
(1998) 02 MAD CK 0202

In the Madras High Court

Case No : In the Madras High Court R. Jayasimha Babu and N. V. Balasubramanian, JJ, Tax Case No. 2107 of 1984 (Reference No. 1563 of 1984) 19 February 1998

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

D. ENGINEERING PVT. LTD.

RESPONDENT

Date of Decision : 19-02-1998

Acts Referred:

Citation : (1999) 239 ITR 111

Hon'ble Judges : R. Jayasimha Babu, J

Bench : Division Bench

Advocate : C. V. Rajan, for the Commissioner P. P. S. Janarthana Raja, for M/s. Subbaraya Aiyar, Padmanabhan and Ramamani, for the assessee, for the Appellant;

Judgement

R. Jayasimha Babu, J.

At the instance of the Revenue, the following two questions have been referred to us for our consideration :

"(i) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the interest u/s 217(1A) of the Income Tax Act, 1961, cannot be charged in this case on the ground that no such interest can be charged in a case where the assessee filed an estimate as required u/s 212(3A), but failed to pay the tax as per such estimate ?

(ii) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the interpretation of the provisions of section 217(1A) does not give scope for any controversy or debate and hence, if it is noticed that the levy of interest under the said section was contrary to law, the mistake can be rectified u/s 154 ?"

The assessment year in question is 1975-76. The assessee after paying the advance tax demanded, had also filed an estimate as the estimated income for

the year was likely to exceed by 331/3 per cent. the amount of the advance tax paid. That estimate was filed as the assessee was required to file such an estimate u/s 212(3A) of the Income Tax Act, 1961. Along with the estimate, the assessee was also required to send the advance tax payable by him on the current income calculated in the manner laid down u/s 209. The assessee while sending the estimate did not send the advance tax payable in accordance with that estimate.

In the order of assessment, the Income Tax Officer being of the view that section 217(1A) of the Act was attracted levied interest under that provision. The assessee thereupon petitioned the Income Tax Officer to rectify the assessment. The rectification was refused by the Income Tax Officer, but was permitted by the Commissioner (Appeals), in the appeal that was filed before him by the assessee. The Tribunal having affirmed the order of the Commissioner, the Revenue has sought this reference.

Section 212 of the Act deals with the estimate to be filed by the assessee. Section 212(3A) requires the assessee to file an estimate, if the assessee's current income is likely to exceed the amount of advance tax demanded from him u/s 210 by more than 331/3 per cent. The section, inter alia, requires that the assessee :

"..shall at any time before the date on which the last instalment of advance tax is due from him, send to the Income Tax Officer an estimate of-

(i) the current income, and

(ii) the advance tax payable by him on the current income calculated in the manner laid down in section 209, and shall pay such amount of advance tax as accords with his estimate on such of the dates applicable in his case u/s 211 as have not expired, by instalments which may be revised according to sub-section (2) :"

The proviso to section 212(3A) of the Act not being material, for the purpose of this case, it is unnecessary to refer to the same.

Section 217(1A) which makes a reference to section 212(3A) of the Act provides that if a person who is required to file an estimate under that provision :

"..has not sent the estimate referred to therein, simple interest at the rate of twelve per cent. per annum from the 1st day of April next following the financial year in which the advance tax was payable in accordance with the said sub-section up to the date of the regular assessment shall be payable by the assessee upon the amount by which the advance tax paid by him falls short of the assessed tax as defined in subsection (5) of section 215."

Significantly section 217(1A) of the Act does not make any reference to the failure if any, on the part of the assessee in remitting the amount of the advance tax in accordance with the estimate filed by him u/s 212(3A) of the Act. The

estimate if filed, the advance tax not remitted with it cannot attract interest under this provision. Admittedly, estimate has been filed.

The interest that would be payable by the assessee on the amount by which the advance tax paid by him falls short of the assessed tax, could only be u/s 215 of the Act which provides for levy of interest on the amounts by which the advance tax paid falls short of the assessed tax.

It is not permissible to read words into taxing statutes as repeatedly held by the courts. Although the obligation cast on the assessee u/s 212(3A) of the Act includes not only the filing of an estimate, but also the payment of the advance tax in accordance with that estimate, failure to pay the advance tax in accordance with that estimate has not been made ground for levy of interest u/s 217(1A) of the Act, and in the absence of language explicitly providing for levy of interest on the advance tax not remitted with the estimate, such interest cannot be levied in cases where the estimate is filed without paying the further amounts payable as advance tax.

The language employed in these two provisions is unambiguous and does not admit any doubt as to what the assessee is required to do, and as to what is permissible for the Income Tax Officer to do. The levy of interest on the amount of the advance tax which had not been remitted along with the estimate was, therefore, clearly an error committed by the Income Tax Officer and which error was apparent on the face of the record capable of being corrected u/s 154 of the Act.

Learned counsel for the Revenue fairly brought to our notice the decision of the Patna High Court in the case of Commissioner of Income Tax Vs. Bihar Journals Ltd. wherein a similar view has been taken.

Our answer to the questions referred to us, therefore, is in the affirmative, against the Revenue and in favour of the assessee. The assessee is entitled to its costs in the sum of Rs. 1,000.