DARJEELING CONSOLIDATED TEA CO. LTD. Vs COMMISSIONER OF INCOME TAX. COMMISSIONER OF INCOME TAX v. DARJEELING CONSOLIDATED TEA CO. LTD.

Court: Calcutta High Court

Date of Decision: Feb. 14, 1990

Citation: (1991) 97 CTR 205

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

Bench: Full Bench

Judgement

SUHAS CHANDRA SEN, J. :

The Tribunal has referred the following three questions of law to this Court under s. 256(1) of the IT Act, 1961 at the instance of the assessee :

1. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified in law in upholding the impugned

order passed by the CIT under s. 263 of the IT Act, 1961 on a ground different from the one considered, adjudicated upon and decided by the

Commissioner ?

2. If the answer to the question No. 1 is in the affirmative and in favour of the Revenue, whether on the facts and circumstances of the case, the

Income Tax Appellate Tribunal was justified in law in upholding the order passed by the CIT under s. 263 of the IT Act, 1961 on the ground that

the interest payable under s. 244/243(1)(a) of the said Act was not correctly allowed by the ITO in his order dt. 5th July, 1979 ?

3. Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that the interest under s.

244/243(1)(a) of the IT Act, 1961 was not admissible to the assessee company in respect of the period 1st April, 1975 to 9th March, 1977 ?

At the instance of the CIT the following question of law has also been referred to this Court :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that interest under s. 214 of the IT Act

should be computed upto the date of giving effect to the Tribunal order instead of upto the date of regular assessment within the meaning of s.

2(40) of the IT Act, 1961 ?

2. The relevant asst. yr. is 1972-73 for which the assessees accounting year ended on 31st December, 1971.

The assessee company derived income from business as well as under :

The assessee company derived income from business as well as from other sources. For the year in question, a loss return of Rs. 2,39,491 was

filed. The assessment was regularly completed by the ITO under s. 143(3) of the IT Act, 1961 on 6th December, 1974 in which the net loss was

computed at Rs. 62,429 after adjusting income from other sources, etc. The ITO allowed the loss as well as the absorbed depreciation to be

carried forward. The assessee claimed credit for tax deducted at source, but in the absence of certificate the credit was not given. The ITO,

however, directed that the credit should be given for the advance tax paid by the assessee under s. 210. He also allowed interest under s. 214.

The assessee went up in appeal and ultimately the Appellate Tribunal vide its order dt. 5th January, 1979 in ITA No. 3667/C/77-78 has allowed

further relief to the assessee. The ITO gave effect to the order of the Appellate Tribunal and the loss was taken at Rs. 1,35,816. Thus after giving

effect to the order of the Appellate Tribunal, the computation resulted in a loss. The ITO gave credit for the advance tax paid and also allowed

interest under s. 214 for the period from 1st April, 1972 to 9th March, 1977 on Rs. 10,000 which worked out to Rs. 3,036. Thus, the total

amount of interest allowed under both sections came to Rs. 8,936. Of course, the ITO adjusted the amount already refunded earlier on 9th March,

1977.

The CIT was of the view that the ITO had allowed interest in excess in giving effect to the Appellate Tribunals order. The order passed by the ITO

on 5th July, 1979 giving effect to the order of the Tribunal was erroneous and prejudicial to the interest of Revenue. Accordingly, a notice was

issued on 1st June, 1981 pointing out to the assessee the mistake in the order and his proposal to pass suitable order under s. 263. The CIT took

note of the following facts :

(1) The assessee had paid advance tax for the year amounting to Rs. 10,000;

(2) This amount became refundable to the assessee alongwith interest under s. 214.

(3) The refund was somehow not given.

(4) The Tribunal passed its order on the assessees appeal on 5th January, 1979 granting further relief to the assessee.

