(1990) 09 AHC CK 0013

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 327 of 1979

Babu Ram Chandra Bhan and Another — APPELLANT

Vs

Income Tax Officer and Another — RESPONDENT

Date of Decision : 11-09-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 237, 241, 244(1), 244(2)

Citation : (1991) 99 CTR 91 : (1991) 190 ITR 260 : (1991) 55 TAXMAN 480

Hon'ble Judges : B.P. Jeevan Reddy, C.J;S.J. Verma, J

Bench : Division Bench

Judgement

B.P. Jeevan Reddy, C.J.—The petitioner is claiming interest for two periods in this writ petition, namely, June 28, 1967, to September 8, 1972 and again from April 25, 1974 to October 6, 1978. A few facts may be stated to appreciate the aforesaid claim.

2. The petitioner was a partner in a partnership firm. Assessments were made for the assessment years 1957-58 and 1958-59. Certain penalties were also levied for those assessment years. The petitioner paid a major portion of the penalties imposed and questioned the levy of penalties. By an order dated March 28, 1967, the Tribunal set aside the penalties with the result that the penalties paid become refundable.

3. It, however, appears that the Department was not satisfied with the orders of the Tribunal dated March 28, 1967, and they sought for a reference. Ultimately, the reference was rejected on September 8, 1972. On April 25, 1974, two refund vouchers were issued in favour of the petitioner for the amount paid by him plus interest for the period September 8, 1972 to April 25, 1974. But, before the petitioner could encash those vouchers, the encashment thereof was stopped by orders of the Department inasmuch as an ex-partner of the said firm laid a claim to the said amount. The claim preferred by such third party (ex-partner) was investigated and his claim was rejected. Thereafter, fresh refund vouchers were

issued on October 6, 1978 for the same amount for which refund vouchers were earlier issued on April 25, 1974. In other words, no interest was included in the refunded amount for the period April 25, 1974 to October 6, 1978. It is in the above circumstances that the petitioner is claiming interest u/s 244(1) for the first period (June 28, 1967 to September 8, 1972) and u/s 244(2) for the second period (April 25, 1974 to October 6, 1978).

4. So far as the first period is concerned, Section 244(1) clearly supports the petitioner''s claim. It says :

"(1) Where a refund is due to the assessee in pursuance of an order referred to in Section 240 and the Assessing Officer does not grant the refund within a period of three months from the end of the month in which such order is passed, the Central Government shall pay to the asses-see simple interest at fifteen per cent. per annum on the amount of refund due from the date immediately following the expiry of the period of three months aforesaid to the date on which the refund is granted."

5. According to this provision, the petitioner is clearly entitled to interest with effect from July 1, 1967. Admittedly, interest has been paid to him from September 8, 1972, to April 25, 1974. Therefore, the petitioner shall be paid interest at the aforesaid rate on the amount refundable to him for the period July 1, 1967 to September 7, 1972.

6. Now, coming to the second period, the question is whether the proceedings which were taken on the basis of the objection/claim filed by the third party (ex-partner) are proceedings under the Act within the meaning of Section 241 as it then stood. For the sake of convenience we may read Section 241 at this stage :

"241. Power to withhold refund in certain cases.--Where an order giving rise to a refund is the subject-matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the Assessing Officer is of the opinion that the grant of the refund is likely to adversely affect the Revenue, the Assessing Officer may, with the previous approval of the Chief Commissioner or Commissioner, withhold the refund till such time as the Chief Commissioner or Commissioner may determine."

7. While there is no specific provision empowering the Income Tax Officer or the assessing officer to investigate such claim, such a power is implicit and inherent in him which would be evident from a reading of Section 237.

8. Section 237 says :

"If any person satisfies the Assessing Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess."

9. It is thus clear that a person becomes entitled to refund only when he satisfies

the Assessing Officer that a certain amount is due to him. This satisfaction necessarily involves an inquiry where there is a dispute as to the entitlement to the amount to be refunded. We are, therefore, of the opinion that the proceedings taken on the basis of and in pursuance of the objection/claim filed by a third party were proceedings under the Act within the meaning of Section 241 of the Act. If so, Sub-section (2) of Section 244 is attracted which reads as follows :

"(2) Where a refund is withheld under the provisions of Section 241, the Central Government shall pay interest at the aforesaid rate on the amount of refund ultimately determined to be due as a result of the appeal or further proceeding for the period commencing after the expiry of three months from the end of the month in which the order referred to in Section 241 is passed to the date the refund is granted."

10. According to this sub-section, interest is payable with effect from the date on which the period of three months expired from the end of the month in which the order referred to u/s 241 is passed. The material before us, however, does not make it clear as to when the said order stopping the refund of encashment vouchers issued on April 25, 1974, were passed. The first respondent-income tax Officer is to verify this aspect and pay the interest from the appropriate date till October 6, 1978 at the prescribed rate.

11. The orders shall be passed by the first respondent in pursuance of this order within three months of the date on which a certified copy of this order is produced before him.

12. The writ petition is allowed in part with the above directions. No costs.

