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IN THE HIGH COURT OF DELHI AT NEW DELHI

{ITA 1380/2009 & 1381/2009}

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Judgment delivered on: November 8,2010

ITA 1380/2009

TWENTY FIRST CENTURY FINANCE LTD.Appellant

Through Mr. Salil Aggarwal, Advocate
Versus

THE COMMISSIONER OF INCOME TAXRespondent

Through Ms. Prem Lata Bansal,
Advocate.

ITA 1381/2009

TWENTY FIRST CENTURY FINANCE LTD.Appellant

Through Mr. Salil Aggarwal, Advocate
Versus

THE COMMISSIONER OF INCOME TAXRespondent

Through Ms. Prem Lata Bansal,
Advocate.

CORAM:-

**HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE SURESH KAIT**

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)

1. Admit
2. Following common question of law arises for determination of this Court in both these appeals:-

“Whether the Income Tax Appellate Tribunal was justified in law in not holding that the order made u/s 201 (1) & 201 (1A) of the Income Tax Act, 1961 dated 24.01.2000 was barred by limitation?”



3. With the consent of the learned counsel for the parties, I have finally heard the matters and proceed to dictate the order. Few facts which need to be noticed for the disposal of these two appeals are as under.

4. These appeals pertain to the assessment years 1994-95 and 1995-96. A search was conducted at the premises of the assessee's company under Section 132 of the Income Tax Act on 26th February, 1997. During the search, certain documents were seized. These documents include certain audit objections from the company's Auditors wherein it was pointed out that company had failed to discharge its obligation in compliance with the provisions of Section 192 to 206 of the Act. On the basis of these documents, summons under Section 131 of the Act were issued to the Managing Director of the Assessee's Company asking him to furnish the details. We may point out at this stage that as per the Auditor's objections, the assessee company had paid interest on the borrowings from M/s Mesco Airlines Ltd. and M/s Mideast India Ltd. on which tax was also deducted at source. However, this tax amount was not deposited with the Central Government and it was for this reason that the Auditors had raised the objections that the assessee's company had violated the provisions of Section 192 to 206 of the Act. On this premise, penalty proceedings under Section 201 and 201 (1A) of the Act were initiated which culminated in passing of orders dated 24th January, 2000 whereby the penalty on the assessee company was imposed and the interest was also levied.

5. The appellant filed appeal thereagainst which was dismissed.



the Tribunal has dismissed the appeal of the appellant herein a confirmed the orders of penalty and payment of interest passed by the Assessing Officer. The order of the Tribunal reveals that the assessee had pressed the issue of limitation only before the Tribunal, i.e., the contention of the assessee was that the action taken by the Assessing Officer in initiating the penalty proceedings under Section 201 and 201 (1A) of the Act was time barred. It was the submission of the appellant, predicated on the judgment of this Court in the case of **CIT Vs. NHK Japan Broadcasting Corporation**, 305 ITR 137 that such an action could be taken within a period of four years. It was thus submitted that in respect of financial year 1993-94 (corresponding to assessment year 1994-95), the period of limitation was expired on 31st March, 1998. Likewise, in respect of financial year 1994-95 (corresponding to assessment year 1995-96), the last date of initiating action was 31st March, 1999. In the present case, since the action was taken beyond the aforesaid dates, it was time barred. The Tribunal has not accepted the aforesaid contention of the assessee giving its own reasons.

6. It is not necessary at this stage and in these appeals to go into these reasons. It is stated that the Tribunal has been greatly influenced by the fact that the assessee herein had recovered the tax deducted at source and illegally retained with it and further that the assessee had not produced any evidence to show that the recipient of the interest amount namely the aforesaid two companies had paid the tax on the said income. This is one of the factors which has influenced the Tribunal to come to the conclusion that in respect of the said income, the tax has been completely escaped.



7. Mr. Salil Aggarwal, learned counsel appearing for the appellant has submitted that the aforesaid premise is completely erroneous. In support of this plea, he has drawn out attention to the orders passed by the Assessing Officer under Section 201(1A) of the Act. In this order, the Assessing Officer has reproduced the relevant portion of the explanation furnished by the assessee vide its letter dated 24th December, 1999. The reading of the extracted portion shows that the assessee had taken a specific plea before the Assessing Officer that even when the assessee had deducted the tax at source, no certificate of Tax Deducted at Source was furnished to M/s Mesco Airlines Ltd. and M/s Mideast India Ltd. Therefore, there was no occasion for the said two companies to take benefit of the said TDS in the Income Tax Return filed by them as assessees.

8. Another specific plea which is taken is that the said two companies had shown the interest as their income in the Income Tax Return and had infact paid the tax on their total income. It is thus argued that the Income Tax Appellate Tribunal gathered a wrong impression which was contrary to the record, that the interest income has escaped the tax net and the revenue had suffered in that behalf. It is his argument that keeping in view this escape in amount which is factually incorrect, the Tribunal has distinguished the judgment of this Court in the case of **NHK Japan Broadcasting Corporation** (*supra*). We find from the orders of the Assessing Officer, CIT (A) as well as the ITAT that the aforesaid explanation furnished by the assessee before the Assessing Officer, namely, no TDS certificate was issued to the recipient of the interest amount and further that those recipient had in any case paid the entire tax from the interest



income received by them have not been gone into. Infact, this pl of the assessee is not verified at all.

9. We are not commenting as to whether what would have been the outcome of the proceedings had the aforesaid fact been taken into consideration by the CIT (A) or the ITAT and whether the judgment of this court in ***NHK Japan Broadcasting Corporation*** (supra) would still be distinguishable. At the same time, we are of the opinion that this was very material aspect which should have been got verified and taken into consideration by the authorities below. It is for this reason alone, we set aside the orders of the ITAT and CIT (A).

10. Matter is remitted back. The CIT (A) shall call for remand report from the Assessing Officer seeking verification on the aforesaid plea taken by the assessee and after eliciting this information, the issue shall be decided afresh by the CIT (A).

11. Having regard to the fact that a considerable time has elapsed in this process, we expect the CIT (A) to decide the appeals within six months from today.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

NOVEMBER 8, 2010
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