
(2011) 07 KL CK 0188

In the High Court Of Kerala

Case No : IT Appeal No"s. 307 of 2002 and 17 Of 2003

Commissioner of Income Tax

APPELLANT

Vs

Tata Ceramics Ltd.

RESPONDENT

Date of Decision : 29-07-2011

Acts Referred:

Income Tax Act, 1961 — Section 10(6A), 192, 195A

Citation : (2011) 4 KLJ 757 : (2011) 203 TAXMAN 43

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : P.K.R. Menon and George K. George, for the Appellant; E.K. Nandakumar, A.K. Jayasankar Nambiar, Anil D. Nair, Smt. Priya Mahesh, Smt. Priya Manjooran and Dr. K.P. Pradeep, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—These appeals are filed by the Revenue for sustaining assessment of the tax paid by the respondent assessee on remittance made to a foreign collaborator as income assessable at the hands of the respondent. We have heard learned Senior counsel Shri. P.K.R. Menon appearing for the appellant and learned counsel appearing for the respondent.

2. The respondent assessee, a Company engaged in manufacture of ceramic products at Special Economic Zone, Kochi, entered into an agreement with a British Company for technical collaboration for manufacture of products. Clause 11 of the technical collaboration agreement produced as Annexure G is as follows:-

11. Taxes

All direct or indirect taxes and the import duties due in India in connection with the performance of the Agreement shall be borne by TCKL. All direct or indirect taxes and import duties in London in connection with the performance of the Agreement shall be borne by APT.

In terms of the above provision, for the remittances made to the foreign company the assessee paid tax in India. In the assessment, the Assessing Officer by applying section 195A of the Income Tax Act grossed up the income on the tax component on the remittance and assessed the grossed up amount as income earned by the foreign company in India and assessed the same at the hands of the respondent assessee. There is no dispute about the respondents liability to pay tax on the remittance made to the foreign company either as their agent in India or in terms of the above provision in the agreement. However, dispute raised by the respondent was on the rejection by the Assessing Officer of their claim for exemption on the tax paid on the remittance u/s 10(6A) of the Act which otherwise would constitute a component of the income earned by the foreign company justifying grossing up of net remittance to determine total income for assessment.

3. In the first appeal filed before the CIT (Appeals) the assessee produced the approval obtained from Government of India for Annexure G agreement based on which the CIT (Appeals) upheld assessee's claim for exemption u/s 10(6A) and held that the income earned by the Foreign Company cannot be grossed up u/s 195A for the purpose of assessment. The Tribunal confirmed the same, against which the Department has filed these Appeals.

4. Before us learned Senior Standing Counsel for the Revenue contended that section 195A applies irrespective of section 10(6A). His further contention is that remittance of tax by the respondent assessee is not separately approved by Government of India in terms of section 10 (6A) of the Act. Since the controversy is with regard to the scope and application of Sections 10 (6A) and 195A of the Act, we extract hereunder the said provisions.

10 Incomes not included in total income.--In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-

(6A) Where in the case of a foreign company deriving income by way of royalty or fees for technical services received from Government or an Indian concern in pursuance of an agreement made by the foreign company with Government or the Indian concern after the 31st day of March, 1976 but before the 1st day of June, 2002 and,-

(a) where the agreement relates to a matter included in the industrial policy, for the time being in force, of the Government of India, such agreement is in accordance with that policy; and

(b) in any other case, the agreement is approved by the Central Government, the tax on such income is payable, under the terms of the agreement, by Government or the Indian concern to the Central Government, the tax so paid.

195A. Income payable "net of tax".--In a case other than that referred to in sub-

section (1A) of section 192, where, under an agreement or other arrangement, the tax chargeable - on any income referred to in the foregoing provisions of this Chapter is to be borne by the person by whom the income is payable, then, for the purposes of deduction of tax under those provisions such income shall be increased to such amount as would, after deduction of tax thereon at the rates in force for the financial year in which such income is payable, be equal to the net amount payable under such agreement or arrangement.

As already stated, the assessee is liable to be assessed for payment of tax on the income earned by the foreign company in India in connection with the technical collaboration agreement such Company has with the assessee, and the same is not in dispute. The only dispute raised by the assessee is against the demand of tax on the income grossed up with the tax component by applying section 195A of the Act. In other words, the assessee's contention is that the assessee is liable to be assessed on the remittance made to the foreign company, which is their income and not the tax paid thereon by the assessee by virtue of clause 11 of the agreement.

We are of the view that the first appellate authority and the Tribunal rightly upheld assessee's claim because the agreement stands approved by Government of India and there is no dispute on this. The contention of the Senior Standing Counsel for the Revenue that tax remittance itself should be separately approved by Government of India is not tenable because section 10(6A) speaks about only approval of agreement and when the agreement is approved, clause 11 thereof providing for remittance of tax by the assessee also gets approved by the Government. Section 195A authorises assessment of gross income only when collaboration agreement is not approved by Government of India u/s 10(6A). The effect of approval of agreement u/s 10(6A) is that the tax paid by the Indian concern on the remittance to the foreign collaborator gets exemption from tax and when such tax is exempted grossing up u/s 195A to cover up tax component of remittance is not permissible. So much so, since the agreement between the assessee and the foreign company is approved by Government of India u/s 10(6A), tax paid is exempt from further tax and therefore grossing up u/s 195A to cover tax component of the remittance does not arise. Both the appellate authorities rightly declared respondents' entitlement for exemption from payment of tax on tax.

We therefore, dismiss both the Income Tax Appeals.