(1992) 01 CAL CK 0033

In the Calcutta High Court

Case No : Civil Order No. 4275 (W) of 1986

Shaw Wallace and Co. Ltd. and Another — APPELLANT

Vs

Central Board of Direct Taxes and Others — RESPONDENT

Date of Decision : 17-01-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 80O

Citation : (1992) 196 ITR 241 : (1992) 65 TAXMAN 200

Hon'ble Judges : Suhas Chandra Sen, J

Bench : Single Bench

Advocate : Debi Pal, Pranab Pal and Manisha Seal, for the Appellant;A.C. Moitra and R.C. Prosad, for the Respondent

Judgement

Suhas Chandra Sen, J.—This writ petition was moved on April 17, 1986. A direction for affidavits was given on that date. No affidavit has been filed even till now. The dispute is about the interpretation of Section 80-O of the Income Tax Act. The petitioners had made two applications to the Board both dated September 19, 1980, for approval of two agreements, one dated June 15, 1978, and the other dated July 16, 1979, with M/s. General Navigation and Commerce Co., Dubai, U.A.E. The Board has summarised the agreements in the following manner :

"Under the agreements dated June 15, 1978, and July 16, 1979, you were required to provide the services of S/Shri A. C. Bera and P. D. Dasgupta, respectively, in relation to the provision of system analysis and programming services. Apart from this, the agreements do not mention anything specifically about the actual services, if any, to be rendered by you. You have contended that the technical services are actually being rendered by you to the foreign enterprise through your technicians deputed outside India. However, in the absence of any specific provision in the agreement for the provision of back-up services by you or for holding you responsible for the proper execution of the contracts by the technicians deputed by you, your assertions cannot be corroborated. Apparently, the two agreements are for the mere supply of technical personnel for service outside India. According to the guidelines contained in para 3(vi) of the Board''s Circular No. 187 dated December 23, 1975 (see Commissioner of Income Tax Vs. P.N. Nagaraj and Another, agreements for the mere supply of technical personnel for service outside India are outside the scope of Section 80-O.

The Board, therefore, regrets their inability to approve your agreements dated June 15, 1978, and July 16, 1979, with Messrs. General Navigation and Commerce Co. Ltd., Dubai, U.A.E., for purposes of Section 80-O of the Income Tax Act, 1961."

2. The Board has not doubted that technical services are to be rendered by the petitioners to the foreign party through technicians deputed by the petitioner. The Board, however, is doubtful about the genuineness of these agreements because of the absence of any specific provision in the agreement for back-up services or in the absence of any default clause for the proper execution of the contract by the technicians deputed by the petitioners. The Board has concluded that the two agreements are for mere supply of technical personnel for service outside India.

3. Having regard to the object of Section 80-O, the Board''s objection does not appear to be lawful. If the petitioners agree to render technical services outside India to foreign enterprises and receive income in foreign exchange for such services, then the agreements of the petitioners are clearly within the scope of Section 80-0. It is not understood as to why the Board is objecting to the two agreements on the ground that the two agreements were for mere supply of technical personnel for service outside India. If the petitioners earn foreign exchange by rendering technical service by technical personnel abroad, it is clearly within the ambit of Section 80-O of the Income Tax Act. The application for review made by the petitioners before the Board was turned down by two orders both dated January 14/21, 1986. Therefore, I am of the view the the Board was not right in rejecting the petitioners'' application on this ground. The order of the Board dated May 17, 1983, is set aside. There will be an order in terms of prayer (A) of the writ petition. The Board is directed to pass a suitable order in accordance with law within a period of four weeks from the date of communication of this order in the light of this judgment. The assessment order will abide by the decision of the Board. If the Board grants approval to the two agreements, the assessment order will be amended by the Income Tax Officer accordingly.

4. The writ petition is disposed of finally as above. There will be no order as to costs.

