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(2012) 11 DEL CK 0243

In the Delhi High Court

Case No : IT Appeal No''s. 621 to 624 of 2012 and C.M. Application No. 18532 of 2012

Director of Income Tax APPELLANT

Vs

Cargil TSF PTE Ltd. RESPONDENT

Date of Decision : 19-11-2012

Acts Referred:
Income Tax Act, 1961 — Section 2(28A), 40(a)(i)

Citation : (2013) 212 TAXMAN 16

Hon'ble Judges : S. Ravindra Bhat, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Abhishek Maratha and Ms. Anshul Sharma, for the Appellant; Vikas Jain, for the Respondent

Final Decision : Dismissed

Judgement

1. The present appeals are directed against the three orders of the Income Tax Appellate Tribunal (ITAT) dated 19.08.2011 for the Assessment Years 2005-06, 2006-07 and 2007-08. The question of law sought to be urged on behalf of the Revenue is:

Whether the Tribunal fell into error in holding that the discounting charges earned by the assessee from Indian parties by discounting bills of exchange and promissory notes did not amount to interest as defined u/s 2(28A) of the income tax Act?

The assessee in this case is incorporated in Singapore and is a tax resident of that State. During the relevant year it used to provide financial services, including subscription, buying, underwriting or otherwise acquire, own, hold, sell or exchange securities or investments of any kind. It filed its returns which were assessed to tax on the basis of scrutiny assessment. The Assessing Officer (AG) was of the opinion that the assessee had earned discounting charges by discounting bill of exchange in favour of the Indian companies which it had

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claimed as discounting charges and not part of its business income. The AO treated all these amounts, i.e. the bill discounting fees earned by the assessee as interest income on the loans extended by the assessee to its customers. The CIT (Appeal) on being approached by the assessee confirmed the order of the AO. the Tribunal in the appeals filed by the assessee, analysed the nature of discounting services provided by the assessee to its customers and applied its ratio in the previous ruling, i.e. ITA 684/Del/2009 for Assessment Year 2004-05 in 2011 (9) ITR (Trib) 558 and set aside the order of the CIT (Appeal) and the AO. The Tribunal also noticed that its order for Assessment Years 2004-05 and 2005-06 had been carried in appeal before this Court which confirmed and adopted the reasoning in its order dated 17.02.2011. In the present case, the Tribunal, therefore, allowed the assessee''s appeal, holding as follows:

The discounting charges are to be treated as business income and consequently the appeals filed by the assessee for assessment years 2006-07 and 2007-08, i.e. ITA No. 3057/Del/11 and ITA No. 3880/Del/10 are allowed. In ITA No. 3880/Del/10, the assessee has challenged the charging of interest under sec. 234B of the Act. Since, we have deleted the main addition in respect of taxability of discounting charges as interest income. This issue in the light of our observations would require to be read judicated. In other words, it is consequential in nature.

2. This Court notices that in the decision of the Court confirming the previous ruling of the Tribunal (reported as Commissioner of Income Tax Vs. Cargill Global Trading P. Ltd., , the Court took into consideration the definition of ''interest'' u/s 2(28A) of the Act and also analysed the contents of two circulars issued by the CBDT, being No. 65 dated 02.09.1971 and the subsequent one dated 22.03.1993 (Circular No. 647)(sic), and confirmed the reasoning of the Tribunal that discounting charges did not amount to interest and was not subject to tax. The Court deleted the disallowance u/s 40(a)(i) of the income tax Act. In view of this reasoning which this Court fully concurs with, no substantial question of law arises. The appeals are dismissed.

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