

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Review Application No. 393 of 2015
Delay Condonation Application No. 6950 of 2015

In
Income Tax Appeal No. 26 of 2009

Director of Income Tax
and another.Appellant.

Versus.

M/s Maersk Co. Ltd.Respondents.

With
Review Application No. 392 of 2015
Delay Condonation Application No. 6949 of 2015

In
Income Tax Appeal No. 27 of 2009

Director of Income Tax
and another.Appellant.

Versus.

M/s Maersk Co. Ltd.Respondents.

With
Review Application No. 391 of 2015
Delay Condonation Application No. 6948 of 2015

In
Income Tax Appeal No. 28 of 2009

Director of Income Tax
and another.Appellant.

Versus.

M/s Maersk Co. Ltd.Respondents.

With
Review Application No. 390 of 2015
Delay Condonation Application No. 6947 of 2015

In
Income Tax Appeal No. 29 of 2009

Director of Income Tax
and another.Appellant.

Versus.

M/s Maersk Co. Ltd.

.....Respondents.

Present:

Mr. H.M. Bhatia, Sr. Standing Counsel for Income Tax.

Mr. Porus Kaka, Sr. Advocate assisted by Mr. Manish Kanth and Ms. Menka Tripathi, Advocates for respondent.

Dated: 26th February, 2019**Coram: Hon'ble Ramesh Ranganathan, C.J.****Hon'ble Sudhanshu Dhulia, J.****Hon'ble Alok Singh, J.****Ramesh Ranganathan, C.J. (Oral)**

1. These four applications are filed seeking review of the order passed by a Full Bench of this Court in ITA No. 26 of 2009 and batch dated 07.04.2011. While these review applications were filed more than four years after the order of the Full Bench dated 07.04.2011, and the explanation furnished in the applications, seeking condonation of delay, are wholly unsatisfactory, we are satisfied that, even on merits, the order of the Full Bench does not necessitate review.

2. The only contention urged by Mr. H.M. Bhatia, learned Senior Standing Counsel for Income Tax, is that the Full Bench had relied on an earlier Division Bench judgment of this Court in **Commissioner of Income Tax and another Vs. Sedco Forex International Drilling Co. Ltd. 264 ITR 320**, being unaware of the fact that the said judgment had been reversed by the Supreme Court in **Sedco Forex International Drilling Inc. Vs. Commissioner of Income Tax 279 ITR 310**; the Full Bench had also concurred with the views expressed by the earlier Division Bench, in **CIT Vs. M/s Tide Water Marine International Inc. 2008 (2) UD 126**, which had again relied on the judgment of the Division Bench in **Commissioner of Income Tax Vs. Sedco Forex**

International Drilling Co. Ltd. 2003 Vol. 264 ITR 320; and as the Full Bench had relied on a Division Bench judgment of this Court, which had already been overruled by the Supreme Court, the order of the Full Bench suffers from an error apparent on the face of record, necessitating its review.

3. A Division Bench of this Court, in its order in ITA No. 26 of 2009 and batch dated 09.12.2010, had observed that the Tribunal had rendered judgment following the decision of this Court in **CIT Vs. Sedco Forex International Drilling Inc. Ltd.**; the said judgment may not be directly applicable to the case on hand; their view was contrary to another decision of this Court in **CIT Vs. Tide Water Marine International Inc. (2008) 2 UD 126**; and the matter should, therefore, be referred to a Larger Bench.

4. The question, which fell for consideration, before the Larger Bench, was whether, in cases where the assessee was liable to be taxed in India and it was his obligation to pay advance tax, would his failure to pay advance tax, render him liable to pay interest thereon under Section 234-B of the Income Tax Act? In the order under review, the Full Bench observed that, in **Sedco International**, a Division Bench of this Court had held that interest was not payable by the assessee under Section 234-B of the Act on account of non deduction of tax at source by the employee; the reasoning laid down in the said judgment, and the principles enunciated therein, were squarely applicable to the present facts and circumstances of the case; the said judgment applied on all the fours; and they agreed with the said decision. The Full Bench concurred with the decision of the Division Bench in **Tide Water Marine International**, and disagreed with the order of the Division Bench in its reference order dated 09.12.2010.

5. In the order dated 07.04.2011, review of which is sought, the Full Bench has assigned elaborate reasons and has answered the reference holding that, in cases where the assessee's income is chargeable under the head "salaries", the person responsible, for paying any income chargeable under the head "salaries", shall, at the time of paying, deduct income tax at source; failure on his part entailed an obligation to pay interest under Section 234-B of the Act in order to compensate the loss incurred to the revenue; and, upon failure on the part of the employer to deduct tax at source, the assessee only becomes liable to pay the tax directly under Section 191 of the Act, and does not become liable to pay interest under Section 234-B of the Act.

6. The questions which arose for consideration before the Division Bench of this Court, in **Sedco Forex International Drilling Co. Ltd**, were (1) whether the Tribunal was right in holding that off period salary was not taxable under Section 9(1)(ii) read with the Explanation as it stood at the relevant time; (2) whether the Tribunal was right in holding that free food, beverages and boarding on the rig was not a perquisite under Section 17(2)(iii); and (3) whether the Tribunal was justified in deleting interest levied, on the assessee, under Section 234-B of the Income Tax Act. On question no. 1, the Division Bench held in favour of the Revenue and against the assessee. However, with regards both questions 2 and 3, the Division Bench held in favour of the assessee and against the Revenue.

7. Aggrieved by the order of the Division Bench, to the extent it held against them on the question whether salary of employees of the assessee, payable for the field breaks outside India, would be subjected to tax under Section 9(1)(ii) read with Explanation thereto, the assessee carried the matter in appeal, and

the Supreme Court, in its order, in **Sedco Forex International Drilling Inc. and others**, held that the activity of employees abroad could not be said to be a “rest” period or “leave” period within the meaning of Section 9(1)(ii) of the Income Tax Act.

8. The appeal to the Supreme Court, against the order passed by the Division Bench of this Court in **CIT Vs. Sedco Forex International Inc**, was preferred by the assessee, and not the revenue. The Supreme Court, in **Sedco Forex International Drilling Inc and others**, was not called upon to examine the question whether interest should be levied on the assessee under Section 234-B of the Income Tax Act. The question which was referred to the Full Bench, i.e. whether the assessee was liable to pay interest under Section 234-B of the Act, was answered in favour of the assessee by the Division Bench in **Sedco Forex International Drilling Inc**. The assessee’s appeal to the Supreme Court was not on the question which fell for consideration before the Full Bench. The revenue did not question the order of the Division Bench, in **Sedco Forex International Drilling Inc**, before the Supreme Court. As such, the contention put forth on behalf of the revenue, that the order of the Division Bench, in **CIT Vs. Sedco Forex International Drilling Inc**, was reversed by the Supreme Court, matters little, since the judgment of the Supreme Court was on a question which was not even referred to the Full Bench.

9. We are satisfied, therefore, that these applications, seeking review of the order of the Full Bench, are frivolous. While we were initially inclined to dismiss the review applications with costs we refrain from doing so as it would only result in an additional financial burden on the public exchequer. We,

accordingly, dismiss the review applications. However, in the circumstances without costs.

(Alok Singh, J.) (Sudhanshu Dhulia, J.) (Ramesh Ranganathan, C.J.)

26.02.2019

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