IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

INCOME TAX APPEAL NO.106/2010

The Commissioner of Income Tax-IV, Nagpur
...Versus...
Shri Sanjaykumar Narayandas Saraf

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri Anand Parchure, Advocate for appellant
Shri K.P. Dewani, Advocate for respondent

CORAM : SMT. VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.
DATE : 12.07.2016

By this Income Tax Appeal, the appellant - Department challenges the order of the Income Tax Appellate Tribunal, dated 26.6.2009 dismissing the appeal of the Department and upholding the order of the Commissioner of Income Tax (Appeals) deleting the addition of Rs.08,32,04,200/- made by the Assessing Officer under Section 68 of the Income Tax Act.

The respondent – assessee is a non-resident, who had remitted money from his foreign bank account to Indian bank account during the relevant period. The Assessing Officer made an addition of Rs.08,32,04,200/- under Section 68 of the Act by rejecting the claim of the assessee that the assessee had received the said amount towards consultancy charges for rendering the services outside India for three corporate entities. The order of the Assessing Officer was challenged by the respondent – assessee before the Commissioner of Income Tax (Appeals) and the Commissioner of Income Tax (Appeals) allowed the appeal filed by the assessee. It was held that no addition could have been made by the Assessing Officer, as it was duly proved by the assessee that the assessee had received the said amount towards consultancy charges for rendering the services outside India for the different corporate entities. Being aggrieved by the order of the Commissioner of Income Tax (Appeals), the Department had filed the appeal before the Income Tax Appellate Tribunal. The Tribunal, by the impugned order, dated 26.6.2009 dismissed the appeal filed by the Department. The Department has filed this Income Tax Appeal against the order of the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal.

On hearing the learned Counsel for the parties and on a perusal of the orders of the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal, it appears that there is no scope for interference with the orders. The Commissioner of Income Tax (Appeals) as well as the Income Tax Appellate Tribunal, have properly assessed the evidence on record and have recorded a finding of fact that the assessee had received the aforesaid amount towards the consultancy charges for rendering the services out of India. While holding so, the Authorities observed that the money was admittedly remitted from the foreign bank account to the account of the assessee in India. The Commissioner of Income Tax (Appeals) and the Tribunal recorded that the companies to which the respondent –

assessee provided the consultancy services are the tax residents of Mauritius and are old corporate entities existing for more than a decade. The Tribunal further found that not only the corporate entities, to which the assessee provided the consultancy services, were registered in the countries out of India but they had also issued confirmation letters in support of the services rendered by the assessee to them, outside India and that the amount of Rs.08,32,04,200/- was received by the assessee towards the consultancy charges, that were paid by them to the assessee. The Tribunal found that there was material on record to show that the assessee visited the countries, where the corporate offices of the companies to which the consultancy services were provided by the assessee are located for providing services to them. It was observed that the corporate entities, to which the services were rendered, were holding the tax residency certificates from the concerned Income Tax Authorities. In this background, the Commissioner of Income Tax (Appeals) and the Tribunal recorded a clear finding of fact that the assessee had been successful in establishing that he is a non-resident, who had received the consultancy fees from the companies located outside India, that was deposited in the foreign bank and then remitted to the account of the assessee in India. After having held so, the Commissioner of Income Tax (Appeals) and the Tribunal held that the provisions of Section 68 of the Act could not have been invoked, in the circumstances of the case.

Since the findings recorded by the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal are pure findings of facts and since they do not give rise to a substantial question of law, we dismiss the Income Tax Appeal with no order as to costs.

JUDGE **JUDGE**

Wadkar