
(2004) 01 DEL CK 0042
In the Delhi High Court
Case No : IT Appeal No. 251 of 2002

Director of Income Tax

APPELLANT

Vs

HCL Infosystems Ltd.

RESPONDENT

Date of Decision : 06-01-2004

Acts Referred:

Income Tax Act, 1961 — Section 192, 195, 260A

Citation : (2004) 192 CTR 108 : (2005) 274 ITR 261 : (2005) 144 TAXMAN 492

Hon'ble Judges : B.C. Patel, C.J.; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Premlata Bansal, for the Appellant; Anil Dewan and Beena Gupta, for the Respondent

Final Decision : Dismissed

Judgement

1. As pointed out by the Tribunal, the IT Department after a lapse of six years issued notices requiring the assessed to show cause why the remittances made by it to Hewlett Packard (USA) in respect of salaries paid by HP (USA) on behalf of the assessed to four "foreign technicians"/expatriates, be not treated as "fee for technical services" and why the assessed should not be treated as an assessed-in-default for not deducting tax from the said payment u/s 195 of the IT Act. Considering the documents placed on record and various other documents, the Tribunal has arrived at a conclusion that the remittances were by way of "salaries" and were not "fee for technical services" as claimed by the Revenue. It is specifically observed by the Tribunal that the presumption raised by the learned CIT(A) cannot be sustained in view of the fact that insofar as HP (USA) is concerned, the fee for technology transfer and for the transfer of know-how by HP (USA) to HP (India) has already been quantified and separately received. The technicians were deputed and the services were placed at the disposal of the assessed during the deputation period. The assessed is not only liable to pay the salary but to pay the tax thereon. The Tribunal expressed the opinion on the facts that the payment has rightly been treated as salary borne by

the assessed on which tax had been correctly deducted at source u/s 192 of the IT Act, 1961, Reliance is also placed on the letter of CBDT and a letter addressed by Asstt. CIT (Special), Circle 30(1), New Delhi. Our attention was drawn to various documents at pp. 127, 130, 138, 144, 145, 162, 163, 169 and 175, The Tribunal relying on material evidence, has held that the assessee has rightly considered the payment as salary and has rightly deducted tax at source u/s 192 of the IT Act.

2. Learned counsel for the Revenue relied on the judgment delivered by the Kerala High Court in the case of Cochin Refineries Ltd. Vs. Commissioner of Income Tax, to contend that the remittance was in the nature of "fees" and would not be covered under the head "Salaries". As such, she contended that the tax deduction ought to have been made u/s 195 of the IT Act, 1961, and not u/s 192 as was done by the assessed, The Kerala High Court decision considered the ambit of the expression "fees for technical services" under the Explanation to Section 9(1)(vii) of the said Act. That provision itself makes it clear that salaries would not fall within the expression "fees for technical services". Moreover, the said decision was delivered on its peculiar facts. In fact, in the said decision it is observed that:

"There appears to be no dispute that the services rendered by the foreign company, Foster Wheeler Energy Corpn., would be in the nature of technical services and would, Therefore, consequently be covered fully by the above Explanation".

3. In our opinion, it cannot be said that the Tribunal has committed an error. In any event, there is no substantial question of law which requires, consideration as the Tribunal has arrived at a finding on the material placed on record. Hence, the appeal is dismissed.