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

% Judgment delivered on : 28.07.2008

\+ ITA Nos.781/2008, 782/2008, 783/2008 & 808/2008

THE COMMISSIONER OF INCOME TAX-XVII. ..... **Appellant**

-versus-

FOOD CORPRATION OF INDIA, CONTRIBUTORY PROVIDENT FUND TRUST. ..... **Respondent**

Advocates who appeared in this case:

For the Appellant : Ms. Rashmi Chopra
For the Respondent : Mr. Kamal Sawhney

CORAM :-

HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER

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

BADAR DURREZ AHMED, J (ORAL)

1. These four appeals arise out of the common order dated 14.09.2007 passed by the Income Tax Appellate Tribunal

(hereinafter referred to in short as 'Tribunal') in ITA Nos. 4042, 4043, 4044, 4045/D/2006 pertaining to the financial years 2001 - 02 to 2004 – 05. In respect of these years the question which arose was whether the assessee was liable to deduct tax at source under Section 194A of the Income Tax Act, 1961, (hereinafter referred to as 'the said Act').

2. According to the revenue, the assessee was liable to deduct the tax at source and, not having done so, became an assessee in default. As recorded in the impugned order, the assessee is a Provident Fund Trust of Employees created after seeking exemption under Section 16 of the Employees Provident Fund Act, 1952 (EPF Act). The trust is recognised and exempted both under the IVth Schedule of the said Act by the Commissioner of Income Tax, Delhi, as well as, by the Provident Fund Commissioner under the EPF Act.

3. In the course of survey proceedings conducted in the premises of the assessee it was found that the amounts being credited to the account of the ex-employees after cessation of employment, had the character of interest and as such, according to the Assessing Officer, the assessee was required to deduct tax at source under Section 194A of the said Act. The assessee having failed to do so

was treated as being default and, hence, demands under Section 201 (1) and 201 (1A) for the said financial years were raised against the assessee by the Assessing Officer.

4. Being aggrieved by the said order of the Assessing Officer, appeals were filed before the CIT (Appeals), who confirmed the orders passed by the Assessing Officer. The matter was taken in appeal by the assessee before the Tribunal. Before the Tribunal, the issue that required consideration was, whether the assessee trust was an individual and, therefore, was outside the purview of Section 194 A of the said Act. The Tribunal considered the definition of person given in Section 2 (31), as well as, the provisions of Section 194A of the said Act and came to the conclusion that a conjoint reading of the two sections would make it clear that before holding an assessee in default under Section 194 A, it has to be first determined and adjudicated as to what is the status of the assessee. This is so because any person who is an individual or a Hindu Undivided Family, is not liable to deduct tax at source under Section 194 A of the said Act in respect of the payments with regard to interest. The Tribunal noted that neither the Assessing Officer nor CIT (Appeals) had determined the status of the assessee trust before holding the

assessee to be in default for non-deduction of tax at source as provided under Section 194 A of the said Act. The tribunal also referred to various decisions of High Courts including :-

i. ***CIT v. SEA Head Office Monthly Paid Employees Welfare Trust*** **:** ***(2004) 141 Taxman 364(Del)****;*

ii. ***CIT v. Showroom Krishan Bandar Trust*****:** ***201 ITR 984***;

iii. ***CIT v. Deepak Family Trust*****:** ***72 Taxman 406***;

iv. ***M L Family Trust &Others v. State of Gujarat*****:** ***213 ITR 152***;

v. ***ITO v. Arihant Trust & Others*** **:** ***214 ITR 306 (Mad)***;&

vi. ***CIT v. TSR Enterprises*****:** ***274 ITR 41 (2004) (Mad)***.

5. After considering all these decisions, the Tribunal concluded (a) that it is necessary to determine the status of an assessee before the liability of deducting tax at source under Section 194A of the said Act can be foisted upon such assessee; (b) on the basis of the decisions rendered by the various High Courts, as mentioned above, the status of the assessee trust in this case, would be that of an individual.

6. In coming to the latter conclusion, the tribunal, as did other decisions of several High Courts referred to above, placed

reliance on the provisions of Section 161 of the said Act. We are of the view that the objects for which the trust was constituted by the trust deed dated 28.04.1968 needs to be kept in mind. A perusal of the objects, the relevant extract of which is referred to hereinafter, would show that the aggregate of sums, which are contributed or subscribed to the fund by the members as defined in the Regulations and by the Corporation in accordance with the Food Corporation of India (Contributory Provident Fund) Regulations, 1967, together with the income which accrues or investment held by the trustees, constitute assets of the fund which, the trustees are required to hold and apply in accordance with the regulations which are binding on the members to the fund. The relevant object clause of the respondent trust reads as follows:-

> "It is hereby agreed and declared that the aggregate of the sums to be contributed and subscribed to the fund by the members as hereinafter defined and by the Corporation in accordance with the Food Corporation of India (Contributory Provident Fund) Regulations 1967 shall be paid and together with the Income accruing from the use of or investments thereof held by the Trustees and shall in their hands constitute the assets of the fund and the Trustees shall hold and apply the assets of the said fund according to the said regulations which shall be binding on the members as herein after defined and the Corporation."

Under Section 160 & 161 of the Act, the trustees are the representative assessees in respect of the income accruing to trust. The trustees thus, in accordance with provisions of Section 161 of the Act are amenable to tax, as well as, eligible to all exemptions, deductions and benefits which would be available to the beneficiaries, i.e., members who are individuals as per their entitlements, if they were to individually hold the said assets. It is, thus, clear that the trustees bears the same status under the Act as that of the beneficiaries whom they represent. It is in this context that the various High Courts, in the judgments referred to above, accepted the status of the trust to be of like nature as that of individual beneficiaries.

7. Therefore, in our view, the Tribunal came to a correct conclusion, firstly that before it could be determined as to whether the respondent assessee was required to deduct tax at source under Section 194A of the Act, its status had to be determined, and secondly, if its status was that of an individual then, the provisions of Section 194A of the Act could not be applicable to the respondent / assessee.

8. In the instant case, the Tribunal came to the conclusion

that the respondent / assessee had the status of an individual and it was thus axiomatic that it was not required to deduct tax at source in respect of the payments made by it in view of provisions of Section 194A of the Act.

9. The impugned order does not call for any interference. We find that no substantial question of law arises for consideration. These appeals are dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

July 28, 2008
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