



KAR HC: Clarificatory Amendment Cannot Create A Fresh Tax Liability Retrospectively

Facts and Issues:

The taxpayer, Jindal Thermal Power Company Limited, signed contracts with some foreign companies, including Raytheon Ebasco Overseas Ltd. (REOL). Under these contracts, the foreign companies supplied equipment from outside India and also provided technical and engineering services.

The tax department said that the payments for these services were “fees for technical services” and were taxable in India u/s 9(1)(vii) of the Income-tax Act, read with the India–USA tax treaty (DTAA). According to the department, the taxpayer should have deducted tax at source u/s 195 before making the payments. Since it had not deducted enough tax, the department raised demands u/s 201 for assessment years 1996-97 to 1998-99.

Thereafter, the Finance Act, 2010 amended the Explanation to section 9(2), with stated retrospective effect from 1 June 1976, to provide that income could be deemed to accrue in India whether or not services were rendered in India. The principal issue in the case was whether this amendment could retrospectively impose tax on earlier offshore services and undo the benefit of the law as judicially interpreted.

Contentions of the Revenue:

The tax department argued that the income was always taxable u/ss 4, 5 and 9(1)(vii). In its view, the 2010 amendment did not add any new tax. It only made clear an existing rule: if technical services are used for a business or a source of income in India, the income is taxable in India, no matter where the services are performed.

The department relied on the Supreme Court’s decision in GVK Industries, which says that India can tax matters arising outside India if they have a sufficient connection with India.

The department also argued that the taxpayer had no right to challenge the amendment at all, because the tax was really payable by the foreign company that received the money, and not by the taxpayer.

Contentions of the Taxpayer:

The taxpayer argued that the 2010 amendment was not just a clarification. It actually changed the law by removing the condition that the services must be performed in India. This made the tax net wider.

Relying on Ishikawajima-Harima, the taxpayer said that simply calling a change “for removal of doubts” does not make it apply to the past, if in reality it changes the law or creates a new burden.

The taxpayer also pointed out that a person making a payment cannot be expected to deduct tax in an earlier year based on a law that was made many years later. Applying the amendment to the past would take away rights that had already been settled and would create a tax liability that did not exist when the payments were made.

Judgment of the Court:

The Karnataka High Court agreed with the taxpayer and allowed both the appeals and the writ petition.

The Court held that the 2010 amendment removed the condition that the services must be performed in India. By doing so, it brought more foreign companies into the tax net. In substance, this was a new tax charge and not a mere clarification of the old law.



Following the Supreme Court's decisions in *M.M. Aqua Technologies* and *Martin Lottery Agencies*, the Court said that using words like "for removal of doubts" does not make an amendment apply to the past when the amendment actually changes the existing law.

The Court therefore "read down" the 2010 amendment. This means the amendment remains valid, but it would apply only from the time it was made, and not from 1 June 1976.

Citation:

Jindal Thermal Power Company Limited (formerly Jindal Tractebel Power Company Ltd.) v. Deputy Commissioner of Income-tax (TDS), 2026 HC (KAR) 141

Comments:

This ruling makes an important difference clear. A true clarification only explains what an existing provision already means. A substantive amendment, on the other hand, widens the tax base or creates a new obligation. Parliament cannot turn a new tax into a "clarification" just by using such words in the law.

The decision is especially important for TDS (withholding tax) disputes. If the tax net is widened with effect from past years, a payer could be punished for not deducting tax at a time when, under the law then in force, no tax was deductible. The Court has prevented this unfair result.

Overall, the judgment supports certainty, fairness and predictability in tax laws that are made with effect from past years. However, whether it will help in other cases will depend on the facts of each case, that is, whether the later amendment really changes the earlier law or only explains something that was unclear.