(2007) 08 P&H CK 0073

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Commissioner of Income Tax	APPELLANT
Vs	
Bansal Abhushan Bhandar	RESPONDENT

Date of Decision: Aug. 14, 2007

Acts Referred:

- Income Tax Act, 1961 - Section 143, 147, 154, 155, 156

Citation: (2007) 213 CTR 97

Hon'ble Judges: M.M. Kumar, J; Ajay Kumar Mittal, J

Bench: Division Bench

Judgement

Ajay Kumar Mittal, J.
This order shall dispose of IT Ref. Nos. 58 and 58A of 1996 for asst. yrs. 1985-86 and 1986-87 as an identical question of law has been referred in these cases.

2. At the instance of the Revenue, the Income Tax Appellate Tribunal, Delhi Bench ''E'', Delhi (for short "the Tribunal") has referred the following question of law u/s 256(1) of the IT Act, 1961 (for short "the Act") for the asst. yrs. 1985-86 and 1986-87 for the opinion of this Court:

Whether, on the facts and circumstances of the case, the Tribunal was right in law in upholding the CIT(A)''s order whereby he had deleted the interest charged u/s 215/217 of the IT Act, 1961 ?

3. Briefly, the facts necessary to answer the above question are that original assessments in the aforesaid matters were completed u/s 143(1) of the Act on a total income of Rs. 17,140 and Rs. 39,566 respectively. No interest was charged thereon u/s 215/217 of the Act. The assessments, however, came to be reopened. The reassessment was completed on the enhanced income of Rs. 2,99,491 and Rs. 9,22,119 respectively. Interest u/s 217 of the Act was levied in pursuance of the enhancement made to the total income on the finalization of reassessment

proceedings. The assessee moved applications u/s 154 of the Act requesting that interest charged u/s 217 of the Act amounting to Rs. 27,102 and Rs. 53,330 respectively on reassessment was wrongly charged and that part of the reassessment order deserved reversal. The applications were rejected by the Dy. CIT (Special Range), Karnal by order dt. 10th Oct., 1988 (Annexs. Al and A2).

4. The assessee preferred two separate appeals relating to the aforesaid two assessment years before the Commissioner of Income Tax (Appeals), Karnal [for short "CIT(A)"] on the ground that the rejection of its plea that no interest was leviable u/s 217 of the Act, was legally unsustainable. The plea raised by the assessee found favour with the CIT(A) and resultantly, the levy of interest u/s 215/217 amounting to Rs. 27,102 and Rs. 53,330 was cancelled. The CIT(A) observed in clear terms that Section 215(3) does not authorize the AO to levy interest de novo in a case where no interest was levied at the time of original assessment but it only empowers the AO to enhance or reduce interest in proceedings initiated subsequent to the original assessment. The appeals consequently stood accepted by order dt. 14th Dec, 1988 (Annexs. B1 and B2). The Revenue aggrieved by the appellate orders filed appeals before the Tribunal. The Tribunal on consideration of rival submissions approved the view taken by the CIT(A) and observed that there was no error in the order of the CIT(A) warranting interference. Additionally, the Tribunal held that no interest u/s 215 could be charged during the course of reassessment proceedings as it was not a regular assessment as defined u/s 2(40) of the Act and that any subsequent assessment proceedings under any provisions of the Act could not be termed as a regular assessment.

5. Learned Counsel appearing for the Revenue submitted that the Tribunal was not right in resorting to Sub-section (3) of Section 215 of the Act for cancelling of levy of interest by the AO. Learned Counsel submitted that case of the assessee was covered by Sub-section (6) of Section 215 of the Act and the assessment made u/s 147 of the Act was to be considered to be a regular assessment and by virtue of Sub-section (1) of Section 215, the assessee was liable to pay interest.

6. No one has appeared on behalf of the assessee. We have given thoughtful consideration to the submission of counsel for the Revenue and find force in the same.

