
(2006) 10 DEL CK 0190

In the Delhi High Court

Case No : IT Appeal No's. 849, 862, 867, 874, 882, 885 and 908 of 2006

Commissioner of Income Tax

APPELLANT

Vs

Select Holidays Resorts Ltd.

RESPONDENT

Date of Decision : 06-10-2006

Acts Referred:

Finance Act, 2003 — Section 191

Income Tax Act, 1961 — Section 201(1), 201(1A), 260A

Citation : (2007) 207 CTR 234

Hon'ble Judges : Vikramajit Sen, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : R.D. Jolly, for the Appellant; Satyan Sethi, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—These appeals u/s 260A of the IT Act pertain to asst. yrs. 1995-96, 1996-97, 1998-99, 1999-2000, 2000-01, 2001-02 decided by the CIT(A) by common orders dt. 11th Dec., 2003. The Tribunal likewise rejected the further appeals filed by the Revenue in terms of the impugned order dt. 3rd April, 2006. Succinctly stated the duty is cast u/s 201(1) of the IT Act to deduct tax at source within the prescribed time and at the prescribed rate, and if there is a failure on this score the assessed is liable to pay the Income Tax together with interest thereon and is further liable to penalty proceedings provided it is found to be an "assessed-in-default". In the present case the deducted had paid the Income Tax which was to be deducted by the assessed u/s 201(1) of the Act.

2. On a reading of the impugned order it is apparent that the principal question taken by the Revenue reads thus—"On the facts and in the circumstances of the case as well as in law the learned CIT(A) has erred in directing the AO to charge interest u/s 201(1A) from the date of deductibility of tax till the payment by the deducted as Explanation to Section 191 inserted by Finance Act, 2003 w.e.f. 1st June, 2003 is not applicable to the default committed by the assessed for earlier years." The Tribunal has dismissed the appeals filed by the Revenue by impugned

order dt. 20th Sept., 2005 inter alias applying the decisions of this Court in IT Appeal Nos. 906 of 2006 and 909 of 2006 titled as CIT v. Adidas India Marketing (P) Ltd., decided on 10th July, 2006 reported at Commissioner of Income Tax Vs. Adidas India Marketing (P) Ltd., The Bench comprising Madan B. Lokur and Vipin Sanghi, JJ. observed as follows:

In our view, firstly, there is no justification for the Revenue to seek to levy interest for any period after the date on which the tax is actually paid. The same is clear from a plain reading of Section 201(1A). The period for which interest can be claimed u/s 201(1A) is "from the date on which such tax was deductible to the date on which such tax is actually paid". Consequently no interest beyond the date of actual payment of the tax can be claimed by the Department. This section does not state that the tax should have been paid by the assessed alone. The tax may actually be paid by the assessed or the deducted. What is of relevance is the actual payment of the tax. Secondly, the grievance appears to be vague because it is not clear for what further period and up to which date the Revenue considers interest payable, even after payment of the tax. Thirdly, we find that the said issue was not the one raised before the Tribunal. We have already set out the ground of appeal raised before the Tribunal.

Notice has also been drawn to the decision in Commissioner of Income Tax Vs. Majestic Hotel Ltd., The Bench comprising T.S. Thakur and Shiv Narayan Dhingra, JJ. observed as follows:

There is, in our opinion, no escape from the liability arising from Section 201(1A) in case where the assessed does not deduct or does not pay after deduction the amount deducted. Interest at the stipulated rate is inevitable and can be legitimately recovered from the assessed-in-default. Mr. Jolly's submission, that the expression "date on which such tax was actually paid" must relate to the date when tax is paid by the assessed, needs notice only to be rejected. If tax has been paid by the deducted as is the position in the instant case, there is no question of the assessed paying the same over again either in full or part. Tax could be recovered from the assessed only once. If that be so, interest must stop accruing, the moment, the amount of tax is paid to the Revenue. It is immaterial whether the tax is paid by the deducted or the assessed who had made the deduction. What is significant is that the interest which is compensatory in character is paid to the Revenue till the date the amount of tax is. actually deposited. That is precisely what has been done in the instant case. The question framed earlier is answered accordingly.

3. It has been vehemently contended before us on behalf of the Revenue that these decisions do not prohibit initiation of penalty proceedings and that for that purpose the declaration that the assessed is an "assessed-in-default" is relevant. However, this does not appear to have been raised before the Tribunal. It was for this purpose that we have extracted the grounds raised before the Tribunal. The specific question of whether penalty proceedings can nevertheless continue despite the payment of tax and interest thereon by the deducted was not

separately and distinctly raised or contended before the Tribunal. We are, Therefore, not called upon to consider this question in the present proceedings u/s 260A of the IT Act.

4. In the facts and circumstances of this case, no substantial question of law arises for consideration since the question which has been raised before the authorities stands covered by the aforementioned decisions.

5. The appeals are dismissed accordingly.