(2002) 11 DEL CK 0082

In the Delhi High Court

Case No : Income Tax A. No. 119 of 2002

Commissioner of Income Tax — APPELLANT

Vs

Insilco Ltd. — RESPONDENT

Date of Decision : 14-11-2002

Acts Referred:
Income Tax Act, 1961 — Section 156, 234B, 260A

Citation : (2003) 179 CTR 214

Hon'ble Judges : Sharda Aggarwal, J;D.K. Jain, J

Bench : Division Bench

Advocate : R.D. Jolly and Rashmi Chopra, for the Appellant;

Judgement

I. T.A. No. 119 of 2002 :

1. This appeal by the Revenue u/s 260A of the Income Tax Act, 1961 (for short "the Act"), is directed against the order dated November 5, 2001, passed by the Income Tax Appellate Tribunal, Delhi Bench "D", New Delhi (for short "the Tribunal"), in I. T. A. Nos. 2317 and 2318/Delhi of 1994, pertaining to the assessment years 1990-91 and 1991-92.

2. Despite service no one appears for the respondent-assessed. We have, accordingly, heard Mr. Jolly, learned senior standing counsel for the Revenue.

3. Though both the appeals, on the issue of interest u/s 234B of the Act, have been disposed of by the Tribunal by the impugned order but we find that there is significant difference on the facts in the two assessment years and in fact for deleting the said interest the Tribunal has itself assigned different reasons in respect of the two assessment years.

4. In so far as the assessment year 1990-91 is concerned the Tribunal has come to the conclusion that the levy of interest u/s 234B was not justified as the assessed was under a bona fide belief that its income was not chargeable to tax because the interest paid had exceeded the receipt of interest.

5. Having regard to various pronouncements, we are of the view that the order of the Tribunal in respect of the said assessment year involves a substantial question of law.

6. However, as regards the assessment year 1991-92, the interest has been deleted by the Tribunal in view of the decision of the apex court in Commissioner of Income Tax and Others Vs. Ranchi Club Ltd., , wherein the decisions of the Patna High Court in Ranchi Club Ltd. Vs. Commissioner of Income Tax and Others and Uday Mistanna Bhandar and Complex, Tej Kumari Devi and Ranchi Club Ltd. Vs. Commissioner of Income Tax and Others, have been affirmed by the apex court. In the said decisions, it was held by the Patna High Court that in the absence of a specific and clear order by the Assessing Officer for charging interest u/s 234B of the Act, interest could not be charged in the notice of demand issued u/s 156 of the Act.

7. In the present case, the Tribunal has noticed that in the order of assessment for the assessment year 1991-92 the only direction of the Assessing Officer was to "charge interest" and there was no specific direction to charge interest u/s 234B of the Act.

8. In view of the said authoritative pronouncement, no question of law, much less a substantial question of law, arises, from the order of the Tribunal in respect of the said assessment year.

9. Admit.

10. The following question of law is framed for adjudication, in respect of the assessment year 1990-91 :

"Whether the Tribunal was correct in law in deleting interest charged u/s 234B of the Income Tax Act, 1961, in respect of the assessment year 1990-91 ?"

11. The appellant shall file within three months ten copies of the cyclostyled paper books, containing all documents on which reliance was placed before the Tribunal, including any order/orders, either in the case of the assessed itself or in the case of any other assessed, which has been followed by the Tribunal.

12. The appeal be listed for hearing in the regular course.