



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

Reserved on: 17.11.2016
Pronounced on: 03.07.2017

+ **ITA 240/2004**

COMMISSIONER OF INCOME TAX

..... Appellant

Through : Sh. Raghvendra Singh, Sr. Standing
 Counsel and Sh. Rahul Chaudhary, Advocate.

versus

M/S. MODILUFT LTD.

..... Respondent

Through : Sh. Amar Dave and Sh. Abhinav
 Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

MR. JUSTICE S. RAVINDRA BHAT

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1. The question of law framed in this appeal under Section 260A of the Income Tax Act, 1961 [hereafter "the Act"] is as follows:

"Whether the Income Tax Appellate Tribunal was correct in law in setting aside the order passed under Section 201(1) and 201(1A) of the Income Tax Act, 1961."

2. The assessee used to operate scheduled airlines; it closed down that business in 1996 due to which its staff, including pilots were laid-off. For AY 1997-98, the assessee filed its return on 29.11.1997. The Assessing Officer (AO) picked up the case for scrutiny and completed assessment under Section 143(3) of the Act. The assessee filed Tax Deducted at Source (hereafter "TDS") returns under Section 206 of the Act in Form 24 on



26.03.1998, declaring the TDS, and deposited ₹ 1,06,89,369/-. The AO observed that Capt. J.H. Patel who was an Executive Pilot for four months in 1996 (for the period April-August 1996) had complained, that he was paid a net salary of ₹ 7,72,500/- after TDS of ₹ 5,32,380/- and Provident Fund of ₹ 32,250/- but that no Form-16 was issued. The AO stated that similar information was received from the Ludhiana Special Range office of the Income Tax authorities in relation to Capt. A.K. Vohra that though his gross salary was ₹ 15,28,058/- of which TDS was ₹ 6,15,980/-, yet Form-16 issued by the company reflected gross income of ₹ 7,71,600/- and TDS of ₹ 2,75,640/-. The AO also observed that a complaint was received from the Economic Intelligence Bureau of the Department of Revenue, stating that larger sums were deducted towards TDS but the entire amounts were not paid to the authorities. To verify the genuineness of the complaints and the information, the AO scrutinized the assessee's Form 24 and asked it to furnish relevant information. After seeking several dates towards accommodation, the assessee, by letter dated 05.06.2000 stated that its relevant records were destroyed in fire and that it was unable to supply the information. The AO asked a specific query with respect to the variation in TDS amounts shown in the salary slips issued by the assessee to three individuals, i.e. Capt. A.K. Vohra, Capt. S.C. Mehta and Capt. J.H. Patel and the actual TDS amounts deposited in respect of such individuals.

3. By its reply dated 21.08.2000, the assessee informed the revenue that salary was a subject matter within the domain of M/s. Lufthansa, and its Senior Vice President (Operations). It was also stated that salaries depended on the individual contracts entered into between the employer and the officer



concerned. The assessee's position was that individual contracts were made available to the revenue and that since they were authentic documents binding on both parties, they were adhered to by the company. It was further stated that the salaries were worked out on the basis of agreements and that taxes were paid accordingly. It was further stated that the TDS certificate in Form 16 in the case of Capt. A.K. Vohra was received by him and even contained his signatures. This signified that he had no objection with regard to the contents, i.e. amounts deducted and deposited. In the absence of any complaint or letter from Capt. A.K. Vohra, claiming that TDS certificate for amounts more than what was paid to him were issued, the revenue's stand could not be accepted. It was further stated that the company had ceased its operation in the middle of 1996 after which it did not have any records.

4. The AO observed – on the basis of information furnished by the three Executive Pilots and further information through pay slip furnished by Capt. B.S. Sandhu that larger or higher amounts were deducted from the salaries given to such employees but a lesser amount was deposited. On the basis of analysis of the materials furnished by such pilots, the AO concluded that there was a liability of tax to the tune of ₹ 67,90,382/- in respect of 31 pilots. In addition to that amount – determined as the assessee's liability, the AO calculated interest under Section 201(IA) of the Act to the extent of ₹ 60,66,265/-. The aggregate of this demand formed the basis of the assessment. The assessee unsuccessfully appealed to the CIT.

