

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2009

C O R A M:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

and

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

TAX CASE (APPEAL) No.251 of 2009

Commissioner of Income Tax TDS,  
Chennai.

.. Appellant

vs.

[ICL SHIPPING LTD.](#),

827, Anna Salai,  
Chennai-600 002.

.. Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 15.12.2008 passed in ITA No.2207/Mds/06 relating to the assessment year 2001-2002.

For appellant : Mrs. Pushya Sitaraman  
Standing Counsel for Income Tax.

J U D G M E N T

(Judgment of the Court was delivered  
by F.M.IBRAHIM KALIFULLA, J.)

The revenue has come forward with this appeal challenging the order of the Income Tax Appellate Tribunal, Chennai in ITA No.2207/Mds/06, dated 15.12.2008.

2. The question of law posed for consideration is as to whether the conclusion of the Tribunal in holding that the Indian shipping company need not deduct tax at source with respect to its crew for the days on which the ship was outside the territorial waters of India and the number of such days exceeds 182 in any particular year.

3. We heard Mrs.Pushya Sitaraman, learned standing counsel appearing for the appellant and perused the relevant provisions viz., Sections 2(30), 2(42) and 6 of the Income Tax Act, 1961 as well as taken note of the indisputable fact that the crews were on duty outside the territorial waters of India in the ship of a company of Indian origin for more than 182 days.

4. On a reading of Sections 2(30), 2(42) and 6 together, for a person to claim the status of a 'non-resident' has only to satisfy that though such person as a crew works for an Indian shipping company rendered such service for the said company in the ship

outside the territorial waters of India for a period exceeding 182 days. For that purpose it would be relevant to extract Sections 2(30), 2(42) and Explanation to Section 6, which reads as under:

"Section 2(30) : "non-resident" means a person who is not a "resident" and for the purposes of sections 92,93 and 168, includes a person who is not ordinarily resident within the meaning of clause (6) of section 6;

Section 2(42) "resident" means a person who is resident in India within the meaning of section 6;

Section 6: For the purposes of this Act,-

(1) An individual is said to be resident in India in any previous year, if he--

(a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more; or

(b) \*\*\*

(c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

Explanation-- In the case of an individual,-

(a) being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian ship as defined in clause (18) of Section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or for the purposes of employment outside India, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted."

**5. Having regard to the said specific statutory provisions providing for the benefit of grant of exemption for a non-resident, we are convinced that in the case on hand having regard to the fact that the crews with reference to whom the exemption was availed and who offered their services outside the territorial waters for an Indian shipping company, the period of which exceeded 182 days, there was no scope to find fault with the action of the Indian shipping company in not having deducted any tax at source in respect of the salary paid to such crew for the relevant period.**

**6. We therefore do not find any question of law much less substantial question of law in order to entertain this appeal and the same is dismissed.**

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To

1. The Commissioner of Income Tax,  
Chennai.
2. The Income Tax Appellate Tribunal,  
Chennai 'A' Bench,  
Chennai