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Commissioner of Income Tax Vs P.K. Industries

None

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 3, 2008

Acts Referred:
Income Tax Act, 1961 â€" Section 210, 214, 240, 244

Citation: (2009) 316 ITR 155

Hon'ble Judges: Satish Kumar Mittal, J; Rakesh Kumar Garg, J

Bench: Division Bench

Judgement

Rakesh Kumar Garg, J.
The present reference has been sent by the Tribunal, Amritsar vide order dated 23-9-1983 passed in RA No.

55/Asr/1983 for the opinion of this Court on the following questions of law which have arisen out of order passed in ITA No. 747/Asr/1981 and

CO. No. 85/Asr/1981 for the assessment year 1977-78:

(i) Whether on the facts and in the circumstances of the case, the Tribunal is correct in returning a finding that the issue raised is not debatable ?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal is correct in upholding the finding of Commissioner (Appeals) that the

assessee is entitled to interest u/s 244(1A) of the Income Tax Act ?

(iii) Whether on the facts and in the circumstances of the case, the Tribunal is justified in holding that the assessee is entitled to receive interest u/s

214 of the Income Tax Act from the prescribed date to the actual date on which refund was ordered ?

2. The assessee had made payment of advance Income Tax u/s 210 of the FT Act (hereinafter referred to as the ""Act"") when the assessment was

made. Further after the return had been filed, a further amount of Rs. 47,856 was required to be paid by way of tax. Out of this sum, Rs. 15,000

was paid. The assessee having felt aggrieved, appealed against the assessment made, whereby the Income Tax Officer had made a considerable

addition. As a result of the appellate order, assessment made by the Income Tax Officer was slashed and the total income was reduced to the

extent that the assessee became entitled to claim a refund of a part of the advance tax paid by him u/s 210 of the Act. The assessee made a claim

that the interest on the excess amount of advance tax paid by him be allowed to him. The Income Tax Officer turned down his claim both u/s 214

as well as under section, 244(1A) of the Act.

3. The assessee felt aggrieved against the said order, filed an appeal before the Commissioner (Appeals), Jalandhar. The Commissioner (Appeals),

Jalandhar vide order dated 23-9-1981 held that the assessee was entitled to claim interest from the date of passing of the regular assessment order

made upto the date of payment of refund u/s 244(1A) and directed the Income Tax Officer to revise the assessment. However, the plea of the

assessee for allowing interest u/s 214 was declined.

4. Not satisfied with the order of the Commissioner (Appeals), Jalandhar, the assessee further filed an appeal before the Tribunal. The revenue

also filed cross-objections before the Tribunal. The assessee was in appeal against the findings of the Commissioner (Appeals), Jalandhar in

respect of his claim for interest from the date of payment of the advance tax upto the date of assessment, whereas; the case of the revenue in the

cross-objections was against the admission of the claim of the assessee for interest from the date of assessment upto the date of refund made. The

Tribunal vide its order dated 24-3-1983 accepted the appeal filed by the assessee and the cross-objections filed by the revenue were dismissed.

5. We have heard Mr. Sanjiv Bansal, advocate, learned Counsel for the revenue and perused the record.

6. At the outset, it is relevant to mention that question No. 1 has not been pressed by the counsel for the revenue. As regards question No. 2, it

has been pointed out that the said question has to be answered in favour of the assessee and against the revenue in view of the judgment of the

Supreme Court reported as Sandvik Asia Ltd. Vs. Commissioner of Income Tax-I, Pune and Others, wherein it has been held as under:

The Government is liable to pay interest, at the rate applicable to the excess amount refundable to the assessee, on the interest amount which

becomes due u/s 214(1). Section 214(1) itself recognizes in principle the liability to pay interest on the amount of tax paid in excess of the amount

of assessed tax and which is retained by the government. Interest on the excess amount is payable at the rate specified therein from the first day of

the year of assessment to the date of regular assessment. Once the interest becomes due, it takes the same colour as the excess amount of tax

which is refundable on regular assessment. The Supreme Court in Modi Industries Limited, Modinagar and Others Vs. Commissioner of Income

Tax, Delhi and Another, has clarified that advance tax has to be treated as paid pursuant to an order of assessment and hence interest is payable

thereon but u/s 244.

Interest is payable on the amount to be refunded u/s 244(1) within three months from the decision of the appellate or other authority specified in

Section 240. The expression ""amount"" in the earlier part of Section 244(1A) refers not only to the tax but also to the interest; it is a neutral

expression and it cannot be limited to the tax paid in pursuance of the order of assessment.

Even assuming that there is no provision for payment of compensation, compensation for delay is required to be paid as the Act itself recognizes in

principle the liability of the department to pay interest when excess tax was retained and the same principle should be extended to cases where

interest was retained.

7. The said judgment has also been followed by the Bombay High Court in the case of Godrej and Boyce Mfg. Co. Ltd. Vs. P.K. Gupta,

Commissioner of Income Tax and Others, . Following the above judgments, question No. 2 is answered against the revenue and in favour of the

assessee.

8. We also find that question No. 3 as raised by the revenue has to be answered against the revenue and in favour of the assessee in view of the

judgment of the Apex Court reported as Modi Industries Limited, Modinagar and Others Vs. Commissioner of Income Tax, Delhi and Another,

The conclusions drawn up by the Hon''ble Apex Court in the said judgment are reproduced hereinafter below:

(i) Upto 31-3-1975, interest u/s 214 is payable from the first day of April of the relevant assessment year to the date of the first assessment order.

The amount on which the interest is to be paid is the amount of advance tax paid in excess of the tax payable by the assessee as calculated in the

regular assessment (the first assessment order). The amount on which interest was payable did not vary due to the reduction or enhancement of

tax as a result of any subsequent proceeding. But with effect from 1-4-1985, while the period for which interest was payable remained constant,

the amount on which the interest was payable, varied with the variation in the quantum of refund as a result of any subsequent orders,

(ii) If any tax is paid pursuant to the assessment order after 31-3-1975 (which will include TDS and advance tax to the extent the same has been

retained and treated by the Income Tax Officer as payment of tax in discharge of the assessee''s tax liability, in the assessment order), becomes

refundable wholly or in part as a result of any appellate or other order passed, the Central Government will have to pay the assessee interest on the

refundable amount u/s 244(1A). For the purpose of this section, the amount of advance payment of tax and the amount of TDS must be treated as

payment of Income Tax pursuant to an order of assessment on and from the date when these amounts were set off against the tax demand raised in

the assessment order, in other words, the date of the assessment order.

(iii) With effect from 1-4-1985, interest payable u/s 214 will increase or decrease in accordance with the variation in the quantum of the excess

payment of tax brought about by orders passed subsequent to the regular assessment as mentioned in Sub-section (1A).

Accordingly, we approve the view taken by the Bombay, Allahabad, Andhra Pradash, Patna and Delhi High Courts to the extent their views

accord with the view taken herein.

9. The Calcutta High Court has also followed the judgment of the Hon"ble Apex Court in Modi Industries Ltd. case (supra) in the case of Simplex

Concrete Piles (India) Ltd. and Geo Millar and Company Ltd. Vs. Commissioner of Income Tax and Others, .

10. We are in respectful agreement with the above said judgments. Thus, question No. 3 is answered against the revenue and in favour of the

assessee.

11. Thus, the questions referred to above are answered accordingly.