(2006) 02 DEL CK 0078

In the Delhi High Court

Case No : IT Appeal No. 182 of 2006

Commissioner of Income Tax — APPELLANT

Vs

Koshika Telecom Ltd. — RESPONDENT

Date of Decision : 13-02-2006

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

Citation : (2006) 203 CTR 99 : (2006) 287 ITR 479

Hon'ble Judges : T.S. Thakur, J;B.N. Chaturvedi, J

Bench : Division Bench

Advocate : R.D. Jolly and Ajay Jha, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

1. The respondent-assessed is engaged in the business of operating cellular mobile telephone services. In terms of a license awarded in its favor for

operation of the said services in the States of Uttar Pradesh, Bihar, Orissa and West Bengal, the assessed was required to provide finance and

performance (of) bank guarantees to the Department of Telecommunications. The assessed appears to have arranged these bank guarantees from

IFCL, NICL and Lord Krishna Bank. These institutions had in connection with the furnishing of the guarantees required deposit of margin money

by the assessed, Interest earned/accrued on these margin money deposits became the subject-matter of a dispute in the asst. yr. 1996-97. The

AO was of the view that interest on such deposits had to be taxed as income from other sources. Reliance was in support of that view placed by

the AO on a Supreme Court decision in Tuticorin Alkali Chemicals and Fertilizers Ltd., Madras Vs. Commissioner of Income Tax, Madras, .

2. In appeal, the view taken by the AO was reversed by the CIT(A) who held that

the deposit of margin money with the banks was inextricably

linked to the requirement of furnishing bank guarantees by the assessed. The deposits could not Therefore be deemed to be parking of surplus

funds so as to render any income earned on the same exigible to tax as income from other sources. Reliance in support of that view was placed

upon two decisions of Supreme Court in Commissioner of Income Tax Bihar-II Patna Vs. Bokaro Steel Limited, Bokaro, and Commissioner of

Income Tax Vs. Karnal Co-operative Sugar Mills Ltd., .

3. A further appeal by the Revenue filed before the Tribunal having failed, the former is in appeal before us u/s 260A of the IT Act.

4. We have heard Mr. Jolly, learned Counsel for the Revenue, and perused the record. The finding of fact recorded by the CIT(A) and affirmed

by the Tribunal is to the effect that the deposit of the margin money by the assessed with the banks was inextricably linked to the furnishing of the

bank guarantees by the assessed to the Department of Telecommunications for obtaining a license. That finding in our view concludes the

controversy inasmuch as if the deposits were indeed inextricably linked to the business of the assessed, the question whether the income accruing

on the said deposits would constitute business income stands answered by the decisions of Supreme Court in Bokaro Steel (supra) and Karnal

Co-operative Sugar Mills'' case (supra). Both these decisions are in our view sufficient authority for the proposition that where the income in the

nature of interest flows from deposits made by the assessed which deposits are in turn inextricably linked to the business of the assessed, the

income derived on such deposits cannot be treated as income from other sources.

5. In that light of what is said above no question of law much less a substantial question of law arises for our consideration in this appeal, which fails

and is hereby dismissed.

