

(1999) 02 MP CK 0026
In the Madhya Pradesh High Court
Case No : M.C.C. No. 268 of 1993

Commissioner of Income Tax	Vs	APPELLANT
Jakko Poyry Engineering		RESPONDENT

Date of Decision : 09-02-1999

Acts Referred:

Income Tax Act, 1961 — Section 256(2), 9

Citation : (2000) 241 ITR 546 : (1999) 103 TAXMAN 457

Hon'ble Judges : Nirmal Kumar Jain, J; Bashir Ahmed Khan, J

Bench : Division Bench

Advocate : S.K. Pawnekar, for the Appellant; G.M. Chaphekar, for the Respondent

Judgement

B.A. Khan, J.—The Revenue has filed this application u/s 256(2) of the Income Tax Act, 1961, praying for calling for the statement of the case from the Income Tax Appellate Tribunal on the following two questions :

"(i) Whether, on the facts and circumstances of the case, the Tribunal was justified in holding that no service has been rendered by the assessee who is a non-resident to a resident in terms of Section 9 of the Income Tax Act ?"

(ii) Whether, on the facts and circumstances of the case, the Tribunal was justified in holding that payment of \$ 69,198 has not accrued or arisen in India as fees for technical consultancy in terms of Section 9 of the Income Tax Act ?"

2. It transpires that the assessee is a non-resident based in Finland. It was approached by Nepa Mills, a resident, for consultancy services to solve its production and operation problems. An agreement was executed between the two and pursuant thereto, the non-resident assessee sent its consultants for field study who were paid on daily basis a total amount of \$ 35,198. The results of their study were later finalised and prepared in Finland for which \$ 24,000 were paid to the assessee under the agreement. The assessee was taxed for \$ 35,198 which was treated its income by the Assessing Officer. It took appeal before the

Commissioner of Income Tax (Appeals) but failed. It then carried the matter to the Tribunal and succeeded. The Tribunal interpreting the provisions of Section 9 of the Income Tax Act, 1961, along with its Explanation 2 took the view that rendering of service was a prerequisite for tax liability and since no such services were rendered by the non-resident assessee in India, therefore, any fee paid for technical services rendered could not be taxed as income at the hands of the non-resident assessee.

3. The Revenue felt dissatisfied and filed R. A. No. 130 of 1992 requiring the Tribunal to refer the abovestated two questions to this court for opinion. The application was rejected on the ground that no question of law arose in the matter, because the Tribunal had found it as a fact that no technical service was rendered by the assessee in India. Hence, this application for calling for a statement of case from the Tribunal on the above-stated questions.

4. The case of the Revenue is that the Tribunal had ignored the provisions of Section 9(1)(vii)(b) of the Income Tax Act, which provided that any income shall be deemed to accrue or arise in India, if it was an income by way of fees for technical services payable by a person who is a resident. The relevant provision is extracted hereinbelow :

"9. (1) The following incomes shall be deemed to accrue or arise in India-- . . .

(viii) income by way of fees for technical services payable by-- . . .

(b) a person who is a resident, except where the fees are payable in respect of services utilised in a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India ;"

5. We have examined the Tribunal's order rejecting R. A. No, 130 of 1992 and there is no clue that the Tribunal had had regard to the provisions referred to hereinabove. Therefore, it remained to be seen whether the fee paid to the assessee-company by the resident Nepa Mills could be held to be an income accruing or arising in India and thus taxable. The matter, in our view, gives rise to a question of law warranting calling for a statement of the case from the Tribunal, Indore Bench. We order accordingly and require the Tribunal to send the statement of the case on the aforesaid two questions.