(1988) 02 AP CK 0032

In the Andhra Pradesh High Court

Case No : R.C. No. 63 of 1984

Bakelite Hylam Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 04-02-1988

Acts Referred:
Income Tax Act, 1961 — Section 139, 143, 244, 246

Citation : (1988) 72 CTR 137 : (1988) 171 ITR 344

Hon'ble Judges : Y.V. Anjaneyulu, J;G. Ramanujulu Naidu, J

Bench : Division Bench

Advocate : M.J. Swamy and D. Man Mohan, for the Appellant; M. Suryanarayana Murthy, for the Respondent

Judgement

Y.V. Anjaneyulu, J.—This is a reference made by the Income Tax Appellate Tribunal u/s 256(1) of the Income Tax Act, for the assessment year 1971-72, at the instance of the assessee. The question referred is :

"Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in holding that an appeal did not lie to the Commissioner (Appeals) against an order of the Income Tax Officer passed to give effect to an appellate order made by the Appellate Assistant Commissioner in the quantum appeal, on the issue of non-allowance of interest under action 244 on the refund arising to the assessee as a result of the Appellate Assistant Commissioner''s order in quantum appeal ?"

2. For the Income Tax assessment year 1971-72, assessment was initially made and the matter went up to the Tribunal. The Tribunal passed an order granting certain reliefs to the assessee and in giving effect to the Tribunal''s order, the Income Tax Officer passed what he described as a modification order dated September 19/22, 1978. The Income Tax Officer granted a refund of Rs. 4,037. The assessee referred an appeal against the so-called modification order. In the appeal filed, the assessee claimed that the Income Tax Officer was in error in omitting to grant interest u/s 244 of the Act. It may be pointed out that

whatever refund is due and is not granted within the time allowed, the assessee can claim payament of intrest on the amount of refund. The Commissioner (Appeals) declined to admit the assessee''s appeal on the ground that no appeal lies against an order giving n effect to the appellate order of the Tribunal. In any event, no right of appeal is provided against the Income Tax Officer''s omission to grant refund u/s 244 of the Act.

3. The assessee filed an appeal before the Tribunal questioning the correctness of the view taken by the Commissioner (Appeals). The Tribunal upheld the Commissioner''s view and dismissed the appeal. The present reference is the outcome of the Tribunal''s order rejecting the assessee''s contention.

4. Two issues arise for consideration as indicated by the question referred to this court. The first question is, Whether the assessee can appeal against a modification order passed by the Income Tax Officer giving effect to the order of the appellate authority ? In other words, could it be said that the modification order partakes of the nature of an order u/s 143 of the Act so as to subject itself to an appeal u/s 246 of the Act. Now, the Revenue''s contention is that the order/ orders passed by the Income Tax Officer giving effect to the appellate decisions cannot be described as assessment orders in the sense they are understood u/s 143 of the Act. It is, therefore, submitted that no appeal lies. We are afraid, the contention urged by the Revenue is not tenable. An order of assessment is one in which there is computation of income or computation of tax or both. That computation of income and tax can be made by the Income Tax Officer not only in regular assessment made u/s 143 of the Act but also in orders passed from time to time giving effect to the decision of the appellate authority is as much an assessment order as the one passed by him by way of regular assessment u/s 143 of the Act but also in order passed from time to time giving effect to the decisions of the appellate authirities. The order passed by the Income Tax Officer giving effect to the decision of the appellate authority is as much an assessment u/s 143 of the Act. We are fortified in this view by the decision of the Calcutta High Court in Kooka Sidhwa and Co., Calcutta Vs. The Commissioner of Income Tax, W.B., and the decision of the Punjab High Court in GOPI LAL Vs. COMMISSIONER OF Income Tax, DELHI AND RAJASTHAN., . We, therefore, hold that an assessee has a right of appeal against a modification order as if it were an assessment order itself and the appellate authority is bound to entertain an appeal and decide it on merits.

5. The second question involved is whether the omission to grant interest u/s 244 of the Act on the belated refund could be the subject-matter of an appeal ?

6. It is true the section 246 of the Act does not specifically refer to the provision of an appeal against an order under the section 244 of the Act. Learned counsel for the assessee, however, invited our attention to the decision of the Supreme Court in Central Provinces Manganese Ore Co. Ltd. Vs. Commissioner of Income Tax, . The question considered by the supreme Court in this case is, whether the assessee is entitled to file an appeal against the levy of interest u/s 215 and 139

of the Act. Section 246 of the Act did not, in terms, refer to these two items and provide a right of appeal. The view taken, therefore, was that in the absence of a specific right of appeal conferred by section 246, no appeal lies to the appellate authority against refusal to grant interest. The Supreme Court held that where there is total denial of the liability to pay interest, the order is liable to be challenged in an appeal although there can be no appeal if the dispute is only regarding the quantum of interest payable. A distinction lay in the fact that, where, on the principal of law, there is total denial of the assessee''s claim, it is open to him to show that the claim for interest is well-founded. If, however on principle, there was no objection to the grant of interest but the dispute related only to the quantum, then the assessee has no right of appeal against the order on the ground that interest was inadequately granted In our opinion, this analogy holds good in the present case also. This is not a case where the assessment is in issue on the quantum of interest payable on belated refund u/s 244. There is total omission on the part of the Income Tax Officer to grant interest on refund. The Income Tax Officer insisted that, in terms of section 244 of the Act, the assessee is not entitled to interest. There is thus total denial of the liability by the Revenue to pay interest on the belated refund to the assessee u/s 244 of the Act. An Appeal, therefore lies against such total denial to the next appellate authority. If, however, the dispute is merely regarding the quantum of interest payable on the belated refund, no appeal would be maintainable. As we find in the present case that there is total denial without granting any interest whatsoever u/s 244, an appeal lies. We accordingly answer

7. We accordingly answer the question in favour of the the assessee and against the Revenue.

8. No costs.

