THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 04.05.2010

\+ **ITA 693/2010**

COMMISSIONER OF INCOME TAX ... Appellant

\- versus –

SALORA INTERNATIONAL LTD ... Respondent

Advocates who appeared in this case:-
For the Appellant : Mr Abhishek Maratha
For the Respondent : None

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE V.K. JAIN

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)

CM 8208/2010

The delay in re-filing the appeal is condoned.

This application stands disposed of.

ITA 693/2010

1. The revenue is in appeal against the order dated 24.10.2008 passed by the Income Tax Appellate Tribunal in ITA 2248/Del/2005 pertaining to the assessment year 1999-2000.

2. The question before the Tribunal was as to whether the Commissioner of Income Tax (Appeals) had erred in allowing the appeal of the assessee filed against the charging of interest under Section 234B and

3. The Assessing Officer had passed an order under Section 154 of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act') on 25.10.2004 whereby excess MAT credit allowed earlier to the assessee was withdrawn and a demand of Rs 64,32,260/- was raised. The assessee's contention was that the interest under Section 234B and 234C of the said Act should have been charged after setting off the MAT credit allowable under Section 115JAA. The Assessing Officer, however, did not agree with this submission of the assessee.

4. Being aggrieved thereby, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who examined the question as to whether charging of interest under Section 234B and 234C was to be done before allowing MAT credit or not. We may point out that the assessee had taken this plea qua interest under Section 234B and 234C of the said Act by way of a rectification application under Section 154 of the said Act before the Assessing Officer.

5. The Commissioner of Income Tax (Appeals) decided in favour of the assessee and directed the Assessing Officer to allow MAT credit before charging interest under Section 234B and 234C of the said Act. The revenue, being aggrieved by the order passed by the Commissioner of Income Tax (Appeals), preferred an appeal before the Tribunal, which came up for hearing on 09.08.2007. By virtue of the said order, the Tribunal upheld the rejection of the application under Section 154 of the said Act

of the revenue.

6. Subsequently, a miscellaneous application was filed by the assessee for recall of the above order which was an *ex parte* order and certain facts were brought to the notice of the Tribunal, which earlier escaped its notice. Consequently, the Tribunal, by its order dated 30.04.2008 passed in the said MA No. 624/2007, recalled the earlier order dated 09.08.2007.

7. While passing the order of recall, the Tribunal noted that initially an intimation under Section 143(1) dated 29.09.2000 was prepared in which a refund of Rs 56,84,908/- was allowed to the assessee. However, on 22.09.2004, the Assessing Officer issued a notice to the assessee proposing to rectify the intimation under Section 154 of the said Act. The particulars of the mistake proposed to be rectified were indicated in the notice as under:-

> "You have been allowed MAT credit of Rs 1,07,13,704/- whereas the maximum MAT credit allowable in the assessment year 1999-2000 under the provisions of Section 115JAA is Rs 77,72,810/-. Hence, the excess credit allowed under Section 115JAA for Rs 29,40,894/- needs to be withdrawn."

8. In response to the said notice, the assessee wrote a letter on 23.09.2004 and, as observed by the Tribunal, there was no serious objection, in principle, to the rectification as proposed in the notice. Subsequently, on 25.10.2004, the Assessing Officer passed the rectification

MAT credit, which was found to be Rs 20,76,793/-, was withdrawn by the said order. In the computation form in ITNS-150 attached to the order under Section 154, the Assessing Officer charged interest of Rs 18,92,824/- under Section 234B and Rs 7,31,453/- under Section 234C. Because the Assessing Officer had charged the interest under Section 234B and 234C, the assessee filed objections by virtue of a letter dated 18.11.2004, requesting the Assessing Officer to delete the levy of interest since, according to the assessee, the tax payable was less than the assessed tax. The said application was regarded as an application under Section 154. The Assessing Officer rejected the said application. However, the assessee's appeal from the said rejection was allowed by the Commissioner of Income Tax (Appeals), as indicated above.

9. As mentioned above, the Tribunal, in the first round, allowed the appeal by the department thereby restoring the order passed by the Assessing Officer under Section 154. However, as we have indicated above, that order of the Tribunal has been recalled and the Tribunal considered the matter afresh, which has finally been disposed of by the order dated 24.10.2008, which is impugned herein by the revenue.

10. One of the issues which was of prime importance before the Tribunal was whether the interest under Section 234B and 234C was levied by the Assessing Officer by invoking Section 154 of the said Act or not? The Tribunal observed that from the sequence of events, it would be

interest by invoking Section 154 of the said Act by passing his order dated 25.10.2004. The contention was that in doing so, the Assessing Officer committed two errors. First of all, he had not issued any notice under Section 154 proposing to levy such interest. The extract of the notice set out above, does not indicate any proposal for levy of interest in the manner that the Assessing Officer ultimately did. The notice merely stated that there was some error in the MAT credit available to the assessee. The second contention was that interest was levied on the footing that the MAT credit cannot be considered to be tax paid in advance and, therefore, it could not be reduced from the assessed tax for the purpose of levy of interest under Section 234B and 234C.

11. By virtue of the impugned order, the Tribunal observed that on the earlier occasion, the Tribunal had proceeded on the assumption that it was the assessee who had first made an application to the Assessing Officer for rectification of the intimation on the footing that the MAT credit should be taken into account before levying interest under Section 234B and 234C. However, the Tribunal noted that the sequence of events, starting from the issuance of the intimation under Section 143(1) and the issuance of the notice under Section 154 by the Assessing Officer and the passing of the order under Section 154 on 25.10.2004 clearly were not brought to the notice of the Tribunal in the first round. The Tribunal came to the conclusion that by passing the order dated 25.10.2004 under Section 154 of the said Act, the Assessing Officer not only withdrew the excess MAT

150 also charged interest under Section 234B and 234C. The Tribunal also came to the conclusion that the Assessing Officer completely ignored the settled legal issue that before charging interest under Section 234B and 234C, MAT credit was to be first allowed to the assessee. The Tribunal also observed that, in fact, the charging of interest under Section 234B and 234C by the Assessing Officer, as a consequence of the order passed under Section 154, was a debatable issue, which the Assessing Officer could not do by invoking the provisions of Section 154. The Tribunal also returned a clear finding that the charging of interest under Section 234B and 234C was introduced by the Assessing Officer in his order under Section 154 and not while rejecting the application of the assessee under Section 154. Consequently, the Tribunal held that the Commissioner of Income Tax (Appeals) was fully justified in directing the Assessing Officer to allow MAT credit before charging interest under Section 234B and 234C of the said Act.

12. We find no infirmity in the order passed by the Income Tax Appellate Tribunal. No substantial question of law arises for our consideration.

The appeal is dismissed.

BADAR DURREZ AHMED, J

V.K. JAIN, J

MAY 04, 2010
SR