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

DECIDED ON: 25.07.2012

\+ ITA 407/2012

M/s Asian Hotels (North) Ltd. ..... Appellant

Through: Mr.M.P.Rastogi &
Mr.K.N.Ahuja, Advocates.

versus

Commissioner of Income Tax-I ..... Respondent

Through: Mr.Deepak Chopra, Sr.Standing Counsel with Mr.Harpreet Singh Ajmani, Advocate for Deptt. of Tax.

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

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)
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1. The question sought to be raised in this appeal by the assessee is whether the amount paid as tip to the employees is to be subjected to the TDS in terms of Section 192 of the Income Tax Act.

2. In CIT v. ITC Ltd., now reported in (2011) 338 ITR 598 (Delhi) and CIT v. C.J. International Hotels Ltd., 2011-TIOL-287-H.C.-DEL-IT, it has been held that Section 192 applies and tax should have been

deducted by the employer-hotel and this position is not disputed by learned counsel for the appellant.

3. In view of the above decision, the appeal is dismissed in terms of the judgment reported in (2011) 338 ITR 598 (Delhi).

4. However, learned counsel submitted that the assessee cannot be treated as defaulter. Counsel for the revenue relied upon the judgment report as Commissioner of Income Tax (TDS) v. M/s American Express Bank Ltd., ITA 74/2003 dated 21st December, 2011. The said judgment has clarified that if the assessee fails to deduct the tax, it has to be recovered along with interest under Section 201 (1A) of the Act.

5. In M/s American Express Bank Ltd., the Court had observed as follows:-

"9. While we are not inclined to disturb the finding of the Income Tax Appellate Tribunal that the assessee had acted in a bona fide manner, we do not agree with the conclusion of the Income Tax Appellate Tribunal that the assessee cannot be regarded as being as an "assessee in default" in respect of the short deduction. It is important to remember that the question of "good and sufficient reasons" only arises when one considers the proviso to Section 201(1) of the said Act. That proviso has been specifically introduced to negate the possibility of imposition of penalty under Section 221 if the Assessing Officer is satisfied that the person liable had good and sufficient reasons to not deduct and pay the tax in question. Thus, the proviso is to be applied only to the question of penalty. It would not absolve the assessee insofar as his being considered as an assessee in default for the purposes of Section 201(1) of the said Act. Therefore, this finding of the Tribunal is set aside. Consequently, question no.1 is decided in favour of the Revenue and against the assessee.

11. We would like to reiterate that although the questions have been decided in favour of the Revenue, it must be remembered that the finding of the Tribunal that the assessee acted in a bona fide manner, has to be kept in mind and, therefore, no penalty can be imposed on the assessee under Section 221 because of the specific stipulation in the proviso to Section 201(1) of the said Act. We also note that the exact quantum of the default needs to be computed. It would, therefore, be necessary to remand the matter to the assessing officer for the limited purpose of computing the exact quantum of default and the interest payable under Section 201(1A) of the said Act. We make it clear that in case the employees of the assessee have paid the taxes as per their individual returns/assessments, then no amount towards tax would be payable to that extent by the assessee, however, the assessee would continue to be liable for interest under Section 201(1A) but only for the period commencing „from the date on which such tax was deductible to the date on which the tax is actually paid" [see: CIT v Adidas India Marketing P. Ltd : (2007) 288 ITR 379 (Del) and CIT v Trans Bharat Aviation (P) Ltd : (2010) 320 ITR 671 (Del)]. The assessing officer shall give full opportunity to the assessee to produce documents in this regard.

The appeals are allowed to the extent indicated above"

6. In view of the above rulings, no substantial question of law arises for consideration. The appeal is dismissed.

S. RAVINDRA BHAT, J

R.V.EASWAR, J

JULY 25, 2012
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