

(2014) 03 AP CK 0108

Andhra Pradesh High Court

Case No: Writ Petn. No. 5807 of 1999

Sirpur Paper Mills Ltd.

APPELLANT

Vs

Joint Commissioner of Income
Tax

RESPONDENT

Date of Decision: March 20, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 2 Rule 2
- Income Tax Act, 1961 - Section 214

Citation: (2014) 270 CTR 371 : (2014) 368 ITR 598 : (2015) 230 TAXMAN 362

Hon'ble Judges: G. Chandraiah, J; Challa Kodanda Ram, J

Bench: Division Bench

Advocate: P. Muralikrishna, Advocate for the Appellant; S.R. Ashok, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Challa Kodanda Ram, J.

This writ petition has been filed seeking to declare the action of the 1st respondent in not paying the interest from 1st April, 1987 to 22nd Dec, 1998 to the petitioner under s. 214 read with other provisions of the IT Act (for short, "the Act") for the income-tax asst. yr. 1984-85 in the consequential order dt. 22nd Dec., 1998 as unconstitutional, illegal and consequently prays the Court to direct the respondents to pay the interest for the above said period. For the asst. yr. 1984-85, the petitioner/assessee had paid an advance tax of Rs. 22,55,000 and had also paid an amount of Rs. 50,881 to his credit by way of TDS. Assessee was finally assessed to income under the head "Long-term capital gains" for a sum of Rs. 3,28,732. Thus, the assessee became eligible for refund of an amount of Rs. 19,77,149 along with interest under s. 214 of the Act. By order dt. 22nd Dec, 1998, the assessee was determined to be entitled for a refund of Rs. 19,77,149, on which he was also

entitled to be paid interest under s. 214 of the Act for the period from 1st April, 1984 to 31st March, 1987 as per the applicable rates and finally the same was arrived at Rs. 8,35,325. These facts as set out in the affidavit filed along with the writ petition are not in dispute. In the present writ petition, the claim of the assessee is for payment of compensation on account of the delay in payment of the interest amount for the period from 31st March, 1987 to 22nd Dec, 1998. The assessee's claim for interest came to be rejected by the Dy. CIT (Assessment), Special Range, Hyderabad, through the letter No. S-2/SR. 3 dt. 18th May, 1998 on the ground that there was no provision in the Act to grant interest on interest. It was also further stated that in terms of the judgment of the Supreme Court in [Modi Industries Limited, Modinagar and Others Vs. Commissioner of Income Tax, Delhi and Another](#), interest is allowable only from the 1st day of April of the assessment year to the date of making an order of assessment.

2. A detailed counter-affidavit has been filed by the 1st respondent Lt. CIT (Assessment), Special Range-5, Hyderabad on his behalf and on behalf of other respondents as well, raising various contentions including the plea that the petitioner is not entitled for interest as the demand is hit by Order II, r. 2 of CPC. It was further contended that assuming, without conceding, that interest is payable, interest amount cannot be granted beyond the one contemplated by the Supreme Court in Modi Industries Ltd. (supra). It was also further stated that the cause of action for the refund arose only when the AO passed consequential order dt. 7th Oct., 1988 in pursuance of the appellate order of the CIT but not on any date anterior to it. It was further stated that the judgment of the Gujarat High Court in [D.J. Works Vs. Deputy Commissioner of Income Tax](#), was not accepted by the Department as the same was contrary to the statutory provisions and the procedure contemplated under s. 214 of the Act and as such the assessee-petitioner is not entitled to any relief based on the view expressed by the Gujarat High Court.

3. Having considered the rival submissions of the learned counsel and on perusal of the judgment of the Supreme Court in [Sandvik Asia Ltd. Vs. Commissioner of Income Tax-I, Pune and Others](#), we are of the opinion that the issue involved in this case is no more res integra. The apex Court in the above case while reversing the judgment of the Bombay High Court in [Sandvik Asia Ltd. Vs. Commissioner of Income Tax and Others](#), had extensively dealt with the issue and finally came to decide that under the Act, the Revenue is entitled to collect only tax, interest, penalty etc., within the four corners of the Act and any other amount which has been collected in excess would have the general character of the "amount" which amount if it is withheld beyond the period permissible under the statute, the taxpayer is entitled to be compensated for the deprivation of the said amount. In that context, the meaning that is required to be given to the word "compensation" has been considered extensively and finally the Department was directed to pay interest @ 9 per cent per annum within a period of one month from the date of receipt of copy of the order, failing which the Department shall pay a penal interest

@ 15 per cent per annum for the period mentioned in the said judgment. Respectfully following the above cited judgments of the Supreme Court, the writ petition is allowed directing the respondents to pay the simple interest @ 9 per cent per annum for the period i.e., from 31st March, 1987 to 22nd Dec, 1998 to the petitioner within a period of two months from the date of receipt of copy of this order, failing which the respondents shall pay the penal interest @ 15 per cent per annum for the above said period. No order as to costs. Miscellaneous petitions, if any pending, in this writ petition shall stand closed.