

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : INCOME TAX MATTER

Date of decision : 10th September, 2007

ITA No. 839/2007

COMMISSIONER OF INCOME TAX Appellant
Through Ms. P.L.Bansal with Mr. Vishnu Sharma,
Advocates.

versus

NOBLE & HEWITT (I) PVT LTD Respondent
Through Counsel (presence not given)

CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE DR. JUSTICE S. MURALIDHAR

MADAN B. LOKUR, J (Oral)

1. The Revenue is aggrieved by an order dated 17th November, 2006 passed by the Income Tax Appellate Tribunal('Tribunal') Delhi Bench "D" New Delhi in ITA No. 2910/Del/2004 relevant for the assessment year 1999-2000.

The Assessee maintains a mercantile system of accounting. It had collected service tax during the previous year relevant to the assessment year in question. Out of the service tax so collected the Assessee had deposited part of the amount but an amount of Rs. 14.40 lakhs was not deposited by the Assessee with the concerned authorities. The Assessee did not claim any deduction in this regard nor did it debit the amount as an expenditure in the Profit & Loss Account. The Assessing Officer as well as the Commissioner of Income Tax (Appeals) ['CIT(A)'] nevertheless disallowed the amount and added it back to the income of the Assessee.

The CIT (A) was of the view that the Assessee had not followed the correct accounting procedure. If it had done so, the amount would have had to be debited to Profit & Loss Account and thereafter the Assessee could claim a deduction thereon. The Commissioner relied upon decision of the Calcutta High Court in Chowringhee Sales Bureau P. Ltd. v. Commissioner of Income Tax, West Bengal-I (1977) 110 ITR 385.

In appeal, the Tribunal was of the opinion that in view of the provisions of Section 43 B of the Income Tax Act, 1961('Act'), since the Assessee had not claimed a deduction there was no question of disallowing the deduction which was not even claimed. The relevant extract of Section 43 B of the Act reads as follows:

“43B.

Certain deductions to be only on actual payment.

Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of -

(a) Any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force,

(b) xxxxxxxxxxxxxxxx

(c) xxxxxxxxxxxxxxxx

(d) xxxxxxxxxxxxxxxx

(e) xxxxxxxxxxxxxxxx

(f) xxxxxxxxxxxxxxxx

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him.....”

Learned counsel for the Revenue urges that the decision of the Calcutta High Court in Chowringhee Sales Bureau covers the point in its favour. We are unable to agree. In that case it was held that the liability to pay sales tax arose the moment a sale or purchase was effected and if an Assessee was maintaining accounts on the mercantile system it would be entitled to deduction of the estimated liability of sales tax, even though such sales tax had not been paid to the sales tax authorities. The question there concerned was the entitlement of the assessee to deduction under Sections 10(1) and 10(2)(xv) of the Income Tax Act, 1922. The decision is clearly distinguishable in its application to the present case. Here we are concerned with an Assessee who has not even claimed any deduction on the ground of service tax and has not debited the amount to its Profit & Loss Account. Moreover the provisions of Section 43B of the Act are quite clear in this regard. The decision of the Calcutta High Court in Chowringhee Sales Bureau was not in the context of the applicability of Section 43B of the Act.

In our opinion since the Assessee did not debit the amount to the Profit & Loss Account as an expenditure nor did the Assessee claim any deduction in respect of the amount and considering that the Assessee is following the mercantile system of accounting, the question of disallowing the deduction not claimed would not arise.

Learned counsel for the Revenue submits that the Assessee has sought to evade tax under the mercantile system of accounting. We are of the view that it is not for the Revenue authorities to tell the Assessee how to maintain its accounts.

We cannot find any fault in the view taken by the Tribunal and find no merit in this appeal. No substantial question of law arises.

The appeal is dismissed.

Sd./-

MADAN B. LOKUR, J

SEPTEMBER 10, 2007

Sd./-
S.MURALIDHAR, J