IN THE HIGH COURT OF DELHI

ITA No. 780/2004

Judgment reserved on : March 04, 2005
Date of pronouncement : May 05, 2005

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Commissioner of Income Tax ...Petitioner
through: Mr. R.D.Jolly with
Ms. Sonia Mathur, Advs.
Versus

M/s HCL Info System Ltd. ...Respondent
through : Mr. Ajay Vohra with
Ms. Kavita Jha, Advs.

CORAM :

HON'BLE MR. JUSTICE SWATANTER KUMAR
HON'BLE MR. JUSTICE MADAN B. LOKUR

1. Whether reporters of local paper may be allowed to see the judgment?

2. To be referred to the reporter or not?

3. Whether the judgment should be referred in the Digest?

SWATANTER KUMAR, J.

For Orders, see ITA 786/2004.

SWATANTER KUMAR
(JUDGE)

MADAN B. LOKUR
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M/s HCL Info System Ltd. ...Respondent
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AND

ITA No. 784/2004

Commissioner of Income Tax ....Petitioner
through: Mr. R.D.Jolly with
Ms. Sonia Mathur, Advs.

Versus

M/s HCL Info System Ltd. ....Respondent
through : Mr. Ajay Vohra with
Ms. Kavita Jha, Advs.

AND

ITA No. 785/2004

Commissioner of Income Tax ....Petitioner
through: Mr. R.D.Jolly with
Ms. Sonia Mathur, Advs.

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M/s HCL Info System Ltd. ....Respondent
through : Mr. Ajay Vohra with
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Commissioner of Income Tax ....Petitioner
through: Mr. R.D.Jolly with
Ms. Sonia Mathur, Advs.

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M/s HCL Info System Ltd. ....Respondent
through : Mr. Ajay Vohra with
Ms. Kavita Jha, Advs.

AND

ITA No. 788/2004

Commissioner of Income Tax ....Petitioner
through: Mr. R.D.Jolly with
Ms. Sonia Mathur, Advs.

Versus

M/s HCL Info System Ltd. ....Respondent
through : Mr. Ajay Vohra with
Ms. Kavita Jha, Advs.

AND

ITA No. 790/2004

Commissioner of Income Tax ....Petitioner
through: Mr. R.D.Jolly with
Ms. Sonia Mathur, Advs.

Versus

M/s HCL Info System Ltd. ....Respondent
through : Mr. Ajay Vohra with
Ms. Kavita Jha, Advs.

AND

ITA No. 87/2005

Commissioner of Income Tax ....Petitioner
through: Mr. R.D.Jolly with
Ms. Sonia Mathur, Advs.

Versus

M/s HCL Info System Ltd. ....Respondent
through : Mr. Ajay Vohra with
Ms. Kavita Jha, Advs.

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HON'BLE MR. JUSTICE MADAN B. LOKUR

1. Whether reporters of local paper may be allowed to see the judgment?

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SWATANTER KUMAR, J.

1. By this order we would dispose of above 8 Income Tax Appeals preferred under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the `Act').

2. M/s HCL Info System Ltd., the assessee deals with computer hardwares. They are liable in law for proper tax deduction at source on the salary paid to its employees which are posted in various parts of the country in the offices of the assessee. For the purpose of verification notice under Section 136(6) of the Act was issued to the assessee on 25.9.1998 in response to which Senior Manager of the assessee attended the proceedings. According to the Assessing Officer a survey was

conducted under Section 133 (A) of the Act on 1.3.1999 and it came to the notice that employees were getting conveyance allowance and leave travel allowance which were not considered for purpose of deduction of tax from salary. Further according to the Revenue the company did not obtained any documentary evidence with regard to these two benefits given to the employees and which was obviously treated as expenses of the company. A specific query was raised for explaining the reasons for deducting tax on conveyance allowance as well as on LTA. The stand of the company was that the assessee was under bona fide belief that conveyance allowance was not liable to tax and was thus not included in the estimated income of the employee. It was also stated that the assessee as an employer was not required to precisely compute the taxable income of the employees and provisions of Section 201 (1) were not attracted in the facts and circumstances of the case.

3. After perusing the record the Assessing Officer held

that the demands had been made merely on the basis of declaration of employees certifying that the amount was spent and there was no supporting documents that actually the amount was incurred. The quantum of short deduction was estimated on the basis of total amount of conveyance which was not taxed Rs.7,01,838/-, LTA not taxed (to the extent of 40%) Rs.12,52,240/- and held that the tax deduction should have been to the extent of Rs.5,47,141/- thus made the payment under Section 201(1) of the said amount and interest under Section 201(1) totaling to Rs.13,65,116/-.

4. Aggrieved therefrom an appeal was preferred by the assessee before the Commissioner of Income Tax (Appeals) vide a detailed judgment and while relying upon judgments of the Court accepted the appeal of the assessee and set aside the demand on account of conveyance allowance, LTC as well as interest imposed thereupon. The matter was thus remanded to the Assessing Officer for recalculation in accordance with law.

