(2001) 06 DEL CK 0024

In the Delhi High Court

Case No : IT Ref. No. 211 of 1980 6-12-2001 A.Y. 1975-76

COMMISSIONER OF INCOME TAX APPELLANT

Vs

ESKAY ELECTRONICS (INDIA) LTD. RESPONDENT

Date of Decision : 12-06-2001

Acts Referred:

Citation : (2001) 165 CTR 741 : (2001) 248 ITR 536

Hon'ble Judges : Arijit Pasayat, C.J;D.K. Jain, J

Bench : Full Bench

Advocate : R. C. Pandey and Prem Lata Bansal and Ajay Jha, for the Revenue, None, for the assessed, for the Appellant;

Judgement

Arijit Pasayat, C.J.

At the instance of revenue , the following question has been referred by Tribunal, Delhi Bench-B, u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as ''the Act''), for opinion of this court :

"Whether on facts and in the circumstances of the case, the Tribunal is correct in law in holding that interest is payable u/s 214 on the payment of Rs. 1.36 lakhs made on 14-1-1975 ?"

2. Factual position is almost undisputable and is as follows:

assessed, a private limited company, filed its return for assessment year 1975-76 for which the previous year ended on 30-4-1974. assessed claimed interest u/s 214 of the Act on the ground that advance tax paid by it was in excess of tax payable. Same was disallowed by the Income Tax Officer on the ground that last Installment of advance tax of Rs. 1,36,000 was paid late by the assessed. This was due on 15-12-1973, but, in reality, was paid on 14-1-1975. assessed preferred appeal before the Appellate Assistant Commissioner (hereinafter referred to as the AAC). Being of the view that Income Tax Officer was erroneous in his conclusions, Appellate Assistant Commissioner allowed the claim. Matter was carried in further appeal by revenue before the Tribunal. Tribunal affirmed Appellate Assistant Commissioner''s order and dismissed revenue ''s appeal. Though Tribunal accepted revenue ''s stand that circulars of the Board F. No. 12/80/64-IT(B), dated 1-6-1965, and 23-7-1974, relied upon by the Appellate Assistant Commissioner, were not very relevant, yet held that a plain reading of section 214 of the Act shows that assessed''s claim was in order. On being moved for reference, the question as stated above has been referred for our opinion.

3. We have heard learned counsel for revenue . There is no appearance on behalf of assessed in spite of service of notice.

Learned counsel for revenue submitted that when time stipulation has been fixed by the statute, any payment made beyond the stipulated date not qualify for grant of interest u/s 214 of the Act.

4. Sub-section (1) of section 214 at the relevant time read as follows:

"214. (1) The Central Government shall pay simple interest at nine per cent per annum on the amount by which the aggregate sum of any Installments of advance tax paid during any financial year in which they are payable under sections 207 to 213 exceeds the amount of the tax determined on regular assessment from the 1st day of April next following the said financial year to the date of the regular assessment for the assessment year immediately following the said financial year, and where any such Installment is paid after the expiry of the financial year, during which it is payable by reason of the provisions of section 213, interest as aforesaid shall also be payable on that Installment from the date of its payment to the date of regular assessment :

Provided that in respect of any amount refunded on a provisional assessment u/s 141A, no interest shall be paid for any period after the date of such provisional assessment."

The pivotal expression appearing in the said provision is "the aggregate sum of any Installments of advance tax paid during any financial year in which they are payable under sections 201 to 213". It would, Therefore, be clear that reference is made not only to section 211 of the Act but also to the cluster of provisions referred in sub-section (1) of section 214. Sections 207 to 213 appearing in Part-C (Advance payment of tax) of Chapter XVII of the Act deal with "Collection and recovery of tax". As was observed by the Full Bench of Andhra Pradesh High Court in Bakelite Hylam Ltd. Vs. Commissioner of Income Tax, , sections 207 to 213 provide for advance payment of tax during the financial year, in all its facets, for the computation of the tax so payable, for the Installments in which such tax is payable, for the dates on which such Installments are to be paid and in certain cases for the deferment of payment even beyond the financial year. Tax payable in advance is compendiously referred to as ''advance tax''. Therefore, when sub-section (1) of section 214 refers to sections 207 to 213, there is no justification for looking only at section 211 as learned counsel for revenue want us to do and conclude that unless the Installments are paid strictly as per section 211, interest is not payable u/s 214 on the excess amount of advance tax paid during the financial year. It is to be noted that section 208 provides that advance tax shall be payable during the financial year. Section 211 deals with Installments of advance tax and due dates.

Section 208 deals with conditions of liability to pay advance tax and at the relevant time referred to payment during the financial year, as noted above. We are in agreement with the view expressed by the Full Bench of Andhra Pradesh High Court in Bakelite Hylam''s case (supra). Therefore, our answer to the question referred is in the affirmative, in favor of assessed and against revenue .

The reference stands disposed of accordingly.

