

No deemed income of NR u/s 9 when it had established Liaison office in India to purchase goods for export

Summary – The High Court of Karnataka in a recent case of Tesco International Sourcing Ltd., (the Assessee) held that Activity of assessee-liaison office of a foreign company being confined to purchase of goods in India for purpose of export, fall under purview of Explanation 1(b) to section 9(1)(i) and, thus, not exigible to tax.

JUDGMENT

1. As a common question of law arises for consideration in all these appeals and the assessee is also the same and the orders are passed in respect of different assessment years, they are taken up for consideration together and disposed of by this common judgment.

2. The revenue has preferred these appeals against the common order passed by the Tribunal, which has held that no income was derived by the assessee in India through its operations as Liaison Office in India and thus allowed the appeals of the assessee setting aside the orders passed by the Appellate Court.

3. The assessee is a company engaged in the business of service agent in respect of purchase of various accessories in the name of Tesco International Sourcing Ltd., Hongkong established in Hongkong to act as a buying agent for Tesco Group Companies. Tesco International Sourcing Limited India Liaison Office was established in the year 2001. The assessee acts as a communication channel between Tesco, Hongkong and the manufacturers in sourcing apparels from India and undertakes liaising activities like co-ordinating with the manufacturers and Head Office. The survey was conducted under Section 133A of Income Tax Act (hereinafter referred to as Act) on 05.02.2009 in the office premises of the assessee. In compliance of the notice under Section 148 of the Act dated 26.05.2009, the assessee filed its returns of income for the assessment years 2005-2006 on 02.07.2009 admitting Nil income. After processing the said returns, the Assessing Authority held the activities of the assessee relate to supply chain management activities for Tesco International Sourcing Ltd., Hongkong Company and is not covered in the exception provided in Explanation 1(b) to Section 9(1)(i) of the Act. Accordingly, assessment order is passed levying tax. Aggrieved by the said order, the assessee preferred an appeal against the draft assessment order.

4. The assessee filed its objections to draft assessment order before the Dispute Resolution Panel. The Dispute Resolution Panel confirmed the view taken by the Assessing Authority. Thereafter, the Assessing Authority proceeded to pass an order under Section 143(3) of the Act. Aggrieved by the said order, the assessee preferred appeals to the Tribunal.

5. The Tribunal after hearing both the parties took note of the two judgments of this Court in the case of *CIT (International Taxation) v. Nike Inc.* [\[2013\] 34 taxmann.com 170/217 Taxman 1 \(Karnataka\)](#) and also in the case of *Jebon Corpn. India Liaison Office v. CIT (International Taxation)* [\[2012\] 206 Taxman 7/19 taxmann.com 119 \(kar.\)](#) and held that, the facts of this case are similar to the one in the case of Nike and therefore following the said judgments held that the assessee is entitled to the benefit of exemption provided in Explanation 1(b) to Section 9(1)(i) of the Act and set aside the orders passed by the Assessing Authority. Aggrieved by the said order, the appeals are filed by the revenue.

6. The learned counsel for the revenue assailing the impugned order contended that the judgment rendered by this Court in the case of *Jebon Corpn. India Liaison Office (supra)*, which is applicable to the facts of this case and therefore he submits the impugned orders requires to be set aside.

7. Per contra, the learned counsel for the assessee submitted, the Tribunal at para No.7.2 of its order has clearly set out the facts of *Nike Inc. case (supra)* and that it has correctly recorded the finding that the law laid down in the said case is applicable to the facts of this case. In fact, in para No.7.5 the Tribunal has also taken note of the judgment of this Court in *Jebon Corpn. India Liaison Office (supra)* holding that the law laid down was not applicable to the facts of this case. Therefore he submits that no case for interference is made out.

8. The substantial question of law raised in these appeals for consideration of this Court is as under:

"Whether on the facts and in the circumstances and in Law, the Tribunal was correct in holding that the activity of the liaison office of the assessee is confined to purchase of goods in India for the purpose of export, when the assessee is carrying on the systematic activity of business and earning income through its liaison office and liable to tax u/s.9(1)(i) of the Act and recorded a perverse finding?"

9. We have gone through the impugned order as well as the judgment in the aforesaid two cases, which are relied upon.

10. The Tribunal at Para No.7.2 has clearly set out the facts of the Nike case as well as in this case and after applying the law laid down in the aforesaid case has granted the relief to the assessee. The factual positions are not disputed. Therefore, it is the judgment rendered by this Court in *Nike's case (supra)* which is applicable to the facts of this case and the Tribunal has relied upon the said judgment and followed the same. No case is made out for interference as rightly pointed out by the Tribunal. The facts in the case of the *Jebon Corpn. India Liaison Office (supra)* is totally different from the facts of this case and said judgment is not applicable. In that view of the matter, the substantial question of law raised is answered in favour of the assessee and against the revenue.

11. Accordingly, we do not find any merit and the appeals are dismissed.