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

INCOME TAX APPEAL NO.239 OF 2011

The Director of Income Tax (International Taxation),
Mumbai

..Appellant.

Versus

Ishikawjima Harima Heavy Inds. Company Limited

..Respondent.

Mr.Arvind Pinto for the appellant.

Mr.Percy J Pardiwala, Senior Advocate with Mr.Jas Sanghvi i/by PDS Legal
for the respondent.

CORAM : J.P. Devadhar &
M.S. Sanklecha, JJ.

DATE : 30th October 2012

P.C. :

1. The question of law raised by the Revenue in this appeal reads
thus :

*“Whether, on the facts and circumstances of the case and in law, the
Tribunal is correct in law in holding that the amount receivable by the
assessee in respect of offshore supply of equipments and offshore services
cannot be taxed within the purview of Section 9(1) of the Income Tax Act,
1961 ?”*

2. The assessment year involved herein is AY 2003-2004.

3. The dispute in the present case relates to the taxability of the off-

shore services and off-shore supply made by the assessee during the assessment year in question. The Income Tax Appellate Tribunal following the decision of the Apex Court in the assessee's own case reported in (2007) 288 ITR 408 (SC) has held that the amount receivable by the assessee in respect of offshore supply of equipments and offshore services cannot be taxed under Section 9(1) of the Act. According to the Revenue in view of the explanation, added to Section 9 by Finance Act, 2010 with retrospective effect from 1st June 1976, the assessee is liable to pay tax in respect of the offshore supply of equipments and offshore services. It is relevant to note that the Apex Court in the aforesaid assessee's own case has held that apart from non-applicability of Section 9(1) of the Income-tax Act, 1961 in the present case Article 7 of the DTAA between India and Japan is also applicable and, hence, the income arising on account of offshore services and offshore supply of equipments would not be taxable. If the assessee is not liable to tax in view of the Article 8 of DTAA between India and Japan, then, irrespective of the amendment to Section 9(1) of the Act, the assessee would not be liable to tax.

4. In this view of the matter, no fault can be found with the order of the Income Tax Appellate Tribunal. The appeal is accordingly dismissed with no order as to costs.

(M.S. Sanklecha, J.)

(J.P. Devadhar, J.)