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(1989) 04 P&H CK 0063

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No''s. 72 and 73 of 1981

Commissioner of Income Tax APPELLANT

Vs

Atlas Cycle Industries RESPONDENT

Date of Decision : 24-04-1989

Acts Referred:

Income Tax Act, 1961 — Section 147, 148, 215, 215(2), 80G

Citation : (1989) 180 ITR 319

Hon'ble Judges : S.S. Sodhi, J;Gokal Chand Mital, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajay Mittal, for the Appellant; D.K. Monga, Senior Advocate, Rajiv Mehra and Rajiv Bhalla, for the Respondent

Judgement

Gokal Chand Mital, J.—The Atlas Cycle Industries is the assessee and the matter relates to the assessment year 1972-73. Since the calendar year was the accounting year, it ended on December 31, 1971. On May 21, 1971, notice was issued by the Income Tax Officer u/s 210 of the Income Tax Act, 1961 (for short "the Act"), for payment of advance tax of Rs. 31,29,358. The assessee paid the amount as follows :

Date of deposit

Amount deposited

Rs.

14-6-1971

4,63,340

14-9-1971

8,23,330

15-12-1971

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6,43,330

2-3-1972

5,40,000

14-3-1972

61,750

2. Up to December 15, 1971, Rs. 19,30,000 was paid and Rs. 6,01,750 was paid thereafter in March, 1972. In this manner, till March 14, 1972, Rs. 25,31,750 was paid as advance tax, against the demand of Rs. 31,29,358. Since the accounting year ended on December 31, 1971, and less than 75 per cent, of the advance tax was paid by then on the balance, interest was charged by the Income Tax Officer u/s 215 of the Act.

3. The assessee challenged the imposition of interest but on appeal the Commissioner of Income Tax (Appeals) deleted the levy of interest, and the Department failed before the Tribunal. On the aforesaid facts, at the instance of the Department, the Tribunal has referred the following question for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the interest u/s 215 was not chargeable in this case ?"

4. For the assessment year in question, the original assessment was made on January 31, 1973 at Rs. 51,88,420 which was amended to Rs. 50,59,780. On March 29, 1977, the Income Tax Officer issued notice for reassessment u/s 148 of the Act and mentioned therein that the benefits u/s 80G and 40(c) (sic) of the Act were granted in excess. In the reassessment proceedings, the Income Tax Officer did not find merit in the two grounds mentioned in the notice for reassessment but made an addition of Rs. 16,541 on some other grounds.

5. The order of reassessment was challenged by the assessee in appeal and the Tribunal came to the conclusion that the reassessment could not be sustained as the two items mentioned in the notice for reassessment were found to be erroneous and since the very ground for initiating reassessment proceedings disappeared, no reassessment order could be passed. On this matter, the Department has got the following question referred for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in cancelling the reassessment made by the Income Tax Officer ?" .

6. Since the two references related to the same assessee and for the same assessment year, one common statement of the case with both the questions mentioned therein has been sent to this court.

7. We propose to deal with each question separately. Adverting to the question relating to interest, on a reading of the chart tabulated above regarding payment of advance tax, we find that till the end of the accounting year, i.e., up to

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December 31, 1971, against the demand of Rs. 31,29,358, Rs. 19,30,000 was paid which is less than 75 per cent, of the advance tax, and, therefore, it is clear that the assessee committed default in payment of advance tax. If 75 per cent, of the advance tax had been paid up to December 31, 1971, interest would not have been leviable but this is not the case here.

8. The assessee paid Rs. 6,01,750 more towards advance tax in March, 1972. Payment of interest on the said amount is being disputed. On behalf of the assessee, it is not disputed that on the difference between the total amount paid, that is, Rs. 25,31,750, and the demand of advance tax of Rs. 31,29,358, the liability of interest is not the subject-matter of dispute in this reference and would be dealt with or has been dealt with separately. Therefore, the only question for our determination is whether on the amount of Rs. 6,01,750, which was paid after the expiry of the accounting year, in March, 1972, that is, before the end of financial year, the interest is leviable.

9. For this matter, we have to consider Section 215(1) of the Act, which provides that if default is committed by an assessee in payment of advance tax, simple interest at the rate of 15 per cent. per annum is payable on the short deposit with effect from the 1st day of April next following the said financial year up to the date of the regular assessment. That means the Department wants to levy interest on the amount of Rs. 6,01,750 with effect from April 1, 1972, till the date of the regular assessment, but once the aforesaid amount is paid before April 1, 1972, how can interest thereon be calculated with effect from April 1, 1972, till the date of the regular assessment. If the amount had not been paid before April 1, 1972, and had been paid some time thereafter before the regular assessment, interest could have been charged with effect from April 1, till the date of payment, See in this behalf Section 215(2)(i). The word "or otherwise" in Sub-section (2) signifies that in whatever manner tax is paid, it shall be taken note of in calculating the interest. In spite of default having been committed by the assessee in not paying the due advance tax within time, yet by virtue of the provisions of Section 215(2) read with Sub-section 2(1) of the Act, which provides for charging interest with effect from April 1 next following till payment, no interest is payable on the amount of Rs. 6 lakhs odd, as mentioned above, as the payment of that amount was made in March, 1972.

10. In view of the above, we answer the question, in the negative, in favour of the Revenue, but at the same time say that on the amount of Rs. 6 lakhs odd paid in March, 1972, no interest is payable but on the balance unpaid amount of advance tax interest would be payable as per Section 215 of the Act.

11. Adverting to the question referred regarding the reassessment proceedings, we are of the view that the Tribunal was right in cancelling the reassessment as both the grounds on which reassessment notice was issued were not found to exist, and the moment such is the position, the Income Tax Officer does not get the jurisdiction to make a reassessment.

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12. This view of ours finds support from the Supreme Court decisions in Commissioner of Income Tax, Gujarat Vs. A. Raman and Company, and Bankipur Club Ltd., Patna Vs. The Commissioner of Income Tax , Bihar and Orissa, Patna, . Similar view has been taken by the Rajasthan High Court in Additional Commissioner of Income Tax Vs. Ganeshilal Lal Chand, . On behalf of the Commissioner of Income Tax, Gujarat I Vs. Ahmedabad Manufacturing and Calico Printing Co. Ltd., , a decision of the Gujarat High Court was cited. On a consideration of the matter, we are of the view that in view of the aforesaid Supreme Court decisions, the view taken by the Rajasthan High Court is correct and the view taken by the Gujarat High Court is not, correct. Accordingly, we dissent from the view taken by the Gujarat High Court and in view of the decisions of the Supreme Court and Rajasthan High Court, we hold that the Income Tax Officer did not have the jurisdiction to proceed with the reassessment, the moment he found the two grounds mentioned in the reassessment notice incorrect or non-existent. Accordingly, we answer the referred question in favour of the assessee, in the affirmative, that the Tribunal was right in cancelling the reassessment.

13. Both the references stand disposed of in the aforesaid terms with no order as to costs.

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