



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA No.849/2006

Commissioner of Income Tax, Delhi. ..Appellant through
! Mr.R.D.Jolly, Advocate.

Versus

\$ M/s Select Holidays Resorts Ltd. ...Respondent through
^ Mr.Satyen Sethi, Advocate.

WITH

2. ITA No.862/2006

Commissioner of Income Tax, Delhi. ..Appellant through
Mr.R.D.Jolly, Advocate.

Versus

M/s Select Holidays Resorts Ltd. ...Respondent through
Mr.Satyen Sethi, Advocate.

WITH

3. ITA No.867/2006

Commissioner of Income Tax, Delhi. ..Appellant through
Mr.R.D.Jolly, Advocate.

Versus

M/s Select Holidays Resorts Ltd. ...Respondent through
Mr.Satyen Sethi, Advocate.



WITH

4. ITA No.874/2006

Commissioner of Income Tax, Delhi. ..Appellant through
Mr.R.D.Jolly, Advocate.

Versus

M/s Select Holidays Resorts Ltd. ...Respondent through
Mr.Satyen Sethi, Advocate.

WITH

5. ITA No.882/2006

Commissioner of Income Tax, Delhi. ..Appellant through
Mr.R.D.Jolly, Advocate.

Versus

M/s Select Holidays Resorts Ltd. ...Respondent through
Mr.Satyen Sethi, Advocate.

WITH

6. ITA No.885/2006

Commissioner of Income Tax, Delhi. ..Appellant through
Mr.R.D.Jolly, Advocate.

Versus

M/s Select Holidays Resorts Ltd. ...Respondent through
Mr.Satyen Sethi, Advocate.



WITH

7. ITA No.908/2006

Commissioner of Income Tax, Delhi. ..Appellant through
Mr.R.D.Jolly, Advocate.

Versus

M/s Select Holidays Resorts Ltd. ...Respondent through
Mr.Satyen Sethi, Advocate.

% Date of Decision : 6th October, 2006

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE DR. JUSTICE S. MURALIDHAR

- | | |
|--|----|
| 1. Whether reporters of local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

: VIKRAMAJIT SEN, J. (Oral)

1. These Appeals under Section 260A of the Income Tax Act pertain to Assessment Years 1995-1996, 1996-1997, 1998-1999, 1999-2000, 2000-2001, 2001-2002 decided by the CIT (A) by common orders dated 11.12.2003. The ITAT likewise rejected the further Appeals filed by the Revenue in terms of the



impugned Order dated 3.4.2006. Succinctly stated the duty is cast under Section 201 (1) of the Income-Tax 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 assessee 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 "Assessee in default". In the present case the deductee had paid the income-tax which was to be deducted by the assessee under Section 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 under Section 201(1A) from the date of deductibility of tax till the payment by the deductee as explanation to Section 191 inserted by Finance Act, 2003 w.e.f. 1.6.2003 is not applicable to the default committed by the assessee for earlier years." The ITAT has dismissed the Appeals filed by the Revenue by impugned Order dated 20th September, 2005 inter alia applying the decisions of this Court in ITA Nos.906/2006 & 909/2006 titled as *Commissioner of Income Tax Delhi vs. Adidas India*



Marketing (Pvt.) Ltd., decided on 10th July, 2006. The Bench comprising Madan B.Lokur & 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 under section 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 Assessee alone. The tax may actually be paid by the Assessee or the deductee. What is of relevant 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.**, [2006] 155 Taxman 447 (Delhi). 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 assessee 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 assessee 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 assessee, needs notice only to be rejected. If tax has been paid by the deductee as is the position in the instant case, there is no question of the assessee paying the same over again either in full or part. Tax could be recovered from the assessee 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 deductee or the assessee 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 assessee is an "Assessee in default" is relevant. However, this does not appear to have been raised before the ITAT. It was for this purpose that we have extracted the grounds raised before the ITAT. The specific question of whether penalty proceedings can nevertheless continue despite the payment of tax and interest thereon by the deductee was not separately and distinctly raised or contended before the ITAT. We are, therefore, not called upon to consider this question in the present proceedings under Section 260A of the Income-Tax Act.



4. In the facts and circumstances of this case no substantial question of law arises for consideration since the question which have been raised before the Authorities stand covered by the aforementioned decisions.

5. The Appeals are dismissed accordingly.

A handwritten signature in black ink, appearing to read 'Vikramajit Sen'.

**(VIKRAMAJIT SEN)
JUDGE**

A handwritten signature in black ink, appearing to read 'S. Muralidhar'.

**(S. MURALIDHAR)
JUDGE**

**October 06, 2006
'ac'**