IN THE INCOME TAX APPELLATE TRIBUNAL
NEW DELHI, BENCH 'H'

ITA No. 1562/Del/2008
Assessment Year: 1997-98

M/s TURKMENISTAN AIRLINES
NO 1, BMC HOUSE, MIDDLE CIRCLE,
CONNAUGHT PLACE, NEW DELHI

Vs

ADIT
INTERNATIONAL TAXATION 2(2), NEW DELHI

K G Bansal, AM and George Mathan, JM

Dated: October 16, 2009

Appellant Rep by: Shri Suresh, Adv.
Respondent Rep by: Y K Kakkar, Sr. DR

ORDER

Per: George Mathan:

1. This appeal by the assessee has been preferred against the order of Ld. CIT(A) XXIX, New Delhi in *appeal No.270/2006-07 dated 25.2.2008* for the Assessment Year 1997-98. Shri Suresh Advocate appeared for the assessee and Ms. Y K Kakkar, Sr. DR represented on behalf of the revenue. In the assessee's appeal, the assessee has raised the following grounds:

"1) The lower authorities have erred in holding that foreign travel tax is chargeable to tax u/s 44BBA of the I.T. Act.

2) It is contended that foreign travel tax is not income of the appellant at all.

3) It is contended that foreign travel tax collected on behalf of revenue belongs to revenue and the principle of 'division of income by overriding title' will apply to the impugned sum of Rs. 34,90,500/-.

4) The lower authorities have erred in holding that the provisions of Section 234D of the Act are applicable, as the assessment was completed after 1st June 2003.

5) The above grounds of appeal are independent and without prejudice to one another.

Appellant craves leave to add, alter amend or withdraw any of the grounds of appeal at the time of hearing"

2. In regard to grounds Nos. 1, 2 & 3 which were against the action of Ld. CIT(A) in holding that the foreign travel tax is chargeable to tax u/s 44BBA, it was fairly agreed by both the sides that the issue was squarely covered against the assessee by the decision of Hon'ble High Court of Uttaranchal in the case of *Reading and Bates Exploration Co. reported in 278 ITR 47*, wherein it is held as follows:

"Section 9(1)(ii) read with the Explanation of the I.T. Act, 1961, provides for an artificial place of accrual for income taxable under the head "salaries". It enacts that income chargeable under the head "salaries" is deemed to accrue

in India if it is earned in India, i.e., if the services under the contract for employment are rendered in India. I explains the expression "income earned in India" to mean payment for the services in India even if the contract is executed outside India or the amount is payable outside India. However, from the said Explanation it is not possible to infer the corollary, viz., that in all cases where services are rendered outside India the salary cannot be deemed to accrue in India ipso facto. In certain cases, even if the services were rendered outside India, the income can still accrue or arise in India."

2.1 In these circumstances, respectfully following the principles laid down by the Hon'ble High Court of Uttaranchal in the case of Reading & Bates Exploration Co. referred to supra, the finding of Ld. CIT(A) is confirmed.

3. In regard to ground No.4 which is against the upholding of the levy of interest u/s 234D, it was fairly agreed by both the sides that the issue was squarely covered by the decision of Special Bench of this Tribunal in the case of *Ekta Promoters Pvt. Ltd. reported in 113 ITD 719 (Del) (SB) =* ***(2008-TIOL-337-ITAT-DEL-SB)***, wherein it has been held as follows:

"Therefore, it was to be held that section 234D, which has been brought on the statue from 1.6.2003, cannot be applied to the Assessment Year 2003-04 or earlier years, but it will have application only with effect form the Assessment year 2004-05.

In view of the aforesaid, it was to be concluded that interest under section 234D was chargeable from the assessment year 2004-05 and it could not be charged for earlier years even though regular assessments for those years were framed after 1.6.2003 or the refund was granted for those years after the said date."

3.1 In these circumstance, respectfully following the decision of Special Bench of this Tribunal in the case of Ekta Promoters Pvt. Ltd. referred to (supra), the A.O. is directed to delete the levy of interest u/s 234D of the Act.

4. The assessee has also filed additional ground in respect of levy of interest u/s 234B. As the additional ground as raised does not require any fresh verification of facts in view of the decision of Hon'ble Supreme Court in the case of *National Thermal Power Corporation Ltd. reported in 229 ITR 383 =* ***(2002-TIOL-279-SC-IT)*** the same is admitted.

4.1 In regard to the additional ground, it was submitted by the Ld. A.R. that no opportunity having been granted to the assessee before the levy of interest u/s 234B, the same was illegal and liable to be deleted. It was his further submission that even if the interest u/s 234B was leviable, the same was liable to be restricted to the date of original assessment. He relied upon the decision of Coordinate Bench of this Tribunal in the case of *Freightship Consultants Pvt. Ltd. reported in 300 ITR 96 (Del.).* In reply, the Ld. D.R. submitted that the levy of interest was mandatory in view of the decision of Hon'ble Supreme Court in the case of *Anjum M H Ghaswala reported in 252 ITR 01 (SC) =* ***(2002-TIOL-73-SC-IT)***.

4.2 We have considered he rival submissions. The levy of interest u/s 234A, 234B & 234C of the Act has been held as mandatory by the Hon'ble Supreme Court in the case of *Anjum M H Ghaswala* referred to supra and consequently, the prayer of the assessee that no opportunity having been granted to the assessee, the levy of interest u/s 234B was liable to be deleted, stands rejected. Further, in view of the decision of Coordinate bench of this Tribunal in the case of Freightship Consultants P. Ltd. referred to supra, the A.O. is directed to levy the interest u/s 234B up to the date of original assessment as made on 30.3.2000.

5. In the result, the appeal of the assessee is partly allowed.

6. This decision was pronounced in the open court on 16.10.2009.