

ITEM NO.7

COURT NO.5

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S). 1196-1197/2013
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 25/07/2012
IN TCA NO. 225/2006 AND TCA NO. 226/2006 PASSED BY THE HIGH COURT
OF MADRAS)

IAN PETER MORRIS

PETITIONER(S)

VERSUS

ASSTT. COMMNR. OF INCOME TAX
(WITH INTERIM RELIEF AND OFFICE REPORT)

RESPONDENT(S)

Date : 29/11/2016 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE N.V. RAMANA

For Petitioner(s)

Mr. Dhruv Agarwal, Sr. Adv.
Ms. Shruti Agrawal, Adv.
Mr. Abhinav Mukerji, Adv.

For Respondent(s)

Mr. K. Radhakrishnan, Sr. Adv.
Ms. Rashmi Malhotra, Adv.
Mr. Deepak Prakash, Adv.
Ms. Shruti Srivastava, Adv.
Mrs. Anil Katiyar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are allowed in terms of the signed
order.

[VINOD LAKHINA]
COURT MASTER

[TAPAN KR. CHAKRABORTY]
COURT MASTER

Signature Not Verified
Digitally signed by
VINOD LAKHINA
Date: 2016.12.02
16:37:48 IST
Reason: 

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.11385-11386 OF 2016
[Arising out of Special Leave Petition
(Civil) No.1196-1197/2013]

IAN PETER MORRIS . . . APPELLANT

VERSUS

THE ASSISTANT COMMISSIONER OF
INCOME TAX . . . RESPONDENT

ORDER

1. Leave granted.
2. The appellant - Assessee along with three others had promoted a Company, namely, 'Log in Systems Innovations Private Limited' (the Acquiree Company) in the year 1990. The said Company was acquired by one Synergy Credit Corporation Limited (the Acquirer Company). The appellant was offered the position of Executive Director

in the Acquirer Company for a gross compensation of Rs.1,77,200/- per annum. This was by appointment order dated 8th October, 1993. On 15th October, 1993, an Acquisition Agreement was executed between the Acquirer Company and the Acquiree Company on a going concern basis for a total consideration of Rs.6,00,000/-. On the same date i.e. 15th October, 1993, a Non-Compete Agreement was signed between the appellant - Assessee and the Acquirer Company imposing a restriction on the appellant from carrying on any business of Computer Software development and marketing for a period of five years for which the appellant - Assessee was paid a sum of Rs.21,00,000/-. The question that arose in the proceedings commencing with the Assessment Order is whether the aforesaid amount of Rs.21 lakhs is on account of 'salary' or the same is a 'capital

receipt'. The High Court in the order under appeal took the view that the said amount is 'salary amount' on which interest would be chargeable/leviable under Section 234B and 234C of the Income Tax Act, 1961 (for short "the Act"). Aggrieved, the present appeal has been filed.

3. A limited notice was issued in the present case confining the scrutiny of the Court to correctness of levy of interest as ordered/affirmed by the High Court. The aforesaid limited notice, therefore, has to be understood to have concluded the issue with regard to the nature of the receipt, namely, that the same was salary.

4. A perusal of the relevant provisions of Chapter VII of the Act [Part A, B, C and F of Chapter VII] would go to show that against salary a deduction, at the requisite rate at which income tax is

to be paid by the person entitled to receive the salary, is required to be made by the employer failing which the employer is liable to pay simple interest thereon. The provisions relating to payment of advance tax is contained in Part 'C' and interest thereon in Part 'F' of Chapter VII of the Act. In cases where receipt is by way of salary, deductions under Section 192 of the Act is required to be made. No question of payment of advance tax under Part 'C' of Chapter VII of the Act can arise in cases of receipt by way of 'salary'. If that is so, Part 'F' of Chapter VII dealing with interest chargeable in certain cases (Section 234B - Interest for defaults in payment of advance tax and Section 234C - Interest for deferment of advance tax) would have no application to the present situation in view of the finality that has to be

attached to the decision that what was received by the appellant - assessee under the Non-Compete Agreement was by way of salary.

5. For the aforesaid reasons, the appeals are allowed; the order of the High Court so far as the payment of interest under Section 234B and Section 234C of the Act is set aside.

.....,J.
(RANJAN GOGOI)

.....,J.
(N.V. RAMANA)

NEW DELHI
NOVEMBER 29, 2016