
(2005) 05 AHC CK 0278

Allahabad High Court

Case No: IT Ref. No. 44 of 1998

Commissioner of Income Tax

APPELLANT

Vs

Amrit Banaspati Co. Ltd.

RESPONDENT

Date of Decision: May 10, 2005

Acts Referred:

- Companies (Profits) Surtax Act, 1964 - Section 273, 7A(4), 7A(5), 7B
- Income Tax Act, 1961 - Section 214, 214(1), 256(1)

Citation: (2006) 203 CTR 565

Hon'ble Judges: Rajes Kumar, J; R.K. Agrawal, J

Bench: Division Bench

Advocate: A.N. Mahajan, for the Appellant; S.D. Singh, for the Respondent

Final Decision: Allowed

Judgement

1. The Tribunal has referred the following question of law u/s 256(1) of the IT Act, 1961 (hereinafter referred to as "Act") for the asst. yr. 1986-87 for opinion to this Court:

Whether, on facts and in the circumstances of the case, learned Tribunal was legally correct in holding that the interest u/s 7B of Companies (Profit) Surtax Act, 1964 was admissible to the assessee, even though, the advance tax of Rs. 18,00,000 due on 15th Dec, 1985 was paid on 8th Feb., 1986 and there is no provision under the said Act entitling the assessee to claim interest where interest is paid after the statutory date, i.e., 15th December, of the relevant previous year though before the 31st March, of the relevant previous year?

2. The brief facts of the case are that the assessee-company was not previously assessed, by way of regular assessment under Companies (Profit) Surtax Act, 1964 (hereinafter referred to as "Act") and as such, it was liable to submit its estimate in respect of correct chargeable amount to surtax in accordance with the provisions of

Section 7A(5)(b) and to pay the advance tax by 15th Dec, 1985 in accordance with the provisions of Section 7A(4)(a). The assessee had filed its estimate in time on 16th Dec, 1985 but consequential due tax of Rs. 18 lakhs was not paid upto 15th Dec, 1985 within the financial year. According to the AO as well as the CIT(A) it has not been paid its liability within the stipulated period under the provisions of Section 7A(4)(a), accordingly interest held not payable u/s 7B of the Act.

When the matter came up before the Tribunal, the Tribunal allowed interest u/s 7B of the Act.

3. We have heard learned standing counsel on behalf of the Revenue and Sri S.D. Singh, learned Counsel appearing on behalf of the assessee respondent.

4. Learned standing counsel submitted that since a sum of Rs. 18 lakhs which was due to be payable by 15th Dec, 1985 was not paid within the time stipulated u/s 7A(4)(a), interest u/s 7B of the Act was not payable and the Tribunal has erred in granting the interest u/s 7B of the Act. Learned Counsel for the assessee submitted that any amount paid during the financial year, was in the nature of an advance tax and interest u/s 7B of the Act was payable. In respect of his contention, he relied upon various decisions of Hon"ble High Court and apex Court.

5. We have given our anxious consideration to the submissions made by the learned Counsel for the parties and perused the order of Tribunal and the authorities below. Section 7A(4)(a) and Section 7B read as follows:

7A. Advance payment of surtax.--(1) In this section--....

(4) Subject to the provisions of this section, advance surtax shall be payable in three equal instalments on the following dates during the financial year, namely:

(a) the 15th day of June, the 15th day of September and the 15th day of December, in the case of an assessee whose chargeable amount to the extent of 75 per cent thereof or more is derived from a source or sources for which the previous year (relevant to the assessment year next following the financial year aforesaid) ends on or before the 31st day of December;

(b) the 15th day of September, the 15th day of December and the 15th day of March, in any other case;

7B. Interest payable by Government.--The Central Government shall pay simple interest at, (fifteen per cent) per annum on the amount by which the aggregate sum of any instalments of advance tax paid during any financial year in which they are payable u/s 7A exceeds the amount of the tax determined on regular assessment, from the 1st day of April next following the said financial year to the date of the regular assessment for the assessment year immediately following the said financial year.

Thus, u/s 7B, interest is payable on the aggregate sum of any instalments of advance tax paid during any financial year. The provision of Section 7B of the Companies (Profit) Surtax Act, 1964 is similar to the Section 214 of the IT Act.

