* THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 17.11.2008

\+ ITA Nos.1273/2008, 1274/2008, 1280/2008 & 1284/2008

THE COMMISSIONER OF INCOME TAX-XVII
AAYAKAR BHAWAN, LAXMI NAGAR
NEW DELHI .....Appellant

-versus-

M/S DEWAN CHAND
S-11, GREATER KAILASH-II,
NEW DELHI ..... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Rashmi Chopra
For the Respondent : Mr H Raghvendra Rao

CORAM :-

HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether the Reporters of local papers may be allowed to see the judgment ?
2. To be referred to Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

BADAR DURREZ AHMED, J (ORAL)

CM Nos. 15568/08, 15569/08 & 15577/08 (for exemption)

Allowed subject to all just exceptions.

CMs stand disposed of.

+ **ITA Nos 1273/2008, 1274/2008, 1280/2008 & 1284/2008**

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These four appeals arise out of the common order dated 5.10.2007 passed by the Income Tax Appellate Tribunal in ITA Nos 1708 to 1711/Del/2006 pertaining to financial years 2001-02 to 2004-05. All these appeals raise issues relating to Sections 201(1) and 201(1A) of the Income Tax Act, 1961.

Two points arise for consideration. The first point is with regard to the deduction of tax at source in respect of amounts paid to persons who have already paid tax on the said receipts. The Assessing Officer noted that if the deductees had already paid tax on the income received from the assessee (deductor), the same would not be recoverable from deductor. The Assessing Officer, however, noted that it was for the deductor to prove that the deductee had declared the payments received from the deductor as income of the deductee in its income tax returns for the respective years and it was for the deductor to furnish evidence to that effect. According to the Assessing Officer, such evidence had not been produced before him

and, therefore, he held that the assessee/deductor was an assessee in default.

Both the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal have examined this issue in detail and have concluded on facts that the assessee had furnished confirmations from the payees wherein they had given their PAN numbers/acknowledgement of their returns and they confirmed that they had included the amount received from the assessee as their income and have also paid the taxes due on such income. In fact, the Commissioner of Income Tax (Appeals) categorically observed that in the absence of any contrary evidence on record, it is to be held, that the assessee had duly discharged the onus that lay upon him to prove that the tax stands paid on the amounts paid by him to various payees/deductees. In view of this categorical finding returned by the Commissioner of Income Tax (Appeals) and confirmed by the Tribunal, we cannot find fault with the conclusion of the Tribunal that the assessee cannot be regarded as one under default in terms of Section 201(1) of the said Act.

The Tribunal also placed reliance on the decision of the Supreme Court in the case of ***Hindustan Coca Cola Beverage Pvt Ltd vs CIT: 293 ITR 226*** in concluding that once the payees had paid the tax on the amount received by them, the assessee/deductor cannot be treated as an assessee in default under Section 201(1) and the tax required to be deducted cannot be recovered from such assessee. The Tribunal also noted the board's instruction no 275/201/95-IT(8) dated 29.1.1997 which would indicate that in case, in such a situation, tax is to be recovered from the assessee, it would be an exercise in futility as, on the one hand, the assessee would be required to pay the tax and, on the other hand, the payee would be required to claim the refund. We see no error in the Tribunal's order on this aspect of the matter.

The second point that was sought to be raised was with regard to the issue as to whether the payments made by the assessee were under a contract or were wages paid directly to the labourers. Both the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal have concluded on facts that the payments were not in the nature of payments under contract but had the character of

wages. It is obvious that the liability to deduct tax under Section 194C of the said Act, only arises in case of contractual payments. Since the payments were made to the employees employed by the assessee on daily wages, they cannot be said to be contractual payments. This is the finding that has been returned by the Commissioner of Income Tax (Appeals) as well as the Tribunal. We find no infirmity with these findings and the conclusion of law that has been arrived at by the authorities below.

The learned counsel for the appellant, however, submitted that the Tribunal did not consider the question of interest under Section 201(1A) which could arise where the payments made by the payees are delayed. In this regard we find that the Commissioner of Income Tax (Appeals) had taken note of this and had directed the liability of interest under Section 201(1A) to be computed on the basis of the tax liabilities as indicated in the orders passed by the Commissioner of Income Tax (Appeals) in the respective financial years. The learned counsel appearing for the respondent/assessee also does not dispute the position as indicated by the respective orders passed by the Commissioner of Income Tax (Appeals).

In the aforesaid circumstances, no substantial question of law arises for our consideration. The appeals are dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

November 17, 2008
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