(1991) 06 KAR CK 0018

In the Karnataka High Court

Case No : Income-tax Referred Case No. 213 of 1987

Chief Commissioner (Adm.) and another APPELLANT

Vs

Mysore Minerals Ltd. RESPONDENT

Date of Decision : 26-06-1991

Acts Referred:

Income Tax Act, 1961 — Section 209, 209 A, 212 (3A), 216, 256 (10)

Citation : (1993) 109 CTR 250 : (1992) 197 ITR 572 : (1993) 68 TAXMAN 308

Hon'ble Judges : N. Venkatachala, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : G. Chandrakumar, for the Appellant; G. Sarangan, for the Respondent

Judgement

K. Shivashankar Bhat, J.—The following question has been referred for our consideration u/s 256(10) of the Income Tax Act, 1961.

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in cancelling the interested levied u/s 216 by following the decision of the Andhra Pradesh High Court inn Addl. Commissioner of Income Tax Vs. Vazir Sultan Tobacco Company Ltd.,

2. The relevant assessment year is 1981-82. The assessee is M/s. Mysore Minerals Ltd. for the relevant year, it paid advance tax as follows :

--- Date Income Advance tax Date of estimated ----------------------- payment estimated paid --- Rs. Rs. Rs. --- 11-9-1980 60,00,000 35,47,500 11,82,500 15-9-1980 11-12-1980 1,00,00,000 59,12,500 47,30,000 28-12-1980 12-3-1981 1,30,21,000 76,98,666 17,86,200 18-3-1981 ---

3. At the time of assessment, the Income Tax Officer held that the assessee''s payment of the first installment of advance tax was not in proportion to the

actual income found ultimately. Therefore, he invoked section 216 of the Income Tax Act, 1961, and levied interest as per that section.

4. There is no dispute that the assessee had filed estimates u/s 209 and complied with all the relevant provisions, such as, sections 209, 209A and 212(3A) of the Income Tax Act, 1961, and levied interest as per that section.

5. There is no dispute that the assessee had filed estimates u/s 209 and complied with all the relevant provisions, such as, sections 209, 209A and 212(3A) of the Income Tax Act. However, the Income Tax Officer proceeded to levy interest by observing thus :

"It is clear that, by filing two higher estimates u/s 212, the assessee has deferred the payment of the first instalment of advance tax by Rs. 13,83,722, which fell due on September 15, 1980. Levy interest ......"

6. From the above, it is quite clear that the assessing authority did not give any finding that the assessee had underestimated the advance tax payable by him and thereby reduced the amount payable in either of the first two instalments. He proceeded to levy interest solely because the ultimate income found was not duly reflected in the advance tax paid in so far as the first instalment was concerned. The appeal filed by the assessee before the Commissioner failed. The Income Tax Appellate Tribunal, however, accepted the appeal and allowed the same mainly purporting to rely upon certain observations made by the Andhra Pradesh High Court in the case of Addl. Commissioner of Income Tax Vs. Vazir Sultan Tobacco Company Ltd., . Hence, this reference at the instance of the Revenue.

7. Learned counsel for the Revenue pointed out that the decision of the Andhra Pradesh High Court being the subject-matter of an appeal pending before the Supreme Court, the relevant observation referred to by the Appellate Tribunal was not warranted in the instant case. At my rate, the interpretation given to the section by the Andhra Pradesh High Court was not appropriate to the said provision.

8. It is necessary for us to go0 into the said question at all having regard to the proved facts in the instant case. Even the Income Tax Officer found that the assessee had filed all the estimates properly and made the payments of advance tax and in fact, the total advance tax paid by the assessee exceeded the tax assessed on the assessee. In the very nature of things, a business concern can only estimate the income that may be earned by the assessee. It is not possible to hold that the estimate of the income for the purposes of the first instalment was in any way opposed to the provisions referred to already. In fact, the finding given by the Income Tax Officer is that all the provisions have been duly complied with by the assessee. In view of this finding, no further question arises for consideration. The order of the finding Officer was liable to be set aside solely on the ground that there was no finding given by him as to the underestimate, which is a jurisdictional fact, to attract section 216(a).

9. In view of the above, the question referred to us is answered in the affirmative and against the Revenue.