(5) On 5th July, 1979, the ITO gave effect to the Appellate order in which the following calculation was made :

Tax Calculation :

Tax Payable Rs. Nil

Tax paid under s. 210 Rs. 10,000

Tax deducted at source Rs. 21,142 Rs. 31,142

Rs. 31,142

Add :

Interest under s. 214

1.4.72 to 9.3.77 on Rs. 10,000 Rs. 5,900

Interest under s. 243(a) on Rs. 12,217 - 1.4.75 to 9.3.77 Rs. 3,036

Rs. 40,078

Less :

Already refunded on 9.3.77 Rs. 34,459

Now refundable Rs. 5,619

The CIT was of the view that interest under s. 214 should have been allowed only from 1st April, 1972 to the date of the original order under s.

143(3), that is, on 6th December, 1974. Because the refund was not paid expeditiously the assessee became entitled to the refund and further

interest under the provisions of s. 243(a) of the IT Act, 1961. Although refund under s. 243(a) had been granted, the allowance of interest under s.

214 from 6th December, 1974 to 9th March, 1977 was erroneous. The CIT observed as follows :

It would appear to me that in the scheme of the IT Act two types of interest payable to the assessee are provided. The first type is that the

assessee is found to have paid by way of advance tax amounts in excess than what is ultimately found payable and the assessee is compensated for

the Departments retaining the excess with it. The other type is where a refund is found payable but is delayed. These two types appear to be

clearly distinguishable and could not possibly overlap each other. If the assessees arguments are to be accepted then he would be entitled for

interest under s. 214 as well as under s. 243(a) for the period for which the excess was known and determined and the refund was delayed.

Obviously, this would be an anomalous situation which is not warranted by a harmonious interpretation of the various sections providing for interest

payable to the assessee.

The assessee went up in appeal before the Tribunal. Before the Tribunal it was argued on behalf of the assessee that the interest payable under s.

243(a) of the IT Act, 1961. The consequential order passed by the ITO to give effect to the appellate order of the Tribunal was also a regular

assessment and, therefore, the assessees claim of a judgment of this Court in the case of Chloride India Ltd. Vs. Commissioner of Income Tax and

Others, where it was held that the word 1regular assessment in s. 214 would include assessment made by the ITO pursuant to an appellate order.

The Tribunal ultimately held as follows :

Interest payable by the Government under s. 243(a) is provided for different situation when the ITO has ordered to grant refund to the assessee

but the refund as such was delayed and was not allowed to the assessee within three months from the end of the month in which the total income is

determined. As discussed earlier, the ITO gave effect to the appellate order of the Appellate Tribunal dt. 5th January, 1979 which resulted to the

grant of interest under the above two sections which was found to be erroneous by the CIT in the impugned order proceedings, refund of any

order passed in appeal, or other, proceedings, refund of any amount becomes due to the assessee, the ITO shall, except as otherwise provided in

the Act, refund the amount to the assessee without his having to make any claim in that behalf. This the ITO has done, in this connection, we may

refer to provisions of s. 244 which provides that where the refund is due to the assessee in pursuance of an order or an order referred to in s. 240

the ITO does not grant the refund within a period of three months from the date of the appellate order, the Government shall pay to the assessee

interest after excluding the period of three months referred to above. The interest allowed by the ITO was supposed to be under s. 243 apparently

although s. 243(a) was mentioned. Of course, in both the sections, the initial period of three months for which no interest is payable, is provided

for.

The Tribunal also held in its order as follows :

According to the CIT, in the present case, the tax payable right from the assessment order made under s. 143(3) giving effect to the order of the

Appellate Tribunal was nil, whereas in those decided cases the tax liability as well as the amount of interest payable under s. 214 was variable.

Hence, the CIT was of the view that those decisions could not help the case of the assessee. In our opinion, this view of the CIT is not correct.

The Hon"ble Calcutta High Court in the case of Chloride (India) Ltd. (supra) has specifically dealt with this point, while relying on its earlier

decisions as reported in Kooka Sidhwa & Co. vs. CIT (1964) 54 . In our view, in the present case, the assessee is entitled to interest under s.

