

SC raps HC for affirming ITAT's order on taxability under sec. 9 without considering question of law raised

Summary – The Supreme Court of India in a recent case of Black & Veatch (I) (P.) Ltd., (the Assessee) held that where regarding question of taxability procurement service, under section 9 High Court had merely quoted judgment of Tribunal in extenso without deciding substantial questions of law raised, matter was to be readjudicated.

ORDER

The following questions of law were raised by the appellant before the High Court:

- "(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in holding that the procurement fees of Rs.5.30 crores payable of M/s Tech Source Corporation is not liable to be taxed in India under Section 9(1)(i) or 9(1)(vii) and further erred in holding that the procurement service was in the nature of Commercial Services?
- (ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in holding that the procurement services were in the nature of Commercial Services?
- (iii) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in deleting the disallowance of Rs.5.81 crore under Section 40(a)(i) of the Act?"

The SC held that the questions of law raised before the High Court are significant and needs to be decided by the High Court considering the provisions under Section 260A of the Income Tax Act, 1961 (for short, "the Act"). The High Court in its judgment and order has merely quoted the judgment of Income Tax Appellate Tribunal *in extenso* without deciding the substantial questions of law raised by the revenue.

In view of the above, we allow this appeal and set aside the judgment and order passed by the High Court. We remand the matter back to the High Court and request the High Court to consider and decide the aforesaid questions of law taking into consideration the provisions of Section 260A of the Act.

We clarify that we have not expressed any opinion on the merits or demerits of the case. No order as to costs.