5. The assessee's appeal to the ITAT was, however successful. The ITAT concluded that the adverse findings with respect to collection of higher amounts but deposit of much smaller amounts was not based upon any



credible findings. It, therefore, set aside the findings of the AO and also the CIT. The ITAT reasoned *inter alia* as follows:

“16. As per Section 206 of the Act, the assessee has to file the return of TDS in Form No.24 indicating the tax deducted at source and deposited to the government. The assessee company filed such return on 26.3.1998 indicating the TDS of Rs.1,06,89,369/- and deposited the same to the government. Such TDS included the TDS of Rs.57,65,092/- deducted from the remuneration paid to 31 pilots. On the basis of complaint by three pilots, the AO concluded that actually the assessee company has deducted tax at source at Rs.1,20,47,313/- from the remuneration paid to 31 pilots. In other words, it was not the case of the revenue that the assessee company has short deducted tax at source. The case of the revenue is that actually the assessee has deducted tax at source at Rs.1,20,47,313/- from the remuneration paid to 31 pilots but it has paid to the government only Rs.57,65,092/-. This observation of the AO has to be therefore, examined. As mentioned earlier, the assessee company filed the return of TDS in Form No.24 giving information of remuneration paid to 31 pilots and the tax deducted at source as well as paid to the Govt. as per law. The AO had observed that the complaints were received from three pilots to the effect that they were paid higher remuneration and higher tax was deducted at source. In one case, the pilot also furnished copy of pay slips allegedly issued by the assessee company indicating higher remuneration and higher deducted at source. The AO wanted to verify the contents of such complaints. He issued summons to some pilots. In response to such summons, some pilots appeared/confirmed the remuneration paid to them and tax deducted at source which confirmed to the claim of the assessee company. In none of the cases any pilot converted the stand of the assessee company. The AO has also referred to the information received from one pilot Shri B.S. Sandhu. The contents of the complaint have been mentioned by the AO on page 5 of his order. The reading of the complaint nowhere whispers that higher tax was deducted at source and he was issued TDS certificate of lesser amount.



Actually, the complaint was to the effect that he has not been paid his outstanding dues and he has not been issued TDS certificate due to which he would not file his income tax return. However, this complaint has nothing to do with the provisions of Section 201(1)/201(A) of the Act. If the outstanding dues have not been paid to him, the revenue cannot help it. If the TDS certificate was not issued to him, there was violation and different section of the Act deals with such situation. But certainly this cannot be a case of any occasion under Section 201 of the Act. Thus, reliance on such information was misplaced.

17. Admittedly, the assessee had employed 31 pilots. Three pilots complained against the assessee. Some pilots corroborated the statement of the Assessee company directly before the AO. Still the AO held that the assessee has deducted higher taxes from the remuneration paid to all 31 pilots and failed to make payment of the same to the government. We fail to understand the logic of the lower authorities in this regard. Perhaps the revenue's observations would have got some force if the AO had held that the assessee company has collected higher TDS from the remuneration paid to three pilots but failed to pay the same to the government. But that is not the case of the revenue.

18. The AO has held the assessee in default of the provisions of Section 201(1) of the Act. This section is applicable where the assessee has defaulted the tax at source (in the case before us) but failed to pay the same to the government as per law. But in order to attract the provisions of Section 201(1) of the Act, the revenue has to prove conclusively that the tax has been deducted at source which the assessee company failed to pay to the government. Except the assertion of the lower authorities on the basis of complaint received from three pilots, there is nothing on record to suggest that higher tax has been deducted as source from the remuneration paid to 31 pilots which the assessee failed to pay to the government. While holding the assessee company in default of payment of TDS to government, the AO did not think it proper to verify that the pilots including



