(1999) 09 AHC CK 0251

Allahabad High Court

Case No: Income Tax Application No. 259 of 1995 15 September 1999

COMMISSIONER OF INCOME TAX		APPELLANT
	Vs	
SIR SHADI LAL ENTERPRISES LTD.		RESPONDENT

Date of Decision: Sept. 15, 1999

Acts Referred:

- Income Tax Act, 1961 - Section 141A, 143, 154, 156, 220

Citation: (2000) 108 TAXMAN 543

Hon'ble Judges: S. Rafat Alam, J; M.C. Agarwal, J

Bench: Full Bench

Advocate: Bharat JI Agarwal and Shambhu Chopra, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

1. This is an application u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act) praying that the Tribunal, Delhi Bench "B", New Delhi, be directed to state a case and refer the following question stated to be of law and to arise out of its order dated 27-7-1994 passed in IT Appeal No. 3236 (Delhi) of 1991 for the assessment year 1987-88 for the opinion of this Court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in cancelling the interest of Rs. 1,23,004 charged by the assessing officer u/s 220(2) of the Income Tax Act, 1961 ?"

2. We have heard Shri Bharat A Agarwal, senior standing counsel for the applicant and Shri Shambhu Chopra, the learned counsel for the opposite party.

3. The facts of the case are that the assessee had filed return of income and claimed that since the tax already paid was more than the tax leviable on the return of income, a provisional assessment u/s 141A of the Act be made and assessment was, accordingly, made vide order dated 13-7-1988 and a refund of Rs. 4,39,352 was granted. Subsequently, a regular assessment was made by the assessing officer

determining the income at Rs. 5,99,44,449 and a demand was raised for which a notice of demand was served. In the assessment order, the assessing officer levied interest u/s 220(2) of the Act on the aforesaid amount of Rs. 4,39,352. The question is whether the said interest levied in a sum of Rs. 1,23,004 was rightly charged. The'' Tribunal to whom the matter was carried, deleted the said interest following its order for the assessment year 1986-87. The Tribunal had taken the view that no interest could be levied on the amount of refund granted u/s 141A. The Commissioner moved an application u/s 256(1), which has been rejected by the Tribunal with the following observations:

"We have carefully considered the arguments of both the sides. The facts of the case are that the income of the assessee was assessed under provisional assessment u/s 141A at Rs. 2,73,46,558. Accordingly, the assessee was allowed refund of Rs. 4,39,352. As per the regular assessment u/s 143(3), the income of the. assessee was determined at Rs. 5,99,44,449 and in such assessment no refund was found to be payable to the assessee. Accordingly, the assessing officer charged interest u/s 220 by invoking the provisions of section 154 amounting to Rs. 1,23,004. The assessing officer''s action was confirmed by the Commissioner (Appeals). However, the ITAT following its earlier order in IT Appeal No. 2165 (Delhi) of 1991 directed that no interest u/s 220 was chargeable. Against such direction of the Tribunal, the revenue is seeking a reference to the Hon''ble High Court. However, the income of the assessee as finally determined after giving effect to the orders of the appellate authorities was Rs. 2,58,94,320. Thus, as the income is finally determined at less than the income determined u/s 141A the refund granted as per provisional assessment is not payable by the assessee, so the question whether any interest was payable on such refund originally granted to the assessee is purely academic. Hence, we deem it unnecessary to refer this question to the High Court.''

The facts mentioned in the Tribunal''s order u/s 256(1) have not been controverted and the fact remains that the assessment as concluded after the appellate proceeding resulted in determination of the income that was even less than the income determined u/s 141A. Thus, the figures mentioned in the Tribunal''s order are Rs. 2,58,94,320 and Rs. 2,73,46,558 meaning thereby that a further refund would have been granted after the assessment became final. The assessing officer had charged interest u/s 220(2) on the amount of refund that was granted on the basis of the provisional assessment. Section 220(2) does not apply because no notice of demand was served in respect of the amount of refund. Under this provision, the assessee is liable to pay interest only if the amount specified in the notice of demand u/s 156 was not paid. Sum of Rs. 4,39,352 was not such amount. The learned standing counsel referred to sub-section (4) of section 141A which deals with the amount refunded on provisional assessment. Clause (a) states that where the sum refundable on regular assessment is equal to or exceeds the amount refunded under sub-section (1), the amount so refunded shall be deemed to have been refunded towards the regular assessment. The present case is governed by

clause (a) of sub-section (4) of section 141A and, therefore, the amount would be deemed to have been refunded on a regular assessment.

4. The learned standing counsel contended that the amount became refundable only after the appellate proceeding and not on the regular assessment as made by the assessing officer. This content ion is against the settled law, which is that the assessment merges in the appellate order and, therefore, after the decision of appeal it is the assessment as made by the appellate authority that would become the regular assessment.

5. In our view, the answer to the question proposed by the revenue is self evident and, therefore, we decline to direct the Tribunal to make a reference.

6. The application is, accordingly, rejected.