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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 1334/2007**

THE COMMISSIONER OF INCOME TAX-V ..... Appellant
Through: Ms. Rashmi Chopra, Advocate

versus

PROAGRO SEED COMPANY (P) LTD. ..... Respondent
Through: Mr. C.S. Aggarwal, Sr. Advocate with
Mr. Prakash Kumar, Advocate

% DATE OF DECISION: September 16, 2010

CORAM:
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MS. JUSTICE REVA KHETRAPAL

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

A.K. SIKRI, J. (ORAL)

1. The issue involved in this appeal pertains to the maintainability of appeal under Section 246A challenging the assessment order insofar as it relates to the charging of interest under Sections 234A, 234B and 234C of the Income-Tax Act.

2. In the instant case, the assessee had raised a contention that the income derived from the production of Hybrid Seeds is an agricultural income and is thus not liable to be assessed as income.

3. It was contended that under Section 208 of the Income-Tax Act, 1961 since the assessee had to merely estimate its income and is to be computed in accordance with Section 209 of the Income-Tax Act, thus since such an income was fully outside the scope of the Income-Tax Act, it is not to be considered for the purposes of payment of advance tax and hence there is no liability to pay interest under Section 234B of the Income-Tax Act.

4. However, the assessee felt aggrieved by the aforesaid assessment order and filed the appeal before CIT(A) contending that the interest levied under Sections 234A, 234B and 234C was not leviable. The assessee accordingly denied the levy of interest altogether. This appeal of the assessee was, however, dismissed on the ground that no such appeal was maintainable under Section 246A of the Act. The order of the CIT(A) was successfully challenged by the assessee before the Tribunal inasmuch as vide impugned orders dated 27.04.2007. The Tribunal has concluded that appeal preferred by the assessee was maintainable and has remanded the case back to the CIT(A) to hear and dispose of the said appeal on merits. While taking this view, the Tribunal has referred to and relied upon the judgment of the Supreme

5. We have gone through the said judgment of the Supreme Court and from the reading thereof we find that the view of the Tribunal relying upon the said judgment to the effect that appeal was maintainable before the CIT(A) is correct. We reproduce herein the following observations of the Supreme Court:-

> *"Now, the question is whether orders levying interest under sub-section (8) of section 139 and under section 215 are appealable under section 246 of the Income-tax Act. Clause (c) of section 246 provides an appeal against an order where the assessee denies his liability to be assessed under the Act or against any assessment order under sub-section (3) of section 143 or section 144, where the assessee objects to the amount of income assessed or to the amount of tax determined or to the amount of loss computed or to the status under which he is assessed. Inasmuch as the levy of interest is a part of the process of assessment, it is open to an assessee to dispute the levy in appeal provided he limits himself to the ground that he is not liable to the levy at all."*

6. Even this Court in the case of ***CIT vs. M.K. Yashwant Singh, 231 ITR 145*** relied upon the aforesaid judgment of the Supreme Court and spelled out two types of cases and made distinction between the two. It was held that such appeals may fall in one of the two categories, namely, one, where liability to pay interest at all is denied, and two, where the liability to pay interest is not or cannot be disputed but a waiver or reduction is sought for. This Court was of the opinion that in the first type of cases the plea as to non-liability to pay interest can be raised while disputing the assessment in appeal, but in the latter case, the

remedy of assessee lies not in appeal but before the assessing authority itself to seek waiver or reduction of interest.

7. Hence, present case falls in first category and the appeal preferred by the assessee before the CIT(A) was maintainable. We are, therefore, of the opinion that no question of law arises. Dismissed.

A.K. SIKRI, J.

REVA KHETRAPAL, J.

SEPTEMBER 16, 2010
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