

(1989) 12 CAL CK 0036

Calcutta High Court

Case No: None

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

HINDUSTAN HEAVY CHEMICALS
LTD.

RESPONDENT

Date of Decision: Dec. 20, 1989

Acts Referred:

- Income Tax Act, 1961 - Section 217(1A)

Citation: (1992) 107 CTR 235

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

Bench: Full Bench

Judgement

SUHAS CHANDRA SEN, J. :

The following question of law has been referred to this Court by the Tribunal under s. 256(2) of the IT Act, 1961 :

"Whether, on the facts and in the circumstances of the case the Tribunal was justified in holding that the order of the ITO in not charging the interest under s. 217(1A) of the Act was not prejudicial to the interests of the Revenue and, therefore, the CIT was not justified in invoking the provision of s. 263 of the IT Act, 1961 ?"

2. The assessment year involved in this reference is the asst. yr. 1976-77. In this case, the CIT had invoked the jurisdiction under s. 263 of the IT Act for correcting an error committed by the ITO for failure to charge interest under s. 217(1A) of the Act.

3. The assessee's case is that the CIT was wrong in invoking the provisions of s. 263. It was contended that non-charging of interest under s. 217(1A) of the Act was not a mistake. The assessee had furnished the revised estimate and had paid the tax due to the extent of Rs. 5,42,429 within the extended date allowed by the CIT himself.

4. On appeal the Tribunal held as follows :

"There is no dispute about the fact that the assessee furnished revised estimate and paid the balance tax as per estimate within the date extended by the CIT under the proviso to s. 212(3A). In view of this fact we are of the opinion that the ITO had done nothing wrong in not charging interest under s. 217(1A). Accordingly it has to be held that the CIT was not justified in invoking the provisions of s. 263 on the ground of non-charging of interest under s. 217(1A) of the Act in this case."

5. The language of s. 217(1A) of the Act is quite clear. Interest can be levied only when the ITO finds that an assessee has not sent the estimate referred to therein. But in this case, the finding of the Tribunal is that the estimate was sent and the advance tax was paid within the extended date. Sec. 217(1A) does not contemplate that even in such a situation interest must be levied. The Tribunal was right in holding that the CIT was not justified in invoking the jurisdiction under s. 263 of the Act.

6. Accordingly the question 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.