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

\+ WP (C) No 4619/2000

Date of decision: February 23, 2006

K.R. PRADEEP ..... Petitioner
Through Mr. C.S. Aggarwal, Senior Advocate with Ms. Pratibha M. Singh, Mr. Prakash Kumar, Mr. Girish Sharma, Mr. Biswajit and Mr. Salil Aggarwal, Advocates.

versus

CENTRAL BOARD OF DIRECT TAXES ..... Respondent
Through Mr. R.D. Jolly with Mr. Ajay Jha, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MADAN B. LOKUR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest ?

MARKANDEYA KATJU, CJ

1. This writ petition has been filed against the impugned order dated 19.5.2000 of the Central Board of Direct Taxes.
2. Heard counsel for the parties and perused the record.
3. The petitioner is a Chartered Accountant providing professional services to foreign clients outside India. He entered into an agreement with Marubeni Corporation, Tokyo, Japan, to provide

accountancy and management services for a period of 36 months from 1.10.1999 to 30.9.2002. True copy of the said agreement is `Annexure P1' to the writ petition.

4. Clause 3 of the said agreement states as under:-

> "3. Service under this agreement is to be rendered only by communicating in writing and transmitting to the COMPANY to its headquarters at Tokyo or to *such other place outside India as may be specified*, the advice, suggestions, information, etc. The communication is to be through appropriate medium of communication in person or by way of mail, fax, etc. It is the agreement between the parties that the services are rendered only when the information, advice, etc., is received in writing by COMPANY outside India and not under any other circumstance. It shall be the duty of CONSULTANT to ensure that such services in the manner aforesaid reach the COMPANY outside India in writing with the utmost expedition, as and when required from time to time depending upon the exigencies of the situation. This constitutes the essence of the contract."

5. In consideration for the services, the petitioner was to receive an aggregate fee of Rs.40 million, i.e., Rs. 4 crores.

6. The petitioner claimed the benefit of Section 80RRA of the Income Tax Act vide application dated 16.2.2000, `Annexure P2' to the writ petition. However, by the undated letter dated March, 2000, the said application was rejected by the C.B.D.T. by the following order:-

> "TO
>
> Shri K.R. Pradeep
> No.20, 1st Floor
> "Eden Park", Flat No.101
> Vittal Mallya Road
> BANGALORE-560001
>
> SUBJECT:- APPLICATION FOR APPROVAL UNDER SECTION 80RRA OF THE INCOME TAX ACT, 1961 – REG.

Sir,

I am directed to refer to your application dated 16th February, 2000 on the above subject.

2. One of the conditions to be satisfied for availing the benefits under section 80RRA is that there shall be services rendered outside India. It is observed that the agreement does not provide for physical presence abroad for work, in your case. Hence your case does not qualify for deduction under section 80RRA and the application is, therefore, rejected.

Yours faithfully,

Sd/-
(C. J. SCARIA)
DESK OFFICER (FTD)."

7. Thereafter, the petitioner filed a detailed representation dated 20.3.2000 vide `Annexure P4'. Para 1 of the said letter states as under:-

"1. I have indicated at Item 10 of the application that services are to be rendered outside India during the three year period from 01.10.1999 to 30.09.2002. The contract is for Rs.40 million. Service of this magnitude over a period of three years envisages extensive stay outside India and would not be possible without extensive travel to various countries in which employer has substantial interest. As a matter of fact, I am scheduled to proceed to USA and Canada in the first week of May 2000 and stay there for as long a period as more than six weeks. Many more journeys outside India have to be made. A lot of time running to several months in a year has to be spent outside India. Further my entire work has to be done outside India."

8. However, that application has also been rejected by the order dated 19.5.2000, which states as follows:-

"TO

Shri K.R. Pradeep
No.20, 1st Floor

"Eden Park", Flat No.101
Vittal Mallya Road
BANGALORE-560001

SUBJECT:- APPLICATION FOR APPROVAL UNDER SECTION 80RRA OF THE INCOME TAX ACT, 1961 – RECONSIDERATION REG.

Sir,

I am directed to refer to your letter dated 20th March, 2000 on the above subject.

2. As per para 3 of the Agreement, "service is to be rendered only by communicating in writing and transmitting to the COMPANY to its headquarters at Tokyo or to such other place outside India as may be specified." No term or condition of Agreement specifies any service to be performed outside India. "Services rendered from India" cannot be treated as "Service outside India".

3. Your application, therefore, is once again stands rejected.

4. This issues with the approval of Joint Secretary (FT & TR).

Yours faithfully,

Sd/-
(C. J. SCARIA)
DESK OFFICER (FTD)."