The finding of the First Appellate Authority reads as under :

> "I have considered the submission of the appellant which are well founded. The employees are allowed L.T.A. After availing 5 days leave by them and on submission of statement giving details of journey performed containing place visited, mode of travel, number of person and fare etc. Sometime the amount sanctioned to the employee is less than the amount claimed and is based on the entitlement of the employee. No detail of ticket number etc. were being obtained by the appellant company. The CBDT has been issuing circulars every year for guidance of the DDO's for deduction of tax at source from the salary income paid to the employees. However, unfortunately no specific format or guidelines have been issued for obtaining the relevant details to verify that the journey has actually been performed by the employees. The Hon'ble Andra Pradesh High Court in the case of P.V.Rajgopal Vs. UOI – 233 ITR 678 had referred to the CBDT circular issued every year to provide guidance to the DDO's. The Court had observed that the circulars advised the drawing and disbursing authority to satisfy itself that the computation of taxable salary income is in order with reference to deduction availing to the employee. This does not convert him into an Income Tax Officer or an adjudicating authority as many

erroneously believe. All that it means is that the assessee must declare his claim so that with reference to Section 201, proviso, he can say that he had good and sufficient reasons not to deduct tax at source in respect of any income to avoid imposition of penalty. The appellant had accepted the claim of the employees of having performed journey and allowed them the Leave Travel Allowance and considered the same to be exempt from taxation as per Section 10(5) read with Rule 2(B) of the IT Rules. The employer has no reason to suspect or doubt that the declaration given by the employees are not correct, particularly when the Tax Department has not prescribed any specific details or format in which the declarations are to be submitted by the employees. Further it is for the Assessing Officer adjudicating in the individual assessment of the employee to examine this fact whether the claim of exemption u/s 10(5) of the Income tax Act has been made correctly or not. The employer cannot be given the responsibility of the adjudicating authority to sit in judgment over the claim of the employee which can only be done by the Assessing Officer. There is nothing on record to show that the conduct of the employer was malafide and the payments have been made without deduction of tax as source with some ulterior motive. It may further be noted that no additions for wrong claim of

> Leave Travel Allowance has been made by the Assessing Officer in the case of the individual employees most of whom has been filing their individual returns. Considering these facts and also keeping in view the decision of Hon'ble Andhra Pradesh High Court in P.V.Rajgopal's case as well as the various decision of Ld. Income Tax Appellate Tribunal, Delhi Bench, I am of the view that the Ld. Assessing Officer was not justified in rejecting the claim of exemption of LTA u/s 10(5) of the Act and considering the same as a taxable income of the employee and determining short deduction of tax u/s 201(1) of the act. The short deduction of tax determined by the Ld. Assessing Officer for the respective years for LTA are therefore deleted."

5. The Revenue accepted the above findings in regard to other matters however impugned the order of the Commissioner of Income Tax (Appeals) of the First Appellate Authority in regard to grant of the relief in relation to leave travelling allowance. The Tribunal vide its order dated 24.6.2004 accepted the findings of the First Appellate Authority and held as under :

" The learned counsel for the assessee has also invited our attention to the Circulars issued by CBDT to the DDOs from time to time in connection with the tax deduction from salaries to show that they were not specifically required even by CBDT to verify the evidence regarding the incurring of actual expenditure by the concerned employees before treating the LTA as exempt u/s 10(5) for the purpose of estimating the salary income and deducting tax therefrom. Having perused these declarations filed by the concerned employees as well as the Board's Instructions issued in this regard to the DDOs, we find that there was sufficient material available on record for the assessee to entertain a bonafide belief that the LTA granted to its employees was exempt u/s 10 (5) and thus, the estimate of salary made by it for the purpose of deduction of tax at source for salary income as required by the provisions of Section 192 based on such bona-fide belief was certainly a fair and honest estimate. It, therefore, follows that the obligation cast on the assessee company u/s 192 was duly discharged by the assessee company and there being brought on record by the revenue to show any instance of any of the employees having not actually incurred the LTA granted to them on their travel, we are of the view that there was no case to treat the assessee company as an assessee in default in respect of the short deduction if any of the tax deducted at

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> source from such salary income merely because the actual proof/evidence of having actually incurred the leave travel allowance on travel expenses was not verified by it. As such, considering all the facts and circumstances of the case as well as the legal position emanating from the various judicial pronouncements cited by the learned counsel for the assessee, we are of the considered opinion that the assessee company had compiled with the requirements of Section 192 and there was no case to treat it as an assessee in default u/s 201(1) as well as to charge interest u/s 201(1). In that view of the matter, we hold that the learned Commissioner of Income Tax (Appellate) was fully justified in cancelling the orders passed by the Assessing Officer u/s 201(1)/ 201(1A) for the years under consideration and upholding his impugned order, we dismiss the appeals filed by the Revenue."

