

**Cit Vs. Peter Dukes**

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**Court :** Delhi

**Decided On :** Dec-15-2003

**Reported in :** [2005]142TAXMAN593(Delhi)

**Appeal No. :** IT Appeal No. 176 of 2002 , 15 December 2003

**Appellant :** Cit

**Respondent :** Peter Dukes

**Advocate for Pet/Ap. :** Ms. Prem Lata Bansal; for the Appellant, ; Ms. Jasleen Kaur Oberoi;for the Respondent

**Judgement :**

ORDER

1. This appeal by the revenue under section 260A of the Income Tax Act, 1961 is directed against a consolidated order dated 3-8-2001, passed by the Income Tax Appellate Tribunal Delhi Bench-E (hereinafter referred to as the Tribunal) in ITAs No. 1652, 1660,1663 & 1667/DeL/95, retaining to assessment year 1990-91. According to the revenue, the said order involves the following questions of law:

1. Whether ITAT was correct in law in confirming the order of CIT (A) and thereby deleting the addition of Rs. 79,378.00 on account of overtime being 15 per cent of salary, addition of Rs. 1,89,527.00 on account of overheads being 45 per cent of the salary and Rs. 28,704.00 on account of perquisites by the assessing officer.

2. Whether ITAT was correct in confirming the order of CIT (A) and thereby deleting the addition of tax perquisite whereas under the provisions of section 17(2)(iv) the taxes paid by the employer are to be treated as perquisite?

3. Whether ITAT was correct in confirming the order of CIT (A) and thereby deleting the interest charged under section 234B of the Income Tax Act.

4. Whether the order of ITAT is perverse in law and on facts when it has passed the non-speaking order?'

2. From the impugned order we find that while dismissing revenue's appeal, the Tribunal has relied upon its earlier orders in the case of identically placed assessed's in respect of assessment year 1988-89. The Tribunal has also noted that revenue's applications against the said orders have also been dismissed by it.

3. When the matter came up for hearing on 21-11-2002, we had directed learned counsel for the revenue to have instructions as to whether Tribunal's order for the assessment year 1988-89 was challenged further or not. Though more than a year has elapsed but learned counsel for the revenue has not been able to get any instructions as to whether the said orders were challenged by the revenue by filing applications under section 256(2) of the Act or not.

4. Faced with the situation, M/s. Prem Lata Bansal, learned senior standing counsel for the revenue, has attempted to argue that the impugned order is perverse inasmuch as the Tribunal has misdirected itself in relying on its earlier orders for the assessment year 1988-89. According to the learned counsel, the facts of those case are distinguishable. However, on a pointed query by the court as to whether such a plea was raised by the revenue before the Tribunal, the answer of the learned counsel was in the negative. Nevertheless, even in the present appeal no such plea has been raised.

5. in view of the above-stated factual scenario, when the view of the Tribunal on a similar issue has been accepted by the revenue in respect of one of the years, no question of law, much less a substantial question of law, survives for our consideration. Accordingly, we decline to entertain the appeal.

Dismissed.

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