(2010) 07 P&H CK 0264

In the Punjab And Haryana At Chandigarh

Case No : Income Tax A. No''s. 149 and 150 of 2003

Commissioner of Income Tax APPELLANT

Vs

Arun Kapoor RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:
Finance Act, 2001 — Section 143(1), 143(3), 234B(1)
Income Tax Act, 1961 — Section 132, 211, 234B, 234C, 260A(4)

Citation : (2011) 334 ITR 351

Hon'ble Judges : Ajay Kumar Mittal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—This order shall dispose of I.T.A. Nos. 149 and 150 of 2003. The facts are said to be identical in both the appeals. Reference is made to the facts of I.T.A. No. 149 of 2003.

2. The Revenue has preferred this appeal u/s 260A of the income tax Act, 1961 (in short "the Act") against the order of the income tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") passed in I.T.A. No. 333 (ASR)/96 on November 29, 2002, for the assessment year 1994-95, proposing to raise the following substantial question of law:

Whether, on the facts and in the circumstances of the case, the income tax Appellate Tribunal was justified in upholding the orders of the Commissioner of income tax (Appeals) in deleting the interest charged under Sections 234B and 234C on the ground that the asses-see could not be held liable for such interest on the income surrendered u/s 132(4) during the course of search and seizure operation conducted after the close of the financial year?

3. The Assessee is engaged in the business of trading of cloth and filed return for the assessment year 1994-95 on October 28, 1994, declaring an income of Rs. 30,38,920. On April 29, 1994, a search was conducted at the residential as well

as business premises and on search, the Assessee surrendered certain amounts as additional income. The assessment was completed on November 23,1995, at the total income of Rs. 30,63,930. The Assessee made a request for adjusting the cash amount seized during search on May 30, 1994. The said request of the Assessee was not accepted by the Assessing Officer. As the search operation had taken place on April 29, 1994, i.e., after the closing of the financial year, interest under Sections 234B and 234C was levied. In September, 1994 part of the seized cash was adjusted towards tax due in different cases for the assessment year 1994-95. As per Section 211 of the Act, the Assessee was required to pay advance tax in three instalments for the financial year ending on March 31, 1994. The due dates for paying advance tax were September 15, 1993, December 15, 1993 and March 15, 1994. The Assessing Officer held that the Assessee was liable to pay tax instalment on the surrendered income from the date advance tax was due, i.e., September 15, 1993, December 15, 1993 and March 15, 1994 and charged interest under Sections 234B and 234C of the Act accordingly. On appeal, the Commissioner of income tax (Appeals) and the Tribunal held that the demand of interest was not justified and income surrendered after the close of the financial year could not be foreseen by the Assessee for the purpose of payment of advance tax. The finding of the Tribunal is as under:

After considering the rival submissions and going through the material available on the record, it appears that in the instant cases, the Assessees had requested soon after the search that whatever tax was due on the income surrendered be adjusted out of the amounts seized from them. Therefore, while filing the returns, the Assessees treated the entire cash seized as tax paid by them. It is not disputed at any stage that the Assessees requested the Department on May 30, 1994, after the search and seizure operations to adjust a sum of Rs. 42 lakhs seized from this group of cases towards the likely demands arising in view of the surrender made u/s 132(4) of the Act.

Admittedly, the assessments were framed in all the cases on November 29, 1995, i.e., after the request of the Assessees to adjust the cash seized, made on May 30, 1994. In other words, the Assessees had requested soon after the search that whatever tax was due on the income surrendered be adjusted out of the amounts seized from them and the balance be returned to them.

4. We have heard learned Counsel for the Revenue. None appears for the Assessee.

5. Learned Counsel for the Revenue submits that the view taken by the Tribunal in deleting the interest cannot be sustained as payment of interest was mandatory. The mere fact that the Assessee could not foresee the interest liability was no ground not to demand interest. The interest was payable on the amount of assessed tax which may be held to be due. Reliance has been placed on Explanation 1 to Section 234B(1) of the Act added in the year 2001, with effect from April 1, 1989, vide the Finance Act, 2001.

6. The chargeability of interest u/s 234B of the Act came up for consideration in a recent judgment dated July 20, 2010 passed in I.T.A. No. 851 of 2008 (Jacob Export House v. CIT [2011] 330 ITR 53 (P&H)) wherein it was held as under (page 56):

7. The matter is no longer res integra. This Court in Parkash Agro Industries Vs. Dy. Commissioner of Income Tax, , while considering the effect of amendment to Explanation 1 retrospectively, with effect from April 1, 1989, had held that an Assessee is liable to pay interest u/s 234B of the Act on the amount of income assessed u/s 143(1) or 143(3) of the Act and not on the basis of income declared in the return by the Assessee. The relevant observations reads as under (page 152):

''9. It is no doubt true that prior to the amendment brought by the Finance Act, 2001, which has been made effective retrospectively from April 1, 1989, the interest u/s 234B of the Act was chargeable with reference to the total income as had been declared by the Assessee in its return and not on the assessed income. Explanation 1 to Section 234B(1) of the Act was amended by the Finance Act, 2001. It reads thus:

Explanation 1.-In this section, ''assessed tax'' means the tax on the total income determined under Sub-section (1) of Section 143 or on regular assessment as reduced by the amount of tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income.

(b) in Sub-section (3), for the words ''one and one-half per cent'', the words ''one and one-fourth per cent'' shall be substituted with effect from June 1, 2001.''

10. The said Explanation was the subject-matter of challenge before this Court in Raj Kumar Singal Vs. Union of India (UOI) and Others, where the Division Bench while upholding the validity of the said provision, interpreted it as under (page 562):

... A comparison of the two provisions shows that under the original provision interest was leviable on the income as declared in the return filed by the Assessee. By the amended provision, the interest is leviable on the income as determined by the assessing authority minus the income on which the tax has been paid or deducted. The amendment is only calculated to clarify the ambiguity that was felt in the original provision. It is not arbitrary or unreasonable.

7. Section 234C of the Act provides for interest for deferment of advance tax. Section 234C(1)(b) is relevant in the present case as it applies in the case of Assessees other than companies. According to the aforesaid provision, the Assessee is liable to pay interest on the returned income at the rate specified therein for the period for which advance tax has been deferred.

8. In view of the above, though the Assessee was entitled to benefit of payment out of the seized cash from the date of his application the Assessee was liable to pay interest u/s 234B of the Act on the tax liability determined on the income assessed by the Assessing Officer.

9. Similarly the Assessee is liable to pay interest u/s 234C of the Act in terms thereof and shall be entitled to benefit of payment out of the seized cash from the date of making application for adjustment of the seized cash towards tax liability. The view to the contrary taken by the Tribunal cannot be sustained.

10. Accordingly, the substantial question of law is answered in favour of the Revenue and the appeal is allowed in these terms.