(2011) 10 UK CK 0003

In the Uttarakhand High Court

Case No : ITA No. 15 of 2006

CIT	APPELLANT
Vs	
Dehradun Club Ltd.	RESPONDENT

Date of Decision : 14-10-2011

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 143(3), 148, 154, 156

Citation : (2013) 259 CTR 149 : (2013) 351 ITR 396 : (2012) 209 TAXMAN 27

Hon'ble Judges : Tarun Agarwala, Acting C.J.;Umesh Chandra Dhyani, J

Bench : Division Bench

Advocate : Arvind Vashisht, for the Appellant; S.K. Posti, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, Actg., C.J.—Heard Mr. Arvind Vashisht, the learned counsel for the appellant and Mr. S.K. Posti, the learned counsel for the respondent assessee. This is an appeal u/s 260-A of the Income Tax Act, 1961 (hereinafter referred to as Act) filed by the Revenue. For the assessment year 1998-1999, an assessment order was passed by the Assessing Officer u/s 143(3) / 148 of the Act vide order dated 24th November, 2000. The operative portion of the order of the assessing officer is extracted hereunder :-

8. Initiate penalty proceedings u/s 271(1)(c) for not offering the above income of taxation. Penalty proceedings u/s 271B are also initiated as the assessees business turnover exceeds Rs.40 lakhs and accounts are not audited as per section 44AB issue demand notice and challan.

2. From the aforesaid, it is clear that while completing the assessment, the assessing officer had not issued any direction in respect of charging interest u/s 243-B of the Act.

3. Pursuant to the assessment order, a notice of demand was issued u/s 156 of the Act demanding interest u/s 243-B of the Act amounting to Rs.1,27,545/- on the ground that the assessee had failed to pay advance tax within the stipulated

period as specified u/s 209 of the Act.

4. The assessee, being aggrieved by the charging of the interest, filed an application u/s 154 of the Act for rectification of the order on the ground that there was a mistake apparent from the record. The assessee contended that the interest u/s 234B of the Act could not be charged since there was no order to that effect in the assessment order. The application of the assessee was rejected by the assessing officer. The assessee, being aggrieved by the rejection of his application, filed an appeal before the Commissioner of Income Tax (Appeals), who by an order dated 05.09.2002 allowed the appeal and quashed the order demanding interest u/s 234-B of the Act. The appellate authority held that there has to be a specific order for charging interest in the assessment order and since the assessing officer did not levy any interest in the assessment order, no interest could be charged in the notice of demand issued u/s 156 of the Act.

5. The Revenue, being aggrieved by the order of the appellate authority, preferred an appeal before the Income Tax Appellate Tribunal, who by its order dated 06th June, 2005 rejected the appeal and affirmed the order of the appellate authority. The Revenue, being aggrieved by the aforesaid orders, has filed the present appeal u/s 260-A of the Act.

6. The question of law, which is to be considered in the present appeal is

whether interest u/s 234-B of the Act could be charged in the notice of demand issued u/s 156 of the Act in the absence of any specific order demanding interest in the assessment order.

7. In order to answer the question of law, it would be appropriate to examine a few provisions of the Act.

8. Section 143(3) of the Act as it existed for the relevant year in question is extracted hereunder:-

143(3) On the day specified in the notice issued sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make as assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

9. Section 156 of the Act is extracted hereunder:-

Notice of demand.

156. When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Assessing Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable.

10. A perusal of the aforesaid provision clearly indicates that the tax, interest, penalty, or fine is payable in consequence of an order passed under the Act, namely, the assessment order. There has to be a specific order passed by the assessing officer charging interest and, only thereafter, a notice of demand levying interest could be issued.

11. The language of the aforesaid provision mandates that the Income Tax Officer shall by an order in writing make an assessment of the total income or loss of the assessee and determine the same payable by the assessee on the basis of such assessment. The Supreme Court in Kalyan kumar Ray Vs. Commissioner of Income Tax, West Bengal-IV, Calcutta, while considering the provisions of Section 143(3) of the Act held that the Income Tax Officer has to determine, by an order in writing, not only the total income, but also the net sum which would be payable by the assessee for the assessment year in question and that the demand notice u/s 156 of the Act has to be issued in consequence of such an order.

12. In Ranchi Club Ltd. Vs. Commissioner of Income Tax and Others , the assessment order did not mention about the levy of interest and a notice of demand was issued u/s 156 of the Act to the effect that the interest was payable on the tax due. The Patna High Court held that the levy of interest was not justified. The said decision was affirmed by the Supreme Court in Commissioner of Income Tax and Others Vs. Ranchi Club Ltd., .

13. In Vinod Khurana Vs. Commissioner of Income Tax and Another, , the Punjab & Haryana High Court held that the notice of demand u/s 156 of the Act cannot go beyond the assessment order and that the assessee cannot be served with any such notice demanding interest where the assessment order does not specify charging of any interest. Similarly in Commissioner of Income Tax Vs. Kishan Lal (HUF), , the Delhi High Court held that since no direction was issued in the assessment order for charging of interest, the notice of demand could not be issued levying interest u/s 234A, 234B and 234C of the Act. Similar view was reiterated by the Delhi High Court in Commissioner of Income Tax Vs. Insilco Ltd., .

14. In Uday Mistanna Bhandar and Complex, Tej Kumari Devi and Ranchi Club Ltd. Vs. Commissioner of Income Tax and Others, , while analyzing the provisions of Sections 234A, 234B and 234C vis-?-vis Section 156 of the Act, the Patna High Court held that notice of demand claiming interest can be issued only when there is a direction in the assessment order for levying interest. In Smt. Tej Kumari and Others Vs. Commissioner of Income Tax and Others, , the Full Bench of the Patna High Court (Ranchi Bench) held that in the absence of any specific order, interest could not be charged or recovered from the assessee.

15. The learned counsel for the appellant submitted that the provision of charging interest u/s 234A, 234B & 234C of the Act is mandatory as held by the Supreme Court in Commissioner of Income Tax, Mumbai Vs. Anjum M.H.

Ghaswala and Others, . There is no quarrel with the aforesaid proposition laid down by the Supreme Court, but, at the same time, the assessment order must contain the imposition of interest and, only thereafter, a notice of demand could be issued u/s 156 of the Act. To elucidate the matter, a notice of demand is somewhat like a decree in a civil suit, which must follow the order. When the judgment in a civil suit does not specify any amount to be recovered, the decree could not contain such amount. Similarly, when the assessment order u/s 143 (3) of the Act does not indicate that interest would be leviable, the notice of demand u/s 156 of the Act levying interest would be wholly illegal since interest is payable in consequence of an order passed as is clear from Section 156 of the Act. Consequently, the notice of demand cannot go beyond the assessment order and the assessee cannot be served with any such notice demanding interest. There is another aspect of the matter. The assessee must know that he has been charged with interest under a particular section of the Act. That must be specified in the assessment order and, only thereafter, a notice of demand u/s 156 of the Act could be issued. In the light of the aforesaid, the court is of the opinion that if the assessment order does not specify charging of interest, then it could not be charged or levied u/s 156 of the Act. The question of law is answered accordingly. In the light of the aforesaid, the appeal filed by the appellant fails and is dismissed. In the circumstances of the case, parties shall bear their own cost.

