



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 24.07.2009

+ **ITA 596/2005**

THE COMMISSIONER OF INCOME TAX ... Appellant

- versus -

M/S ZORAVAR VANASPATI LIMITED ... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Suruchi Aggarwal with Ms Payal Jain

For the Respondent : Mr Prakash Kumar

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. On 20.02.2009, when this matter came up for hearing, this court passed the following order:-

“While admitting this appeal, the following substantial question of law was framed by virtue of this Court’s order dated 16.08.2005 :-

“Whether the Tribunal was in the instant case justified in deleting interest under Section 234A & B of the Income Tax Act, 1961 even when ITNS 150 accompanying the assessment order computed the liability towards interest under the said Act?”



consideration in the instant appeal. This will become clear from the order passed by the Commissioner of Income Tax (Appeals) dated 27.02.2001, wherein he observed as under:-

“3. In the written submissions, additional ground of appeal relating to the levy of interest u/s. 234 A and 234 B on the tax on the returned income instead of assessed income was urged to be allowed to be taken up. As its omission was not willful, it is taken up for consideration.

3.1 It was argued by the Ld. Counsel that interest u/s 234 A and 234 B is leviable on the tax on the returned income and not on the assessed income. In support of the above contention, reliance was placed on Patna High Court's decision in Ranchi Club Ltd. Vs. CIT 85 Taxman 201 in which it has been held that interest u/s 234 A and 234 B is chargeable on the tax on returned income and the civil appeal filed by the department challenging the Patna High Court's decision was dismissed by the Supreme Court as reported in (2000) 114 Taxman 414(SC).

3.2 The AO is therefore directed to recomputed the chargeable interest u/s 234 A and 234 B on the tax on returned income.

4. In the result, the appeal is partly allowed.”

From the above extracts, it is apparent that the issue before the Commissioner of Income Tax was whether the levy of interest u/s 234 A & 234 B of the Income Tax Act, 1961 was to be computed on the basis of returned income or assessed income. The Commissioner of Income Tax (Appeals) came to the conclusion that such interest was to be computed on the basis of returned income and consequently directed the Assessing Officer to re-compute the interest chargeable under the said provisions. Being aggrieved by the said order, the Revenue preferred the appeal bearing ITA



The Tribunal, however, instead of deciding the question as to whether the interest under Sections 234A & 234 B is to be computed on the basis of returned income or assessed income, went into the question of chargeability of interest in the present case when there was no specific mention of charging of interest in the assessment order though it was mentioned in the computation in Form ITNS 150. The Tribunal followed the decision of this Court in the case of **Commissioner of Income Tax v. Insilco Ltd: 261 ITR 220** which held that if there is no specific direction in the assessment order passed by the Assessing Officer with regard to chargeability of interest under the said provisions, then the levy of interest would be bad in law. The Tribunal also noted that this Court had followed the decision of the Supreme Court in the case of **Commissioner of Income Tax & Others v. Ranchi Club Ltd: 247 ITR 209**. Following the said decision, the Tribunal dismissed the appeal of the department.

Before this Court, the Revenue has inter alia taken several grounds of appeal. The first ground taken by the Revenue is that the Tribunal failed to appreciate that the appeal before it was against the direction of the Commissioner of Income Tax (Appeals) whereby interest was ordered to be charged on the returned income and not on the assessed income. The second ground taken by the Revenue is that the Tribunal failed to appreciate that the Commissioner of Income Tax (Appeals) had nowhere concluded that the interest under Sections 234 A & 234 B was not chargeable and that the said order of the Commissioner of Income Tax (Appeals) had been accepted by the assessee. It was also urged that the Tribunal failed to appreciate that once the assessee had accepted the order passed by the Commissioner of Income Tax (Appeals) and had not challenged the same before the Tribunal, the Tribunal was not justified in holding that the interest could not be charged unless and until there is a specific direction in the assessment order. It was urged that the Tribunal ought not to have deleted the levy of interest in its entirety when there was no such specific plea raised by the assessee.



The learned counsel for the revenue submitted that the Tribunal's order deserves to be set aside on this ground alone that the question before it was different from what the Tribunal had ultimately decided.

To understand the exact extent of the controversy before the Tribunal, it would be necessary for us to examine the grounds of appeal before the Tribunal. The learned counsel for the revenue states that the copy of the grounds of appeal would be filed before the next date of hearing.

Renotify on 27.03.2009.”

2. The learned counsel for the revenue has not filed a copy of the grounds of appeal taken before the tribunal. However, Mr Prakash Kumar, who appears on behalf of the respondent / assessee, states that against the order of the Commissioner of Income-tax dated 27.02.2001, which was the subject matter of the impugned order, the assessee has also preferred an appeal being ITA No.1863/Del/2001 wherein the question of levy of interest on the ground that it has not been mentioned in the assessment order is in issue. The plea taken is that since the charging of interest is not specifically mentioned in the assessment order, though it is mentioned in the ITNS 150, no interest could be charged from the assessee. That issue is yet to be decided by the tribunal in the assessee's appeal. The question raised by the revenue before the tribunal was not with regard to the levy of interest per se, but the question as to whether interest could be levied on the



course, not decided by the tribunal. For these reasons, we feel that the appropriate course to follow would be to set aside the impugned order and to remand the matter to the tribunal so that the revenue's appeal is heard alongwith the assessee's said appeal No.1863/Del/2001. It is ordered accordingly.

3. We note that, as per the learned counsel for the assessee, the ground taken by the revenue before the tribunal is not properly worded. We permit the revenue to amend the grounds before the tribunal so that the tribunal is in a position to return a definitive finding on the issue raised by the revenue as well as the issue raised by the assessee.

The appeal stands disposed of.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

July 24, 2009

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