Vs. Commissioner of Income Tax , Madras, .

5. Aggrieved by the said order of the Tribunal, the Revenue filed the reference application before the Tribunal and the Tribunal has referred the aforesaid question for our opinion.

6. The learned Counsel appearing for the Revenue submitted that the AO was right in excluding the deduction allowed u/s 35B of the IT Act, 1961, from the Iranian income to arrive at the, correct Iranian income, which had suffered tax both in Iran and India, for the purpose of relief u/s 91 and also relied on the Andhra Pradesh High Court judgment reported in Commissioner of Income Tax Vs. M.A. Mois, . Even though notice had been served on the respondent-company in this tax case, there was no representation for the assesses. 7. We have heard the counsel appearing for the Revenue, The relevant provision of law for our consideration is Section 91 of the IT Act. Sec: 91 of the IT Act deals with countries with which no agreement exists and it grants unilateral relief in cases where Section 90 does not apply, subject to the following conditions:-

(a) the assessee should be resident of India in the previous year;

(b) the income should have accrued in fact outside India and should not be deemed under any provision of this Act to accrue in India;

(c) the income should be taxed both in India and in a foreign country with which India has no agreement for relief against or avoidance of double taxation; and

(d) the assessee should have in fact paid the ,tax in such foreign country by deduction or otherwise.

The unilateral relief is granted only in respect of the "doubly taxed income", which means that, that part of the income is actually included in the assessee's total income. The word "income" as it is understood for the purpose of Section 91 would be the income computed in the normal sense before adjustment of deduction u/s 35B. What is contemplated by the term or expression "income" in the said section is not an exact quantum or measure of the income as computed either in India or abroad for the purpose of taxation in the respective countries, but the income as ordinarily understood in a commercial business sense. This is

so, because the Indian tax laws may not be identical to the laws obtaining in another country and the computation of income in either country would not result in the same quantum of income since each country has its own fiscal policies and tax structure and allowances. It is not in dispute that the income earned by the respondent-assessee in Iran was Rs. 25,61,426. The said Section 91 speaks of the income which accrued or arose outside India. Hence, the income which accrued or arose outside India, viz., in Iran was prior to the adjustments contemplated u/s 35B. It is on that income, the respondent-assessee is entitled to the benefit of double Income Tax relief. The curtailment of the benefit in this regard by imputing the deduction u/s 35B to the income from Iran is clearly erroneous.

8. Reading of Section 91 with the decision of the apex Court in the case of *K.V.A.L.M. Ramanathan Chettiar v. CIT* (supra), it is clear that the double taxation relief has to be worked out on the Iranian income earned abroad, as above. The learned Counsel for the Revenue relied on the Andhra Pradesh High Court judgment reported in *Commissioner of Income Tax Vs. M.A. Mois*, to support the argument. It was held in the judgment that the amount deducted under Chapter VI-A u/s 91 of the IT Act, is not doubly taxed and, therefore, no relief is available in respect of such amount. In the present case, that part of the income viz., Iranian income was actually included in the assessee's total income. Hence there was a "doubly taxed" income. When the income is doubly taxed, the assessee is entitled to the unilateral relief u/s 91 of the IT Act. Hence, the Andhra Pradesh judgment will not help the Revenue in this case. In view of the same, the orders of the authorities below are in conformity with law and require no interference.

9. In such circumstance, the above question referred to us is answered in favour of the assessee and against the Revenue. The reference is answered accordingly.