

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).8632/2008

(From the judgment and order dated 30/03/2007 in ITA No. 189/2007
of The HIGH COURT OF DELHI AT N. DELHI)

COMMR.OF INCOME TAX, DELHI XVII

Petitioner(s)

VERSUS

NHK JAPAN BROADCASTING CORP.

Respondent(s)

(With appln(s) for c/delay in filing SLP and office report)(For final

WITH
SLP(C) NO. 8633 of 2008 - With appln. for c/delay in filing SLP and with office
report (for final disposal)

Date: 16/07/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Petitioner(s) Mr. Mohan Parasaran, ASG.
Mr. Chinmoy Pradip Sharma, Adv.
Mr. B.V. Balaram Das,Adv.

For Respondent(s) Mr. M.S. Syali, Sr.Adv.
Mr. Peeyoosh Kalra, Adv.
Ms. Mallika Poswal, Adv.
Mr. Jagjit Singh Chhabra,Adv.

UPON hearing counsel the Court made the following
ORDER

Delay condoned.

Leave granted.

Appeals are disposed of with no order as to costs.

(S. Thapar)

(Madhu Saxena)

PS to Registrar

Court Master

The signed order is placed on the file.
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4510 OF 2008
(Arising out of SLP(C) No. 8632 of 2008)

COMMISSIONER OF INCOME TAX, DELHI XVII
APPELLANT (S)

...

VERSUS

M/S NHK JAPAN BROADCASTING CORPN.
RESPONDENT(S)

...

WITH

CIVIL APPEAL NO.4511 OF 2008 @ SLP(C) NO. 8633 OF 2008

ORDER

Delay condoned.

Leave granted.

The assessee is a Japanese Organization set up for transmission of news and broadcasting. It pays salary to its employees. It also pays some housing allowance.

The Assessing Officer included Citizen Tax as a part of the income of the ex-patriates employed by the assessee - Company in India as part of the employee's income on the ground that it was an amount paid by the assess to its employees. According to the Assessing Officer the assessee ought to have deducted TDS at the time of payment.

Feeling aggrieved by the decision of the Assessing Officer the assessee preferred an appeal before Commissioner of Income Tax (Appeals). The view taken by CIT(A) was that Citizen Tax is a statutory levy in Japan on the Japanese Citizens and that such tax constitutes an overriding charge on the salary income and,

-2-

therefore, the same had to be excluded in computation of taxable income. This view of the Commissioner has been upheld by the tribunal.

When the matter came before the High Court in appeal filed by the Department under Section 260A of the Income Tax Act, 1961, the High Court took the view that in view of the concurrent finding of fact, no interference is called for and the appeal was dismissed accordingly. Hence, this Civil Appeal.

Without going into the merits of the case, suffice it to state that in the present case, in our view, the CIT (A) ought to have examined the scope of the Japanese Law, namely, Citizens Individual Inhabitant Tax Act. In the letter of appointment issued, there is a reference to the words. The relevant clause reads as under:

"Your emoluments shall be subject to deduction of taxes as per applicable laws and the Tax liability on host country (India) shall be borne by NHK-Japan Broadcasting Corporation."

Analysing the said clause one finds that the emoluments paid by the assessee was subject to deduction of tax as per applicable laws. Therefore, in

our view, CIT (A) ought to have examined the provisions of Citizens Individual Inhabitant Tax Act which is a Japanese Law and it ought to have analysed the provisions of that Law, particularly, when it was required to decide the question as to nature of the levy being an overriding charge on the salary income, as stated hereinabove. The controversy in the present case is that Citizens Tax is a statutory levy in Japan on the Japanese Citizens constituting an

-3-

overriding charge. If it is an overriding charge then of course the Commissioner was right in saying that it would not be an income. However, in our view, since the provisions of the Act have not been examined, the matter needs to be considered afresh by the tribunal. Accordingly, we remit the matter to the tribunal for fresh consideration in accordance with law. We express no opinion on the merits of the case.

The Civil Appeals are decided accordingly with no order as to costs.

.....J.
[S.H. KAPADIA]

New Delhi,
July 16, 2008

.....J
[B. SUDERSHAN REDDY]