

# **DIRECTOR OF INCOME TAX vs. ISHIKAWJIMA HARIMA HEAVY INDS. COMPANY LIMITED**

HIGH COURT OF BOMBAY

J. P DEVADHAR & M. S. SANKLECHA, JJ.

ITA NO. 239 OF 2011

30th October, 2012

(2012) 83 CCH 0042 MumHC

(2013) 258 CTR 0335 : (2013) 86 DTR 0330 : (2013) 212 TAXMAN 0273

Legislation Referred to

Section 9(1)

Case pertains to

Asst. Year 2003-2004

Decision in favour of:

Assessee

***Income deemed to accrue or arise in India—Taxability of the off-shore services and off-shore supply—DTAA between India and Japan—Article 7, 8—Whether the amount receivable by the assessee in respect of offshore supply of equipments and offshore services cannot be taxed within the purview of Section 9(1) of the Income Tax Act, 1961—Held, the Apex Court in the assessee's own case reported in (2007) 288 ITR 408 (SC) has held that the amount receivable by the assessee in respect of offshore supply of equipments and offshore services cannot be taxed under Section 9(1) of the Act—According to the Revenue in view of the explanation, added to Section 9 by Finance Act, 2010 with retrospective effect from 1st June 1976, the assessee is liable to pay tax in respect of the offshore supply of equipments and offshore services—It is relevant to note that the Apex Court in the aforesaid assessee's own case has held that apart from non-applicability of Section 9(1) of the Income-tax Act, 1961 in the present case Article 7 of the DTAA between India and Japan is also applicable and, hence, the income arising on account of offshore services and offshore supply of equipments would not be taxable—If the assessee is not liable to tax in view of the Article 8 of DTAA between India and Japan, then, irrespective of the amendment to Section 9(1) of the Act, the assessee would not be liable to tax in India***

Held :

*The dispute in the present case relates to the taxability of the offshore services and off-shore supply made by the assessee during the assessment year in question. The Income Tax Appellate Tribunal following the decision of the Apex Court in the assessee's own case reported in (2007) 288 ITR 408 (SC) has held that the amount receivable by the assessee in respect of offshore supply of equipments and offshore services cannot be*

*taxed under Section 9(1) of the Act. According to the Revenue in view of the explanation, added to Section 9 by Finance Act, 2010 with retrospective effect from 1st June 1976, the assessee is liable to pay tax in respect of the offshore supply of equipments and offshore services. It is relevant to note that the Apex Court in the aforesaid assessee's own case has held that apart from non-applicability of Section 9(1) of the Income-tax Act, 1961 in the present case Article 7 of the DTAA between India and Japan is also applicable and, hence, the income arising on account of offshore services and offshore supply of equipments would not be taxable. If the assessee is not liable to tax in view of the Article 8 of DTAA between India and Japan, then, irrespective of the amendment to Section 9(1) of the Act, the assessee would not be liable to tax.*

*In this view of the matter, no fault can be found with the order of the Income Tax Appellate Tribunal. The appeal was accordingly dismissed.*

Conclusion :

*The amount receivable by the assessee in respect of offshore supply of equipments and offshore services cannot be taxed u/s 9(1) of the Act and under Article 7 of the DTAA between India and Japan*

In favour of :

Assessee

Cases referred:

(2007) 288 ITR 408 (SC)

Counsel appeared:

Arvind Pinto for the appellant.: Percy J Pardiwala, Senior Advocate with Jas Sanghvi for the respondent

**PC.**

1. The question of law raised by the Revenue in this appeal reads thus :

"Whether, on the facts and circumstances of the case and in law, the Tribunal is correct in law in holding that the amount receivable by the assessee in respect of offshore supply of equipments and offshore services cannot be taxed within the purview of Section 9(1) of the Income Tax Act, 1961 ?"

2. The assessment year involved herein is AY 2003-2004.

3. The dispute in the present case relates to the taxability of the offshore services and off-shore supply made by the assessee during the assessment year in question. The Income Tax Appellate Tribunal following the decision of the Apex Court in the assessee's own case reported in (2007) 288 ITR 408 (SC) has held that the amount receivable by the assessee in respect of offshore supply of equipments and offshore services cannot be taxed under Section 9(1) of the Act. According to the Revenue in view of the explanation, added to Section 9 by Finance Act, 2010 with retrospective effect from 1<sup>st</sup> June 1976, the assessee is liable to pay tax in respect of the offshore supply of equipments and offshore services. It is relevant to note that the Apex Court in the aforesaid assessee's own case has held that apart from non-applicability of Section 9(1) of the Income-tax Act, 1961 in the present case Article 7 of the DTAA between India and

Japan is also applicable and, hence, the income arising on account of offshore services and offshore supply of equipments would not be taxable. If the assessee is not liable to tax in view of the Article 8 of DTAA between India and Japan, then, irrespective of the amendment to Section 9(1) of the Act, the assessee would not be liable to tax.

4. In this view of the matter, no fault can be found with the order of the Income Tax Appellate Tribunal. The appeal is accordingly dismissed with no order as to costs.

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