

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 29.07.2008

+ ITA Nos. 548/2008 & 549/2008

DIRECTOR OF INCOME TAX (EXEMPTION) ... Appellant

- versus -

INDIA TRADE PROMOTION ORGANIZATION ... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Prem Lata Bansal

For the Respondent : None

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether 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 Digest ?

BADAR DURREZ AHMED, J (ORAL)

CM No. 6249/2008 in ITA 549/2008

Allowed subject to all just exceptions.

ITA 548/2008 & ITA 549/2008

1. These appeals pertain to the assessment years 1989-1990 and 1990-91. They arise out of the common order passed by the Income Tax Appellate Tribunal on 22.06.2007. They are, therefore, disposed of by this common order.

2. The facts in brief are that the assessment was completed in respect of both the years creating demands for both the years. Thereafter, in 1994 exemption was granted to the assessee under Section 10 (23C) (iv) of the Income Tax Act, 1961 (hereinafter referred to as the 'said Act'). In view of the said exemption which had been granted, the assessment was rectified under Section 154 of the said Act and the assessee was assessed at nil. The Assessing Officer also granted refund but did not grant any interest on the refund of the tax paid by the assessee. It was claimed that no interest was payable in view of the assurance given by the representative of the assessee that it would not be making any claim of interest on belated refunds. It was also noted that such an assurance was discernible from the letter dated 12.09.1994 issued by the Under Secretary to Government of India of Ministry of Finance, which had been issued in favour of the Commissioner of Income Tax (II), New Delhi.

3. The assessee being aggrieved by the non-grant of interest on the refund which had been allowed, preferred appeals before the Commissioner of Income Tax (Appeals), who dismissed the appeals and confirmed the order of the Assessing Officer.

4. In the appeals preferred before the Income Tax Appellate Tribunal, the said Tribunal found, as a question of fact, that there was no waiver of interest on the part of the assessee. The Tribunal considered the decisions of the Calcutta High Court as well as the Punjab and Haryana High Court in (i) **DCIT v. Central Concrete and Allied Products: 236 ITR 595 (CAL)** and (ii) **National Horticulture Board v. Union of India: 253 ITR 12 (P & H)**. These decisions clearly established that the entitlement to interest under Section 244A is a substantive and an inherent right.

5. The only issue, therefore, which was there before the Tribunal was whether the assessee had waived its right to interest. An affidavit of the Executive Director of the assessee company had been placed on record indicating that there was no such waiver of the right to claim interest under Section 244A of the said Act. The Tribunal noted that the Department had not brought on record the alleged assurance of the assessee given to the Central Board of Direct Taxes in which the assessee had allegedly waived its claim to interest under Section 244A of the said Act. Consequently, the Tribunal was of the opinion that the affidavit filed by the assessee remained uncontroverted by the Department and nothing contrary to the contents of the document has been placed on record. Accepting the said affidavit of the Executive Director of the assessee, the Tribunal concluded that there was no

waiver of the right to claim interest under Section 244A of the said Act.

This is a finding of fact.

6. No question of law, what to speak of a substantial question of law, arises for our consideration. It may be noted that we are dismissing these appeals on merits without requiring the appellant to seek a clearance from the Committee on Disputes which it would have otherwise had to take before filing these appeals.

These appeals stand dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

July 29, 2008
SR