[2024] 461 ITR 33 (Del)

[IN THE DELHI HIGH COURT]

COMMISSIONER OF INCOME-TAX (INTERNATIONAL TAXATION)

v.

HEIDRICK AND STRUGGLES INC.

RAJIV SHAKDHER and GIRISH KATHPALIA *JJ.*

July 25, 2023.

Assessment Year: 2018-19
Favouring: Assessee, person

ASSESSMENT — EFFECT OF CBDT CIRCULAR NO. 14 OF 1955 — DUTY OF ASSESSING OFFICER TO GRANT RELIEF TO ASSESSEE EVEN IF NOT CLAIMED — INCOME-TAX ACT, 1961

According to the Central Board of Direct Taxes Circular No. 14 of 1955, officers of the Department must not take advantage of the ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him.

Held, dismissing the appeal, that what emerged from a reading of the order was that (i) it was not the case of the Department that the income received by the assessee for the services rendered to an Indian company was taxable, (ii) the benefit of article 12 of the Double Taxation Avoidance Agreement between India and the United States of America was available to the assessee, (iii) rectification had been ordered with respect to two other group companies, in similar circumstances, respectively, and (iv) Circular No. 14 of 1955 dated April 11, 1955, which, inter alia, casts a duty on the officers of the Department to draw the attention of the assessee towards any relief that may be available to them, which the assessee may have inadvertently omitted to claim, was applicable in the instant case. The Tribunal was right in granting relief to the assessee.

CIT v. Bharat General Reinsurance Co. Ltd. [1971] 81 ITR 303 (Delhi) (page 36c) and Madhabi Nag Bankura v. ACIT [2015] SCC Online ITAT 13813 (page 36b) referred to.

I. T. A. No. 396 of 2023.

Sanjay Kumar, Senior Standing Counsel, with *Ms. Easha Kadian* and *Ms. Hemlata Rawat*, Standing Counsel, for the appellant.

Rohit Tiwari, Advocate, for the respondent.

JUDGMENT

The judgment of the court was delivered by

Rajiv Shakdher J.—C. M. Appl. No. 37204 of 2023 (Application filed on behalf of the appellant-Revenue seeking condonation of delay of 180 days in refiling the appeal)

This is an application moved on behalf of the appellant-Revenue, seek ing condonation of delay in refiling the appeal.

2. According to the appellant-Revenue, there is a delay of 180 days.

3. Mr. Rohit Tiwari, who appears on behalf of the respondent-assessee, does not oppose the prayer made in the application.

4. Accordingly, the delay is condoned.

The application is disposed of, in the aforesaid terms. I. T. A. No. 396 of 2023.

5. This appeal concerns the assessment year (AY) 2018-19.

6. Via this appeal, challenge is laid to the order dated August 26, 2022 passed by the Income-tax Appellate Tribunal (in short, "Tribunal").

7. According to Mr. Sanjay Kumar, learned senior standing counsel, who appears on behalf of the appellant-Revenue, the short issue which arises for our consideration is : Whether the Tribunal could have overturned the view taken by the Commissioner of Income-tax (Appeals) (in short, "CIT(A)") and the Assessing Officer (AO), that the rectification which the petitioner sought concerning the subject income being inadvertently shown under the wrong head, could not be dealt with, under section 154 the Income-tax Act, 1961 (in short, "Act").

8. The brief facts which arise for our consideration concern imposition of tax on the income received by the respondent-assessee, for services ren- dered to an Indian company, namely, Heidrick and Struggles India Pvt. Ltd. (in short, "HSIPL").

9. The respondent-assessee had filed its return of income (ROI), wherein the income received from HSIPL on account of services rendered, i. e., Rs. 2,84,40,475, was shown under the head "Income from other sources". The record shows that the return was processed under section 143(1) of the Income-tax Act, 1961 (in short, "Act") by the Centralized Processing Centre, Bengaluru (in short, "CPC").

10. The record also discloses that the petitioner moved a rectification application, which did not find favour with the Centralized Processing

Centre. The Centralized Processing Centre issued an intimation/order dated June 14, 2019, in that regard.

11. Being aggrieved, the respondent-assessee preferred an appeal with the Commissioner of Income-tax (Appeals).

The Commissioner of Income-tax (Appeals) did not disturb the intimation/order dated June 14, 2019 issued under section 143(1) of the Act.

