

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

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I.T.A.No.382 of 2015

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JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

This appeal, under Section 260-A of the Income Tax Act, is preferred against the order passed by the Income Tax Appellate Tribunal, Hyderabad in I.T.A.No.1342/Hyd/2013 dated 04.06.2014 for the assessment year 2008-2009. Two appeals, preferred by the assessee in I.T.A.No.1342/Hyd/2013 and I.T.A.No.1343/Hyd/2013 for the assessment years 2008-2009 and 2009-2010 respectively, were decided by the Tribunal by way of a common order.

Facts, as noted in the order of the Tribunal, are that the petitioner's parent company-M/s.Akor Petroo Limited took a loan from U.T.I. Bank in the year 2004 for Rs.4,37,43,512/-; and, utilizing the said loan amount, purchased technical data from M/s.Hardi Exploration and Production (Hardi UK). This technical data was given by M/s.Akor Petroo Limited to its subsidiary (the assessee), and the account of the assessee was debited with this amount in the books of accounts of M/s.Akor Petroo Limited. This amount was recovered, in the subsequent year, from the assessee company by its parent company M/s.Akor Petroo Limited treating the amount of Rs.4,40,60,426/- (as against the actual amount, as per account, of Rs.4,37,43,512/-) paid by the assessee to its parent company on 31.03.2008 as the cost of technical data received from it.

The assessing officer passed an order, under Section 201(1A) of the Act, treating this amount as liable for TDS under Section 194-J of the Income Tax Act. The assessing officer demanded TDS of Rs.49,92,046/- under Section 201(1) and interest of Rs.17,97,136/- under Section 201(1A) of the Act. The assessee's appeal was rejected by the Commissioner of Income Tax Appeals, though the assessee contended that their parent company M/s.Akor Petroo Limited had not rendered any technical services to them; M/s.Akor Petroo Limited obtained technical data from

M/s.Hardi Exploration and Production (Hardi UK) in the year 2004; for the technical services rendered by the latter to the former, payment was made outside India by the parent company to M/s.Hardi UK; the parent company M/s.Akor Petroo Limited had merely passed on such technical data to the assessee company; and they never rendered any technical services which attracted the provisions of Sections 194-J of the Act.

Aggrieved by the order of the Commissioner, the assessee carried the matter in appeal. In the order under appeal, the Tribunal observed that the payment made by M/s.Akor Petroo Limited to Hardi UK was credited in its books in the financial year 2004-2005; the assessee was merely supplied with ready study data, and no services were rendered by M/s.Akor Petroo Limited to the assessee; the ready study data, acquired by M/s.Akor Petroo Limited, was purchased by the assessee; payment made on such purchases did not attract TDS; no services of any sort were rendered by M/s.Akor Petroo Limited to the assessee, to be construed as technical services rendered to a resident under Section 194-J of the Act; the assessing officer had wrongly levied tax under Section 201 of the Act, and interest thereon; rendering technical services is essential in terms of Section 194-J of the Act r/w.Explanation-2 to Section 9(1)(vii) of the Act; as held by the Supreme Court, in **G.E. India Technology Centre P. Ltd. v. Commissioner of Income Tax**, the obligation to deduct tax arises only when the sum paid is 'chargeable to tax under the Act'; in the present case, the amount credited to the account of M/s.Akor Petroo Limited was merely reimbursement of payment made by M/s.Akor Petroo Limited to Hardi UK in the year 2004; and the order of the assessing officer was erroneous. After perusing copies of the ledger accounts of the assessee, in the books of M/s.Akor Petroo Limited, as well as the ledger account of Hardi U.K in the books of M/s.Akor Petroo Limited, the Tribunal held that it was clearly established that it was merely reimbursement of the amounts paid by M/s.Akor Petroo Limited to the Hardi U.K, and the same was reflected as a loan; it was neither reflected as expenditure or as income in the books of accounts of M/s.Akor Petroo Limited; and there was no liability of making any TDS when payment was made by way of reimbursement of expenses.

Sri B.Narasimha Sarma, Learned Senior Standing Counsel for the Income-Tax Department, would reiterate the very same submissions urged on behalf of the Revenue before the Tribunal.

From a perusal of the order under appeal, it is clear that the ready study data, purchased by M/s.Alkor Petroo Limited from M/s.Hardi Exploration and Production (Hardi UK), was supplied by them to their subsidiary i.e., the assessee; and the amount paid by M/s.Alkor Petroo Limited to Hardi UK was reimbursed by the assessee four years thereafter in the year 2008. It is evident, therefore, that no services were rendered by the parent company (M/s.Alkor Petroo Limited) to its subsidiary (i.e., the assessee) so as to be construed as technical services rendered to a resident under Section 194-J of the Act.

Sri B.Narasimha Sarma, Learned Senior Standing Counsel for Income Tax Department, has also not been able to show how procurement of ready study data by the parent company, from another foreign company, and supplying it to the assessee amounts to services rendered to a resident attracting Section 194-J of the Act. The Tribunal is the final court of facts and, as the finding recorded by it is on the basis of the material on record, the order under appeal cannot be said to be perverse. The said order does not also give rise to any substantial question of law necessitating interference in appeal under Section 260-A of the Act.

The appeal fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

RAMESH RANGANATHAN, J

S.RAVI KUMAR, J

Date:07.12.2015.