ORDER SHEET

IN THE HIGH COURT AT CALCUTTA

Special Jurisdiction
[Income Tax]

ORIGINAL SIDE

ITA 14 of 2007

NOPANY MARKETING COMPANY PVT LTD

Versus

CIT (TDS) KOLKATA

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE ARINDAM SINHA

Date : 9th February, 2015.

Mr. J. P. Khaitan, Sr. Adv.

Md. Nizamuddin, Adv.

The Court : The subject matter of challenge in the appeal is a judgment and order dated 30th August, 2006 by which the learned Tribunal agreeing with the views of the assessing officer and the CIT(A) rejected the contention of the assessee. The assessee has once again come up before this Court.

The question of law at the time of admission framed was as follows:

"Whether on a true and proper interpretation of the provisions contained in chapter XVIIB of the Income Tax Act, 1961 the Assessing Officer has jurisdiction to demand the amount of tax not deducted at source by an order passed under sub-sections (1) and (1A) of Section 201?"

Mr. Khatian, learned Senior Advocate, appearing for the appellant/assessee, drew our attention to the explanation to Section 191 and contended that the assessee may be made liable provided the payee had not offered the money received by him for taxation and has thus failed to pay tax on that. He submitted that in the absence of a clear cut finding that the payee in this case had failed to offer the money received by him for taxation and had failed to pay tax thereon, the liability under Section 191 could not have been foisted upon the assessee before us for omission on its part to deduct tax at source.

Mr. Nizamuddin, learned advocate appearing for the revenue, has disputed this submission made by Mr. Khaitan. He drew our attention to a judgment in the case of Hindustan Coca Cola Beverage Pvt. Ltd. vs. C. I. T., reported in (2007) 163 Taxman 355 (SC) wherein the following views were taken :

"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."

The judgment of the Apex Court, as cited by Mr. Nizamuddin, is a complete answer to the submissions advanced by Mr. Khaitan. Even otherwise, whether the payee has offered money for taxation; whether the payee has paid tax on that, is a defence which the appellant could have taken. If he takes the defence, it is for him to prove it. It cannot be suggested that it was the obligation of the assessing officer to first explore the possible defences and then to collect evidence in support thereof.

For the aforesaid reasons, the appeal is dismissed and the question is answered in the affirmative.

(GIRISH CHANDRA GUPTA, J.)

(ARINDAM SINHA, J.)

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