9. By means of the writ petition, the petitioner has prayed for a writ of Certiorari to quash the order dated 19.5.2000 and the undated order dated March 2000 and for a direction to the respondent to approve the terms and conditions of services with Marubeni Corporation, Japan for the financial years in question.

10. Before dealing with the contentions of the learned counsel for the parties, we may refer to Section 80RRA (1) of the Income Tax Act which states as follows:-

> "**80RRA.** (1) Where the gross total income of an individual who is a citizen of India includes any remuneration received by him in foreign currency from any employer (being a foreign employer or an Indian concern) for any service rendered by him outside India, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the individual, [a deduction from such remuneration of an amount equal to-
>
> xxxx xxxx xxxx xxxx xxxx"

11. Learned counsel for the petitioner relied on the decision of the Supreme Court in **Central Board of Direct Taxes and others** v. **Aditya V. Birla**, 170 ITR 137 in which the Supreme Court stated that the word "employer" in Section 80RRA is not restricted to a person who uses or employs the services of another. It includes consultants and technicians engaged for the work. He contended that the petitioner was engaged as a Chartered Accountant and hence he was employed by the Japanese Company.

12. It is true that the aforesaid decision has given a wider meaning to the word "employer" than in common parlance. However, we are of the opinion that the petitioner is not entitled to the benefit of Section 80RRA of the Act because he has not rendered any service outside India for which he received the remuneration in question.

13. Under Clause 3 of the agreement (which we have quoted hereinabove), there is no requirement to be physically present outside India, and there is no specific pleading of the petitioner that

he was physically present outside India when he rendered his service.

14. It has no doubt been stated in para 6 of the writ petition that the provisions for services to be rendered by him involved extensive stay outside India and that the petitioner was scheduled to proceed to USA and Canada for more than six weeks in the first week of May 2000 itself. However, there is a difference between saying that one is scheduled to proceed to a foreign country, and saying that one actually was in a foreign country while doing the work in question. The petitioner has only alleged that he was scheduled to go to foreign countries but he has not stated that he actually went to foreign countries and rendered the service in question to the foreign employer while he was physically present outside India.

15. Learned counsel for the appellant has relied on the judgment of the Karnataka High Court in **A.S. Mani** v. **Union of India and others**, 264 ITR 5 in which a learned Single Judge of the Karnataka High Court held that it was not necessary for a technician to be physically present outside India for the purpose of deduction under Section 80RRA of the Act. We regret our inability to agree with the view taken by the learned Single Judge of the Karnataka High Court.

16. A bare perusal of Section 80RRA of the Act clearly indicates that a person has to be physically present outside India while rendering the service in question..

17. As stated in para 8 of the counter affidavit, Section 80RRA was brought on the Statute by the Finance Act, 1975. The Finance Minister in his Budget specch for 1975-76 stated:-

> "Indian technicians employed abroad are also proposed to be given some tax relief."

18. The purpose of enacting Section 80RRA as mentioned in the Memorandum explaining the provisions of the Finance Bill, 1975 was that Indian technicians who work for a short period outside India during a financial year for a foreign enterprise are liable to pay Indian tax, if they remain resident in India for tax purposes in that year, on the whole of the remuneration received by them from the foreign employer, without any allowance in respect of expenditure incurred by them out of such remuneration for meeting higher living costs in foreign countries. Hence, to avoid this hardship Section 80RRA was enacted.

19. We, hence, cannot agree with the submission of the learned counsel for the petitioner that the words "for any service rendered by him outside India" in Section 80RRA of the Act would include service rendered by a person who remains physically in India but the service is for some work which is done outside India.

20. In this connection, we may also refer to Explanation (iii) to Section 80O of the Income Tax Act which states:-

> "services rendered or agreed to be rendered outside India shall include services rendered from India but shall not include services in India."

21. The fact that there is no clause in Section 80RRA of the Act similar to Explanation (iii) to Section 80O shows that a person cannot get the benefit of Section 80RRA of the Act while physically remaining in India.

22. Apart from the above, Section 80RRA is attracted only when a person claiming the deduction has received remuneration in foreign currency. Convertible foreign exchange can in no situation be received by an assessee who is working only in India.

23. There is no allegation in the writ petition that the petitioner received remuneration in foreign currency. Hence, Section 80RRA of the Act has no application.

24. For the reason given above, there is no force in this petition.

25. The petition is dismissed.

M. Katju
CHIEF JUSTICE

Madan Lokur
MADAN B. LOKUR, J

February 23, 2006
vk.