Cit Vs. Jhalanti and Co.

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Court : Delhi

Decided On : Jul-22-2004

Reported in : [2005]142TAXMAN78(Delhi)

Appeal No. : ITA No. 398 of 1983 q22 July 2004

Appellant : Cit

Respondent : Jhalanti and Co.

Advocate for Pet/Ap. : Ms. Prem Lata Bansal and; Mr. Rajiv Awasthi and; Ms. Rashmi

Judgement :
ORDER

Levy of interest under sections 139(8) and 215Held: Order levying interest under sections 139(8) and 215 is not appealable order under section 246(c).

Income Tax Act, 1961 s.246

Income Tax Act, 1961 s.139(8)

Income Tax Act, 1961 s.215

In the Delhi High Court q Mr. B.C. Patel, C. J. & Mr. Badar Durrez Ahmed. J.

At the instance of the revenue, the Income Tax Appellate Tribunal has referred the following two questions :

1. Whether an appeal lies against an order of charging of interest under section 215 of the Act?

2. Whether the Tribunal is empowered in law to invoke rule 40(5) for deleting the levy of interest under section 215?

2. Both the questions have to be answered in negative in view of the decision, of the Supreme Court in the case of Central Provinces Manganese Ore Co. Ltd. v. CIT : [1986]160ITR961(SC) wherein the question raised was :

'Whether orders levying interest under sub-section (8) of section 139 and under section 215 are appealable under section 246 of the Income Tax Act.?'

The court held that the question whether a case is made out for waiver or reduction of the interest levied under section 139(8) or under section 215 cannot be the subject of an appeal under clause (c) of section 246 of the Income Tax Act.'

The court further pointed out :

'That is a matter which can more appropriately be dealt with by the Commissioner in the exercise of his revisional jurisdiction.'

3. If the appeal itself is not maintainable, there is no question of Tribunal invoking rule 40(5) of the Rules under section 215 of the Income Tax Act.

4. The reference is answered, accordingly with no order as to costs.