Commissioner of Income Tax Vs Brac Chintoor Tea Estates Ltd.

Court: Calcutta High Court

Date of Decision: Feb. 14, 1990

Acts Referred: Income Tax Act, 1961 â€" Section 139, 139(8), 215, 256(1)

Hon'ble Judges: Suhas Chandra Sen, J; Bhagabati Prasad Banerjee, J

Bench: Division Bench

Advocate: A.N. Bhattacharyya, for the Appellant;R.N. Dutta, for the Respondent

Judgement

Suhas Chandra Sen, J.
The following two questions of law have been referred to this Court by the Tribunal u/s 256(1) of the income tax

Act, 1961 ("the Act"):

1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in directing that Rs. 1,80,621 should be deducted in

computation of interest leviable under sections 139(8) and 215 of the income tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in deciding the issue regarding chargeability of interest u/s

139 and section 215 when the assessee"s prayer before the AAC was not denial of liability but error in computation in charging interest under

sections 139 and 215 of the IT Act ?

The assessment year involved in this reference is the assessment year 1981-82, for which the relevant period of accounting is the financial year

ending on 31-3-1981.

2. The facts found by the Tribunal, as narrated in the statement of case, are as under:

3. The assessee is a non-resident company. The assessee filed a return of income for the assessment year 1981-82 on 10-2-1982 which was

obviously not within the prescribed period. The ITO, therefore, levied interest u/s 139(8) of the Act. The ITO while making the assessment, found

that a sum of Rs. 1,94,168 was deposited by way of advance tax on 25-3-1981. Since the amount deposited was beyond the prescribed period,

the ITO treated it as "tendered*. The ITO, thus, found that the assessee did not deposit the advance tax so required in law and he charged interest

under sections 215 and 139(8) without giving credit of the aforesaid amount. Against the order of the ITO, the assessee preferred an appeal

before the Commissioner (Appeals). The Commissioner (Appeals) followed the Calcutta High Court decision in the case of Commissioner of

Income Tax Vs. Karam Chand Thapar and Bros. (P.) Ltd., and held the appeal as incompetent.

On further appeal, the Tribunal observed as follows:

No doubt, in the case of Karamchand Thapar & Bros. (P.) Ltd., the High Court had observed that where the assessee had only partially denied

his liability to pay interest his appeal objecting to the imposition of interest would be incompetent and he could agitate his grievance over the

computation or calculation or method of imposition and ask for reduction or waiver of the interest in the manner prescribed by Rule 40 of the IT

Rules, 1962.

The Tribunal, however, held that since the assessee had not only challenged the levy of interest but had also challenged the quantum of tax payable

by it, the appeal was competent. Relying on the decision in 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, , the Tribunal directed the ITO to

give credit of Rs. 1,80,621 while calculating interest under sections 139(8) and 215.

It has to be seen that this was not a case of appeal against interest simpliciter but other points were involved. The levy of interest was only one of

the points taken incidentally to the main points taken in the appeal. In that view of the matter, the Tribunal was right in entertaining the appeal and in

directing that Rs. 1,80,621 should be deducted in computation of interest leviable under sections 139(8) and 215.

The second question is concluded by the judgment of this Court in the case of CIT v. Surqjbhan Mahawar [IT Reference Nos. 379 and 406 of

1979, dated 3-3-1989].

On behalf of the revenue reliance has been placed in the case of Commissioner of Income Tax Vs. Ajoy Paper Mills Ltd., . In our view this case,

far from coming to the aid of the revenue, goes against the argument made on behalf of the revenue.

Accordingly, both the questions are answered in the affirmative and in favour of the assessee. There will be no order as to costs.

Bhagabati Prasad Banerjee, J.

I agree.