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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 432 OF 2001

The Commissioner of Income Tax-I,  
Qureshi Mansion, Gokhale Road,  
Thane. ... Appellant

Versus

M/s. Nicholas Piramal India Ltd.  
Vitamins and Fine Chemicals Division,  
Mumbai Agra Road, Balkum, Thane.... Respondent

Mr.P.S. Sahadevan for the Appellant.

Mr. A.K. Jasani for Respondents.

**CORAM: F.I. REBELLO &  
R.S. MOHITE, JJ.  
DATED: JANUARY 15, 2008**

**ORAL JUDGMENT (Per F.I. Rebello,J.) :**

. The revenue has preferred this appeal on the following questions :

(i) Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that Children's Education Allowance paid by the assessee to their employees at the fixed rate is exempt u.s.10(14) only on the basis of declaration filed by the employees without verifying actual expenditure incurred by the employee & maintaining records thereof & not

including the same for the purpose of taxable income for the deduction of tax at source u.s. 192 of the I.T. Act, 1961?

(ii) Whether on the facts and in the circumstances of the case the Tribunal was justified in law in holding that L.T.A. paid by the assessee to their employees at the fixed rate is exempt u.s. 10(5) only on the basis of declaration filed by the employees without verifying actual expenditure incurred by the employee & maintaining records thereof and not including the same for the purpose of taxable income for deduction of tax at source u.s. 192 of the I.T. Act, 1961?"

. The present appeal is in respect of assessment years 1995-96. That appeal was heard along with several other appeals which were disposed of by common order dated 6.6.2001. The A.O. observed that the children education allowances and Leave travel allowances were treated as exempted merely on the basis of declaration filed by the assessee and no sufficient proof of incurring expenditure either on the education of the children or on travel was examined by the assessee and as such held that the allowances were wrongly treated as exempted and

consequently made demands. That order was confirmed in appeal by C.I.T. (Appeal) which held that by solely acting on the declarations obtained from the employees was not sufficient to form the honest belief as claimed by the assessee.

. The learned tribunal proceeded to pose to itself a question whether the employer/assessee had acted honestly and fairly or not? The tribunal considered the declarations given by the employees of the Assessee as also affidavits filed by the employees to the effect that they had incurred expenditure. It also noted that the T.D.S. is not effected only on the part of the allowances which is exempted and on the balance portion tax has duly been deducted and paid into the Government treasury. The tribunal as an illustration considered cases of two employees and on considering the facts therein, was of the opinion that it was difficult to hold that the assessee did not act honestly and fairly and or that there was any reason for the assessee to raise any suspicion with regard to the declaration filed by the employees. The tribunal held that it was not a case where the assessee had blindly accepted the declarations and for the aforesaid reasons, considering that the employer is expected to deduct tax only on estimated income and on facts on recording held that the assessee has fairly

estimated the income and for that reasons, quashed the demands raised. In our opinion, these are purely findings of fact recorded by the tribunal with which no fault can be found.

. Apart from that our attention has been invited to the judgment on the similar issue in ITA No. 104 to 107/BOM/90 in Glaxo India Limited Vs. First Income Tax Officer, T.D.S. Circle, Bombay disposed of on 12.6.1995. In that case the issue pertains to short deductions in regard to the estimation of drivers salary as also of domestic servants. Various judgments were placed for consideration before the learned tribunal. The only issue was in respect of short deductions in salaries paid to the employees. The tribunal noted that on the facts on record, it cannot be said that the assessee has deliberately or dishonestly resorted to under estimation of the salary income of the employees for the purpose of deduction of tax at source. It noted that the deduction of tax at source is to facilitate the department to collect the tax earlier to assessment of the same. It does not mean that the department should blindly go by the returns filed by the employees in making the assessments of the employees. The tribunal held that what is to be seen for the purpose of Section 201 as it then stood was whether the assessee has made bona fide estimate

for the purpose of deduction of tax. The tribunal held that from the details furnished the assessee has only made bona fide estimate. An application for reference which was made was rejected. An application was made to this court being Income Tax Application No. 171 of 1997 which was disposed of by this court by observing as under :

"Considering the fact that the tribunal has recorded a finding of fact which concludes the controversy, in our opinion no referable question of law arises. Hence, rejected."

. The revenue took out the matter in Appeal before the Supreme Court. The Special Leave Petition was dismissed.

. It will be clear therefore, that even if the amendment to section 201 has been applied retrospectively, the test whether the assessee acted bona fide is still available as what the assessee under Section 192(1) is called upon, is to deduct tax "on the estimated income". In our opinion, the facts in Glaxo (supra) would clearly apply. On behalf of the Revenue, the learned counsel had brought to our attention the judgment of this court in the case of Benett Coleman & Co. Ltd. Vs. V.P. Damle, Third Income Tax Officer, TDS Circle, Bombay,

157 ITR 812. In that case the assessee had deducted tax but failed to deposit the same. It is in this context that the court had observed that Section 201(1)(a) of the Income Tax Act makes payment of simple interest mandatory. That case is clearly distinguishable and cannot be applied to the facts of the present case as the present case is of deduction on estimated income. Reliance is also placed on the judgment in Pentagon Engg. (P) Ltd. Vs. CIT, 212 ITR 92 Bombay. There again the issue for consideration was whether the tribunal was right in law in taking a view that the provisions of Section 201(1)(a) for levying interest is mandatory. Once it is held that the authority was deducting tax then there is no escapement from levying interest if that amount is not deposited. That is not the case here.

. Considering the findings of fact and the issue involved in this case, we are clearly of the opinion that the question of law as framed would not arise and consequently appeal is dismissed.

(R.S. MOHITE, J.)

(F.I. REBELLO, J.)