214 upto the point of time when the ITO gave effect to the appellate order of the Appellate Tribunal in the light of the ratio of the decision in the

case of Chloride India Ltd.

As discussed briefly above, the same ratio would also apply to the interest allowable to the assessee under s. 243(a) as is in the present case. In

other words, the ITO has committed an error in allowing interest under s. 243(a) for the period from 1st April, 1976 to 9th March, 1977. In the

light of the decision referred to above, the period for which interest has to be computed under s. 243(a) would commence from the point of time in

which the ITO gave effect to the appellate order. The ITO has to consider the initial period of three months as contemplated in s. 243(a). That

apart, in the light of the decision of the Hon''ble Andhra Pradesh High Court Kangundi Kangundi Industrial Works (P.) Ltd. Vs. Income Tax

Officer, A-Ward, the amount of interest payable to the assessee under s. 244 cannot be equated to an amount due but which was delayed. The

amount contemplated as refund of the excess amount paid as tax cannot be equated to the interest payable on such excess amount under s. 214

which does not tantamount to refund of any amount paid as tax. In the instant case, the ITO apparently has allowed interest under s. 243(a) on the

amount of the refund of excess of tax as well as on the amount of interest allowed under s. 214 was allowed from 1st April, 1972 to 9th March,

1977. Again, as stated earlier, the Appellate Tribunal passed the order on 3rd January, 1979. In view of the ratio enunciated in the Chloride India

Ltd. (supra), the computation of interest payable under s. 244 was also erroneous. The interest payable to assessee under s. 244 in the instant case

would commence after the period of three months from the end of the month in which the order of ITO to grant refund was passed. But the ITO

has allowed interest in the instant case for the period prior to that initial three months as well.

In view of the above discussion in the proceeding paragraphs, we uphold the action of the CIT in invoking the provisions of s. 263. But so far as

the directions given by him are concerned, we would modify the directions that the ITO should recalculate the interest payable under s. 214 in the

light of the ratio of the decision to the case of Chloride India Ltd., (supra) alongwith the interest payable under s. 214 as indicated above.

3. It has been contended that the Tribunal has ultimately upheld the order of the CIT under s. 263 on a new ground after the case was considered,

adjudicated and decided by the Commissioner. This contention is without any substance. What was taken into consideration by the CIT was that

the ITO in giving effect to the order of the Tribunal had granted excess interest which was not in accordance with law and which was prejudicial to

the interest of Revenue. The Tribunal has taken the same view in this regard. Although in calculation of interest, the Tribunal has differed from the

CIT, but on the basic fact that excess interest was allowed by the ITO, there is no divergence of view between the Tribunal and the CIT. We have

set out earlier the relevant portion of the order of the Tribunal wherein the Tribunal specifically mentioned that the order of the ITO in which he

gave effect to the appellate order and granted interests under ss. 214 and 243(a) was correctly held by the CIT as erroneous and was prejudicial

to the interest of the Revenue.

4. In that view of the matter, the first question raised by the assessee must be answered in the affirmative and in favour (sic) of the assessee.

5. So far as question Nos. 2 and 3 raised on behalf of assessee are concerned, CIT and Tribunal, both have pointed out that there cannot be any

overlapping of the two sections. This, in our opinion, is the correct way to approach the problem. Sec. 214 of the IT Act, 1961 lays down that the

interest must be payable by the Central Government where the aggregate sum of advance tax paid exceeded the amount of tax determined on a

regular assessment. The interest was to be paid from first day of April next following the financial year until the advance tax was paid to the date of

the regular assessment. The word regular assessment was interpreted in the case of Chloride India Ltd. Vs. Commissioner of Income Tax and

Others, to mean not only the original order passed under s. 143 or s. 144 of the IT Act, 1961 but also any consequential order passed under s.

143 or s. 144 of the IT Act, 1961 but also any consequential order passed by the ITO to give effect to an appellate order.

