



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 10.12.2008

+ **ITA 369/08, 376/08, 381/08, 386/08, 449/08, 457/08, 458/08 & 480/08**

A. B. HOTELS LIMITED ... Appellant

- versus -

COMMISSIONER OF INCOME TAX ... Respondent

Advocates who appeared in this case:

For the Appellant : Mr C. S. Aggarwal, Sr Advocate with Mr Prakash Kumar

For the Respondent : Mr R. D. Jolly

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

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

BADAR DURREZ AHMED, J (ORAL)

1. The present set of eight appeals arise out of the common order passed by the Income Tax Appellate Tribunal on 15.06.2007 in MA 328/Del/2006 pertaining to the financial years 1994-1995 to 2000-2001 and 01.04.2001 to 31.12.2001. By virtue of the impugned order the Tribunal disposed of the miscellaneous application filed on behalf of the revenue under Section 254(2) of the Income Tax Act, 1961. The revenue was seeking rectification of the earlier order dated 30.11.2005



of the above mentioned financial years. By virtue of the order dated 30.11.2005, the Tribunal concluded as under:-

“6. We, after having heard the parties, are of the view that once the Revenue has collected the tax in respect of the impugned additional payments made by the assessee to IAAI, no action u/s 201(1) is required. In these circumstances, we quash the impugned order with a direction to the AO to verify the facts as stated by the Ld. Counsel for the assessee. In case no tax has been paid by IAAI in respect of the impugned payment, the AO is at liberty to issue notice to the assessee and examine the matter afresh after affording a reasonable opportunity of being heard to the assessee.”

The revenue felt that since no direction with regard to Section 201 (1A) of the said Act had been given in the order dated 30.11.2005, the same required modification. After hearing the parties, the Tribunal passed the impugned order dated 15.06.2007, the relevant portion of which reads as under:-

“5. It would appear that the Tribunal after having quashed the impugned order passed by the Ld. CIT (A) under section 201(1) & 201(1A) has given direction to the Assessing Officer to verify the facts as stated by the Ld. Counsel for the assessee. In case no tax has been paid by IAAI in respect of the impugned payment, the Assessing Officer is at liberty to issue notice to the assessee and examine the matter afresh after affording a reasonable opportunity of being heard to the assessee. However, no further direction has been given in case the facts stated by the assessee are found to be not correct. However, we are of the view that said directions are incomplete as much as further directions were required to be given in the matter regarding charging of interest under section 201(1A) in case the assessee has been found to be in default within the



30.11.2005 which needs to be rectified in order to make the directions given in the matter complete. We, therefore, further give liberty to Assessing Officer to invoke the provisions of section 201(1A) regarding charging of interest from the date of chargeability to the date of actual payments of tax in case the facts stated by the assessee are found to be incorrect.

6. In the result, miscellaneous application filed by the Revenue is allowed.”

2. We have heard the counsel for the parties at length. In our view what the Tribunal has done in the impugned order is nothing more than making explicit what was already implicit in the order dated 30.11.2005. The order dated 30.11.2005 had been accepted by the assessee. That order clearly directed the Assessing Officer to verify the facts as stated by the counsel for the assessee that the revenue had collected the tax in respect of the impugned additional payments made by the assessee to the International Airports Authority of India. The order dated 30.11.2005 had clearly directed that in case no tax had been paid by IAAI in respect of the impugned payment, the Assessing Officer was at liberty to issue notice to the assessee and examine the matter afresh after affording a reasonable opportunity of being heard to the assessee. That part of the order remains undisturbed by the passing of the impugned order dated 15.06.2007. All that the impugned order does is to make it clear that in case the facts, as stated by the assessee, are found to be incorrect, that is, in case no tax has been paid by the



would have the further liberty to invoke the provisions of Section 201(1A) regarding charging of interest. In any event, this direction has to be read with the earlier direction given in the order dated 30.11.2005 and in case the Assessing Officer contemplates any action under Section 201(1) or 201(1A), he would have to issue a notice to the assessee and examine the matter afresh after affording a reasonable opportunity of hearing to the assessee in accordance with law. As such, no interference with the impugned order is called for.

The appeals are dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

December 10, 2008
SR