(2011) 02 KAR CK 0001

In the Karnataka High Court

Case No : I. T. A. No. 841 of 2008

ACIT — APPELLANT

Vs

M/s. Fanuc India Ltd. — RESPONDENT

Date of Decision : 07-02-2011

Acts Referred:
Income Tax Act, 1961 — Section 143 (3), 154, 155, 234 D, 250

Citation : (2011) 02 KAR CK 0001

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : M.V. Seshachala, for the Appellant; Vani H, for the Respondent

Judgement

N. Kumar, J.—There is a delay of 150 days in preferring this appeal. The application is not opposed. Therefore, accepting the cause shown in the affidavit filed in support of the application for condonation of delay, the delay of 150 days in preferring this appeal is condoned.

2. This is an appeal preferred by the revenue challenging the order passed by the Tribunal, which affirmed the finding of the Commissioner of Income Tax (Appeals) who held that no interest is payable by the assessee from the date of refund till 1-6-2003.

3. When section 234D was introduced into the Income Tax Act, 1961 (for short here in after referred to as the Act) the assessment was completed u/s 143(3) for the assessment year in question 1999-2000 on 20-12-2004 determining the income tax at Rs. 5,41,47,331 wherein interest u/s 234D was calculated only from 1-6-2003 onwards and not from the date of issue of refund which was in March 2002. The AO treated this as a mistake apparent from the record and accordingly, issued a notice u/s 154 of the Act. The assessee contested the said proceedings by contending that since section 234D was inserted into the statute with effect from 1-6-2003, no interest under the said section is leviable from any earlier date. However, the said contention was rejected by the AO on the ground

that if the order reducing the refund is passed after 1-6-2003, the said provision is attracted and interest is payable from the date of refund and not from date of introduction of section 234D. Aggrieved by the said order, the assessee preferred an appeal to the Commissioner of Income Tax (Appeals). The Appellate Authority held that since the words with retrospective effect from is conspicuously absent when the said section was introduced by the Finance Act with effect from 1-6-2003, the interest is not leviable from the date of refund and it is payable only from 1-6-2003 and therefore, he set aside the order passed u/s 154 of the Act. Aggrieved by the same, the revenue preferred an appeal to the Tribunal, which came to be dismissed. Thereafter, a review petition was filed before the Tribunal, which also came to be dismissed. It is thereafter that the revenue has preferred this appeal.

4. The substantial question of law that arises for consideration in this appeal is whether the interest payable u/s 234D is payable from the date of refund if the refund is anterior to 1-6-2003 in the event of the assessment order being passed after section 234D came into force.

5. Prior to introduction of section 234D, no interest was payable on refund in the event of an order for refund is set aside and the assessee is made to pay the amount of refund, from the date of rectification order or the orders passed by the appellate authorities.

6. In this background, section 234D came to be inserted by the Finance Act, 2003 with effect from 1-6-2003. It reads as under :

(1) Subject to the other provisions of this Act, where any refund is granted to the assessee under sub-section (1) of section 143, and

(a) no refund is due on regular assessment; or

(b) the amount refunded under sub-section (1) of section 143 exceeds the amount refundable on regular assessment.

The assessee shall be liable to pay simple interest at the rate of one-half percent on the whole or the excess amount so refunded, for every month or part of a month comprised in the period from the date of grant of refund to the date of such regular assessment.

(2) Where, as a result of an order u/s 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount of refund granted under subsection (1) of section 143 is held to be correctly allowed, either in whole or in part, as the case may be, then, the interest chargeable, if any, under sub-section (1) shall be reduced accordingly.

7. Therefore, it is clear that the insertion of the aforesaid provision in the Act where levy of interest on any refund is granted to the assessee under sub-section (1) of 143 when subsequently no refund is determined to be due or the

amount of refund granted u/s 143(1) is found to exceed the amount refundable on regular assessment, the assessee shall be liable to pay simple interest at half percent on the whole or the excess amount so refunded for every month or part of the month comprised in the period from the date of grant of refund to the date of such regular assessment.