The CIT pointed out in his revisional order :

Now that it would appear that interest under s. 214 could have been allowed only from 1st April, 1972 to the date of the original order under s.

143(3), i.e., 6th December, 1974. True, that this refund becoming payable was not paid expeditiously and, therefore, the assessee became entitled

to refund under the provisions of s. 243(a). This has been allowed rightly but the allowance of interest under s. 214 from 6th December, 1974 to

9th March, 1977 clearly appears to be erroneous. The reason for this is that interest under s. 214 becomes payable on the amount by which the

aggregate sum of any instalments of advance tax paid exceeds the amount of tax determined on regular assessment. In this case, the tax determined

was all in the original assessment under s. 143(3) and remained so after the appellate order. Excess, therefore, was determined at the stage of the

ITOs assessment and there was no variation thereafter. Therefore, it would appear to me that the application of the provisions of s. 214 in this case

could not possibly exist beyond the point of time the order under s. 143(3) was passed.

The Tribunal has on principle accepted the reason of the CIT but has taken the view that because of the decision of the Calcutta High Court in the

case of Chloride India Ltd. vs. CIT (supra) interest under s. 214 should be allowed upto the date when the ITO passed an order consequential to

the appellate order of the Tribunal.

6. In Chloride Indias case it was clarified that the regular assessment as contemplated by s. 214(1) should be the assessment made by the ITO

initially. If there was an appeal against the order of the ITO, then any order passed by the ITO finally to give effect to the directions of the appellate

authority should also be treated as a regular assessment.

In Chloride Indias case the ITO at the time of passing the initial order of assessment treated the petitioner as a company in which the public were

not substantially interested, and accordingly raised an additional demand of Rs. 2,62,239 by his assessment order. On appeal, the AAC held that

the petitioner was a company in which the public were substantially interested. The ITO thereafter revised the assessment and computed the

amount refundable to the petitioner at Rs. 4,28,260.40. The ITO refused to allow interest on advance tax paid by the petitioner and also the claim

of interest under s. 244 of the IT Act, 1961. The assessee made a revision petition under s. 264 to the CIT claiming interest of Rs. 48,280 under s.

244 and Rs. 23,752 under s. 214 of the IT Act, 1961. The CIT allowed the claim for interest under s. 244 but rejected the claim for interest under

s. 214 holding that ""an assessee was entitled to receive interest under s. 214 when on a regular assessment it was found that the advance tax paid

by the assessee exceeds the tax determined on assessment. In the present case, no part of the advance tax became refundable to the assessee on

the basis of the regular assessment made on 19th December, 1966, and, hence, no interest was paid as s. 214 was not applicable.

7. The CIT has rightly pointed out that the situation may be different when the tax payable or refundable was not modified in appeal. In the instant

cast, the amount that was refundable as determined by the ITO was not altered in appeal. Hence, the CIT held that since the ITO did not have to

modify the assessment order in respect of tax refund pursuant to the appellate order, there was no question of payment of interest under s. 214

upto the date order giving effect to the appellate order.

This distinction drawn by the CIT would have been meaningful and valid had the ITO followed up the assessment order by making an order of

refund. But no order of refund was issued by the ITO until the appellate order was passed. It is only after recalculating the loss sustained by the

assessee in terms of the appellate order that the ITO decided to refund the amount.

Therefore, in view of the ratio of the decision in the case of Chloride India Ltd. vs. CIT (supra) the Tribunal has rightly held that interest under s.

214 had to be paid upto the date when the ITO passed the consequential order giving effect to the appellate order.

8. Thus, question No. 1 is answered in the affirmative and in favour of the Revenue.

Question No. 2 is answered in the affirmative and in favour of the Revenue.

Question No. 3 is answered in the affirmative and in favour of the Revenue.

The question raised by the Revenue is answered in the affirmative and in favour of the assessee.

There will be no order as to costs.

BHAGABATI PRASAD BANERJEE, J. :

I agree.