

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL (LDG.) NO. 836 OF 2009
WITH
INCOME TAX APPEAL (LDG.) NO. 1831 OF 2009

The Commissioner of Income-tax. ... Appellant.

V/s.

M/s.Kirtilal Kalidas Diamond Exports. ... Respondent.

Suresh Kumar for the appellant.

Asifa Khan for the respondent.

CORAM : V.C.DAGA AND J.P.DEVADHAR, JJ.

DATED : 2nd September, 2009.

P.C. :

Heard. Office objections are over-ruled. Appeals are taken up for hearing by consent of parties.

2. In both these appeals, question sought to be raised revolves around deduction of tax under section 195(1) of the Income Tax Act, 1961 as no income accrued to the non-resident of India where services were rendered out of India and payment was made out of India. The Tribunal, considering the facts and appreciating material on record, has recorded the finding of fact as under:

5. Both the parties have been heard. The learned D.R. Has not been able to controvert the factual finding given by the learned CIT(A) that (i)

services were rendered outside India; (ii) payment was made outside India; and (iii) there was no establishment of non-resident in India. On these facts, we are of the view that no income accrued to the assessee in India. Even assuming that income accrued it was to be considered as `Business Profits under the Indo-UK Treaty and could not be charged to tax in India in the absence of any permanent establishment in India. Therefore, we are in agreement with the legal finding given by the learned CIT(A). the order of the learned CIT(A) is therefore upheld.

3. Taking into account the aforesaid finding of fact, we do not see any substantial question of law involved in this appeal. Appeal is, therefore, dismissed in limine with no order as to costs.

(J.P.DEVADHAR, J.)

(V.C.DAGA J.)