

(1990) 08 BOM CK 0105

Bombay High Court

Case No: Writ Petition No. 3214 of 1987

Taru Jethmal Lalvani

APPELLANT

Vs

Secretary, Ministry of Finance,
Department of Revenue and
another

RESPONDENT

Date of Decision: Aug. 13, 1990

Acts Referred:

- Income Tax Act, 1961 - Section 80RRA

Citation: (1990) 185 ITR 419

Hon'ble Judges: T.D. Sugla, J

Bench: Single Bench

Advocate: A.V. Sonde, for the Appellant; Dr. V. Balasubramanian, for the Respondent

Judgement

T.D. Sugla, J.

By this petition under article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the letter dated September 12, 1986, issued by the Ministry of Finance, Department of Revenue, Foreign Tax Division, Government of India, New Delhi.

2. The petitioner had entered into two agreements dated November 3, 1980, and September 1, 1981, with the Ontario Paper Company Limited of Canada for rendering services to that company in and outside India on remuneration as per the agreements. The petitioner's applications for the approval of the agreements were, in the first instance, rejected by the Government, vide its letter dated 27th March/ April 27, 1982. The Government in that letter had refused to grant approval on the ground that the agreement did not create a relationship of employers and employee between the petitioner and the said company. Subsequent thereto, this court, in the case of [Central Board of Direct Taxes and others Vs. Aditya V. Birla](#) , held that, for the purpose of approval of an agreement u/s 80RRA, it was not

necessary to have relationship of employer and employee. Thereafter, the petitioner again applied to the Government, vide application dated August 5, 1986, for approval of the aforesaid two agreements. By its impugned letter dated September 12, 1986, the Government rejected the application in the following terms :

"I am directed to refer to your application dated Marh 4, 1986, and subsequent submissions dated June 5, 1986, on the above subject and to say that you have not rendered any service outside India as a technician within the meaning of section 80RRA of the Income Tax Act, 1961. It is, therefore, regretted that the terms and conditions of your service with Ontario Paper Company Limited, Canada, which commenced in January 1, 1980, cannot be approved for the purpose of section 80RRA of the Income Tax Act, 1961."

3. On going through the provisions of section 80RRA carefully, it is seen that the section does not require rendering of any service outside India as a technician. What it requires, inter alia, is that the service must be rendered outside India and the person who renders such services is a technician within the meaning assigned to it in Explanation (c) thereto. The Government has, thus, not considered the petitioner's application for the approval of the agreements properly. In any event, the letter is not a speaking letter. The fact that reference is not made by the Government to its earlier decision communicated to the petitioner through the letter dated March 27/April 27, 1982, further shows that the applications has not been considered properly.

4. The impugned letter dated September 12, 1986, is, therefore, set aside with a direction to the Government to consider the petitioner's application for approval of the agreements u/s 80RRA afresh according to law and to pass a speaking order. Rule is accordingly made absolute in terms of prayer (a).

5. No order as to costs.