(2007) 10 DEL CK 0211

In the Delhi High Court

Commissioner of Income Tax — APPELLANT

Vs

Dex Travel (P.) Ltd. — RESPONDENT

Date of Decision : 05-10-2007

Acts Referred:

Citation : (2008) 172 TAXMAN 142

Hon'ble Judges : Madan B. Lokur, J;Dr. S. Muralidhar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. In this appeal u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as -the Act) the revenue is aggrieved by an order dated nil 7-10-2005 passed by the Income Tax Appellate Tribunal (''Tribunal''), Delhi Bench ''G'', New Delhi in ITA Nos. 3829 & 3838/Delhi/2004 relevant for the financial years 2001-02 and 2002-03 respectively. The present appeal is however directed against the decision rendered in ITA No. 3838/Delhi/2004 relevant for the financial year 2001-02.

2. The assessee is a travel agent for various airlines. It has in turn engaged agents to sell the air tickets of these airlines. During the relevant financial year the assessee deducted TDS on the commission paid by it to its agents. However, the assessee did not deduct any TDS while passing on to its agents the discount received by it from the different airlines or on the payment of a special commission to its agents. According to the assessing officer, the assessee had violated the provisions of Section 194H of the Act and therefore was liable to be penalised u/s 271C of the Act. The Commissioner (Appeals) (''Commissioner (Appeals)'') however reversed the decision of the assessing officer and cancelled the penalty.

3. According to the assessee, the issue whether it was required to deduct TDS on the discount/special commission paid to its agents was debatable.

It obtained the opinion of some experts including the former Chairman of CBDT, a senior Advocate and a Chartered Accountant to the effect that no tax was deductible at source from the discounts and special commission offered by the assessee to its agents. Accepting this explanation, the Tribunal concurred with the view of the Commissioner (Appeals) that penalty ought not to be levied on the assessee. It accordingly dismissed the revenue''s appeal.

4. Having heard learned Counsel for the parties, we do not find any error in the view taken by the Tribunal. It is not disputed that the assessee had taken the opinion of some experts who had advised that tax was not required to be deducted at source. The issue was a debatable one. We are of the opinion that there was sufficient and reasonable cause in terms of Section 273B of the Act for the assessee not deducting the TDS.

5. No substantial question of law arises.

6. Dismissed.

