(1974) 07 MAD CK 0015

Madras High Court

Case No: Writ Petition No. 2933 of 1972

C.G. Krishnaswami Naidu		APPELLANT
	Vs	
Commissioner of Income Tax and Another		RESPONDENT

Date of Decision: July 16, 1974

Acts Referred:

- Income Tax Act, 1922 - Section 66(7)
- Income Tax Act, 1961 - Section 244, 297(2)

Citation: (1975) ILR (Mad) 469 : (1975) 100 ITR 33

Hon'ble Judges: V. Ramaswami, J; G. Ramanujam, J

Bench: Division Bench

Advocate: K. Sivaraman, for the Appellant; V. Balasubrahmanyan and J. Jayaraman, for the Respondent

Judgement

1. In this writ petition, the petitioner seeks to have the order of the second respondent dated March 1, 1972, quashed. The circumstances under

which the said order came to be passed can be noted before dealing with the petitioner''s grounds of attack against the said order.

2. The petitioner was assessed to Income Tax on March 28, 1951, for the assessment year 1946-47, the relevant year of account being the year

ended January 31, 1946, on a total income of Rs. 1,80,042 and a demand of Rs. 1,09,133-7-0 was raised against him and coercive process was

resorted to to collect the said amount from the petitioner''s premises No. 151, Mount Road, Madras, owned by the petitioner and which was

auctioned to realise the tax arrears. Against such assessment an appeal was taken contending that out of the total income of Rs. 1,80,042, a sum of

Rs. 1,24,004 was earned in Mysore State and that it was not brought into British India and that, therefore, it cannot be included in the total

income. The Appellate Assistant Commissioner allowed the petitioner''s appeal on February 26, 1952. Thereafter, the Income Tax department

went on appeal before the Appellate Tribunal and the Tribunal decided the issue against the assessee and in favour of the revenue on January 9,

1953. The petitioner took the matter on reference to this court and this court in R.C. No. 8 of 1954 reversed the finding of the Tribunal, on

September 5, 1958, agreeing with the view of the Appellate Assistant Commissioner holding that the income which had accrued in Mysore cannot

be brought to charge. The revenue pursued the matter further before the Supreme Court which reframed the question referred and directed this

court on November 25, 1963 Commissioner of Income Tax, Madras Vs. C.G. Krishnaswami Naidu, to decide the issue finally. This court finally

decided in favour of the assessee setting at rest once for all the controversy as to the assessability of the income that accrued in Mysore State, on

September 6, 1965. Thereafter, the Tribunal passed the consequential order u/s 66(5) of the Indian Income Tax Act, 1922, hereinafter referred to

as the old Act, on October 25, 1965, directing the refund of the excess tax collected and a sum of Rs. 68,190.76, was actually refunded to the

petitioner on February 25, 1966. On March 11, 1966, the petitioner submitted a petition to the Commissioner of Income Tax claiming interest on

the sum refunded at 12 per cent. right from the date of collection to the date of refund. The Commissioner initially passed an order on June 20,

1966, directing the payment of interest of Rs. 689''38 for the period from October 25, 1965, the date of the consequential order by the Tribunal,

to February 25, 1966, the date of refund. However, on a further representation made by the petitioner, the Commissioner allowed by his further

order dated September 22, 1967, interest of Rs. 13,165.53 for the period from October 28, 1958, the date of the consequential order of the

Tribunal consequent on the earlier order of this court, to November 25, 1963, the date of the judgment of the Supreme Court. The above interest

has been calculated at the rate of 4 per cent.

3. Aggrieved against the exclusion of the period between November 25, 1963, to October 25, 1965, and the award of lower rate of interest while

fixing the quantum of interest payable to the petitioner, he moved the Board, the second respondent herein, on August 30, 1969, and on April 24,

1971, but his petitions were, however, rejected by the Board. In this writ petition the petitioner contends that he is entitled to the payment of

interest on the excess collections made from the date of the collection till the same was refunded to the petitioner. According to the petitioner a sum

of Rs. 1,24,004, which was not liable to tax at all, had been taxed and a tax of Rs. 69,819.44, had been collected thereon. The said sum to which

the department had no right was with them for about 15 years and, therefore, he is legally entitled to the payment of interest on the said sum u/s

66(7). His contention is that he is entitled to claim interest at the rate of 12 per cent. and the orders of the Commissioner as well as the Board

rejecting his claim for a portion of the period and at a higher rate of interest are not in accordance with law and, therefore, they are liable to be

quashed.

