

HIGH COURT OF KERALA
Commissioner of Income-tax

v.

Malayala Manorama Co. Ltd.

DR. MANJULA CHELLUR, CJ.
A.M. SHAFFIQUE, J.
IT APPEAL NO. 345 OF 2009
OCTOBER 8, 2013

Jose Joseph for the Appellant.

JUDGMENT

A.M Shaffique, J. - This appeal is filed by the revenue against the order passed by the Income Tax Appellate Tribunal in I.T.A. No. 327/Coch/2001 dated 6.4.2004. The appeal is with reference to the assessment year 1999 - 2000, in which the assessee claimed exemption from deducting tax at source in respect of membership fee contribution of U.S. \$ 10,000 equivalent to Rs.3,95,855/-. The Assessing Officer called upon the assessee to deduct the tax at source at normal rate of the amount payable to the International Press Institute (for short 'IPI') as per Section 195(1) of the I.T. Act, 1961. The assessee went in appeal before the Commissioner of Income tax, which was allowed as per order dated 15.6.2001 holding that Section 9(1)(i) of the I.T. Act does not apply in the case. Annexure B is the said order. The Revenue went in appeal before the Tribunal and the Tribunal held that since IPI had no permanent establishment in India and the assessee is not an agent of IPI, as per order dated 6.4.2004 at Annexure C, the appeal came to be dismissed. The Revenue impugns the decision of the Tribunal inter alia raising the following questions of law:

- "1. Whether on the facts and in the circumstances of the case and also on an interpretation of Section 9 of the Income Tax Act read with the relevant agreement the Tribunal is right in law and fact in holding—
 - (i) the assessee in any case cannot be taxed in India as it is not an agent of IPI;
 - (ii) "Section 195(1) does not have any impact because the assessee is not a responsible person for paying any interest or any other sum chargeable under the provisions of this Act".
2. Whether, on the facts and in the circumstances of the case and also for the reasons stated in the statement of the case and the grounds does not the assessee have an obligation under Section 195(1) to deduct tax at source from the amount (or for the amount) paid to IPI?
3. Whether on the facts and in the circumstances of the case are not the various findings of the Tribunal extraneous to issue, namely, the liability/obligation of the assessee to deduct

tax at source and is not the conclusion of the Tribunal based on the irrelevant findings wrong and vitiated?"

2. Prima facie we do not think that the aforesaid questions of law arises for consideration in the above appeal as the first appellate authority as well as the Tribunal has correctly considered the scope and effect of deducting tax at source in respect of the provisions relied upon by the Assessing Officer. In Annexure B order, the first appellate authority found that since IPI is a non-resident body and has no permanent establishment in India Section 9(1)(i) does not apply at all. The said provision will apply only if there is any property, asset or source of income in India which belong to IPI and such source must be used for earning income in India. It was hence found that since the IPI is a non-resident body incorporated by a law in another country having no business or other connection in India any reference to Section 2(24)(ii)(a) of the Income Tax Act become superfluous and therefore Section 195(1) of the Income Tax Act does not apply in the case of the payments made to the IPI. No material is produced by the revenue to arrive at a different finding. The provision of law under Section 195(1) can have application only if the payment is made to an income tax assessee in India. It is found by the Tribunal that the IPI had no permanent establishment in India and the assessee is not an agent of IPI. The assessee is only a member of IPI and by giving advertisement membership fee or other donation the assessee is not getting any monetary advantage. The only benefit available to the assessee is the right to participate and to strive for achieving the objects of IPI through publications, seminars, conferences etc. Therefore it could be seen that on finding of fact itself the authorities have come to a conclusion that the assessee is not liable to comply with the provisions under Section 195 of the Income Tax Act.

Such being the position, we are of the view that the questions of law mentioned in the above appeal does not arise for consideration and accordingly the appeal is dismissed.