(1992) 08 BOM CK 0068

Bombay High Court

Case No: W. P. No. 2795 of 1987

Khatri Consultants Services Pvt. Ltd. and another		APPELLANT
	Vs	
Central Board of Direct Taxes and others		RESPONDENT

Date of Decision: Aug. 25, 1992

Acts Referred:

- Income Tax Act, 1961 - Section 80

Citation: (1993) 109 CTR 137 : (1993) 203 ITR 634 : (1993) 67 TAXMAN 374

Hon'ble Judges: Sujata V. Manohar, J; B.N. Srikrishna, J

Bench: Division Bench

Advocate: P. Rajgopal, for the Appellant; Dr. V. Balasubramanian, for the Respondent

Judgement

B.N. Srikrishna J.

1. This writ petition under article 226 of the Constitution of India impugns an order of the Central Board of District Taxes (hereinafter referred to as "the Board") dated February 17, 1986, declining to grant approval to the agreement dated June 28, 1976, for the purposes of section 80-O of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. The first petitioner is a private limited company which claims to possess a high degree of technical expertise in the field of building construction. The first petitioner entered into an agreement dated June 28, 1976, with a partnership known as "National Construction Company" which is situate in Bahrain. Under the said agreement, the first petitioner was to provide assistance in the technical plan project, methods and execution thereof, selection of equipment required from time to time, drawing up specifications of different materials and items and inviting and filling in tenders. It was also required to interview technical staff and recommend them for appointment as required by the National Construction Company from time

to time. The first petitioner also undertook to carry out a quantity survey of materials of different kinds necessary and/or required for the different projects. It was also required to attend to quality analysis and giving suggestions for maintenance of quality in the different projects. In connection with the obligations undertaken under the agreement, the first petitioner was required to sponsor periodic visits of qualified representatives to the sites of projects in Bahrain to advise on technical problems and review production and purchase. The first petitioner was also required to arrange visits to specialists and/or suppliers of machinery or equipment and advise on delivery schedules and on the quantum and terms of payments, apart from holding joint consultation with other contracting parties and their sub-contractors as also specialists. As consideration, the first petitioner was to receive an annual lump sum payment of Rs. 4 lakhs.

3. Despite the very high-sounding terms in the agreement, the Board, apparently, was not satisfied that this agreement qualified for approval u/s 80-O of the Act. By an order dated March 25, 1977, the Board declined to grant approval and put forward the following reasons :

(a) The agreement was vague and the exact nature of the services to be rendered was not known.

(b) The services so far rendered did not warrant payment of the agreed fees of Rs. 4,00,000 on an annual basis. The agreement showed that the fees would become payable irrespective of the fact whether services are rendered or not.

(c) The agreement appeared to be in the nature of loaning the services of the directors by providing a retainership fee of Rs. 4,00,000 per annum, and

(d) The agreement was more in the nature of an agreement of recruitment of personnel and not for technical services.

4. Before arriving at this decision, the Board had called upon the first petitioner to supply them details of technical drawings, if any, supplied by the first petitioner under the agreement to the foreign contracting party. The first petitioner supplied hardly a few drawings and documents. The first petitioner was unable to satisfy the Board that any further material, as to the exact nature of the technical consultancy or services rendered by them to the foreign party, was available with it. Being not satisfied, the Board, therefore, rejected the approval asked for u/s 80-O of the Act.

5. The first petitioner moved the Board for review of the Board''s decision. The Board, during the long drawn out correspondence between 1977 and 1986, raised a number of queries. The first petitioner, from time to time, made available such material as it had with it.

6. Several interesting facts came to the surface during the enquiries. It came to light that, although under the agreement in question the annual consultancy fees payable was Rs. 4,00,000, the actual amounts remitted by the foreign contracting

party were Rs. 2,00,000, Rs. 1,99,761.25, Rs. 1,50,000 and Rs. 24,563.83 during the years 1976, 1977, 1978 and 1979, respectively. The explanation of the first petitioner for non-receipt of the full consideration amount for technical services rendered abroad was also somewhat strange. The remittance certificate accompanying the amount of Rs. 2,00,000 showed that the payment was towards passage and fares.

7. When the Board called upon the first petitioner to explain this fact, the first petitioner explained that the said amount had been received by them to meet travelling expenses of the directors "to make a visit to the other part of the world for their project", but, instead, National Construction Company used to send air tickets and make accommodation arrangements for the directors abroad at their own cost and, therefore, the said amount had been taken as consultancy fees by the first petitioner as per its letter dated August 16, 1976. When further probed for particulars, the first petitioner came up with the explanation that the original documents were not traceable and made available only copies. In view of these circumstances, by the impugned order dated February 17, 1986, the Board came to the conclusion that the previous decision taken to refuse approval to the concerned agreement for the purpose of section 80-O of the Act could not be reviewed and informed the petitioners accordingly. It is the second order passed by the Board on February 17, 1986, which has been impugned in this petition.

8. The decision of the Board to approve an agreement for the purpose of section 80-O is an administrative act. As long as the Board has followed the requisites of the section and considered all relevant material, it is not possible to find fault with the decision arrived at, in exercise of writ jurisdiction. The first petitioner has not been able to show that the Board has exercised any jurisdiction not vested in it, or that it has travelled beyond the bounds of section 80-O of the Act, or that the Board has either taken into consideration irrelevant material or not taken into consideration any relevant material. On the other hand, despite the earlier decision taken to reject the application, vide order dated March 25, 1977, the Board gave ample opportunity to the first petitioner to produce material in its support. The first petitioner did its best and produced whatever material was available with it. Having considered all the material which was placed before it, the Board has come to the conclusion that it was not possible to review its earlier order declining to grant approval. The earlier order has not been challenged. The second order, in our view, is perfectly justified and not liable to be interfered with in writ jurisdiction.

9. There is no merit in the petition which must fail.

10. The petition is dismissed. Rule discharged with costs.