7. It seems expedient to reproduce Sections 215 and 217 of the Act. The provisions of the above sections for both the aforesaid two assessment years at the relevant time were the same which read thus:

215. Interest payable by assessee.--(1) Where, in any financial year, an assessee has paid advance tax u/s 209A or Section 212 on the basis of his own estimate (including revised estimate) and the advance tax so paid is less than seventy-five per cent of the assessed tax, simple interest at the rate of fifteen per cent per annum from the 1st day of April next following the said financial year upto the date of the regular

assessment shall be payable by the assessee upon the amount by which the advance tax so paid falls short of the assessed tax:

Provided that in the case of an assessee, being a company, the provisions of this sub-section shall have effect as if for the words "seventy-five per cent", the words "eighty-three and one-third per cent" had been substituted.

(2)....

(3) Where as a result of an order u/s 147 or Section 154 or Section 155 or Section 250 or Section 254 or Section 260 or Section 262 or Section 263 or Section 264, the amount on which interest was payable under Sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and--

(i) in a case where the interest is increased, the ITO shall serve on the assessee, a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be a notice u/s 156 and the provisions of this Act shall apply accordingly;

(ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.

(4)....

(5)....

(6) Where, in relation to an assessment year, an assessment is made for the first time u/s 147, the assessment so made shall be regarded as a regular assessment for the purposes of this section and Sections 216, 217 and 273.

217. Interest payable by assessee when no estimate made.--(1) Where, on making the regular assessment, the ITO finds--

(a) that any such person as is referred to in Clause (a) of Sub-section (1) of Section 209A has not sent the statement referred to in that clause or the estimate in lieu of such statement referred to in Sub-section (2) of that section; or

(b) that any such person as is referred to in Clause (b) of Sub-section (1) of Section 209A has not sent the estimate referred to in that clause,

simple interest at the rate of fifteen per cent per annum from the 1st day of April next following the financial year in which the advance tax was payable in accordance with the said Sub-section (1) or Sub-section (2) upto the date of the regular assessment shall be payable by the assessee upon the amount equal to the assessed tax as defined in Sub-section (5) of Section 215.

(2) The provisions of Sub-sections (2), (3) and (4) of Section 215 shall apply to interest payable under this section as they apply to interest payable under that section.

8. Section 215 of the Act w.e.f. 1st April, 1985 by way of amendment by Taxation Laws (Amendment) Act, 1984 (for short "Amendment Act) has brought about important changes in the'' scheme of payment of interest by the assessee. After the aforesaid amendment, Sub-section (3) provides that where as a result of an order under any of the sections specified therein, the amount on which interest was payable by the assessee has been increased or decreased, the quantum of interest is to be increased or decreased accordingly. In case of an increase in the interest, a notice of demand is required to be served on the assessee in the prescribed form specifying the sum payable by the assessee which has to be treated as a demand notice u/s 156 of the Act and the provisions of the Act are to apply accordingly. In the event of reduction of interest payable by the assessee, the excess must be refunded to him.''

9. Sub-section (6) of Section 215 provides that where in relation to an assessment year, an assessment is made for the first time u/s 147, the assessment so made would be regarded as a regular assessment for the purposes of this section and Sections 216, 217 and 273.

Provisions of Sub-sections (2), (3) and (4) of Section 215 have been adopted in Section 217 of the Act.

10. The present references relate to the asst. yrs. 1985-86 and 1986-87 and the same therefore, are governed by the provisions of Amended Act made applicable w.e.f. 1st April, 1985. The Tribunal has proceeded on the basis of provisions of Sub-section (3) of Section 215 of the Act whereas present case is governed by Sub-section (6) of Section 215 whereby any assessment made in pursuance of proceedings u/s 147 of the Act is also considered to be regular assessment. Once that is so, then the provisions of Sub-section (1) of Section 215 are applicable and the assessee is liable to pay interest thereunder. The Tribunal was thus not right in holding that no interest was payable by the assessee u/s 215/217 of the Act. Accordingly, the question of law reproduced above is answered in the negative i.e. against the assessee and in favour of the Revenue. The references shall stand disposed of accordingly.