12. It is in these circumstances that the respondent-assessee carried the matter in appeal to the Tribunal.

13. The Tribunal, after having perused the material on record, made the following crucial observations in paragraphs 9 to 12 of the impugned order :

"9. We have heard the parties, perused the material on record and gave our thoughtful consideration. It is admitted fact that the assessee has filed its return, claimed service income of Rs. 2,84,40,475 received from Heidrick and Struggles Pvt. Ltd. as income from other sources. As per India US Tax Treaty, the service rendered by the assessee do not specify the 'make available clause of India US Tax Treaty'. It is also emerges from the record that for the assessment year 2018-19 a similar adjustment, i. e., taxing a service receipt, 40 per cent. was levied by Centralized Processing Centre, Bangalore in the case of assessee's group company, i. e., Heidrick and Struggles Pvt. Ltd. Singapore, Heidrick and Struggles Pvt. Ltd. UK, the said assessee has preferred an application for rectification wherein the rectification applications have been allowed by the Centralized Processing Centre on February 27, 2020 and January 30, 2020 which are found place in the paper book page No. 300-307 and 361 to 368. Further, it is not in dispute that as per India US Tax Treaty the impugned income is not chargeable to tax as per the provisions of article 12 of India USA Tax Treaty.

10. As per the Central Board of Direct Taxes, Circular No. 14 reads as follows :

> Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a tax-payer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessee on whom it is imposed by law, officers should

> (a) Draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other ;
>
> (b) Freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs.

11. Further, in the case of Madhabi Nag Bankura v. ACIT* (I. T. A. No. 512/Kol/2015) (Kolkata), the hon'ble Tribunal held that the Revenue authorities ought not to have rejected the application under section 154 of the Act on the ground that the assessee has not filed the revised return of income. Further in the case of CIT v. Bharat General Reinsurance Co. Ltd.**, the hon'ble High Court held that merely because the assessee wrongly included the income in its return for a particular year, it cannot confer jurisdiction on the Department to tax that income in that year even though legally such income did not pertain to that year.

12. In our opinion, the addition has been made only due to wrong reporting of income by the assessee which cannot be sustained. Therefore, in our opinion, the learned Commissioner of Income-tax (Appeals) has committed an error in dismissing the appeal filed by the assessee. Accordingly, we allow the assessee's grounds of appeal Nos. 1 and 2." (emphasis is ours)

14. What emerges from a reading of the impugned order is the following :

(i) It is not the case of the appellant-Revenue that the subject income, i. e., the income received by the respondent-assessee for the services rendered to an Indian company, i. e., HSIPL, was taxable.

(ii) The benefit of article 12*** of the India-USA Double Taxation Avoidance Agreement (in short, "Indo-USA DTAA") was available to the respondent-assessee.

* [2015] SCC Online ITAT 13813.

** [1971] 81 ITR 303 (Delhi).

*** Article 12
Royalties and fees for included services
1. Royalties and fees for included services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State. . . .
4. For purposes of this article, “fees for included services” means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services:
(a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 is received ; or
(b) make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design.

(iii) The rectification had been ordered by the Centralized Processing Centre with respect to two other group companies, i. e., Heidrick and Struggles Pvt. Ltd., Singapore, Heidrick and Struggles Pvt. Ltd., UK, in similar circumstance, via order dated February 27, 2020 and January 30, 2020, respectively.

(iv) The Central Board of Direct Taxes Circular No. 14 of 1955 dated April 11, 1955 was applicable in the instant case, which, inter alia, casts a duty on the officers of the appellant-Revenue to draw the attention of the assessee towards any relief that may be available to them, which the assessee may have inadvertently omitted to claim.

15. Having regard to the aforesaid, we are of the view that the Tribunal has taken a just view in consonance with the provisions of the Act and the aforementioned circular issued by the Central Board of Direct Taxes. Undoubtedly, the appellant-Revenue can seek to levy tax only on income which falls within the ambit of the Act. Merely because the respondent-

assessee placed the income under a wrong head, cannot possibly make it amenable to imposition of tax.

16. According to us, no substantial question of law arises for our consideration.

17. The appeal is, accordingly, closed.

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