4. As already stated, the petitioner''s claim is that he is entitled to interest on the excess tax collection from the date of collection till the date of

refund. The excess collection is said to have been made on March 18, 1958. The first contention of the petitioner is that the tax having been

collected by the revenue from him when it was not lawfully due, he is entitled to claim interest by way of compensation for the unauthorised

retention of the money by the revenue and his loss of interest on the excess collection. But the learned counsel himself concedes that the

petitioner''s claim is not under the general law but based on the statutory provision in Section 66(7). Even otherwise, we are clearly of the view that

the petitioner cannot claim interest by way of compensation on the excess collection made by the revenue under the general law. The authorities

have collected the amount under the authority of law and, therefore, there is no question of any claim for compensation in respect of the taxes

collected in excess. It is fairly conceded by the learned counsel for the petitioner that but for Section 66(7) the petitioner may not be able to claim

interest on the excess tax collected and refunded later. We have to, therefore, consider the scope of Section 66(7) with a view to find out whether

the petitioner''s claim for interest from the date of payment till the date of refund is tenable.

5. Section 66(7) provides that, notwithstanding a reference u/s 66(1) made and pending before the High Court, Income Tax shall be payable in

accordance with the assessment made in the case. The proviso thereunder says that if the amount of tax is reduced as a result of such reference,

the amount over-paid shall be refunded with such interest as the Commissioner may allow unless the high Court, at the instance of the

Commissioner, makes an order authorising him to postpone such payment until the disposal of an appeal to the Supreme Court, if any. The section

contemplates the payment of tax as finally determined by the Tribunal without waiting for the result of a tax reference to the High Court and if as a

result of the order passed on such reference the amount of tax paid as a result of the Tribunal''s order is found to be in excess, the same shall be

refunded with such interest as the Commissioner may allow"". On the face of it, the said sub-section does not refer to the period for which the

interest is payable. According to the learned counsel for the petitioner the said provision enjoins the Commissioner to refund the amount of excess

tax with interest and the period for which the interest is payable should naturally be from the date of collection till the date of refund. We are not

inclined to agree with the learned counsel for the petitioner that Sub-section (7) provides for a general right to claim interest from the date of excess

collection. The said sub-section applies only to cases where the matter has been taken to the High Court on reference and as a result of the High

Court''s decision on such reference the refund of excess tax has fallen due. The sub-section does not contemplate all situations such as the matter

stopping with the order of the appellate authority or with the order of the Tribunal. Even according to the learned counsel for the petitioner no

interest is payable if excess tax has been collected before the order of the Tribunal and if ultimately the Tribunal holds that the tax is not payable.

We are not, therefore, inclined to construe the said sub-section as providing for a general right for interest on the excess collections made by the

revenue from the date of payment.

6. The learned counsel then contends that the petitioner is even then entitled to interest from October 28, 1958, the date of the consequential order

of the Tribunal as a result of this court''s decision to reduce the period for which the petitioner has to be paid interest and also the rate of interest

which should at least be the normal rate prevailing in the market, and that the grant of interest at 4 per cent. cannot at all be sustained

7. The scope of the power of the Commissioner under the proviso to Section 66(7) came up for consideration before this court in Ajax Products

Ltd. (In Voluntary Liquidation) Vs. Commissioner of Income Tax, . In that case the assessee contended that the discretion give to the

Commissioner under the proviso to Section 66(7) is only as regards the rate of interest and not as regards the period for which the interest is

payable and that interest is payable under the proviso from the date of over-payment and not from the date of the consequential order of the

Tribunal passed u/s 66(5). The revenue, on the other hand, contended that the discretion given to the Commissioner under the proviso extends not

only to the rate of interest but also to the period for which the interest is payable, and relied on certain instructions issued by the Board on 26th

May, 1967. After considering the scope of the proviso to Section 66(7) in the context and the setting in which the provision occurred, it was held

that Section 66(7) gave a special privilege to the assessee as the result of the matter being taken to the High Court on reference, that the object of

that section was that where by an erroneous order of the Tribunal in any appeal amounts found by the High Court to be due to the assessee had

been withheld by the revenue, such amounts are to be refunded with interest, that under that proviso, the Commissioner had no discretion in the

matter of fixing the period for which the interest is payable on the amount refunded, and that the interest payable under the main section should be

from the date of the original order of the Tribunal which was taken on reference to the High Court or the date of payment of tax if the payment was

subsequent to the said order of the Tribunal. It has, however, been held in that case that the proviso confers discretion on the Commissioner in the

matter of the rate of interest payable on the amount refunded and that the fixation of the rate of interest has to depend upon the circumstances of

each case.

