

\$~6

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 1156/2017 & CM APPL. 46230/2017**

THE PR. COMMISSIONER OF INCOME TAX -3 Appellant
Through **Mr. Puneet Rai and Mr. Ruchir**
Bhatia, Advs.
versus

ENGINEERS INDIA LTD. Respondent
Through **None.**

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **14.03.2018**

The question of law urged by the Revenue in its appeal under Section 260A of the Income Tax Act, 1961 ('the Act') was whether the ITAT (Tribunal) fell into error in holding that the sum of ₹94,91,410/- could not be disallowed under Section 40(a) of the Act.

The Assessee-a public sector company is engaged in engineering consultancy and contract work. It provides engineering and technical consultancy services and support for execution of contract on turnkey basis in the oil and hydrocarbon/gas sectors. Its return for AY 2010-11 declared income in excess of ₹715 crores and was processed but later scrutiny was undertaken and a sum of ₹94,91,410/- was added on the ground that the amounts paid to non-resident foreign agent whose services were utilized were taxable under Sections 9(1)(i) and 9(1)(vii)(b) of the Act. The services

provided by the agent were assistance, in the tendering process undertaken by the assessee, in response to foreign government public tenders. The CIT(A) and the ITAT allowed the assessee's appeal. The CIT(A)'s reasoning is as follows :

“..... Having heard both the parties and having considered their rival contentions, I finding that the basis questioned by me is whether the payment made by the assessee company to the agent outside India in the nature of their business income or fees for technical services. The Assessing officer has held the service to be technical services as per provision of 9 (1)(vii)(b) of the Income Tax Act. For application of the said provision the nature of the services rendered by the non-resident in UAE are to be examined. As far as Engineers India limited is concerned, in UAE are to be examined . As far as Engineers India Limited is concerned, I find that the foreign agent helped the company in the tendering process and provide them valuable input for procuring the business in the UAE. In this whole exercise, I have to examine whether there is any technical, consultancy or managerial services rendered by the non-resident. For every activity of supervision, certain skill and knowledge of the equipment to be dealt with is required but can it be called as technical services. The agent only provided the valuable inputs about the business environment in U.A.E. and helped the company in the tendering process. In this whole exercise, there is no application of mind by the agent and no independent decision taken with regard to the goods to be delivered. In such circumstances, it cannot be said that technical services have been rendered by the agent at UAE. Therefore, the income earned by the said agent outside India is to be considered as his business income and as held by the Hon'ble Delhi High Court in the case of EON Technology P. Ltd. (Cited Supra) the business profits of a non-residents cannot be brought to tax until and unless there is a PE in India. Therefore, this ground of appeal is allowed.”

This Court notices that the ITAT has followed the judgment of the Division Bench of this Court in *Commissioner of Income Tax vs. Eon Technology (P) Ltd.*, 2011(203) taxman 266, where the Court in similar circumstances held that providing such services, in respect of activities abroad, do not constitute fee for technical services and therefore, disallowable under Section 40(a). In view of these circumstances, no substantial question of law arises. The appeal is consequently dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MARCH 14, 2018

rc