



* **HIGH COURT OF DELHI : NEW DELHI**

ITA No.522/2007

% Judgment reserved on: 18th March, 2008

Judgment delivered on: 27th March, 2008

Commissioner of Income Tax
Delhi-XVII
Mayur Bhawan
Connaught Circus
New Delhi

..... Petitioner.

Through: Mr. R.D. Jolly, Adv.

Vs.

Sara International Ltd.
A-31, Hauz Khaz,
Delhi

..... Respondent

Through: Mr. K. Sampath, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |



V.B.Gupta, J.

The Revenue has filed this appeal under Section 260A of the Income Tax Act, 1961 (for short as 'Act') against the impugned order dated 2nd December, 2005 passed by the Income Tax Appellate Tribunal, Delhi Bench 'A' in ITA T.D.S. No.212/Del/2003 for the assessment year 2001-02 vide which the appeal filed by the Assessee was allowed.

2. Brief facts of this case are that the Assessee filed TDS return on Form No.26-C and the same was selected for scrutiny by the Assessing Officer. During the course of the proceedings, it was seen as per the details and copies of Ledger Account that the Assessee had shown expenses of Rs.87,27,705/- as commission under the head "Salary Expenses". Out of these expenses, a sum of Rs.62,60,705/- was paid to M/s. PEC Ltd, Rs.1,64,000/- to M/s. Bhura Export Ltd. and Rs.23,03,000/- to M/s. Ayusa International. The Assessee had submitted documents as far as M/s. Bhura Export Ltd. and M/s. Ayusa International were concerned but no agency

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agreement with M/s. PEC Ltd. was filed. The Assessee explained that commission was paid to M/s. PEC Ltd. for export of wheat. The Assessing Officer asked the Assessee to furnish evidence in support of its explanation. The Assessee filed copy of agreement dated 10th February, 2001. After examining the agreement, Assessing Officer came to the conclusion that the payment made by the Assessee was covered within the meaning of fee for technical services and it was not a case of payment of commission and as such Assessee was liable to deduct tax at source under Section 194-J of the Act and since the Assessee has failed to make the deduction, it was Assessee in default within the meaning of Section 201(1) of the Act and also liable to pay interest.

3. Against the order passed by the Assessing Officer, Assessee filed an appeal before the Commissioner of Income Tax (Appeal) (for short as 'CIT[A]') and the CIT(A) vide its order dated 6th October, 2003 upheld the order of the Assessing Officer. Against the order of the CIT(A), the Assessee filed an appeal before the Tribunal and vide the impugned order the Tribunal accepted the appeal of



the Assessee and set aside the orders of the lower authorities. Now, the Revenue is before this Court.

4. It has been contended by learned counsel for the Revenue that the relevant clauses of the agreement clearly show that there was no relationship of Principal and agent between the Assessee and M/s. PEC Ltd. Further, no commission was received by M/s. PEC Ltd. and the services rendered by it were professional and technical in nature.

5. On the other hand, it has been contended by learned counsel for the Assessee that the Assessee had paid commission to M/s. PEC Ltd. which was exempt from TDS deduction and M/s. PEC Ltd. had transferred a simple contract of supplies to the Assessee against the payment and M/s. PEC Ltd. was not rendering any kind of professional/technical services.

6. Relevant clauses of the agreement dated 10th January, 2001 entered between M/s. PEC Limited and the Assessee has been reproduced by the Tribunal in the impugned order.



7. Sec. 194H of the Act defines the expression “commission” which includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing.

8. Section 194J of the Act defines the expression ‘professional services’ which mean services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the Board for the purposes of Sec. 44AA of this section. The expression ‘fees for technical services’ means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like



project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head 'salaries'.

9. A careful reading of the terms of the agreement leaves no doubt that the services rendered by M/s. PEC Ltd. does not include any managerial, technical and consultancy services during the course of procurement and supply of goods. Although nowhere it mentions that the Assessee is liable to pay commission to M/s. PEC but the Clause 6 of the agreement clearly shows that the payment made to M/s. PEC is commission. A perusal of clauses clarifies that during the financial year, the relationship between M/s. PEC and Assessee was that of Principal and Agent. Clause 6 provides that Foreign L/C shall be transferred in favour of SIL and M/s. PEC's service charge shall be US\$ 1/- PMT Nett of Bill of lading quantity. It is clear from the said clause that M/s. PEC had transferred its wheat export L/Cs in favour of the assessee for execution of the wheat export and M/s. PEC charged commission for the export. Therefore, it can be said that M/s. PEC Ltd. transferred foreign buyers L/Cs in favour of the assessee against commission charges.



10. Further, perusal of the agreement dated 10.1.01 shows that M/s. PEC Ltd. had signed a contract with foreign buyer for supply of wheat and the assessee agreed to assist M/s. PEC in exporting wheat and the M/s. PEC transferred foreign buyers' L/C in favour of the Assessee against commission charges. As per clause 1 of agreement, M/s. PEC was to request to M/s. FCI for release of Cargo from the identified FCI godowns and the assessee was to make direct payment to FCI towards the purchase price of wheat and bear all other expenses relating to shipment of wheat and managed the entire export.

11. As per clause 4 of agreement, the assessee agreed that the quantity of wheat delivered by FCI for the purpose of export against the export contract shall be exported in full to the foreign buyer and will not be sold in domestic market. All important works is being done by the Assessee and M/s. PEC had transferred a simple contract of supplies to the assessee against the payment of commission and M/s. PEC was not rendering any kind of



professional/technical services. Thus, the provision of section 194J of the Act is not applicable.

12. So it is clear that the amount paid by assessee to M/s. PEC was not towards fee for professional or technical service. Therefore, the provisions of Sec. 194J of the Act are not applicable to the facts of the present case and the assessee is not liable to deduct tax at source on this amount under Sec. 201 / 201(A) of the Act.

13. Under these circumstances, we do not find any infirmity in the impugned order passed by the Tribunal and thus in our opinion no substantial question of law arises for consideration.

14. The appeal filed by the Revenue is hereby dismissed.

V. B. GUPTA, J.

MADAN B. LOKUR, J.

March 27, 2008

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