(1980) 01 KL CK 0001

In the High Court Of Kerala

Case No : O.P. No. 3799 of 1977-B

A. Sethumadhavan APPELLANT

Vs

Commissioner of Income Tax and Another RESPONDENT

Date of Decision : 11-01-1980

Acts Referred:
Income Tax Act, 1961 — Section 211, 212(3A), 214, 218

Citation : (1980) 16 CTR 376 : (1980) 122 ITR 587

Hon'ble Judges : T. Kochu Thommen, J

Bench : Single Bench

Advocate : S. Vijayan Nair, for the Appellant; P.K. Ravindranatha Menon, for the Respondent

Judgement

Kochu Thommen, J.—Exhibit P-4 dated August 5, 1977, passed by the Commissioner of Income Tax u/s 264 of the I.T. Act, 1961, is impugned by the petitioner. The Commissioner rejected the petitioner''s claim for interest u/s 214 of the Act in respect of the third instalment of advance tax paid by the petitioner on the ground that the instalment was paid subsequent to the due date.

2. In respect of the assessment year 1976-77, the petitioner was required to pay advance tax in terms of Section 210 in three equal instalments at the rate of Rs. 6,600 on the due dates mentioned u/s 211(1)(ii), viz., 15th September, 15th December and 15th March. The first two instalments were paid by the petitioner on the due dates. On March 13, 1976, which was two days prior to the due date for the payment of the third instalment, the petitioner forwarded an estimate of his income together with a demand draft for Rs. 55,760 being the balance advance tax payable by him on the basis of such estimate. The demand draft was admittedly received by the department on March 16, 1976, which was a day later than the date on which the third instalment became due. For the reason that the third instalment was paid too late, the petitioner''s claim for interest in respect of the amount paid towards the advance tax in excess of what was due as per the regular assessment was rejected by the ITO. His decision was confirmed by the

Commissioner by the impugned order Ex. P-4.

3. Petitioner''s counsel, Shri Vijayan Nair, contends that interest in terms of Section 214 of the Act is payable by the Government in respect of the excess amount paid by way of advance tax, even if such payment was made subsequent to the dates mentioned u/s 211. Counsel states that where advance tax becomes payable on the basis of the estimate as mentioned u/s 212(3A) the liability of the assessee is limited to sending the estimate before the due date provided the amount payable as per the estimate is remitted on or before 1st April. It is, however, not imperative, according to counsel, that the remittance should accompany the estimate on the due date. Counsel further submits that Sub-section (3A) of Section 212 requires the assessee to send the estimate before the due date but it does not require him to assure himself that the estimate sent is received by the department before the due date. Counsel, therefore, contends that so long as it is established that the estimate was sent by the assessee before the due date Sub-section (3A) of Section 212 was in terms satisfied. I shall first read Section 211:

"(1) Subject to the provisions of this section and of Section 212, advance tax shall be payable in three equal instalments on the following dates during the financial year, namely :--...

(ii) the 15th day of September, the 15th day of December and the 15th day of March, in any other case...... : "

4. The instalment in question is the one that was due and payable on the 15th day of March. Section 212(3A) reads :

" (3A) In the case of any assessee who is required to pay advance tax by an order u/s 210, if, by reason of the current income being likely to be greater than the income on which the advance tax payable by him u/s 210 has been computed or for any other reason, the amount of advance tax computed in the manner laid down in Section 209 on the current income (which shall be estimated by the assessee) exceeds the amount of advance tax demanded from him u/s 210 by more than 33-1/3 per cent, of the latter amount, he shall, at any time before the date on which the last instalment of advance tax is due from him, send to the Income Tax Officer an estimate of--(i) the current income, and

(ii) the advance-tax payable by him on the current income calculated in the manner laid down in Section 209, and shall pay such amount of advance tax as accords with his estimate on such of the dates applicable in his case u/s 211 as have not expired, by instalments which may be revised according to subsection (2):......"

5. It is clear that the estimate has to be sent by the assessee before the date on which the last instalment of advance tax was due for payment. This part of the section was in terms satisfied by the assessee in so far as the estimate was admittedly sent on March 13, 1976, although it was received by the department

only on the 16th. But the Sub-section further stipulates that the assessee shall pay the advance tax on the due date mentioned u/s 211 which in the instant case was 15th March. Since the demand draft was not received by the department until the 16th, although it was despatched by post on the 13th, this part of the section was in terms not satisfied by the assessee. The demand draft was not cashed until the 19th. Whether the date of payment is the date of receipt of the demand draft or only the date of encashment of the same is a question which it is unnecessary for me to consider, although it is stated in the impugned order that the date of payment was the 19th which was the date of encashment, Whatever that be, the demand draft itself had been received by the department only a day later than the due date for payment.

6. The question, therefore, is whether interest is payable by the Government in respect of the amount that was paid in excess of what was ultimately determined to be due from the assessee as per the final order of assessment. Before I read Section 214, I shall refer to Section 218(2), which says :

" (2) If any assessee has sent under Sub-section (1) or Sub-section (2) or Sub-section (3) or Sub-section (3A) of Section 212 an estimate or a revised estimate of the advance tax payable by him, but does not pay any instalment in accordance therewith on the date or dates specified in Section 211, he shall be deemed to be an assessee in default in respect of such instalment or instalments:......"

7. He, who does not pay the instalments on the dates specified in Section 211 is deemed to be a defaulter. The petitioner is thus a defaulter in terms of Section 218(2). Being a defaulter the question is, can he claim interest from the Government. Section 214 reads :

"(1) The Central Government shall pay simple interest at twelve per cent, per annum on the amount by which the aggregate sum of any instalments of advance tax paid during any financial year in which they are payable under sections 207 - 213 exceeds the amount of the tax determined on regular assessment, from the 1st day of April next following the said financial year to the date of the regular assessment for the assessment year immediately following the said financial year,......"

8. The liability of the Central Govt. to pay interest u/s 214 arises only when the advance tax itself was paid as required by the Act; that is to say, paid on the date on which it was payable as per Section 211. In the present case such payment was not made.

9. This is the view that was taken by the Andhra Pradesh High Court in Kangundi Industrial Works (P.) Ltd. Vs. Income Tax Officer, A-Ward, , and with respect, I am in full agreement with the same.

10. The decision of the Bombay High Court in Commissioner of Income Tax, Bombay City-V Vs. Traub (India) P. Ltd., , relied on by the petitioner''s counsel, is

of no guidance on this point as that case turned on the basis of an admission on the part of the department.

11. In the circumstances, the challenge against Ex. P-4 fails. The O.P. is dismissed. No costs.

