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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO.801 OF 2012

The Commissioner of Income Tax. ..Appellant
-Versus-
M/s Indian Oil Corporation Limited. ..Respondent

.....
Mr.Tejveer Singh, for the Appellant.
Mr.R.Murlidhar with Mr.A.K.Jasani, for the Respondent.
.....

**CORAM: S.C. DHARMADHIKARI
AND
A.K. MENON, JJ.**

DATE :- 12th September, 2014

PC.:

1 When this matter was called out for admission, Mr.Tejveer Singh, learned counsel appearing for the Revenue, stated that the Appeal is arising out of the order dated 30.09.2011 passed by the Income Tax Appellate Tribunal in Income Tax Appeal No.1949/Mum/2010. The Assessment Year in question is 2002-2003. The Appeal raises the substantial questions of law and according to him, they are formulated at page 4 of the paper book. They read as under:-

- (a) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in holding that interest under Section 234D is not liable to be charged?
- (b) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in holding that

interest under Section 244A(1)(b) of the Income Tax Act, 1961 is to be granted to the Assessee?

2 After the Appeal was argued for sometime, Mr.Tejveer Singh and Mr.Murlidhar, conceded that insofar as the question (a) is concerned that is a substantial question of law and fully covered against the Assessee and in favour of the Revenue by the order of this Court dated 12.09.2012 in Income Tax Appeal No.2012/2011 and since reported in **(2012) 78 ITR 361 : (2012) 254 CTR 113** (*The Commissioner of Income Tax v/s M/s Indian Oil Corporation Limited*).

3 Having perused this judgment with the assistance of the learned counsel appearing for the parties we are of the opinion that the Appeal has to be partly allowed. It is, accordingly, allowed partly and answer to question (a) shall be in favour of the Revenue and against the Assessee in terms of the Division Bench judgment.

4 Insofar as the question (b) and reproduced above is concerned, our attention is invited to Section 244A of the Income Tax Act, 1961 and particularly it's sub-section (1), so also, clauses thereof. It is conceded by Mr.Tejveer Singh that the facts in this case do not give rise to an issue of applicability of sub-section (2) or (3) of the relevant statutory provision, namely, Section 244A. It is further conceded that the relevant statutory provision and for the Assessment Year in question was identically worded as that of Section 244A standing today. Our attention is then invited to the Tribunal's order and impugned in this Appeal. Mr.Murlidhar submits that in paragraph 7 of the impugned order the Tribunal has extensively referred to the judgment of the Delhi High Court in the case of *Commissioner of Income Tax v/s Sutlaj Industries Limited* reported in **325 ITR 331 (Del.)**.

5 The Delhi High Court relied on the view taken by the Madras

High Court in the case of *Cholamandalam Investment and Finance Limited* reported in **(2007) 294 ITR 438**. It has recorded in the order that the Special Leave Petition against this order of the Madras High Court was dismissed by the Honourable Supreme Court of India.

6 The Tribunal in relying upon the view taken by the Delhi High Court, as also, it's own view on that basis, has dismissed the Appeal of the Revenue.

7 Nothing contrary to this legal position has been brought to our notice by Mr. Tejveer Singh. In fact he fairly concedes that the issue is covered against the Revenue. It is also conceded that the statutory provision was identically worded at the relevant time. In such circumstances the Appeal is dismissed insofar as the question (b) is concerned.

8 The Appeal is, accordingly, disposed of. No costs.

(A.K. MENON, J.)

(S.C. DHARMADHIKARI, J.)