

**BEFORE THE AUTHORITY FOR ADVANCE RULINGS (INCOME TAX)
NEW DELHI**

22nd Day of February, 2012

A.A.R. No. 983 -984 of 2010

PRESENT

Justice Mr. P.K.Balasubramanyan (Chairman)
Mr. V.K. Shridhar (Member)

Name & address of the applicant	SKF Boilers and Driers Pvt.Ltd., 129, Bannadka, Belvai-574213 VIA: Moodbidri Mangalore Taluk, Karnataka
Commissioner concerned	Director of Income-tax(Intl.Taxn.), Bangalore
Present for the applicant	None
Present for the Department	Mr. Somanath S. Ukkali, DDIT(IT), Bangalore

RULING

(By Mr.V.K.Shridhar)

Applicant is an Indian company. It is engaged in the manufacture and supply of Rice Par Boiling and Dryer Plants as per the requirements of the customers. It had received an order from White Pearl Rice Mills Ltd., Punjab, Pakistan. The order was received through two agents: Mr. Ghulam Mustafa of Lahore and Mr. Syed Khursheed Anwar of Karachi. The plant was shipped on 23.8.2009. On completion of the export order, commission became payable to the agents as per

the agreed terms. In AAR/983, commission payable to Shri Ghulam Mustafa was Rs.1,26,792; and in AAR/984, commission payable to Mr. Syed Khursheed Anwar was \$15,800. It is submitted that though CBDT has withdrawn Circular No.786 dated 2.2.2007, sections 5(2) and 9 of the Income-tax Act, 1961 (Act) have not undergone any change. The payment of commission on export order did not accrue or arise to the two non-residents in India and hence there is no liability to tax in India. The provision of tax withholding under section 195 of the Act would not apply.

2. On the above stated facts, the applicant has raised the following questions, common in both the above applications, for a ruling by this authority:

1. Whether the income of the non-resident agent can be deemed to accrue or arise in India?
2. Whether tax deduction would be mandatory under section 195 under export commission paid to non-resident agent, if so, at what rate?

3. The Revenue submits that the applicant has not contended that it is availing benefits under the provision of DTAA with Pakistan nor has it a claim of tax exemption under any provision of the Act. The provision of section 195 would apply. It is stated that the Circular No.786 has been withdrawn. The income arising to the two agents on account of export commission falls under section 5(2)(b) of

the Act as the income has accrued in India when the right to receive the income became vested.

4. It is the applicant's contention that the agents have rendered services abroad and would be entitled to receive commission abroad for the services rendered to foreign clients of the applicant. As the services are rendered outside India, and the payment is receivable by the agents abroad no income would arise under the provisions of section 5(2)(b) read with section 9(1) of the Act. Section 5(2)(b) deals with the scope of total income whereby the income of a non-resident includes all income from whatever source derived, which accrues or arises or is deemed to accrue or arise in India during such previous year. Under section 9(1)(i), income accruing or arising directly or indirectly, through or from any business connection in India or source of income in India shall be deemed to accrue or arise in India. We are concerned with the source of income of the two non-resident agents who had earned commission from the business activity of the applicant. Sections 5 and 9 of the Act thus proceed on the assumption that income has a situs and the situs has to be determined according to the general principles of law. The words 'accrue' or 'arise' occurring in section 5 have more or less a synonymous sense and income is said to accrue or arise when the right to receive it comes into existence. No doubt the agents rendered services abroad and have solicited orders, but the right to receive the commission arises in India when the order is executed

by the applicant in India. The fact that the agents have rendered services abroad in the form of soliciting the orders and the commission is to be remitted to them abroad are wholly irrelevant for the purpose of determining the situs of their income. We follow the ruling of this Authority in [Rajive Malhotra AAR 671 of 2005, 284 ITR 564]. We therefore hold that the income arising on account of commission payable to the two agents is deemed to accrue and arise in India, and is taxable under the Act in view of the specific provision of Section 5(2)(b) read with section 9(1)(i) of the Act. The provision of section 195 would apply, and the rate of tax will be as provided under the Finance Act for the relevant year.

We rule accordingly. Ruling is given and pronounced on 22nd day of February, 2012.

(V.K.Shridhar)
Member

(P.K.Balasubramanyan)
Chairman