



★ IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA No. 677 of 2007

% Decided on : August 25, 2009

Commissioner of Income Tax, Delhi – XVII

... Petitioner

through :

Mr. Subhash Bansal, Advocate

**VERSUS**

Business India Television International Ltd.

... Respondent

through :

Mr. NEMO

**CORAM :-**

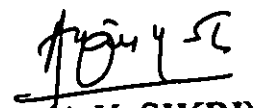
**THE HON'BLE MR. JUSTICE A.K. SIKRI**

**THE HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

**A.K. SIKRI, J. (ORAL)**

For orders, see ITA No. 676 of 2007.

  
(A.K. SIKRI)  
JUDGE

  
(VALMIKI J. MEHTA)  
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1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
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A.K. SIKRI, J. (ORAL)

1. The assessee company is running news and current affairs television network and in this type of business it requires to collect news and also current affairs of the general interest of the viewers continuously. It is not in dispute that for production of these programmes, information is collected by the assessee through its employees. The assessee company, in addition to salary, has also been paying to such employees certain allowances in the nature of the travelling/ conveyance, tea/coffee allowance and newspaper and magazines allowance etc.

2. It is not in dispute that on the salary paid to the employees, the assessee has been deducting tax at source. However, in so far as the



the aforesaid allowances are to re-compensate the employees for expenses incurred by them and wrongly described as "allowances". The explanation furnished by the assessee in respect of these "allowances" was:

"The news allowances were in fact expenditure incurred in news gatherings. The staff spent substantial time outside the office for establishing the contacts, meeting with people for the purpose of news gathering. This involves incurring of expenses for assessee's business in the nature of travelling/conveyance having tea, coffee with potential contacts and such like expenditure which is essential and imperative in this kind of business.

The reading allowance was also in fact the expenditure incurred on purchase of newspaper and magazines etc. The staff was also required to keep itself abreast of the latest development in terms of news, stories etc. in the print media. Therefore, the expenditure incurred on purchase of newspapers, magazines etc. have to be reimbursed to the staff for discharge of official duties. Likewise telephone allowances were also reimbursement of expenditure incurred on telephones. Telephone is a lifeline and a critical input for this type of business. It is the abiding link between the staff, their supervisory officers, the company, potential contracts and with customers etc. Providing a telephone connection at the residence of the each member of the staff of 550 trained personnel would have been a very expensive and impractical proposition and therefore, the assessee thought it fit to reimburse the amount on account of the telephone expenses incurred."

3. The assessee accordingly pleaded that it was under a bonafide belief that the amount paid to the employees is in the nature of reimbursement of the expenses incurred by them in the course of business and therefore it. Hence the assessee was under the belief that he is entitled to the relief available u/s 10 (14i) of the Income Tax Act and these payments would not form part of the salary and therefore the assessee company did not deduct the tax at source on the reimbursed amount paid to these employees.
4. The Assessing Officer did not accept this plea and was of the opinion that the aforesaid payment is in the nature of perquisites to the employees and therefore would be part of salary and therefore non-deduction of tax at

He accordingly held that the



levied interest under Section 201 (1A) in both the assessment years to which these cases relate.

5. The CIT confirmed the aforesaid order of the Assessing Officer. However in appeal preferred by the assessee before Income Tax Appellate Tribunal, the order of the CIT(A) has been set aside vide the impugned judgment.

6. We find from the detailed discussion contained in the impugned judgment that the Tribunal has gone into the nature of the aforesaid expenditure and also took note of some of the judgments of various Benches of the Tribunal. As per the Tribunal, most of these allowances are in fact different form of expenditure and rightly treated as reimbursement of expenditures claimed by the employee. On that basis the Tribunal was of the view that whether the amount paid by the assessee was mere re-imburement of the expenditure claimed by the employees for business purposes or it was an allowance in the nature of perquisites forming part of salary; is in fact a debatable issue and therefore, in these circumstances penalty for non-deduction of the tax at source could not be levied. The relevant portion of the order of the Tribunal, in this behalf, is extracted below:-

“The contention of the assessee that the staff of the assessee spent substantial time outside the office for establishing contacts for the purpose of new gathering and to keep itself abreast of the latest development in terms of news, stories etc. certain expenditure are bound to be incurred, cannot be out rightly rejected. In this type of business certain expenditure is bound to be incurred by the employees on telephones, newspapers, magazines, etc. without which it may be difficult for them to keep themselves upbreast with the latest information/developments. In this scenario, the contention of the assessee that the expenditures were reimbursed to the employees with certain cap cannot be discarded. In any case the claim with regard to the expenses whether it was mere reimbursement of the expenditure claimed by; the employees for business purposes or it was an allowance in the nature of perquisites forming part of salary is in fact a debatable issue. We have



expenditure incurred and was held to be exempt from tax. Likewise in the case of Sol Pharmaceuticals Ltd. Vs. I.T.O. 79 TTJ 319 (Hyd) it was held that if the assessee did not deduct tax at source as required under Section 192 in respect of various allowances paid to its employees under an honest belief that these allowances were exempt from tax, as they were paid by way of reimbursement of expenses within the ceiling fixed by it, the assessee cannot be held to be in default in terms of Section 201. In the case of K.L.M. Royal Dutch Airlines Vs. ACIT 62 TTJ 268 (Del) the assessee has been reimbursing its employees conveyance expenditure since long and at no point of time revenue pointed out that the amounts reimbursed could come within the ambit of Section 192. Therefore, it was bona fide belief that this amount did not require tax deduction at source. As such there was no material to indicate that the conduct of the assessee is not bona fide. Hence, the assessee cannot be deemed to be assessee in default."

7. We, therefore, are of the opinion that no question of law arises. These appeals are accordingly dismissed.

  
(A.K. SIKRI)  
JUDGE

  
(VALMIKI J. MEHTA)  
JUDGE

August 25, 2009

HL