

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

INCOME TAX APPEAL NO.1304 OF 2013

Director of Income Tax, Mumbai .. Appellant.
Vs.
TUV Bayren (India) Ltd. .. Respondent.

Mr. Arvind Pinto for the Appellant.
Mr. Niraj Sheth i/b Mr.Atul K. Jasani for the Respondent.

**CORAM : S.C. DHARMADHIKARI AND
A.K. MENON, JJ.**

DATED : 20TH APRIL, 2015.

P.C. :

1. This appeal by the revenue challenges the order passed by the Income Tax Appellate Tribunal, Mumbai dated 6th July, 2012 reversing the orders of the Assessing Officer and the Commissioner. The only argument canvassed before us and based on which all the questions are proposed and projected is that the Tribunal completely misread and misinterpreted section 9(1)(vii) of the Income Tax Act, 1961 and Article 12(4) of the Indo German Double Taxation Avoidance Agreement.

2. Mr.Pinto submits that the services provided are clearly technical or of consultancy in nature. It is not a simple certification agency as is projected by the assessee. It has specified clients and handles these clients cases. To enable them

to obtain certification so that the products of such clients are certified to meet with the International Quality standards. In the circumstances the Tribunal should not have termed them as not covered by the statutory provision and the fees recovered therefor are thus for technical services. In any event this is not a substantial question of law.

3. The Tribunal had before it the nature of services rendered and by the assessee. The complete record of such services indicated that there is certification and internationally acclaimed, namely, ISO. The certification is of various standards ISO 9001/2, ISO 14001, QS 9000 etc.

4. The nature of work is that the assessee is approached by certain parties for issuance of this standard certificate. The process of evaluation in the form of audit of activities undertaken by the clients is carried out through the audit parties of the assessee. Based on the report of such audit party, a certificate to individual clients/applicants are issued. This is after reviewing the report and several stages of audit work which has been carried out. The certificates are issued for specific and certain period. These are neither technical nor managerial nor consultancy services. There is no advice given but insofar as this activity is concerned, the record indicates that the audit work and

certification would not come within the realm of fees for technical services. In the circumstances, there is nothing in the activities which could enable the revenue to bring them within the purview of section 9 (1)(vii) and Article 12(4) of Indo German Double Taxation Avoidance Agreement. There is a finding of fact and which is rendered after examination of the assessee's records and the service and their nature. Having analysed all this, the Tribunal concluded that the assessee's services are not of the nature falling within statutory provision. In these circumstances, the findings of fact at paragraph 9 and 10.3 of the order under challenge cannot be termed as perverse or vitiated by any error of law apparent on the face of the record. It is fairly conceded that once the fees are not falling within above provisions, then, further question and of applying section 44D and Section 115A of the Income Tax Act, 1961 would not arise.

5. Question No.5.4 is the last question of law. That is stated to be completely covered by the judgment of this Court in the case of *Director of Income Tax (International Taxation) Vs. NGC Network Asia LLC (2009) 313 ITR Page 187*. As a result of the above discussion, none of the questions are substantial questions of law. The appeal fails and is dismissed.

(A.K. MENON,J.)

(S.C. DHARMADHIKARI,J.)