(2010) 231 CTR 541 : (2010) 323 ITR 584 : (2010) 1 KLJ 205

High Court Of Kerala

Case No: Income Tax A. No. 1692 of 2009

Commissioner of Income Tax		APPELLANT
	Vs	
Kerala Chemicals and Proteins Ltd.		RESPONDENT

Date of Decision: Jan. 15, 2010

Acts Referred:

- Income Tax Act, 1961 - Section 143(1), 143(3), 234D, 263

Citation: (2010) 231 CTR 541 : (2010) 323 ITR 584 : (2010) 1 KLJ 205

Hon'ble Judges: V.K.Mohanan, J; C.N. Ramachandran Nair, J

Bench: Division Bench

Advocate: P.K.R. Menon and Jose Joseph, for the Appellant; Joseph Kodianthara and Terry V. James, for the Respondent

Final Decision: Dismissed

Judgement

C.N. Ramachandran Nair, J.
The question raised is whether the Tribunal was justified in holding that the assessee is not liable to pay interest u/s 234D on excess refund granted while sending intimation u/s 143(1) of the Act for the assessment year 1999-2000. We have heard senior counsel appearing for the appellant-Revenue and senior counsel Sri Joseph Markose appearing for the respondent-assessee.

2. During the previous year relevant for the assessment year 1999-2000 the assessee had remitted substantial amount of advance tax. However, in the return filed the assessee claimed refund of over Rs. 47 lakhs which was granted after processing the return and while sending intimation u/s 143(1) of the Act. This was done on June 28, 2000. However, the assessce''s case was taken up for regular assessment u/s 143(3) of the Act and the Assessing Officer completed the assessment on January 22, 2004, wherein it was found that refund granted while sending intimation was irregular inasmuch as the entire amount

refunded was payable as tax finally assessed. The tax demanded on regular assessment is also stated to be paid later. While issuing regular assessment u/s 143(3) the Assessing Officer demanded interest u/s 234D on the refund amount granted on June 28, 2000 but from June 1, 2003 the date on which Section 234D came into force. However, the Commissioner of Income tax in exercise of powers u/s 263 of the Act found that interest is payable u/s 234D from the date of refund, that is June 28, 2000, till date of regular assessment, that is January 22, 2004. When the assessee filed appeal, the Tribunal held that Section 234D providing for interest will apply only from the assessment year 2004-05 onwards and so much so, the assessee is not liable to pay interest at all, even though the assessee did not contest its liability for interest from June 1, 2003, onwards levied in the regular assessment passed u/s 143(3) of the Act. In the first place we are of the view that the levy of interest with effect from June 1, 2003, which was not the subject-matter of revision before the Commissioner u/s 263 could not have been the subject of decision by the Tribunal. In other words, the Tribunal has granted an unsolicited relief to the assessee, which, in our view, is not within the powers of the Tribunal. In any case, in view of our finding on the effective date of operation of Section 234D stated hereunder, there is no need to consider whether the Tribunal could have granted the relief that was not subject-matter of appeal.

3. Section 234D, the scope of which is in issue, is extracted hereunder for easy reference:

234D. Interest on excess refund.-(1) Subject to the other provisions of this Act, where any refund is granted to the assessee under Sub-section (1) of Section 143, and-

(a) no refund is due on regular assessment; or

(b) the amount refunded under Sub-section (1) of Section 143 exceeds the amount refundable on regular assessment,

the assessee shall be liable to pay simple interest at the rate of one-half per cent. on the whole or the excess amount so refunded, for every month or part of a month comprised in the period from the date of grant of refund to the date of such regular assessment.

4. Senior counsel for the Revenue referred to Notes on Clauses wherein the scope of the new provision is explained. However, since there is no dispute as to the scope of the section and the issue is only as to the effective date from which interest could be levied on the assessee we do not find anything useful in the Notes on Clauses. Admittedly Section 234D was introduced by the Finance Act, 2003, with effect from June 1, 2003. In our view this provision on interest is not introduced with reference to any assessment year, which is obvious from the fact that it is not effective from the beginning of the financial year. On the other hand, this provision on interest will apply to all cases of refund granted u/s 143(1) but interest could be levied only with effect from June 1, 2003. Even though refund in this case was granted while sending intimation u/s 143(1) on June 28,

2000, and regular assessment u/s 143(3) was completed converting the refund to demand of tax on January 22, 2004, interest could be demanded only for the period from June 1, 2003 till January 22, 2004 which is what is done by the Assessing Officer. We do not find any justification for the Commissioner to give any retrospectivity to Section 234D which is what he has done by directing the Assessing Officer to revise the assessment levying interest from the date of refund. In fact the Commissioner has no authority to give retrospective operation to a substantive provision of law providing for interest. The Revenue has no answer to our query as to whether interest u/s 234D could be levied in cases of regular assessment completed u/s 143(3) prior to June 1, 2003, leading to demand of refunded amount as tax determined on regular assessment. We are therefore of the view that the Commissioner''s order u/s 263 was rightly found to be untenable by the Tribunal. However, we vacate the finding of the Tribunal that Section 234D is applicable only from the assessment year 2004-05 onwards. The view taken by the Assessing Officer that section applies from June 6, 2003 is the correct position.

5. Appeal is dismissed, but by restoring the assessment with demand of interest levied u/s 234D with effect from June 1, 2003.