8. The learned counsel for the petitioner while taking support from the said decision for the proposition that the Commissioner has no discretion

with reference to the date from which the interest is payable contends that the Commissioner has also no discretion in the matter of fixing the rate of

interest payable on the excess amount refunded and that the contrary view expressed in the judgment requires reconsideration. But, after a due

consideration of the matter, we are clear that a discretion has been given to the Commissioner for fixing the rate of interest payable on the amount

refunded u/s 66(7). Fixation of the rate of interest has to depend upon the circumstances of each case and, so long as the statute has not fixed the

rate of interest, it should be taken that the Commissioner has been given discretion to fix the rate of interest taking into account the peculiar facts

and circumstances of each case. The interest paid in this case is four per cent. It has not been shown by the petitioners with reference to any

specific material that the fixation of interest at 4 per cent. is not a proper discretion by the Commissioner. Thus, u/s 66(7) and the proviso thereto,

the petitioner may be entitled to interest from the date of the original order of the Tribunal, that is, from September 5, 1958, to February 25, 1966,

the date of refund at the rate of 4%. This is on the basis that Section 66(7) could be invoked by the petitioner in this case. However, as already

stated, the assessee has based his claim for interest only u/s 66(7) of the old Act, and the Commissioner also proceeded on that basis. But in

answer to the rule nisi the revenue has filed a counter-affidavit asserting that in view of the transitory provisions contained in Section 297(2)(i) of

the Income Tax Act of 1961, hereinafter referred to as the ""new Act"", it is only the provisions of the new Act relating to the interest payable on

refunds that have to be applied and not Section 66(7) of the old Act. The learned counsel for the petitioner would contend that the revenue is not

entitled to change its view and the Commissioner having applied Section 66(7) of the old Act to the petitioner''s claim for interest, it is not open to

him now to turn round and say that the said Section 66(7) has no application and it is only the provisions in the new Act that have to be applied. It

is true that till the petitioner came to this court by way of this writ petition the revenue proceeded only on the basis that the petitioner could claim

relief on the basis of Section 66(7) of the old Act. But they have now given up that position and say that the said provision has no application to the

petitioner''s case and that the provisions of the new Act relating to payment of interest on refunds have to be applied. It is well-settled that there

cannot be any estoppel against a statue. The fact that the departmental officers took a particular view of the statutory provisions at an earlier stage

will not estop them from taking a correct view of the statutory provisions at a later point of time. We, therefore, proceed to consider the contention

raised by the revenue that the provisions of the new Act relating to payment of interest on refunds have to be applied to the case in view of the

transitory provisions in Section 297(2)(i).

9. Section 297(2)(i) is as follows :

Where in respect of any assessment completed before the commencement of this Act, a refund falls due after such commencement or default is

made after such commencement in the payment of any sum due under such completed assessment, the provisions of this Act relating to interest

payable by the Central Government on refunds and interest payable by the assessee for default shall apply.

10. According to the said provision if in respect of any assessment completed before the commencement of the new Act a refund falls due after

such commencement, the provisions of the new Act relating to interest payable on refunds will have to be applied, and not the provisions of the old

Act. It is the contention of the revenue that the assessment in this case has been completed on March 28, 1951, long before the commencement of

the new Act and the refund fell due on October 25, 1965, after the commencement of the new Act, and, therefore, the provisions of the new Act

relating to interest, that is, Sections 243 and 244, have to be applied and that as per the said provisions no interest is payable if the refund is

granted within six months from the date on which the claim for refund is made where, a claim is needed or from the date of the order granting the

refund where no claim is needed and that the refund having been granted in this case on February 25, 1966, within six months from the date of the

final consequential order of the Tribunal on October 25, 1965, no interest is legally due to the petitioner.

