
Jagdish Prasad Aggarwal (HUF) Vs Commissioner of Income Tax

Civil Writ Petition No. 178 of 1986

Court: Delhi High Court

Date of Decision: July 7, 2009

Acts Referred:

Income Tax Act, 1961 – Section 201, 202, 203, 204, 205

Citation: (2010) 187 TAXMAN 41

Hon'ble Judges: Valmiki J Mehta, J; A.K. Sikri, J

Bench: Division Bench

Advocate: Anoop Sharma and Manu K. Giri, for the Appellant; P.L. Bansal, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner herein is a HUF carrying on the business of export of readymade garments at New Delhi. For the assessment year 1974-75, the

petitioner made following payments towards the advance tax:

(a) 12-9-1973 Rs. 5,728

(b) 11-12-1973 Rs. 5,728

(c) 15-3-1974 Rs. 55,106

2. Last payment was credited in RBI on 25-3-1974. In this manner, total advance tax paid was Rs. 66,562. The return for that assessment year

was filed on 30-7-1974. As per this, he declared the income of Rs. 31,814. However, the Income Tax Officer assessed the income of Rs.

1,57,350 and raised a demand of Rs. 1,23,310 vide assessment order dated 2-7-1977. The petitioner went in appeal against the said order and

the matter was taken up to the Income Tax Appellate Tribunal, which passed the order in favour of the petitioner in June, 1981. As per the order

of the Tribunal income was assessed at Rs. 39,905 of which tax payable was Rs. 16,038. Since the petitioner had paid advance tax of Rs.

66,562, a sum of Rs. 50,524 becomes refundable to the petitioner, which was in fact refunded to him. However, the petitioner made a claim for

interest on this amount u/s 214 of the Income Tax Act, which has been refused by the Commissioner of Income Tax. The reason for refusal given

by the CIT is that last payment of advance tax of Rs. 55,106 was credited only on 25-3-1974, i.e., after the due date of 15-3-1974.

3. The contention of the petitioner is that as per the provisions of Sections 207 and 213 of the Income Tax Act, which provide for advance

payment of tax, the said advance tax is to be paid "during the financial year". Since the instalment of Rs. 55,106 paid on 15-3-1974 was duly

credited in Reserve Bank of India on 25-3-1974, it was well within the said financial year. Therefore, the revenue cannot deny the payment of

interest to the petitioner on the aforesaid amount, once it is found to be refundable. In support of this submission learned Counsel has referred to

the judgment of this Court in the case of COMMISSIONER OF INCOME TAX Vs. ESKAY ELECTRONICS (INDIA) LTD., Learned Counsel for the respondent could not dispute that the matter is covered by aforesaid judgment in favour of the petitioner, wherein this Court made

the following pertinent observations:

The pivotal expression appearing in the said provision is "the aggregate sum of any Instalments of advance tax paid during any financial year in

which they are payable under Sections 201 to 213". It would, therefore, be clear that reference is made not only to Section 211 of the Act but also

to the cluster of provisions referred in Sub-section (1) of Section 214. Sections 207 to 213 appearing in Part-C (Advance payment of tax) of

Chapter XVII of the Act deal with "Collection and recovery of tax". As was observed by the Full Bench of Andhra Pradesh High Court in

Bakelite Hylam Ltd. v. CIT, Sections 207 to 213 provide for advance payment of tax during the financial year, in all its facets, for the computation

of the tax so payable, for the instalments in which such tax is payable, for the dates on which such instalments are to be paid and in certain cases

for the deferment of payment even beyond the financial year. Tax payable in advance is compendiously referred to as "advance tax", therefore,

when Sub-section (1) of Section 214 refers to Sections 207 to 213, there is no justification for looking only at Section 211 as learned Counsel for

revenue want us to do and conclude that unless the instalments are paid strictly as per Section 211, interest is not payable u/s 214 on the excess

amount of advance tax paid during the financial year. It is to be noted that Section 208 provides that advance tax shall be payable during the

financial year. Section 211 deals with instalments of advance tax and due dates.

Section 208 deals with conditions of liability to pay advance tax and at the relevant time referred to payment during the financial year, as noted

above. We are in agreement with the view expressed by the Full Bench of Andhra Pradesh High Court in Bakelite Hylam's case (supra).

Therefore, our answer to the question referred is in the affirmative, in favour of asscssee and against revenue.

4. In view thereof, we are of the opinion that the petitioner is entitled to interest on the aforesaid amount of Rs. 50,524 u/s 214 of the Income Tax

Act. Rule is made absolute. Interest on the aforesaid amount of Rs. 50,524 shall be calculated from 1-4-1974 as per the provisions of Section 214

of the Income Tax Act and paid to the petitioner within two months from today.

5. This writ petition is allowed in the aforesaid terms.