6. We find that Andhra Pradesh High Court in the cases of [J and J Dechane Vs. Commissioner of Income Tax](#); [Bakelite Hylam Ltd. Vs. Commissioner of Income Tax](#), the Bombay High Court in the case of [Harinagar Sugar Mills Ltd. Vs. First Income Tax Officer and another](#), the Calcutta High Court in the cases of [Commissioner of Income Tax Vs. Ajoy Paper Mills Ltd.](#); [Commissioner of Income Tax and Others Vs. Graphite India Ltd.](#), the Gujarat High Court in the cases of [Chimanlal S. Patel Vs. Commissioner of Income Tax and Another](#); [Chandrakant Damodardas Vs. Income Tax Officer Ward, "A" \(Company\), Rajkot](#); [Anup Engineering Ltd. Vs. Income Tax Officer, Companies Circle-II, Ahmedabad](#), the Gauhati High Court in the case of [Moheema Ltd. \(No. 1\) Vs. Commissioner of Income Tax and Others](#), the Karnataka High Court in the cases of [Commissioner of Income Tax Vs. Karnataka State Warehousing Corporation Ltd.](#); [Commissioner of Income Tax Vs. Woodlands Hotel \(P\) Ltd.](#), the Kerala High Court in the cases of [Santha S. Shenoy, A.S. Suresh, A.S. Sasidhara Shenoy, A.S. Narayana Shenoy, Sobhana V. Shenoy, A.V. Gopalakrishna Shenoy and A. Sethumadhavan Vs. Union of India \(UOI\) and Others](#); [Commissioner of Income Tax Vs. Travancore Cements Ltd.](#), the Patna High Court in the case of [Commissioner of Income Tax Vs. Kharsawan Mineral Concern P. Ltd.](#), the Punjab & Haryana High Court in the cases of [COMMISSIONER OF Income Tax Vs. ROADMASTER INDUSTRIES OF INDIA \(P.\) LTD.](#); [Commissioner of Income Tax Vs. Agrawal Metal Works \(P.\) Ltd.](#), the Rajasthan High Court in the case of [Jai Drinks \(P.\) Ltd. Vs. Commissioner of Income Tax](#), the Madras High Court in the cases of [Commissioner of Income Tax Vs. T.T. Investments and Trades Pvt. Ltd.](#); [Commissioner of Income Tax Vs. Southern Sea Foods Ltd.](#); CIT v. Coimbatore Distt. Central Cooperative Supply & Marketing Society Ltd. (1995) Tax LR 1308; [R.V.S. and Sons Vs. Commissioner of Income Tax another](#), the Madhya Pradesh High Court in the cases of [Commissioner of Income Tax Vs. Jagannath Narayan Kutumbik Trust](#); Nasiruddin v. CIT (1996) 135 CTR (MP) 219 : (1996) 131 Taxation 421 and the Delhi High Court in the case of [COMMISSIONER OF INCOME TAX Vs. ESKAY ELECTRONICS \(INDIA\) LTD.](#), have taken a view that u/s 214(1) of the Act the assessee becomes entitled to interest in respect of excess payment of advance tax paid during any financial year even if the date is subsequent to the dates stipulated u/s 211 for payment of such instalments.

7. The Gujarat High Court in the case of [Commissioner of Income Tax, Gujrat Vs. Kohinoor Flour Mills](#), has held that in computing the penalty u/s 273(b) of the Act, the amount of tax paid by the assessee subsequent to the prescribed date for payment of advance tax should be treated as valid advance tax and should be deducted from 75 per cent of the tax determined. The aforesaid decision has been affirmed by the apex Court in [Commissioner of Income Tax Vs. Kohinoor Flour Mills P. Ltd.](#). Thus, the amount of advance tax which is paid after the prescribed date, is

to be treated as advance tax.

8. The view taken by various High Courts referred hereinabove has been followed by this Court in IT Ref. No. 102 of 1987, [The Commissioner of Income Tax Vs. Shri Praveen Kapoor](#), .

9. Respectfully following the aforesaid decisions of various High Courts and our High Court, we held that the amount of tax paid by way of an advance tax after 15th of December, 1985 but paid on 8th Feb., 1986 during the financial year has been rightly treated as advance tax and has been taken into consideration for the purposes of granting interest u/s 7B of the Act.

10. In view of the reasons stated above, we answer the question referred to us in affirmative, i.e., in favour of the assessee and against the Revenue. There shall be no order as to costs.