these three pilots from whom the complaint was received have filed their returns of income and what salary has been declared by them in their returns. These pilots filed their returns of income, they should have enclosed the TDS certificate issued by the assessee company. Whether such certificates depicted any higher remuneration and higher deduction of tax at source or not, we had made a specific query in this regard as to whether in any of the case of 31 pilots, the higher tax was deducted at source than what was mentioned in the TDS certificate issued by the assessee company. The revenue had admitted that no such information was available with them. As against this fact, we find that when the TDS certificate in Form No.16 was issued to the pilots including the pilots from whom the complaints have been received, the same was received by them and their signatures were also obtained as a token of having received their TDS certificates. In one of the cases any pilots informed the assessee company that higher tax was deducted from their remuneration and the TDS certificate of lower was issued to them. We also find that the AO has mentioned about certain pay slips and TDS certificate allegedly issued by the assessee company to some pilots. But once the assessee company has flatly denied the issuance of such pay slips, there was no evidence with the revenue to result such submissions. Thus, reliance on such alleged pay slips also cannot be placed. On the basis of above facts, it is clear that the revenue has failed to evidence its claim that the assessee was in default of not paying the tax deducted at source as per law.....”

6. The revenue argues in its appeal as well as before this Court that the ITAT misappreciated the facts and evidence. The versions of the pilots, particularly Capt. Sandhu and Capt. A.K. Vohra were damaging for the assessee and it was incumbent upon it to explain with full details what were the amounts actually paid to its employees and pilots and what amounts were deducted. Its failure to provide any primary material in this regard showed that it did not discharge the onus of proving that the entire amounts deducted



from the employees' salaries were in fact deposited. Once this pattern of behavior was corroborated in respect of at least three pilots, the Revenue and the AO acted within their rights in concluding that all pilots – numbering 31 had also received the same treatment. Therefore, the AO correctly deduced that an amount in excess of ₹ 67 lakhs was unlawfully retained. In the circumstances, interest was also leviable. It was also submitted that the assessee's contention with respect to absence of records was a pretext and afterthought which was unverifiable and not substantiated in any objective manner. On the other hand, there was credible material for the AO to infer that a variation of 208% between the tax shown in Form 24 and the amount actually deducted by the company existed.

7. Learned counsel for the assessee submits that the ITAT's reasoning is justified. As a matter of fact, the ITAT drew the correct conclusion from the complaint of Capt. Sandhu by holding that his grouse was in respect of non-payment of salary rather than withholding amounts that were not paid by the assessee to the income tax department. Furthermore, the assessee had never admitted that the pay slips relied upon by those individuals who complained to the Revenue were genuine. It was argued on behalf of the assessee that the consistent stand in all proceedings was that there was no discrepancy between the written agreements entered into by the parties and the amounts paid actually. If the written agreements of all the concerned pilots were verified and tallied with Form 24 furnished, there would have been no difficulty. Equally, it was pointed out that none of the complainants or the other pilots answered the summons issued under Section 131 of the Act, much less supported the allegations against the assessee. Again, no attempt



was made by the Revenue to get hold of the records relating to the returns filed by the appellants and cross-check them with the TDS returns filed, especially, by comparing Form 24. In these circumstances, the findings of the CIT were not based upon any credible material but rather based upon conjectures in the absence of any concrete findings.

8. The heart of the allegations leveled by the assessee against the Revenue in this case is that ₹ 2,01,89,369/- deposited as TDS was not the entire amount but that further amounts had in fact been deducted from the salaries of no less than 31 pilots and unlawfully detained by it. The direction of the enquiry was triggered by the complaints made by three individual pilots and later by one Capt. Sandhu during the course of the proceedings. The AO as well as CIT primarily went by the documents provided by the three complainants, i.e. Capt. J.H. Patel, Capt. A.K. Vohra and Capt. S.C. Mehta. The AO's order discusses the relevant details in respect of Capt. A.K. Vohra alone. During the course of the AO's proceedings, the entire enquiry was extended to include allegations leveled by one Capt. Sandhu. Basing itself upon the conclusions and analysis arising out of the amounts mentioned by the complainants, the AO found that over ₹ 67 lakhs was payable as balance TDS that should have been deposited and a further sum in excess of ₹ 60 lakhs was due as interest.

