M/S. Hindustan Coca Cola Beverage Pvt. ... vs Commissioner Of Income Tax on 16 August, 2007

Equivalent citations: AIR 2007 SUPREME COURT 2930, 2007 (8) SCC 463, 2007 AIR SCW 5326, 2008 TAX. L. R. 332, (2008) 202 TAXATION 210, (2007) 58 ALLINDCAS 143 (SC), 2007 (58) ALLINDCAS 143, 2007 (10) SCALE 29, (2007) 10 SCALE 29, (2007) 293 ITR 226, (2007) 5 SUPREME 886

Author: B.Sudershan Reddy

Bench: S.H. Kapadia, B. Sudershan Reddy

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           CASE NO.:
Appeal (civil)  3765 of 2007

PETITIONER:
M/s. Hindustan Coca Cola Beverage Pvt. Ltd

RESPONDENT:
Commissioner of Income Tax

DATE OF JUDGMENT: 16/08/2007

BENCH:
S.H. Kapadia & B. Sudershan Reddy

JUDGMENT:
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J U D G M E N T CIVIL APPEAL NO. 3765 OF 2007 (Arising out of SLP(c) No. 3883 of 2007) B.SUDERSHAN REDDY,J.

Leave granted.

2. This appeal by Special Leave preferred by the appellant-assessee is directed against the judgment of Delhi High Court dated 11.10.2006 in ITA No. 478 of 2005.

3. Briefly stated the facts are as follows:

4. The appellant-assessee is engaged in the manufacture and sale of soft drinks. The appellant-assessee entered into an agreement with M/s. Pradeep Oil Corporation for use of their premises for receipt, storage and dispatch of goods belonging to the appellant-company. There is no dispute that the appellant had paid the warehousing charges to M/s. Pradeep Oil Corporation on which tax was deducted under Section 194C of the Income Tax Act, 1961 (for short 'the Act') @ 2%. The Assessing Officer vide order dated 30.3.2001 held the appellant to be 'assessee in default' for failure to deduct tax at source in respect of warehousing charges paid to M/s. Pradeep Oil Corporation. The Assessing

Officer rejected the plea of the assessee that the payments made by the appellant- company were in the nature of contractual payments on which tax was deducted under Section 194C of the Act at 2%. The Assessing Officer accordingly held that the warehousing charges were in the nature of rent as defined in Explanation to Section 194-I of the Act and, therefore, tax ought to have been deducted at 20% under the said provisions as against deduction of tax at 2% under Section 194C of the Act. The Assessing Officer having held the appellant to be 'assessee in default' for the shortfall in the amount of tax deducted at source levied interest under Section 201 (1A) of the Act on the amount of tax alleged to be short deducted. The Assessing Officer accordingly determined the amount of short deduction of tax and also levied interest payable thereon under Section 201 (1A) of the Act.

5. The appellant preferred an appeal against the order of the Assessing Officer before the Commissioner of Income Tax (Appeals) and thereafter before the Tribunal. The Tribunal also took the view that the appellant-assessee to be an 'assessee in default' in respect of the amount of short deduction of tax and also upheld the levy of interest under Section 201 (1A) of the Act. The further appeal preferred by the appellant- assessee was dismissed by the High Court on 21.5.2004.

6. The appellant thereafter preferred miscellaneous application in the appeals that were already disposed of seeking rectification of the order of the Tribunal dated 12.7.2002. Be it noted, the appellant did not raise any dispute about it being the 'assessee in default' and also raised no objection as regards the levy of interest under Section 201 (1A) of the Act. The grievance of the appellant was that its alternative contention that the warehouser has been assessed on its income and the tax due has been recovered from it by the department and therefore, no further tax could have been collected from the appellant has not been considered by the Tribunal in its order dated 12.7.2002. The contention was that since the tax to be recovered by the department on the income has already been paid by the assessee, no further tax should be recovered from the appellant on the same income. The Tribunal vide its order dated 13.9.2004 allowed the application of the appellant on the ground that the alternative contention of the appellant has not been considered while disposing of the appeal. The contention was specifically raised in Ground No. 7 of the memorandum of appeal preferred by the appellant. The Tribunal accordingly held, to that extent, there is a mistake apparent on the face of record and, therefore, constitutes a rectifiable mistake under Section 254 (2) of the Act. The Tribunal accordingly recalled its earlier order dated 12.7.2002 for the limited purpose of taking up the particular ground raised in Ground No. 7 in the memorandum of appeal. This order directing the reopening of the matter has attained its finality. The department did not challenge the said order.

7. The Tribunal upon rehearing the appeal held that though the appellant-assessee was rightly held to be an 'assessee in default', there could be no recovery of the tax alleged to be in default once again from the appellant considering that Pradeep Oil Corporation had already paid taxes on the amount received from the appellant. It is required to note that the department conceded before the Tribunal that the recovery could not once again be made from the tax deductor where the payee included the income on which tax was alleged to have been short deducted in its taxable income and paid taxes thereon. There is no dispute whatsoever that Pradeep Oil Corporation had already paid the taxes due on its income received from the appellant and had received refund from the tax department. The Tribunal came to the right conclusion that the tax once again could not be recovered from the

appellant (deductor- assessee) since the tax has already been paid by the recipient of income.

8. The High Court interfered with the order passed by the Tribunal on the ground that the order dated 12.7.2002 of the Income-Tax Appellate Tribunal has attained its finality since the appeal filed against the same by the appellant was dismissed by the High Court on 21.5.2004; the point based on Ground No. 7 was not taken up in the appeal preferred by the appellant in the High Court. The High Court further held that the Income-tax Appellate Tribunal's order dated 12.7.2002 got itself merged into the order passed by it on 21.5.2004 dismissing the appeal of the appellant herein. The High Court came to the conclusion that the Tribunal could not have reopened the matter for any further hearing.

9. We have already noticed that the order passed by the Tribunal to reopen the matter for further hearing as regards ground No. 7 has attained its finality. In the circumstances, the High Court could not have interfered with the final order passed by the Income-tax Appellate Tribunal.

10. Be that as it may, the circular No. 275/201/95- IT(B) dated 29.1.1997 issued by the Central Board of Direct Taxes, in our considered opinion, should put an end to the controversy. The circular declares "no demand visualized under Section 201 (1) of the Income- tax Act should be enforced after the tax deductor has satisfied the officer-in-charge of TDS, that taxes due have been paid by the deductee-assessee. However, this will not alter the liability to charge interest under Section 201 (1A) of the Act till the date of payment of taxes by the deductee-assessee or the liability for penalty under Section 271C of the Income-tax Act."

11. In the instant case, the appellant had paid the interest under Section 201 (1A) of the Act and there is no dispute that the tax due had been paid by deductee- assessee (M/s Pradeep Oil Corporation). It is not disputed before us that the circular is applicable to the facts situation on hand.

12. In the circumstances, it is not necessary to go in detail as to whether the Tribunal could have at all reopened the appeal to rectify the error apparent on the face of the record. We do not wish to express any firm view on this aspect.

13. The impugned judgment of the High Court is accordingly set aside. The appeal is allowed with no order as to costs.