8. A careful reading of the aforesaid provisions makes it very clear that there is no indication in the language employed in the entire section that the Parliament intended to make this levy of tax on excess refund retrospectively. On the contrary after inserting this provision in the Act, it is specifically stated that it comes into effect from 1-6-2003. Though the amendment is by insertion, the Parliament has expressly stated that the amendment comes into effect from 1-6-2003. The Parliament has made its intention clear and unambiguous. In other words, it is not retrospective. It comes into effect from only 1-6-2003. The liability to pay interest on such a refund arises from the date of refund and not from the date of the assessment order. When the assessment order'' quantifies the tax payable and if at such a time, it is found that the assessee has been paid a refund, which he is not entitled to in law, he is liable to refund the said amount. Therefore, merely because the order of assessment was passed subsequent to the insertion of the said provision in the Act, would not make the said provision retrospective. The provision providing for imposition of interest is a substantive provision. In the absence of a contract or a usage providing for a payment of interest, interest can be levied only under law and it cannot be recovered by way of a wrong deduction of the amount. Therefore, the liability to pay interest emanates from the statutory provision. It is also equally well settled that unless a substantive provision is made retrospective either by express words or by implication, it has to be considered as prospectively only. A liability, which was not in law earlier, is sought to be foisted on a tax payer. In those circumstances, when the courts were called upon to interpret those provisions, it is not open to the courts to interpret them as retrospectively and foist liability on the tax payer which he is not liable on the date of such refund.

9. It is in this context, it is useful to refer to the Constitution Bench of the Apex Court in the case of J.K. Synthetics Ltd. v. Commercial Tax Officer reported in (1994) 94 STC 422 where it has been held as under :

It is well known that when a statute levies a tax it does so by inserting a charging section by which a liability is created or fixed and then proceeds to provide the machinery to make the liability effective. It, therefore, provides the machinery for the assessment of the liability already fixed by the charging section, and then provides the mode for the recovery and collection of tax, including penal provisions meant to deal with defaulters. Provision is also made for charging interest on delayed payments, etc. Ordinarily the charging section which fixes the liability is strictly construed but that rule of strict construction is not extended to the machinery provisions which are construed like any other statute. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat the same. (See Whitney v. Commissioner of Inland Revenue (1926) AC 37, CIT v. Mahaliram Ramjidas (1940) 8 ITR 442 (PC), India United Mills Ltd. Vs. Commissioner of Excess Profits Tax, Bombay, and M. Ct. Muthiah and Another Vs. Deputy Controller of Estate Duty, Southern Zone, . But it must also be realised that provision by which the authority is empowered to levy and collect interest, even if construed as forming part of the machinery provisions, is substantive law for the simple reason that in the absence of contract or usage interest can be levied under law and it cannot be recovered by way of damages for wrongful detention of the amount. (See AIR 1938 67 (Privy Council) and Union of India (UOI) Vs. A.L. Rallia Ram,). Our attention was, however, drawn by Mr. Sen to two cases. Even in those cases, Commissioner of Income Tax, Andhra Pradesh Vs. M. Chandra Sekhar, and Central Provinces Manganese Ore Co. Ltd. Vs. Commissioner of Income Tax, all that the court pointed out was that provision for charging interest was, it seems, introduced in order to compensate for the loss occasioned to the revenue due to delay. But then interest was charged on the strength of a statutory provision, may be its objective was to compensate the revenue for delay in payment of tax. But regardless of the reason which impelled the Legislature to provide for charging interest, the court must give that meaning to it as is conveyed by the language used and the purpose to be achieved. Therefore, any provision made in a statute for charging or levying interest on delayed payment of tax must be construed as a substantive law and not adjectival law. So construed and applying the normal rule of interpretation of statutes, we find, as pointed out by us earlier and by Bhagwati, J. in the Associated Cement Co.s Case (1981) 48 STC 466 (SC) that if the revenues contention is accepted it leads to conflicts and creates certain anomalies which could never have been intended by the Legislature.

10. Therefore, in the absence of any express words used in the provision making the levy of interest retrospective, it is only prospective i.e., from the day it came into force i.e., 1-6-2003. In fact, this view also finds support from the Judgment of the Delhi High Court, in the case of Director of Income Tax v. Jacabs Civil Incorporated and Mitsubishi Corporation reported in (2011) 330 ITR 578 (Del) .

11. Yet another judgment of the Constitution Bench of the Apex Court in the case of Karimatharuvi Tea Estate Ltd. v. State of Kerala reported in (1966) 15 ITR 262 (SC) where it has held as under :

It is well-settled that the income tax Act, as it stands amended on the first day of April of any financial year must apply to the assessments of that year. Any amendments in the Act which come into force after the first day of April of a financial year, would not apply to the assessment for that year, even if the assessment is actually made after the amendments come into force.

12. In that view of the matter, the appellate authorities were justified in holding that the assessee is not liable to pay tax from the date of refund and the liability is only from 1-6-2003 when section 234D came into force. Accordingly, we

answer this point in favour of the assessee and against the revenue. Ordered accordingly. No Costs.

