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

DECIDED ON: 27.07.2012

\+ ITA 1208/2011

Commissioner of Income Tax-I V ..... Appellant

Through: Mr.N.P.Sahni, Sr.Standing Counsel with Mr.Ruchesh Sinha, Jr.Standing Counsel

versus

M/s Delhi State Industrial & Infrastructure Development Corporation Ltd. ..... Respondent

Through: Ms.Anusuiya Salwan & Mr.Vikas Sood, Advocates

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)
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1. Revenue claims to be aggrieved by the order of the Income Tax Appellate Tribunal (ITAT) to the extent that it allowed the assessee's appeal, holding that the sum of Rs.2, 57, 55, 508/- crores received as interest on income tax refund, does not require to be assessed.

2. We have heard learned counsel. The following questions of law arises, viz, "whether interest paid on income-tax refund bears the

character of income and is, therefore exigible to tax".

3. Brief facts necessary for the purpose of this case are that the assessee, an undertaking of the Govt. of NCT of Delhi, had received the grants. They were brought to tax and the assessee was directed to pay income tax. Subsequently, the refund was claimed and allowed to the extent of Rs.41.89/- crores. This also included a sum of Rs.2,57,55,508/- as interest. The assessee argued that this amount could not be brought to tax. The assessing officer rejected this argument and included it in the computation of income. The appellate commissioner, who was approached by the assessee confirmed the addition holding as follows:

"*3.2 In have considered the submissions made by the authorized representative of the appellant company. The interest of Rs.2,57,55,508/- has been received during the year by the appellant on the refund of income tax. It has been submitted that the appellant had paid tax in respect of scheme of relocation of industries and common effluent treatment plant (CETP Scheme) But subsequently, after the passing of the orders by the Appellate Authorities, the appellant got relief on the issue and as a result refund of income tax was received which was inclusive of interest of Rs.2,57,55,508/-. The contention of the appellant is that since the matter regarding interest earned on the surplus funds of these schemes is covered by the orders of various Appellate Authorities, the interest of Rs.2,57,55,508/- would also be exempt from tax along the same lines. However, I do not agree with the appellant's contention because the sum of Rs.2,57,55,508/- in question is not the interest earned directly from the funds of the relocation and CETP schemes but is rather interest on income tax refund, which is exigible to tax. The matter is not covered by the orders of Higher Appellate Authorities in the appellant's case as contended because the issue dealt with in the appellant's case in earlier years was interest earned on the surplus funds of the schemes owned by the Delhi Administration and merely governed by the*

appellant. Here the issue is interest on income tax refund, which is chargeable to tax. The assessing officer has rightly added this amount to the income of the appellant and I uphold this action of the assessing officer. This ground of appeal is dismissed."

4. The Tribunal's reasoning allowing the assessee's appeal is extracted below:-

"19. We have heard the rival contentions and perused the records. We find that assessee had paid taxes in respect of scheme relating to allocation of industries and CETP Scheme. Subsequently, as per the orders of the appellate authorities, the refund was allowed to the assessee to the extent of Rs.41.89 crores which also included interest to the extent of Rs.2,57,55,508/-. This was claimed by the assessee to be attributed to the refund of tax relating to relocation of industries and CETP Scheme. It was further claimed that since the matter regarding interest earned on the surplus funds of these schemes is covered by the orders of the various appellate authorities, the interest of Rs.2,57,55,508/- would also be exempt from tax along with the same lines. This was not accepted by the Ld. Commissioner of Income Tax (Appeals) and he held that a sum of Rs.2,57,55,508/- in question is not the interest earned directly form the funds of the relocation and CETP schemes but is rather interest on income tax refund, which is exigible to tax. In this regard, it is assessee's plea that the entire refund including the interest belongs to the Government of Delhi and as such it is not exigible to tax in the hands of the assessee. It has further been claimed that assessee had paid the entire amount including the interest to the Delhi Government. We find considerable cogency in the assessee's plea that when the interest itself is not chargeable to tax, the consequential refund was also not chargeable to tax. We find cogency in the contention of the assessee that when Ld. Commissioner of Income Tax (Appeals) has decided to the effect that there is no tax liability in respect of interest relating to relocation of industries and CETP, consequential refund and interest on the same, cannot be chargeable to tax. In this regard, however we note that necessary evidence as to whether the entire amount has been paid to the Delhi Government or not is not available. Hence, we direct the

Assessing Officer to certify the same and allow the assessee's claim accordingly."

5. The Revenue contends that the assessee had paid tax in respect of scheme of relocation of industries, formulated by the Govt. It contested the taxability of the amount; and was successful before the income tax authority who directed refund tax. The amount refunded included interest on the tax deposited. It was contended that even though there was no taxable event that amount wrongly assessed to tax, had to be refunded, by virtue of mandate under the Income-tax Act. Interest was payable and to the extent of interest component the assessee had to pay income tax as it constituted "income from other sources". In the absence of any statutory exemption, the interest on the refunded amount could not be exempted from tax.

6. Learned counsel for the assessee on the other hand, contended that when in principle the tax deposited was a subject of wrong extraction, the interest earned on it and paid as a result of law could itself not be considered as income and therefore, was not liable to taxable.

7. This Court is of the opinion that the view taken by the assessing officer and the appellate commissioner is correct. Unless there is an exact indication in the Income Tax Act itself, that interest payable on income tax refund amounts fulfill the basic character as income (defined under Section 2(24) of the Income Tax Act) cannot be ignored. It is no doubt true that this amount cannot be treated as

interest income since the assessee did not earn it through conscious choice or voluntarily, nor was it engaged in the activity of investing its amount and earning interest. However, the basic characteristic of income being what it is, the amount received towards statutory interest has to be subject to tax under the head 'income from other sources'.

8. In the result, the question is answered in favour of the revenue and in the affirmative; the appeal has to succeed. The order of the assessing officer, to the extent discussed above, is hereby restored. The appeal is allowed in the above terms.

S. RAVINDRA BHAT, J

R.V.EASWAR, J

JULY 27, 2012
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