11. In support of that stand the revenue places reliance on the decision of this court in Pandyan Insurance Co. Ltd. Vs. Commissioner of Income

Tax, . In that case, consequent on the decision of the Supreme Court in an assessee''s case, he became entitled to a refund of a substantial amount,

which was paid within six months of the date of the order entitling him to get refund. Subsequently, the assessee claimed interest at 6 per cent. on

the amount of refund from the date of payment to the date of refund under the proviso, to Section 66(7) of the old Act. This was, however,

disallowed by the revenue on the ground that the petitioner was not entitled to claim interest on the refund as the refund has been granted within six

months from the order entitling him to get refund and no interest is due in such case u/s 243 of the new Act. The assessee came to this court

contending that it is only Section 66(7) of the old Act that could be applied in his case as the reference to the High Court and the appeal to the

Supreme Court were all under the provisions of the old Act and that the provisions of Sections 243 and 244 of the new Act will not, therefore,

apply to such cases. This court held that the assessment in that case having been completed before, the commencement of the new Act and the

refund having fallen due as a result of the decision of the Supreme Court rendered after such commencement, the two requisites for the application

of Section 297(2)(i) were satisfied and, therefore, the provisions of the new Act relating to interest payable by the Central Government on refund

should alone apply to that case, and that the refund having been made within six months of the order granting refund, there was no liability for

interest on the part of the revenue. The said decision directly applies to the facts of this case. The learned counsel for the petitioner, however,

seeks to distinguish the said decision on the ground that the court proceeded on an erroneous assumption that the assessment in that case had been

completed before the commencement of the Act.. According to him the assessee in that case could have taken up the plea that the assessment

stood completed only on the date of the judgment of the Supreme Court which he did not do; and an assessment can be said to have been

completed only after the assessment becomes final after the pronouncement of the order of the highest authority in the hierarchy of the authorities

constituted under the Act and in this case the assessment can be said to have been completed only when the High Court passed its ultimate order

on May 6, 1965 C.G. Krishnaswami Naidu Vs. Commissioner of Income Tax, Madras, on a remand from the Supreme Court. The learned

counsel contends that if there is no completed assessment before the commencement of the Act, one of the requisites of Section 297(2)(i) is

lacking, and in such a case it is the old Act that has to apply. In support of his contention that an assessment can be said to have been completed

only when the assessment becomes final and not when the assessing authority passes the original order of assessment, the learned counsel places

reliance on the decision of the Supreme Court in Kalawati Devi Harlalka Vs. Commissioner of Income Tax, West Bengal and Others, . In that

case the Supreme Court expressed the view that the word "" assessment"" in Clause (a) of Section 297(2) includes within its scope a proceeding u/s

33B of the Act. But their Lordships of the Supreme Court specifically rejected the assessee''s contention in that case that the expression

proceedings for the assessment"" meant original proceedings for the assessment and not appellate or revisional proceedings. In that case the

expression "" proceedings for the assessment"" has been taken to comprehend the proceedings by way of appeal, revision or reference having

regard to the context in which it has been used and the object with which the provision has been enacted. This decision cannot be taken to lay

down a general proposition that wherever the word ""assessment"" occurs, it should naturally comprehend appeal, revision or reference. It has been

pointed out by the Supreme Court in A.N. Lakshmana Shenoy Vs. The Income Tax Officer, Ernakulam and Another, :

This brief resume of the relevant provisions of the Income Tax Act, clearly establishes that the word ""assessment"" has to be understood in each

section with reference to the context in which it has been used. In some sections it has a comprehensive meaning and in some a somewhat

restricted meaning, to be distinguished from a ''reassessment'' or even a '' fresh assessment''.

12. It is not, therefore, possible to construe the word ""assessment"" in the same sense wherever it occurs as the word ""assessment"" has been used in

different senses in different sections of the statue and it cannot be given a uniform meaning wherever it occurs.

