
(2007) 02 DEL CK 0130
In the Delhi High Court

Commissioner of Income Tax

APPELLANT

Vs

R.D. Ramnath Co.

RESPONDENT

Date of Decision : 13-02-2007

Acts Referred:

Citation : (2007) 164 TAXMAN 317

Hon'ble Judges : Vidya Bhushan Gupta, J; Madan B. Lokur, J

Bench : Division Bench

Judgement

1. The revenue is aggrieved by an order dated 15-7-2005 passed by the Income Tax Appellate Tribunal, Delhi Bench "E" in ITA No. 3329/Delhi/ 1993 relevant for the assessment year 1990-91.

2. Revenue has raised two grounds to challenge this order. The first ground is with regard to liquidated damages received by the assessed on account of delayed handing over of possession of immovable property due to it under an agreement entered into between the assessed and DCM Ltd. The question was whether the liquidated damages amount to a capital receipt or a revenue receipt.

3. We have today rejected an identical argument raised on behalf of the revenue and come to the conclusion that the receipt was a capital receipt and there is no substantial question of law raised u/s 260A of the Income Tax Act, 1961. We have taken this decision today in ITA No. 53/ 2006. Following the decision already taken, we reject the first contention urged on behalf of the revenue.

4. The second contention urged is that the assessed had received some interest on refund of cash compensatory support in respect of exports made by it. It appears that on an earlier occasion, the Tribunal had come to the conclusion that the cash compensatory support was a capital receipt and, Therefore, not taxable. Later on the statute (Section 28 of the Act) was amended with retrospective effect from 1-4-1962 to the effect that the cash compensatory support was to be treated as business income. On this basis, the amount received by the assessed towards cash compensatory support was held to be taxable and the assessed

was not entitled to any interest on the amount which it had already received. We are told that the interest amount has since been paid over by the assessed to the revenue.

5. The contention of the revenue now is that since the interest amount accrued to the assessed, it is Liabable to pay tax on this amount.

6. The Tribunal considered the position and came to the conclusion that the amended statute has to be given full effect. If the assessed was not entitled to any interest on the cash compensatory support, it cannot be treated as its income for all practical purposes. We find, as it is admitted by both learned Counsel, that the interest amount has already been paid over by the assessed to the revenue. In other words, the assessed does not have any amount left with it and yet the revenue seeks to tax that amount by way of income of the assessed, thereby negating the effect of the amendment which was retrospectively made to the statute.

7. The Tribunal has rightly rejected the contentions urged by the revenue. We do not find any error in the view taken by the Tribunal and, Therefore, are of the opinion that no substantial question of law arises in this appeal that would warrant our interference u/s 260A of the Income Tax Act. Accordingly, the appeal is dismissed.