(1996) 06 PAT CK 0002

In the Patna High Court

Case No : Tax Case No. 53 of 1986

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

GOVIND RAM and CO. — RESPONDENT

Date of Decision : 25-06-1996

Acts Referred:

Citation : (1996) 06 PAT CK 0002

Judgement

The Tribunal, Patna Bench, Patna, at the instance of the Revenue, has referred the following questions for the opinion of this Court under s. 256(1) of the IT Act, 1961 (for short, "the Act") :

"(1) Whether, on the facts and in the circumstances of the case, it was permissible to the assessee to challenge the charging of interest when the order passed by the CIT under s. 263(1) of the IT Act, 1961, setting aside the assessment order with a direction to charge interest was upheld by the Tribunal ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that no interest was leviable made under s. 147/143(3) and under s. 263 ?"

For the facts of this case we may refer to para 3 of the statement of the case which is as under :

"3. While making the original assessment under s. 143(3)/148, the ITO had not charged any interest under s. 139(8). Subsequently, assessment was set aside by the CIT, under s. 263(1) with the direction to the ITO to make a fresh assessment and charge interest under s. 139(8). The ITO made the assessment under s. 143(3)/147/263 and also charged interest under ss. 139 and 217. The AAC on appeal confirmed the action of the ITO both in respect of the assessment and charging of interest. The assessee not being satisfied took this matter in appeal before the Tribunal. The Tribunal passed an order in which it held that no interest could be charged in reassessment proceedings. Accordingly, it cancelled the interest charged. It is necessary to note that the assessee had also contested the validity of the order setting aside the assessment passed by the CIT but the Tribunal had upheld the order of the CIT passed under s. 263(1) setting aside the assessment."

2. Mr. Vidyarthi, learned counsel for the Revenue, submitted that there is divergence of opinion on the question so raised by the different High Courts. He said that the Calcutta High Court in Commissioner of Income Tax and Others Vs. Graphite India Ltd., the Gujarat High Court in Anup Engineering Ltd. Vs. Income Tax Officer, Companies Circle-II, Ahmedabad, and the Madhya Pradesh High Court in Commissioner of Income Tax Vs. Jagannath Narayan Kutumbik Trust, have taken a view in favour of the Revenue, holding that interest will be charged in reassessment proceedings. He further said that the Rajasthan High Court in Commissioner of Income Tax Vs. Jaipur Udyog Ltd., the Bombay High Court in Commissioner of Income Tax, Bombay City-V Vs. Traub (India) P. Ltd., and the Madras High Court in Commissioner of Income Tax Vs. T.T. Investments and Trades Pvt. Ltd., have taken a view in favour of the assessee, holding that no interest could be charged under s. 139(8) and 217 in reassessment proceedings.

3. Mr. Rastogi, learned counsel, submitted that there is a decision of the Patna High Court in favour of the assessee in Prakash Lal Khandelwal Vs. Income Tax Officer and Another, and as recent as in Metallurgical and Engineering Consultants (India) Ltd. Vs. Commissioner of Income Tax and Others

4. Mr. Rastogi has further referred to the amendments made in s. 139(8) of the Act by amending Expln. 2 thereto which reads as under :

"Explanation 2. - Where, in relation to an assessment year, an assessment is made for the first time under s. 147, the assessment so made shall be regarded as a regular assessment for the purposes of this sub-section."

5. The amending Act by which the aforequoted Expln. 2 has come into force is by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1st April, 1985.

6. Mr. Rastogi further referred to the circular of the CBDT as reported in (1985) 152 ITR 29 and paragraphs 14.3 and 15.3 thereof. From this circular also it is clear that prior to 1st April, 1985, interest could not have been charged in reassessment proceeding.

7. We, therefore, find no difficulty in answering both the questions in the affirmative and in favour of the assessee and against the Revenue.

8. We record our appreciation of the assistance rendered to us by Mr. Rastogi.