

M/S FORAMER FRANCE

Subject: Landmark **Uttarakhand High Court** Ruling on Non Resident International Taxation: Allowability of Indian Expenses in hands of Foreign Resident: Revenue's Appeal Allowed and ITAT orders reversed: June 2009

This relates to latest Uttarakhand High Court (12/6/2009) ruling in cases of Pride Foramer and Former France in context of allowability of business expense incurred in India, when there was no Permanent Establishment in India of non resident assessee in India.

Relevant Questions before High Court:

“1) Whether, the assessee, a non-resident company, was entitled to claim deduction for expenses incurred by it between the period 1993-1999, particularly, when according to the Department there was no permanent establishment in existence in India during the relevant period?

2. Whether, the Income Tax Appellate Tribunal has erred in law in holding that the expenses claimed by the assessee were allowable and constitutes business loss to be set off under Section 71 of the Income Tax Act, 1961?”

High Court Reasoning & Conclusion on aforesaid questions:

“Admittedly, the assessee in these appeals are non-resident companies having no permanent establishment in India. It is also not disputed that after the contract received by the assessee companies in the year 1983 and before, fresh contract was given to them by the ONGC only in the year 1999. Learned counsel for the appellant (revenue) argued that since the respondent / assessee did no business in India between 1993 to 1998, as such, they cannot claim any set off under Section 71 of the Act. It is further argued on behalf of the appellant (revenue) that since during the relevant period the assessee were not doing any business in India, as such, the A.O. had rightly disallowed the expenses and the claims of depreciation, which were upheld by the CIT(A). On the other hand, learned counsel for the respondent / assessee argued that the assessee were very much in business and were making attempt to get a new contract, but they could get fresh contract only in 1999

It is contended on behalf of the respondent / assessee that merely for the reason that there was ‘lull in business’ it cannot be said that the assessee were ‘not in business’ during the relevant period.

.....Merely for the reason that the assessee sent some letters and made some offer from Dubai to ONGC does not amount doing business in India. We do agree that ‘lull in business’ does not mean that the assessee has ceased its business. But, when the assessee has neither permanent office, nor any other office in India, nor any contract was in execution during the relevant period, it cannot be said that they were in business in India, as such, it cannot be said that assessee was entitled to set off claimed by it under Section 71 of the Act....”