(2012) 02 MP CK 0007

In the Madhya Pradesh High Court

Case No : Income Tax A. No. 2 of 2012

Executive Engineer, PWD (NH) Division, Indore — APPELLANT

Vs

The Recovery Officer, TDS-II, Indore — RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Income Tax Act, 1961 — Section 206C(1C), 206C(7), 260A

Citation : (2012) ILR (MP) 1755 : (2012) 209 TAXMAN 395

Hon'ble Judges : Shantanu Kemkar, J;S.K. Seth, J

Bench : Division Bench

Advocate : M. Raveendran, Dy. G.A, for the Appellant;

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.—This order shall govern disposal of ITA No. 2 of 2012 and ITA No. 3 of 2012. For the sake of convenience, facts are taken from ITA No. 2 of 2012. This appeal u/s 260A of the Income Tax Act, 1961 (for short, the Act) is directed against the order dated 30.03.2011 passed by Income Tax Appellate Tribunal, Indore (for short, the Tribunal). By the said order the Tribunal disposed of two appeal being ITA Nos. 167 and ITA 168 OF 2009 in respect of Assessment YEARS 200506 AND 2006/07.

2. The facts very briefly stated are that the appellant / assessee had awarded a contract for collecting toll from ''Kshipra Toll Plaza'' situated at Dewas to M/s Kalika Enterprises, Shivpuri and M/s Laxman Electronics, Gwalior (hereinafter referred as Contractors) for the year 2004-05 and 2005-06 respectively. The appellant/assessee did not deduct the tax collected at source (for short, TCS) while collecting the amount of licence fees from the said Contractors. In the circumstances a show cause notice was issued by the Assessing Officer to the appellant raising the demand equal to the amount which the assessee ought to have collected at the time of receiving contract amount as provided u/s 206C(1C) inserted by the Finance Act, 2004 w.e.f. 1.10.2004 together with interest thereon. The Assessing Officer after considering the provisions of

206C(1C) and 206(6) of the Act held that it was obligatory on the part of the appellant to have collected the tax at the time of receiving actual contract amount from the Contractors. He, therefore, raised the demand vide order dated 1.12.2006 equal to the amount not collected and interest thereon.

3. The aforesaid order dated 1.12.2006 passed by the Assessing Officer was assailed by the appellant before the Commissioner of Income Tax (Appeals 1) Indore. The Commissioner (Appeals) vide order dated 30.01.2009 partly allowed the appeal and held that the appellant/assessee is no longer liable to pay tax as it has been able to place evidence on record that the Contractors from whom the appellant had to collect tax while receiving the licence fee have paid their due taxes on their returned income. Accordingly, the demand raised for payment of tax was deleted. However, the Commissioner (Appeals) held that the appellant is liable to pay interest in view of the provisions contained in section 206C(7) of the Act.

4. The said order of the Commissioner (Appeals) by which the order of Assessing Officer regarding interest part has been affirmed, was challenged by the appellant before the Tribunal. The Tribunal vide impugned order dated 30.03.2011 held the appellant to be liable to pay interest. It held that from the Circular dated 29.01.1997 it is clear that even if the deductees (Contractors) pay tax, the liability of the deductor (appellant) with regard to charging of interest will continue till the date of payment of taxes by the deductees (contractors). Aggrieved by the order of the Tribunal, the appellant has filed this appeal.

5. It has been contended by Ms. M Raveendran, learned Deputy Government Advocate that the learned Tribunal has committed error in holding that the appellant is liable to pay interest on the tax which was to be collected by the appellant, but was not collected. According to her, the interest was leviable only on the tax liability of the deductee.

6. We find no merit in the submissions made by learned Deputy Government Advocate for the appellant. The provision contained in section 206C (7) of the Act is very clear, which reads thus :

206C(7)Without prejudice to the provisions of sub-section (6), if the [person responsible for collecting tax] does not collect the tax or after collecting the tax fails to pay it as required under this section, he shall be liable to pay simple interest at the rate of [one] per cent per month or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid [and such interest shall be paid before furnishing the quarterly statement for each quarter in accordance with the provisions of sub-section (3)].

(emphasis supplied)

7. A plain reading of the aforesaid section makes it clear that if a person responsible for collecting tax does not collect the tax or even after collecting the

same fails to pay it shall be liable to pay simple interest at the rate of one per cent per month or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid. Having regard to this clear provision in our considered view interest is required to be paid on the tax which was not collected by the appellant and not on the tax liability of the deductees (Contractors). In the circumstances, we find no error in the orders impugned in this appeal. In our considered view, no substantial question of law is involved in this appeal warranting admission of the same. Accordingly, the appeal is liable to be and is hereby dismissed in limine.