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

\+ **ITA No. 891/08 & 894/2008**

July 16, 2009

ITA No. 891/08

THE COMMISSIONER OF INCOME TAX-XVII ...Appellant
Through: Ms. Rashmi Chopra and Mr. Chandramani Bhardwaj, Advocates

VERSUS

TRANS BHARAT AVIATION (P) LTD. ....Respondent

Through:

AND

ITA NO. 894/2008

THE COMMISSIONER OF INCOME TAX-XVII ...Appellant
Through: Ms. Rashmi Chopra and Mr. Chandramani Bhardwaj, Advocates

VERSUS

TRANS BHARAT AVIATION (P) LTD. ....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE A. K. SIKRI
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

%

A.K.SIKRI, J.

1 These appeals have been filed by the Revenue under Section 260-A of the Income Tax Act questioning the validity of the order dated 31.8.2007 of the Income Tax Appellate Tribunal (I.T.A.T). By the impugned order, the ITAT allowed the appeals of the assessee to the extent that it held that the assessee is not liable to pay the TDS. The ITAT however held the assessee liable for interest under Section 201(1)(A) of the Act. For the sake of convenience reference is being made to the facts of ITA 891/2008.

2 The facts are that the assessee is engaged in the business of air taxi operators. During the course of the verification proceedings, it was found that the assessee in the year under consideration had made payments to Airport Authority of India (AAI) in respect of space rent, rent for office space, parking charges etc at various airports all over India on which no tax was deducted at source. The Assessing Officer held the assessee was liable to deduct TDS and since TDS was not deducted, the assessee was held to be in default under Section 201(1) and also liable for interest under Section 201(1)(A) of the Act. The CIT(A) sustained the order of the Assessing Officer and which resulted in filing of the appeal by the assessee before the ITAT, and which as stated above was partly allowed.

3 It has been contended by the counsel for the Revenue that there is a presumption that though Airport Authority of India (AAI) is a Government undertaking, it would have paid its taxes and, therefore, the assessee not having deducted TDS from the payments made to Airport Authority of India (AAI), the assessee is deemed to be in default. The counsel further vehemently argued that no presumption can be drawn even if, the AAI is a Government undertaking that it would have paid its taxes.

4 We note that ITAT has followed the decision of this court in ***CIT Vs. Adidas Marketing P.Ltd.*** in which decision this court held that the assessee who was obliged to but had not deducted tax at source, would not have asked to pay the same where the deductee had paid tax on the amount received by him as his income. The ITAT further noted that since the deductee is a Government of India undertaking, it cannot be presumed that it has not paid tax. We put it to the counsel for the appellant as to whether any notice was issued by the Assessing Officer to the Airport Authority of India (AAI), so that there is no double taxation, the counsel for the appellant stated that this was not clear from the file. Similarly, the counsel in reply to the court query also said that there is nothing on record suggests that any proceedings have been initiated against Airport Authority of India for not paying its taxes.

6 Another issue which was urged by counsel for the appellant was that the interest which has been ordered by the ITAT is only till the due date of filing of

the return of the Airport Authority of India (AAI) wherein it should have be till the date of actual payment of tax by the Airport Authority of India. The ITAT in our opinion has rightly held that since Airport Authority of India is a Government undertaking, the taxes may be presumed to have been paid lastly by the due date of filing of the return of income and, therefore, the liability of the assessee to pay interest on the amount which was to be deducted as TDS ends with the due date of filing of the return by the Airport Authority of India.

8 Accordingly, no substantial question of law arises. The appeals are accordingly dismissed.

A.K. SIKRI, J

VALMIKI J.MEHTA, J

July 16, 2009

ib