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

\+ ITA 882/2016, CM APPL.45233/2016

COMMISSIONER OF INCOME TAX (INTERNATIONAL ..... Appellant

Through: Mr. Raghvendra Singh and Mr. Rahul Chaudhary, Advocates.

versus

NATIONAL PETROLEUM CONSTRUCTION COMPANY ..... Respondent

Through: Mr. Prakash Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% **03.02.2017**

The Revenue questions the order of the Income Tax Appellate Tribunal ("ITAT") whereby it allowed the assessee's appeal. On 6.12.2016, the Court had recorded as follows: **-**

> *"All except one questions urged in this appeal are covered by the decision of this Court for the previous assessment years, titled as National Petroleum Construction Company Vs. Director of Income Tax (International Taxation), [2016] 383 ITR 648.*
>
> *Learned counsel seeks some time to examine the relevant materials pertaining to the surviving question i.e. with respect to applicability of Section 234B of the Income Tax Act, 1961.*
>
> *List on 03.02.2017."*

The surviving issue, i.e., applicability of Section 234B relates to the Revenue's contentions that interest was payable in respect of non-payment of advance tax.

The ITAT relied upon the judgment of this Court in *Director of Income Tax (International Transactions) v. G.E. Packaged Power INC* 373 ITR 65 where the Court held that the primary liability of deducting the tax for the period concerned is that of the payer. In the facts of the present case, the appellant was the payee and not the payer who could not, therefore, be passing the liability under the terms of the Act.

In view of the fact that the ITAT followed the judgment of this Court, no substantial question of law arises; the appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

FEBRUARY 03, 2017
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