13. The petitioner''s learned counsel then draws our attention to the following two decisions where the expression "" any assessment completed

before the commencement of the Act"" occurring in Section 297(2)(i) has been understood as not including assessments which were pending in

appeal, revision or reference on the date of the commencement of the Act so as to exclude the operation of Section 297(2)(i) in such cases with

reference to claim for interest on refunds which fell due after the commencement of the new Act. In S.P. Jaiswal Vs. Commissioner of Income Tax,

it was held that the combined effect of the operation of Section 297(2)(a) of the old Act and of the Income Tax (Removal of Difficulties) Order,

1962, is that all proceedings including an application for a reference to the High Court in relation to the assessment year in respect of which the

return of income was filed before April 1, 1962, must be dealt with as if the new Act had not been passed. In that case the court was only

concerned with the Question whether an application for reference filed by an assessee against the order of the Tribunal dated February 13, 1973,

could be entertained under the old Act or under the new Act and the court held that, having regard to the provisions of the Income Tax (Removal

of Difficulties) Order, 1962, all proceedings including an application for reference to the High Court in relation to an assessment in respect of which

a return of income was filed earlier to the assessment under the new Act must be dealt with under the old Act. That decision is of no assistance for

interpreting Section 297(2)(i). In RAJA JAGDAMBIKA PRATAP NARAIN SINGH Vs. Income Tax OFFICER, FAIZABAD AND

ANOTHER., the assessee had been paid interest u/s 66(7) of the old Act on the amount of tax refunded as a result of the decision of the High

Court on a reference in respect of an assessment made before the commencement of the new Act. After some time the said order granting interest

was cancelled and the assessee was directed to refund the amount of interest paid. The assessee challenged that order before the High Court. It

was held that the reference before the High Court was pending on April 1, 1962, the date on which the new Act came into force and, therefore, it

should be deemed to have been disposed of by the High Court under the old Act as provided in Section 297(2)(i) and, therefore, the order passed

u/s 66(7) granting interest was justified and that the provisions of the new Act cannot be applied. The court took the view that the assessment was

not completed before the commencement of the new Act so as to attract Section 297(2)(i) and its reasoning is this :

In the present case it is the contention of the opposite parties that the decision of the High Court dated August 21, 1962, has not yet been

communicated to the Appellate Tribunal. Consequently, the Appellate Tribunal and the Income Tax Officer have not yet passed consequential

orders. If that is the position, it is doubtful whether the assessment can be said to be complete even now. It is by no means clear that the case is in

fact governed by Section 297(2)(i) of the new Act.

14. In the first of the two decisions the court did not consider the question as to whether the assessment had been completed before the

commencement of the new Act, with reference to the applicability of Section 297(2)(i) and in the second of the decision they have given a halting

finding on that question that the expression in Section 297(2)(i) "" assessment completed "" refers to the assessment as finally affirmed or modified on

appeal, revision or reference. With respect we are not inclined to agree with the view that the said expression denotes an assessment which has

become final. Finality of an assessment has nothing to do with the factual conclusion of an assessment. Though an assessment ''is completed, it may

not have acquired finality in view of certain provisions, contained in the statute. Therefore, one cannot confuse finality of assessment with an

assessment as completed. We are fortified in this view by the decisions in Pandyan Insurance Co. Ltd. v. Commissioner of Income Tax and Hira

Lal Jagarnath Prasad Vs. Commissioner of Income Tax and Others, . We have already referred to the decision in Pandyan Insurance Co. Ltd. v.

Commissioner of Income Tax, where it has clearly been held that in respect of assessments made but which have not become final before the

commencement of the new Act will have to be governed by the provisions in Section 297(2)(i) in the matter of grant of interest on refunds. Hiralal

Jagannath Prasad v. Commissioner of Income Tax was a case where the assessment was made under the old Act. At the time of the

commencement of the new Act there was a reference before the High Court in relation to that assessment. That reference was disposed of on

November 1, 1966. The Tribunal passed its consequential order u/s 66(5) on June 6, 1968. As a result of the consequential order the assessee

became entitled to a refund of the excess tax paid. After getting refund the assessee claimed interest on the amount refunded which was, however,

refused on the ground that u/s 244 of the new Act the assessee was not entitled to any interest. The court held that as the refund became due by

virtue of the order passed by the Tribunal u/s 66(5) on 6th June, 1968, the provisions of the new Act relating to refund have to be applied in

supersession of the provisions of the old Act, that Section 297(2)(i) is a self-contained provision so far as the refund is concerned and that, in the

face of that provision, Section 66(7) of the old Act cannot be invoked by the assessee. We are, therefore, of the view that the petitioner''s claim

for interest has to be considered only u/s 244 of the new Act in view of Section 297(2)(i) of the new Act. In this view, the relief claimed by the

petitioner for a larger interest cannot be sustained. The writ petition is, therefore, dismissed. There will, however, be no order as to costs.