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Commissioner of Income Tax Vs British Airways

Civil Appeal No''s. 751 to 766, 774, 776, 778 and 785 of 2010

Court: Supreme Court of India

Date of Decision: Jan. 20, 2010

Acts Referred:
Income Tax Act, 1961 â€" Section 192, 201, 201(1), 201(1A)

Citation: (2010) 190 TAXMAN 304

Hon'ble Judges: S.H. Kapadia, J; H.L. Dattu, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

1. Delay condoned. Leave granted.

2. The following substantial question of law arises for consideration in this batch of civil appeals:

Whether the income tax Appellate Tribunal was correct in law in holding that the orders passed under Sections 201(1) and 201(1A) of the income

tax Act, 1961 are invalid and barred by time having been passed beyond a reasonable period.

3. Having heard Learned Counsel on both sides, we are of the view that on the facts and circumstances of these cases, the question on the point of

limitation formulated by the income tax Appellate Tribunal in the present cases, need not be gone into for the simple reason that at the relevant

time, there was a debate on the question as to whether TDS was deductible under the income tax Act, 1961, on foreign salary payment as a

component of the total salary paid to an expatriate working in India. This controversy came to an end vide judgment of the instant Court in the case

of Commissioner of Income Tax vs. Eli Lilly & Co. (India) Pvt. Ltd., reported in [2009] 312 I.T.R. 225 . The question on limitation has become

academic in these cases because even assuming that the Department is right on the issue of limitation, still the question would arise whether on such debatable points, the Assessee(s) could be declared as the Assessee(s) in default u/s 192 read with Section 201 of the income tax Act, 1961.

Further, we are informed that the Assessee(s) have paid the differential tax. They have paid the interest and they further undertake not to claim

refund for the amounts paid. Before concluding, we may also state that in Eli Lilly & Company (India)(P.) Ltd.''s case (supra) vide Paragraph 21,

the instant Court has clarified that the law laid down in the said cases was only applicable to the provisions of Section 192 of the income tax Act,

1961. Leaving the question of law open on limitation, these civil appeals filed by the Department are disposed of with no order as to costs.