

आयकर अपीलीय अधिकरण, मुंबई "एल" खंडपीठ

Income-tax Appellate Tribunal "L" Bench Mumbai

सर्वश्री राजेन्द्र, लेखा सदस्य एवं रविश सूद, न्यायिक सदस्य

Before S/Sh. Rajendra, Accountant Member & Ravish Sood, Judicial Member

आयकर अपील सं./ITA./619/Mum/2017, निर्धारण वर्ष /Assessment Year: 2013-14

M/s. Atomstroyexport-Russia C/o. Nuclear Power Corporation of India Limited, 8 th Floor, South Wing, Vikram Sarabhai Bhavan, Central Avenue, Anushakti Nagar, Mumbai-400 094. PAN:AAFCA 3658 N.	Vs.	Dy. DIT(IT), Range-1(1)(2) 1 st floor, Scindia House, Ballard Estate, NM Road, Mumbai-400 038
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri Samuel Darse-CIT-DR

Assessee by: Shri Nitesh Joshi -AR

सुनवाई की तारीख / Date of Hearing: 06.09.2017

घोषणा की तारीख / Date of Pronouncement: 06.09.2017

आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1) of the Income-tax Act, 1961 (Act)

लेखा सदस्य राजेन्द्र के अनुसार /PER RAJENDRA, AM-

Challenging the order dated 15/11/2016 of the AO, passed in pursuance of the Directions of the Dispute Resolution Panel (DRP), Mumbai, the Assessee has filed the present appeal. The assessee is a joint stock company under the Ministry of Atomic Energy, Russian Federation, incorporated under the provisions of Russian Legislation having its registered office at Moscow, Russia. It is engaged in the business of commissioning of turnkey power project. Return of income was filed on 31/3/2006 declaring a total income of Rs.12.30 crores. The Assessing Officer (AO) completed the assessment on u/s. 143(3) r.w.s.144C(13) of the Act, determining its income at Rs.1,23,06,44,210/-.

2. Effective ground of appeal is about taxing the amount of Rs. 183.78 crores in India that was received by the assessee for executing the Offshore Supply Contract. During the assessment proceedings, the AO found that the assessee had entered into an agreement with Nuclear Power Corporation of India Ltd. (NPCIL) to set up two 1000 MW power plant units in Tamilnadu, that for that purpose it entered into five different agreements with NPCIL, that NPCIL had made payments of Rs.70.11 crores to the assessee for executing the above referred agreements besides paying Rs.183.78 crores for supplying offshore equipments (OSE) and materials, that it had also

entered in to an agreement for carrying out first priority design work for the construction of Units 3 & 4, that for execution of the said agreement a further payment of Rs.21.72 crores was made by NPCIL. He observed that the assessee had claimed applicability of the provisions of section 44BBB of the Act to the fees received from NPICL in respect of Offshore Service Contracts, that it claimed that the receipts under Offshore Supply Contracts were not taxable in India, that income received from the contract of priority design work were to be taxed @ 10% under the head payments received towards royalty. He asked the explain as to why the receipt of Rs.183.78 crores received by it on account of offshore supply contract should not be taxed in India. After considering the submissions of the assessee and the Directions of the DRP, the AO held that income of the assessee from the offshore service contract and offshore supply contracts was taxable in India as per the provisions of section 44BBB of the Act.

3. Before us, representatives of both the sides agreed that the issue stands covered in favour of the assessee by the orders of the Tribunal for the AY.s.2007-08,2008-09,2011-12(ITA.s 8074/ Mum/2010,ITA/6573/Mum/2011,ITA/1033/Mum/2015.dtd.10.01.2017)andAY.2009-10(ITA/6581/ Mum/2012/,dtd.22.03.2017). We are reproducing the relevant portion of the order of the Tribunal for the AY.2009-10(supra)and it reads as under:

“5.Learned Authorised Representative submitted before us that the 2007-08, 2008-09 and 2011-12 in ITA no.8074/Mum./2010, ITA no.6573/Mum./2011 and no.1033/Mum./2015, respectively, vide order dated 10th January 2017, by giving a categorical finding that the amount received under the off-shore contract are not taxable in India under section 44BBB. Therefore, he submitted, the amounts, received under the off-shore supply contracts cannot be taxed.

6.Learned Departmental Representative fairly agreed that the issue squarely covered by the decision of the Tribunal under reference.

7.We have considered the submissions of the parties and perused the material available on record as well as the order of the co-ordinate bench referred to above. The issue in dispute in these grounds is in relation to taxability of the amount received towards supply of materials and equipment under the off-shore supply contracts. Undisputedly, the off-shore supply contracts under which the assessee has supplied materials and equipments in the impugned assessment year is/are continuing from the assessment year 2006-07 onwards. It is relevant to note, the taxability of the amount received under the off-shore contract is a contentious issue between the assessee and the Department right from the assessment year 2006-07. In fact in the impugned assessment year, the Assessing Officer following the order of the DRP for assessment year 2006-07 and 2007-08, has brought to tax the amount received under off-shore supply contracts by applying identical nature of dispute raised by the assessee for assessment year 2007-08, 2008-09 and 2011-12, the Tribunal in its order, as referred to above, after analyzing the nature of contract, provisions of the Act, and relevant DTAA as well as the principles of law laid down in judicial precedents, in a detailed order ultimately concluded, since, supply of materials and equipments under the off-shore supply contracts were carried out and concluded outside India, the receipts from off-shore supply contracts cannot be deemed to accrue or arise in India. The operative portion from the order of the Tribunal is extracted herein below –

"15 Therefore after analyzing the various case laws, statutory provisions, DTA/ provisions and contractual terms and respectfully following judgment of Hon'ble Supreme Court in Ishikawajima-Harima Heavy Industries Limited V/s DICT (288 ITR 408), we are inclined to hold that Offshore Supply contracts were 'carried and concluded-'outside India and hence no income therefrom deemed to accrue or arise in India as per section 9(1) and DTAA provisions and accordingly, not chargeable to tax. The receipts thereof do not form part of receipts for the purpose of computational provisions of section 44BBB. Explanation-4 could not overcome the limitation imposed by Explanation-1(a) to section 9(i)(i) and hence, the impugned income do not form part of business receipts for computation of income u/s 448A8 of the Act. We held so."

8. There being no material difference in facts in the impugned assessment respectfully following the decision of the co-ordinate bench as referred to above, we hold that the amount received towards sLi:fyf: material and equipment under the off-shore supply contract exclude the amount of 423,73f 10,473, from the gross receipts for computing tax under section 441BBB. Grounds no.1 to 5, are allowed."

Respectfully, following the above order of the Tribunal, we decide the effective ground of appeal in favour of the assessee.

As a result, appeal filed by the assessee stands allowed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील मंजूर की जाती है.

Pronounced in open court on 6th, September, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक 6 सितंबर, 2017 को की गई।

Sd/-

Sd/-

(रविश सूद /Ravish Sood)

(राजेन्द्र / RAJENDRA)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक/Dated :06.09.2017.

Jv. Sr. PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR "L" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ, आ.अधि.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.