6. The Assessing Officer had proceeded on the basis that such a claim could not be granted on the basis of declaration to obtain the exemption permissible under Section 10(5) of the Act. If the Assessing Officer was not satisfied with the declaration furnished by the employee, nothing prevented the Assessing Officer to direct the assessee to produce the supporting

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documents before him to show that expenses claimed were actually incurred by the concerned employees. The authority of the Assessing Officer to ask for such documents and obligation of the Assessee to produce such documents cannot be disputed in law. Even the principles of common prudence would require that such documents if demanded should be produced before the authorities concerned. Provisions of Section 192 places an obligation on any person responsible for paying any income chargeable under the head salaries to deduct income tax at the time of payment in accordance with the rates enforced. The expression `salary' in this provision has a wider meaning and is intended to cover the amounts payable to an employee by an employer unless they were otherwise exempted from levy of tax on account of salary. Provisions of Section 10(5) of the Act carves out an exception to this tax liability. In case of an individual the value of any travel agent or by or due to him from his employer in connection with his leave to travel in India would not be an amount included in the total income computed

for the purposes of computing total income. The restriction as imposed in the proviso to this sub section is only that the amount to be exempted under the clause cannot exceed the amount of expenses actually incurred for the purpose of such travel. The provisions of Section 192 of the Act are to be read in conjunction with the provisions of Section 10(5) of the Act for their proper appreciation and application for computing total income liable to tax and consequential liability to deduct the tax at source. It is the case of the assessee before us that the estimated tax arrived at by the employer was bona fide and on the assumption that the benefit taken by the employee of traveling (LTA) in compliance with the policy of company was not liable for deduction of tax at source. The bonafides of the assessee were accepted by the First Appellate Authority and were duly confirmed by the Appellate Tribunal. Whether in a given case the intention of the assessee was bonafide at an estimated income of its employees for the purpose of deduction of tax at source, is primarily a matter of fact. In the facts of the

present case it is not even a mixed question of fact. A Division Bench of this Court in the case of Commissioner of Income-tax vs. S.R.Fragnances Ltd., ITR Vol. 270, 563 is clearly enunciated the principles as to what would be the substantial question so as to enable this Court to exercise its powers under Section 260A of the Income Tax Act. In fact, it has been held in different cases by different High Courts that reimbursement of expenditure for maintaining conveyance having been treated by the employer as an allowance not taxable and therefore not deducting tax at source does not raises any question of law but is primarily a question of fact.

7. Reference in this regard can be made to the judgment of Gujrat High Court in the cases of Commissioner of Income-tax Vs. Oil Natural Gas Corporation Ltd. [2002] 254 ITR 121; Income-tax Officer Vs. Gujarat Narmada Valley Fertilizers Co.Ltd. [2001] 247 ITR 305 and a judgment of this Court in the case of Commissioner of Income-tax Vs. Nestle India Ltd. [2000]

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243 ITR 435.

8. In the case of Gujrat Narmada Valley Fertilizers Co. Ltd. (supra), the Court had expressed the view that ultimately the liability was of the employees and the Court has held as under :-

> "At the same time, however, it cannot be said that the Tribunal has committed an error of law in not considering the circumstances including the circumstance that even though notices were issued in 1993-94, the matter was not pursued further and that a rectification order was passed in favour of an employee. Ultimately, it cannot be gainsaid that the liability is of employees. Even in respect of an individual employee, when an order of rectification was made by the authorities and deduction was made, the Tribunal, in our opinion, cannot be said to be wrong in recording a fining that there was an honest and bona fide belief on the part of the assessee that regarding other allowances also, the case would not fall under section 201 if the amount was not deducted at source."

Further more, in the case of Oil & Natural Gas

Corporation Ltd. (supra) the Court also took the view that where the reimbursement was granted for use of one vehicle owned and possessed by the employee for expenses incurred in undertaking official journeys and payment was made on the employee issuing a certificate that he incurred more expenses than the amount reimbursed would show that expenses were being incurred towards actual expenses and the estimate made by the employer on the income of the employee at the time when such amount was paid, would entitle the benefit to the employee of Section 10(14) of the Act.

9. The above enunciated principles of law clearly shows that in the facts and circumstances of the present case, no question of law arises for consideration of this Court. The Assessing Officer considered it appropriate not to direct the assessee to support the declarations by appropriate documents as such the opinion expressed by the said officer is not substantiated by any material. The estimated income reflected

by the employer thus was based on bonafide estimation and on this ground alone more particularly in absence of any specific direction of the Assessing Officer as afore-referred, we are unable to find any fault in the concurrent findings recorded by the First Appellate Court and the Income-tax Appellate Tribunal.

10. For the reasons aforestated, we are of the considered view that no question, much less a substantial question of law arises in the present case and the same is dismissed while leaving the parties to bear their own costs.

SWATANTER KUMAR
(JUDGE)

MADAN B. LOKUR
(JUDGE)

May 05 , 2005
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