HIGH COURT OF DELHI : NEW DELHI

ITA No. 378 of 2007

% Judgment reserved on: 18th April, 2007

Judgment delivered on: 23rd April, 2007

THE COMMISSIONER OF INCOME TAX-XVII
MAYUR BHAWAN, CANAUGHT PLACE
NEW DLEHI. ..... Appellant
Through:Ms.Rashmi Chopra, Adv.
Vs.

SHRI TOSHIO SAKAI,
C/O ASAHI INDIA SAFETY GLASS LTD
5TH FLOOR, TOWER-B,
GLOBAL BUSINESS PARK,
MEHRAULI, GURGAON ROAD,
GURGAON-122002. ..... Respondent
Through:Mr.Prakash Kumar, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

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

V.B. GUPTA, J.

Present appeal has been filed by Revenue under

Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'Act') against the order dated 7th July, 2006 passed by the Income Tax Appellate Tribunal (hereinafter referred to as 'Tribunal'), Delhi Bench 'F' in ITA No.2711/Del/2003 for the assessment year 1998-99.

2. The brief facts of this case are that the Assessee filed return of income for the assessment year 1998-99 declaring total income of Rs.6,86,377/- and retention money paid to him in Japan under the head "Income from other sources" at Rs.21,43,783/-. The Assessing Officer noted that the Assessee had been paid certain further salary in Japan which has not been offered by him for assessment in India. The Assessee submitted that on such salary, taxes had been paid directly by his employer. The Assessing Officer did not give credit to the Assessee of the taxes paid by his employer and computed the assessment at Rs.59,13,594/-.

3. The Assessee filed an appeal before the Commissioner of Income Tax (Appeals) who held that tax paid on behalf of the Assessee was a matter of verification from record and accordingly called for report from the concerned Income Tax Officer who confirmed that an amount of Rs.10,61,915/-

has been paid by the employer of the Assessee and as such appeal filed by the Assessee was accepted.

4. Being dissatisfied with the order passed by the Commissioner of Income Tax (Appeals), Revenue filed an appeal before the Tribunal. The Tribunal vide its impugned order dismissed the appeal filed by the Revenue.

5. The case of the Revenue in the present appeal is that the Assessee had not declared the salary received from its employer in Japan and no certificate in the prescribed form No.16 was filed by the Assessee either before the Assessing Officer or before the Commissioner of Income Tax (Appeals) and the tax collected by the employer on account of extra salary paid on which no tax had been deducted, did not amount to tax deduction at source.

6. The question of TDS in respect of Assessee was a matter of verification from the record and the Assessing Officer in his report has verified and confirmed the credit of TDS attributable to the Assessee, that out of the TDS of Rs.24,14,343/- made by the employer of the Assessee, a sum of Rs.10,61,915/- related to the TDS of the Assessee. Apparently this amount has been collected as tax deducted

at source. That being the position, the Department should have given credit for the same to the Assessee or refunded the same to his employer. When any amount of tax is recovered under Section 201(1) of the Act by treating the payer as Assessee in default for not having deducted tax at source, that amount is collected by the Department as tax deducted at source and nothing else. Thus, the Department is under an obligation to adjust that amount under the provisions of Section 206 of the Act against assessment of the income in the hands of the payee or else to refund such amount to the payer. The provisions of Section 201(1) of the Act do not create a charge of new tax.

7. The above being the position, no fault can be found with the view taken by the Tribunal. Thus, the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260-A of the Act, which is confined to entertaining only such appeal against the order which involves a substantial question of law.

8. Under the circumstances, we do not find any infirmity in the order passed by the Tribunal.

9. Accordingly, the present appeal filed by the Revenue is, hereby, dismissed.

(V. B. GUPTA)
JUDGE

(MADAN B. LOKUR)
JUDGE

April 23, 2007
bisht