(2011) 01 KAR CK 0049

In the Karnataka High Court

Case No : IT Appeal No''s. 515 to 517 of 2008

CIT and Another — APPELLANT

Vs

Karnataka Bank Ltd. — RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:
Income Tax Act, 1961 — Section 143 (3), 154, 214, 244 A

Citation : (2011) 01 KAR CK 0049

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

Bench : Division Bench

Advocate : K.V. Arvind, for M.V. Seshachala, for the Appellant; S. Parthasarathi and Vani H., for the Respondent

Judgement

N. Kumar, J.—The Revenue has preferred these three appeals challenging the order passed by the Tribunal directing payment of interest on the excess TDS amount paid on behalf of the Assessee.

2. These three appeals relate to three assessment years and the Assessee is common. Therefore, all the three appeals are taken up for consideration together and disposed of by this common order.

3. The Assessee after an assessment order passed in respect of annual returns filed u/s 143(3) of the Act, filed an application for rectification u/s 154 of the IT Act, seeking rectification in respect of certain mistakes as occurred in the order passed by the AO. The rectification sought for was the allowance for the correct amount of TDS of Rs. 39,89,879 as against Rs. 38,13,711, allowance of interest u/s 214 on the balance TDS of Rs. 1,76,168 from 1st April, 1981 on the date of issue of refund as well as grant of interest u/s 244A for the period of delay in respect of refund.

4. The AO while passing the rectificatory order u/s 154 of the Act allowed credit in respect of TDS of Rs. 1,76,168. However, he rejected the claim of the Appellant for allowance of interest u/s s 214 and 244A of the Act. One of the

reason for the AO to reject the interest was, that the Assessees earlier application on the same ground for grant of interest on refund was rejected as barred by limitation which order was also confirmed in appeal. In those circumstances, aggrieved by the rectificatory order rejecting the request of interest, the Assessee preferred an appeal before the CIT(A), Mangalore. The CIT(A) held that the Appellants are not entitled to interest u/s 214 of the Act, whereas the Appellants claim for grant of interest u/s 244A was granted. Aggrieved by the same, the Assessee preferred an appeal before the Tribunal. The Tribunal also has held that the Assessees are not entitled to interest u/s 214 of the Act, whereas, are entitled to interest u/s 244A of the Act. Aggrieved by the said orders, Revenue is in appeal.

5. Learned Counsel for the Appellant assailing the impugned order contends that insofar as payment of interest u/s 244A is concerned, as is clear from Sub-section (4) of Section 244A, the said provision shall apply in respect of Assessees for the assessment order {sic--year) commencing on the 1st day of April, 1999 and subsequent assessment years. Therefore, this payment of interest u/s 244A is not attracted to assessments made pjrior to 1st April, 1989. The assessments involved in these three appeals are for the years 1981-82, 1982-83 and 1983-84. The Tribunal and the appellate, authority were not justified in granting interest u/s 244A.

6. The learned Counsel for the Revenue is justified in the aforesaid stand, if interest had to be paid u/s 244A. Merely because in the orders s. 244A is invoked, obviously it is an inadvertent mistake as no tax could be levied without the authority of law as contained in the statutory provisions. If the Assessee is entitled to refund of tax under the statutory provisions irrespective of the provisions which are invoked or referred to by the courts, what the courts have to find out is, whether in law, the Assessee is entitled to the benefit. If the Assessee is entitled to the benefit, notwithstanding these typographical errors, inadvertent mistakes, the Assessee cannot be denied the relief to which the statute provides for. The material on record discloses that by virtue of the rectification order the AO held that the Assessees are entitled to refund of Rs. 31,76,168, the tax paid by way of TDS. Therefore the said amount of refund is not granted on the basis of the application filed by the Assessees u/s 239 of the Act. When an order of refund is passed in the course of assessment proceedings, it is Section 244, Sub-section (1A), which is attracted. Under the aforesaid provision, the interest is payable after 31st March, 1975. Therefore, the said provision applies to the asst. yrs. 1981-82, 1982-83 and 1983-84. Section 244A which contains the words where refund of any amount becomes due to the Assessee under this Act, is substituted by Direct Tax Laws (Amendment) Act, 1989 which came into effect from 1st April, 1989. Earlier to that the Section reads as under:

Where, in pursuance of any order passed under this Act, refund of any amount becomes due to the Assessee.

7. In this regard it is useful to refer to the judgment of the Apex Court in the case of Modi Industries Limited, Modinagar and Others Vs. Commissioner of Income Tax, Delhi and Another, . The Apex Court held as under:

If any tax paid pursuant to an assessment order after 31st March, 1975 (which will include TDS and advance tax to the extent the same has been retained and treated by the ITO as payment of tax in discharge of the Assessees tax liability in the assessment order), becomes refundable wholly or in part as a result of any appellate or other order passed, the Central Government will have to pay the Assessee interest on the refundable amount u/s 244(1A). For the purpose of this section, the amount of advance payment of tax and the amount of TDS must be treated as payment of income tax pursuant to an order of assessment on and from the date when these amounts were set off against the tax demand raised in the assessment order, in order words the date of the assessment order.

8. Therefore it is clear that when any tax paid is refundable wholly or in part as a result of any appellate or any other order passed which includes a rectificatory order, the Central Government will have to pay the Assessee interest on the refundable amount u/s 244(1A).

9. The order of the authorities rejecting the payment of interest u/s 214 has not been challenged by the Assessees and therefore it has become final. However the order of the appellate authority directing payment of interest on the tax ordered to be refunded which represents TDS amount is legally tenable and is in accordance with Section 244(1A) of the Act. Therefore, we do not see any substantial question of law which requires consideration in this appeal. Accordingly it is rejected.

