
(2012) 02 JH CK 0013

In the Jharkhand High Court

Case No : Tax Case No. 15 of 1990

M/s Metallurgical Engineering and Consultant (India) Limited	APPELLANT
Vs	
Commissioner of Income Tax, Ranchi	RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 80, 800

Citation : (2012) 2 JLJR 138

Hon'ble Judges : Prakash Tatia, C.J;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : B. Poddar, Darshan Poddar, A. Choudhary, Piyush Poddar, for the Appellant; Deepak Roshan, Amit Kumar, Rupa Kumari, for the Respondent

Judgement

1. This Reference came from the order passed u/s 256(1) of the Income Tax Act, 1961 on the request of the assessee, whereby assessee requested for referring the question of law to this Court. The question referred to this Court is as under:--

Whether on the facts and in the circumstances of the case the Tribunal is right in holding that the Commissioner of Income Tax (Appeals), erred in holding that deduction u/s 800 should be allowed regardless of the fact whether the royalty had been received in India during this year or in any other year.

As per the statement of facts, this matter related to the income tax assessment of the assessee for the assessment year 1980-81. The assessee Company claimed that it derived income from consultancy services and for providing technical know-how for metallurgical industries and supply of rolling mills equipments. In the return, the assessee made a claim of Rs. 1,72,37,922/- u/s 800. The claim was based on the fee receivable from the foreign enterprises credited or accounted for in the books of account. The Assessing Officer held that the assessee's claim was quite contrary to the provisions of Section 800 which provided for deduction only in respect of income derived in convertible foreign currency in India. In that view, he restricted the assessee's claim to Rs.

80,47,933/- being the amount of fee actually received in India during the relevant accounting year. Against this order of Assessing Officer dated 18th November, 1982, an appeal was preferred before the Commissioner of Income Tax (Appeals), who ordered the Assessing Officer to allow deduction in respect of the royalty which stands duly included in the total income of the assessee regardless of the fact whether the royalty has been received in India in that relevant year or in any other year. Against the order of the Commissioner of Income Tax (Appeals) dated 19th February, 1983, the Revenue preferred appeal before the Commissioner of Income Tax Appellate Tribunal and submitted that the Commissioner of Income Tax (Appeals) should not have directed to allow deduction u/s 800 in respect of fee received in subsequent year and that it should be directed that the amounts received in India during the year should alone be included for the purpose of deduction u/s 800. The Tribunal after considering Section 800 observed that Section 800 is quite clear that only the amount which has been received in convertible foreign exchange outside India is brought into India on behalf of the assessee. The view of the Tribunal was that deduction should be allowed regardless of the fact whether the royalty had been received in India during the relevant year or in any other year. In that fact situation, the above question has been referred to this Court.

2. Learned counsel for the Assessee relied upon the judgment of the Hon'ble Supreme Court, delivered in the case of J.B. Boda and Co. Pvt. Ltd. Vs. Central Board of Direct Taxes, New Delhi, .

3. After going through the ratio of the judgment delivered in the case of J.B. Boda and Company Private Limited vs. Central Board of Direct Taxes and after going through Section 800, we are of the considered opinion that Section 800 requires bringing of the money within India and we would like to quote Section 80, which read as follows:--

80-O- Deduction in respect of royalties, etc., from certain foreign enterprises.-- Where the gross total income of an assessee, being an Indian company for a person (other than a company) who is resident in India, includes any income received by the assessee from the Government of a foreign State or foreign enterprise in consideration for the use outside India of any patent, invention, design or registered trade mark and such income is received in convertible foreign exchange in India, or having been received in convertible foreign exchange outside India, or having been converted into convertible foreign exchange outside India, is brought into India, by or on behalf of the assessee in accordance with any law for the time being in force for regulating payments and dealings in foreign exchange, there shall be allowed, in accordance with law and subject to the provisions of this section, a deduction of an amount equal to

- (i) forty per cent for an assessment year beginning on the 1st day of April, 2001;
- (ii) thirty per cent for an assessment year beginning on the 1st day of April, 2002;

(iii) twenty per cent for an assessment year beginning on the 1st day of April, 2003;

(iv) ten per cent for an assessment year beginning on the 1st day of April, 2004; of the income so received in or brought into India, in computing the total income of the assessee and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year:

Provided that such income is received in India within a period of six months from the end of the previous year, or within such further period as the competent authority may allow in this behalf:

Provided further that no deduction under this section shall be allowed unless the assessee furnishes a certificate, in the prescribed form, alongwith the return of the income, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

4. A bare perusal of the aforementioned Section clearly indicate that after providing who is eligible for deduction in respect of royalties etc., from certain foreign enterprises, it has been provided "such income is received in convertible foreign exchange in India" and then provided that "such income having been received in convertible foreign exchange outside India, or having been converted into convertible foreign exchange outside India, is brought into India..... in that situation, the deduction is allowable as provided u/s 800.

5. In view of the above, as we have already stated, what is requirement of Section 800 is of bringing in India that foreign exchange, obviously in convertible foreign exchange, therefore, the benefit u/s 800 is available only in the year in which said money is brought in India.

6. Now the question, in the facts and circumstances, as raised by the learned counsel for the assessee, arises is whether the money required to be brought in India in physical form so as to claim any benefit u/s 800. From the statement of the fact, it appears that the assessee himself claimed that the amount spent outside India out of the income covered by Section 800 and, therefore, this is the question germane in the present controversy. This question has been answered by the Hon"ble Supreme Court in the abovementioned J.B. Boda's case (supra). In that case, the entire transaction affected through the media of Reserve Bank of India has been expressed in foreign exchange and in effect the retention of fee due to the appellant was in dollars for the services rendered. This, according to the Hon"ble Supreme Court, is receipt of income in convertible foreign exchange which seems to be that of "two way traffic", which was found to be unnecessary by the Hon"ble Supreme Court, meaning thereby the Hon"ble Supreme Court held that to insist on a formal remittance to the foreign reinsurers first and thereafter to receive the commission from the foreign reinsurer, will be an empty formality and a meaningless ritual.

7. Therefore, in view of the above decision of the Hon''ble Supreme Court, actual physical receipt of the said amount covered u/s 800 is not required in a case where it has been in the same transaction utilized by the assessee without bringing the money in physical form in India. Therefore, in view of the above, it is held that the said Section 800 requires bringing of the foreign exchange in convertible form in India and bringing of the foreign currency in convertible form in India depends upon the facts of the case and in the case, there may not be necessity of bringing the money in actual physical form in India.

8. At this juncture, we may also observe that even in the statement of facts given by the Income Tax Appellate Tribunal, in the order of reference, it has been observed that since the details and other relevant materials were not available from the orders of the lower authorities as to what was the amount covered by Section 800, out of which, how much amount was spent outside India and for that purpose, the Tribunal restored the matter to the file of the Assessing Officer for fresh disposal after bringing relevant materials on record and after giving the assessee an opportunity of being heard.

9. Therefore, it appears that the matter was remanded to the lower authority for the purpose of finding out as to how much of the amount is covered u/s 800 of the Act of 1961 against which how much of the amount, whose actual physical form may not have been brought to India, but has been utilized by the Assessee, which can be found taxable u/s 800. Therefore, also it appears that the same has already been taken note of by the authority so as to examine the question of fact with respect to claim of the assessee referred above. Reference is answered accordingly.