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

ITA No.532/2007

% Judgment reserved on: 19th March, 2008

Judgment delivered on: 2nd April, 2008

LI & FUNG INDIA P.LTD.
216, Okhla Industrial Estate,
Phase III,
New Delhi 110020 ..... Petitioner.

Through: Mr. Ajay Vohra with
Ms. Kavita Jha, Adv.

Vs.

THE COMMISSIONER OF INCOME TAX
NEW DELHI ..... Respondent

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

Coram:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

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 following substantial question of law arises in the present appeal:-

> "Whether on the facts and circumstances of the present case, assessee is eligible for deduction under Section 80-O of the Income Tax Act, 1961?"

2. Brief facts of this case are that the assessee claimed to have rendered technical services out of India as buying agent and thus claimed to be eligible for deduction of Rs. 3,20,81,836/- under Section 80-O of the Income Tax Act, 1961 (for short as 'Act'). However, as positive income was shown at Rs.1,40,50,080/-, the deduction under the above provision was restricted to the income shown. The Assessing Officer was however of the view that the assessee has merely rendered managerial services not of technical nature and thus requirement of Section 80-O of the Act was not satisfied. The Assessing Officer thus denied the deduction claimed by the assessee.

3. On appeal filed by the assessee, the CIT(A) held that services rendered by the assessee are professional

and / or technical services and view taken by the Assessing Officer that technical services would be restricted to services which are purely technical in nature involving scientific or engineering experience is taking too narrow view of the matter and held that the assessee is entitled to deduction under Section 80-O of the Act.

4. Being aggrieved with the order passed by the CIT(A), the revenue filed an appeal before the Tribunal and vide the impugned order the Tribunal held that 30% of the fees received by the assessee is taken towards services rendered in India and 70% of fees received by the assessee is taken to be qualified for deduction under Section 80-O of the Act and accordingly directed the Assessing Officer to re-compute the deduction.

5. The assessee has challenged the order of the Tribunal passed in ITA No.1547/Del/2001 relevant for

the assessment year 1997-98 by way of the present appeal.

6. It has been contended by learned counsel for the Assessee that the assessee company is incorporated in India with the object of providing buying services from India to various principals and the services rendered by the assessee requires knowledge, expertise and experience and were essentially technical services and in any case, even if it was to be held that a portion of the said services were managerial services, the same would be regarded as technical services as defined in Explanation (2) to Section 9(i)(vii) of the Act and therefore, covered under Section 80-O of the Act. Further, the services rendered to the foreign principal no doubt originate in India but terminate outside India only when the foreign client is communicated the contents and factum of rendition of services. It is also submitted that even if the benefit of the services was utilized by the foreign principals to further their business interest in India, the services rendered by the

assessee were to be regarded as rendered from India in the terms of the Circular of Central Board of Direct Taxes, No.700 dated 23rd March, 1995.

7. Learned counsel in support of his contentions has cited a decision of this Court in ***The Commissioner of Income Tax vs. Mittal Corporation [2005] 272 ITR 87.***

8. On the other hand, it has been argued by learned counsel for the revenue that the assessee in this case was rendering services to foreign buyers in India and according to Explanation (iii) to Section 80-O of the Act no deductions are permissible in respect of services rendered in India. It is further contended that if certain portion of the services are rendered outside India, then the assessee could only be allowed deduction qua such portion of services. The deduction could not be allowed on the whole amount and on this point learned counsel for the revenue has relied upon a

decision of the Apex Court in the case of ***Continental Construction Ltd. vs CIT [1992] 195 ITR 81.***

9. Section 80-O of the Act as applicable during the relevant assessment year provides for deduction in respect of consideration received, inter alia, for rendering professional and technical services from India. The relevant provisions of this Section read 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 foreign enterprise....or in consideration of technical or professional services rendered or agreed to be rendered outside India to such Govt. 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 percent of the income so received in, or brought into, India in computing the total income of the assessee.
>
> Explanation: For the purposes of this section-
>
> …….
>
> (iii) Services rendered or agreed to be rendered outside India shall include services rendered from India but shall not include services rendered in India".

