* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : September 18, 2007

\+ ITA 753/2007

COMMISSIONER OF INCOME TAX ..... Appellant
Through Ms. Prem Lata Bansal, Advocate

versus

EICHER CONSULTANCY SERVICES LTD. ..... Respondent
Through

CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE DR. JUSTICE S.MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in Digest? YES

ORDER

1. This appeal under Section 260-A of the Income Tax Act, 1961 ('Act') is directed against the decision dated 15th September, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench "A' Delhi ('Tribunal') in ITA No. 464/D/2002 for the Assessment Year 1996-97.

providing consultancy services against payment of Rs.67,82,500/- consultancy fee payable in US Dollars. The Assessee was to support Whirlpool operations located at Faridabad, India in the development of Master Facility and Productivity Study. For the relevant assessment year, the Assessee claimed deduction of Rs.60,46,224/- under Section 80-O being 50% of the gross income amounting to Rs.1,20,92,449/- in respect of the consultancy services provided to foreign clients. The said amount was received in US dollars.

3. The Assessing Officer held that the fees received for such services would not be eligible for deduction under Section 80-O of the Act since no services had been rendered outside India to a foreign government or enterprise as contemplated by that provision.

4. In the appeal filed by the Assessee, the Commissioner of Income Tax (Appeals) ['CIT(A)'] referred to the circular issued by the Central Board of Direct Taxes ('CBDT') and held that even though the services may be utilized in India by the foreign recipient of the services, it would still qualify for the deduction under Section 80-O of the Act. The CIT (A) directed the Assessing Officer to compute the net income arising out from the receipt and accordingly, consider the allowance of deduction under Section 80-O of the Act on the net amount. Aggrieved by this, the Revenue appealed to the Tribunal.

5. The Tribunal also concurred with the CIT(A) that the deduction ought to be allowed under Section 80-O of the Act and dismissed the appeal.

6. It is contended by Ms. Prem Lata Bansal, learned senior standing counsel appearing for the Revenue that the Explanation (iii) to Section 80-O of the Act, as it then stood during the relevant assessment year, defines services rendered or agreed to be rendered outside India to include

India, it cannot be said that the Assessee had rendered services out India.

7. Section 80-O of the Act as it stood at the relevant point in time reads as under:

> **"Section 80-O**
>
> **Deduction in respect of royalties, etc., from certain foreign enterprises.**
>
> Where the gross total income of an assessee, being an Indian company, or a person (other than a company) who is resident in India includes any income by way of royalty, commission, fees or any similar payment received by the assessee from the Government of a foreign State or a foreign enterprise in consideration for the use outside India of any patent, invention, model, design, secret formula or process, or similar property right, or information concerning industrial, commercial or scientific knowledge, experience or skill made available or provided or agreed to be made available or provided to such Government or enterprise by the assessee, or in consideration of technical or professional services rendered or agreed to be rendered outside India to such Government or enterprise by the assessee, and such income is received in convertible foreign exchange in India, or having been received in 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 and subject to the provisions of this section, a deduction of an amount equal to fifty per cent of the income so received in, or brought into, India, in computing the total income of the assessee.

year or where the Chief Commissioner or Commissioner is satisfied (for reasons to be recorded in writing) that the assessee is, for reasons beyond his control, unable to do so within the said period of six months, within such further period as the Chief Commissioner or Commissioner may allow in this behalf.

Explanation : For the purposes of this section, -

(i) xxx xxx xxx

(ii) xxx xxx xxx

(iii) Services rendered or agreed to be rendered outside India shall include services rendered from India but shall not include services rendered in India.

8. The CBDT by its Circular No. 700 dated 23rd March, 1995 issued a clarification regarding the deduction under Section 80-O of the Act. The relevant portion of the said clarification reads as under:

"It has been clarified in Explanation (iii) to Section 80-O that services rendered or agreed to be rendered outside India (i.e. item (b) above) shall include services rendered from India but shall not include services rendered in India.

A question has been raised as to whether the benefit of Section 80-O would be available if the technical and professional services, though rendered outside India, are used by the foreign Government or enterprise in India.

The matter has been considered by the Board. It is clarified that as long as the technical and professional services are rendered from India and are received by a foreign Government or enterprise outside India, deduction under Section 80-O would be available to the person rendering the services **even if the foreign recipient of the services utilises the benefit of such services in India."**

9. This Circular therefore makes it clear that the key element in Sec 80-O of the Act is not so much the location where the services are utilised but the fact that it is rendered to an entity outside India.

10. This Court in ***Commissioner of Income Tax v. Mittal Corporation [2005] 272 ITR 87*** clarified that an Assessee who provides industrial, commercial or scientific knowledge or experience or skill is entitled to this benefit. It is not as if only an Assessee providing technical services alone will qualify for the exemption. The expression, therefore, admits of a broader and not a narrow interpretation. In our view consultancy services would involve rendering of professional services and therefore the contention that the services provided by the Assessee in this case does not qualify as technical or professional services, does not merit acceptance.

11. On the question whether the services have been rendered from India or in India, as already noticed the clarification issued by the CBDT categorically states that as long as the services are provided to a foreign entity, the mere fact that the information used or services rendered is utilized in India would not describe the provider of the services to the deduction under Section 80-O of the Act. In any event there are concurrent findings both by the CIT (A) and the Tribunal that the services rendered by the Assessee in the instant case are from India. We find no infirmity in the said conclusion arrived at by the two authorities.

12. No substantial question of law arises in this appeal. This appeal is dismissed.

S. MURALIDHAR, J.

MADAN B. LOKUR, J.