

(1988) 04 BOM CK 0055**Bombay High Court****Case No:** Writ Petition No. 3346 of 1986

Trading Engineers (International)
Pvt. Ltd.

APPELLANT

Vs

Central Board of Direct Taxes
and others

RESPONDENT

Date of Decision: April 4, 1988**Acts Referred:**

- Income Tax Act, 1961 - Section 80

Citation: (1988) 70 CTR 60 : (1989) 176 ITR 317 : (1988) 39 TAXMAN 133**Hon'ble Judges:** Sujata V. Manohar, J**Bench:** Single Bench

Judgement

Sujatha Manohar, J.

The petitioner carries on business of rendering technical and engineering services for installation of pumping plants, etc., together with preparation of designs and furnishing of technical know-how connected with it. The petitioner renders technical and engineering services have, in the past, been approved by respondent No. 1, that is to say, the Central Board of Direct Taxes u/s 80-O of the Income Tax Act, 1961. This fact is not denied by the respondents who have not filed any affidavit in reply.

2. One such contract for technical and engineering services was entered into by the petitioner with P. T. Sarang Tehnik, Indonesia. The contract is dated May 14, 1981. It is for installation/erection of pumping plant and other equipment in Indonesia as set out in the agreement. The agreement is at exhibit-A.

3. In respect of this agreement of May 14, 1981, the petitioner applied for approval u/s 80-O of the Income Tax Act, 1961, for the assessment year 1982-83. u/s 80-O, inter alia, where the gross total income of an assessee, being an Indian Company, includes any income in respect of technical services rendered or agreed to be rendered outside India by the assessee under an agreement approved by the Board

in this behalf, and if the assessee complies with the other condition of that section, the assessee is entitled to certain deductions as set out in that section. An application for approval u/s 80-O has to be made before the 1st day of October of the assessment year in relation to which the approval is first sought. Accordingly, the petitioner applied on September 17, 1982, for approval of the said agreement u/s 80-O for the assessment year 1982-83. The respondents have declined to approve the agreement u/s 80-O on the ground that the activities covered by the agreement involved execution of a foreign project or work forming part of a foreign project as described in section 80HKB of the Income Tax Act, 1961.

4. Section 80HKB of the Income Tax Act, however, was introduced in the Income Tax Act, 1961, with effect from the assessment year 1983-84. Section 80HKB was not in existence nor is it applicable to the assessment year 1982-83. There could, therefore, be no question of section 80HKB being applicable to the assessment year 1982-83. The approval sought by the petitioner for the agreement of May 14, 1981, is for the assessment year 1982-83. The application for approval, therefore, cannot be covered by section 80HKB.

5. Mr. Jetley, learned counsel for the respondents, has submitted that the agreement of May 14, 1981, cannot be considered as an agreement for respondents, however, have not denied any of the averments of the petitioner in para 2 of the petition, which clearly sets out that the contract of May 14, 1981, was for rendering technical and engineering services. The contract is also annexed as exhibit-A to the petition and it sets out that the petitioner is required to undertake installation and erection of overhead the contract. The petitioner is also required to provide all skilled workmen and supervising staff but not unskilled labour. The agreement is for rendering technical services. Such agreements have in the past been approved by the respondents u/s 80-O. There is no reason why the petitioner should be denied approval u/s 80-O of this agreement for the assessment year 1982-83.

6. Orders dated February 27, 1986 and October 14, 1986, being exhibits "F" and "H" to the petition, are, therefore, set aside and the respondents are directed to grant approval to the agreement of May 14, 1981, u/s 80-O for the assessment year 1982-83.

7. Rule is made absolute accordingly with costs.