9. A careful reading of the AO's order would show that whilst the initial part deals with allegations of one Capt. J.H. Patel, the only basis for concluding that higher amounts were deducted from the salaries is premised upon allegations leveled by Capt. A.K. Vohra. Capt. Vohra claimed that he had worked for eight months in 1996 and that his gross salary was ₹



15,28,085/- out of which the amount deducted from his salary was ₹ 6,15,980/- but that the Form 16 issued showed that his gross salary was much lesser and the TDS too was ₹ 2,75,640/-. The assessee company's stand was that the pilots were paid according to their individual contracts, copies of which were made available to the Revenue. The assessee also highlighted that each of the pilots had signed on Form 16 which signified the actual amount paid and at no stage did they say that larger amounts were deducted or that lesser amounts of salary was reflected but higher amounts were paid. In other words, at the time of receiving the salaries and signing on the documents which reflected the TDS, the alleged complainants never stated that the documents reflected any incorrect picture. In the case of Capt. B.S. Sandhu, the ITAT noticed that the tenor of his letter and his grievance was that he was not paid salary for substantial periods, rather than complaining that amounts lesser than what was deducted were in fact deposited with the Revenue. As against this, significantly, in reply to the summons issued to all pilots, under Section 131 of the Act, there was no response. Furthermore, there was no attempt on the part of the Revenue to reconcile the records as it were and verify whether in the individual tax returns filed by the pilots, larger amounts were reflected. This failure, in the opinion of the Court, cannot result in penalizing the assessee.

10. The ITAT's reasoning that the Revenue's findings were essentially based upon conjectures and complaints rather than evidence or material is reasonable and sound. The AO's order is primarily premised upon the complaints of Capt. J.H. Patel and Capt. A.K. Vohra and a later letter received from Capt. Sandhu. In their cases too, an attempt to reconcile



between the amounts declared by them in the tax returns and the amounts shown in the returns and the TDS returns of the assessee, was never made. These individuals too did not make their submissions or answer any reply to the summons issued under Section 131 of the Act. The entire tenor of the AO's order is accusatory and prosecutorial in requiring the assessee to discharge almost a presumption that it had not paid the amounts. The AO first had to establish the foundational fact that in respect of each of the 31 pilots, the amounts actually paid or deposited were less than the amounts deducted from the salary. Such a determination had to be preceded by the procedure known to law, i.e. in the form of show cause notice outlining the exact amounts and the basis for such amounts. Instead the AO merely acted upon the basis of some complaints and refused to look into all material factors. There is no discussion for instance, as to the contractual amount in the agreement signed by each pilot and the assessee; the AO has ignored the important fact that no pilot joined the proceeding and answered summons under Section 131 and most importantly, to reject the Form 24 furnished by the assessee, mere complaints were insufficient. If the assessee's explanation about lack of records due to fire seemed suspicious, nevertheless, the AO was under a duty to cross-check and reconcile the returns filed by the individual pilots from the concerned Wards and Circles before rendering its findings. If there were facts that corroborating the allegations that larger amounts were deducted but only a part thereof was in fact deposited with the Revenue, then and then alone would the findings be justified. However, that was not so in the circumstances of the case.



11. For the foregoing reasons, this Court is of the opinion that there is no infirmity with the findings in the impugned order of the ITAT. The question of law is answered in favor of the assessee and against the revenue. The appeal accordingly fails and is dismissed.

S. RAVINDRA BHAT
(JUDGE)

SANJEEV SACHDEVA
(JUDGE)

JULY03, 2017