10. Section 80-O of the Act does not define the term 'technical' or 'professional services'.

11. Clause (a) to Explanation to Section 194J of the Act defines the expression 'professional services' means 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 Section 44AA or Section 194J of the Act.

12. Clause (b) of the said explanation defines 'fees for technical services' to have the same meaning as in Explanation 2 to Section 9(I)(vii) of the Act which is as follows:

13. For the purpose of this Section, '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'.

14. The word 'technical' has been defined in the Oxford Dictionary to mean, inter alia,

> "of or involving or concerned with mechanical arts and applied sciences; of or relating to a particular subject or craft etc. or its techniques, requiring special knowledge to be understood."

15. The Supreme Court in ***Continental Construction case (supra)*** explained the scope of the term 'technical services' as follows:

> "….the expression 'technical services' has a very broad connotation and it has been used elsewhere in the statue also so widely as to comprehend professional services: vide Section 9(1)(vii) referred to earlier. But we need not digress on this aspect for two reasons. Firstly, whatever, may be the position regarding other 'professional services', there can hardly be any doubt that services involving specialized knowledge, experience and skill in the field of constructional operations are 'technical services'."

16. In ***Mittal Corporation case (supra)*** the assessee received commission income as buying agent of foreign enterprises. The assessee claimed deduction under section 80-O of the Act on commission income which was earned on providing commercial information to the foreign buyers. It was held that:-

> "Thus, it cannot be said that the assessee must provide "technical services" even where it receives consideration for only providing commercial information. The section is required to be interpreted accordingly. On the facts, the Tribunal

> clearly held that there is no dispute that it is commercial information which the assessee provided to the foreign buyers and in consideration thereof, the assessee received commission which was in convertible foreign exchange. In view of this, the claim made by the assessee cannot be denied under section 80-O of the Act."

17. Thus, in view of the aforesaid factual situation, it is clear that the services rendered by the assessee require knowledge, expertise and experience and fee received from foreign enterprises for supply of commercial information sent from India for use outside India is eligible for deduction under section 80-O of the Act.

18. Learned counsel for the assessee has also placed reliance on Central Board of Direct Taxes, Circular No.700 dated 23.3.1995, which reads as under:-

> "Deduction under section 80-O of the Income Tax Act, 1961
>
> - clarification regarding.
>
> Section 80-O of the Act, provides for a deduction of 50 per cent from the income of an India resident by way of royalty, commission, fees or any similar

payment from a foreign Government or enterprise:-

(a) in consideration for the use outside India of
any patent, invention, model, design, secret formula or process, etc; or

(b) in consideration of technical or profession services rendered or agreed to be rendered outside India to such foreign Government or enterprise.

In either case, the requirement is that the income should be in convertible foreign exchange.

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 of the Act 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 of the Act would be available to the person rendering the services even if the foreign recipient of the services

utilizes the benefit of such services in India."

19. On the facts of the present case, it is clear that since the contract obliged the assessee to make available information and render services to the foreign client of the nature outlined in Section 80-O of the Act and the Circular No.700 dated 23.3.95 and in consideration thereof, the assesse received the payment which was in convertible foreign exchange. Therefore, the assesse is to be given the benefit of the deduction available under the section to the extent of such consideration. The claim made by the assessee cannot be denied under section 80-O of the Act and thus the Tribunal erred in law in restricting the claim of deduction under Section 80-O of the Act to 70%.

20. The assessee is allowed to qualify for the deduction under Section 80-O of the Act. Thus, the substantial question of law is decided in the

affirmative, in favour of the Assessee and against the Revenue.

21. Accordingly, the appeal stands allowed.

V. B. GUPTA, J.

MADAN B. LOKUR, J.

April, 2008
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