(1992) 08 BOM CK 0013

In the Bombay High Court

Case No : Writ Petition No. 2242 of 1988

Dubon Project Engineering Pvt. Ltd. APPELLANT

Vs

Central Board of Direct Taxes and another RESPONDENT

Date of Decision : 28-08-1992

Acts Referred:
Income Tax Act, 1961 — Section 80

Citation : (1993) 109 CTR 95 : (1993) 200 ITR 577 : (1993) 67 TAXMAN 142

Hon'ble Judges : Sujata V. Manohar, J;B.N. Srikrishna, J

Bench : Division Bench

Advocate : K. Bhujle, for the Appellant; Dr. V. Balasubramanian, for the Respondent

Judgement

Srikrishna, J.—by this petition, the petitioners challenge an order of the Central Board of Direct Taxes (hereinafter referred to as "the Board") dated January 24, 31, 1986, communicated to the petitioners under cover of the letter dated December 1, 1986, by which the petitioners application u/s 80-O for approval of an agreement dated October 19, 1982, for rendering technical services to a foreign company known as Progress Engineering, Lagos, Nigeria, was rejected.

2. The petitioner is company which carries on business as consulting engineering company in India and has expertise in the field of civil, structural, and soils engineering and other related disciplines. The petitioners had entered into five agreements with Progress Engineering, Lagos, Nigeria, for rendering technical services in connection with certain engineering projects in that country. Four of these agreements which were submitted for the purpose of approval u/s 80-O were approved by the orders of the Board. In respect of the fifth agreement, the petitioners made an application on September 26, 1984, in the then existing pro forma. Along with the agreement, the petitioners had forwarded a copy of the agreement certified by its managing director. In response to this application, the Board addressed a letter dated September 23, 1985, and raised a number of queries. Apart from requesting the Board to give some more time to enable it to

submit the information called for, by its letter dated December 10, 1985, the petitioner does not appear to have done anything for almost 11 months. On October 9, 1986, the petitioners addressed a letter to the Board furnishing the information called for by the Board. However, it appears that having waited sufficiently the Board had rejected the application by its order dated January 24, 31, 1986, on the ground that no information was forthcoming in spite of repeated opportunities.

3. Mr. Bhujle pointed out that the information called for by the Board had been supplied and the only thing that was missing was a notarised copy of the agreement which the petitioners were unable to produce on account of the political situation in Nigeria. He states that the petitioners presently have the original copy of the agreement and they are willing to furnish even a copy of the agreement certified by a notary public in India. All other information called for by the Board has already been furnished by the petitioner according to Mr. Bhujle.

4. In these circumstances, we are of the view that the petitioners should be given an opportunity to furnish the original or a notarised copy of the agreement dated October 19, 1982, and to satisfy the Board on the query which had been raised by it.

5. In the result, the order of the Board dated January 24, 31, 1986, is hereby quashed and set aside. The application made by the petitioners dated September 26, 1984, shall be reconsidered by the Board for approval u/s 80-O of the Income Tax Act as expeditiously as possible, after giving an opportunity to the petitioners for furnishing the original of the concerned agreement or a copy certified by a notary public, which they shall do within a period of four weeks from the date of obtaining the certified copy of this order. The petitioners shall be given a hearing in the matter before the order is made.

6. Rule is made absolute, accordingly, in terms of prayer (a) with no order as to costs.

7. Certified copy expedited.