
(1993) 08 CAL CK 0033
In the Calcutta High Court
Case No : Matter No. 1433 of 1990

Commissioner of Income Tax	Vs	APPELLANT
Graphite India Ltd.		RESPONDENT

Date of Decision : 13-08-1993

Acts Referred:

Income Tax Act, 1961 — Section 214, 244

Citation : (1994) 121 CTR 504 : (1994) 209 ITR 318 : (1995) 80 TAXMAN 436

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : S.K. Mitra, for the Appellant; D. Pal, for the Respondent

Judgement

Ajit K. Sengupta, J.—This appeal by the Commissioner of Income Tax (Central-II) is directed against the judgment and order dated July 17, 1990 (see Graphite India Ltd. Vs. Commissioner of Income Tax and Others, of a learned single judge on the writ application filed by the respondent.

2. The facts leading to this appeal are that the respondent/writ petitioner filed on June 12, 1981, a statement of advance tax u/s 209A(1)(a) of the Income Tax Act, 1961, for the assessment year 1982-83 on the basis whereof a sum of Rs. 1,34,97,379 was payable by way of advance tax. The respondent paid advance tax of Rs. 21,99,126, Rs. 5,56,615 and Rs. 5,00,000 on June 12, 1981, July 23, 1981, and November 19, 1981, respectively, by three instalments for the said assessment year 1982-83. As the income of the respondent was expected to be less, it filed on December 14, 1981, Form No. 29 estimating its income subject to advance tax and advance tax payable thereon estimated at Rs. 1,06,19,318. The respondent paid Rs. 31,66,807 and Rs. 6,56,998 on December 14, 1981, and March 31, 1982, respectively, by way of advance tax. The respondent thus, in total, paid Rs. 70,79,546 by way of advance tax for the said assessment year.

3. The respondent duly filed its return on June 29, 1982, showing a total income of Rs. 86,94,100 for the said assessment year and a sum of Rs. 49,01,299

became payable by way of advance tax. On November 24, 1982, the Assessing Officer made provisional assessment u/s 141A of the Act for the said assessment year and computed the refund allowable at Rs. 21,32,494. But only Rs. 80,853 was refunded by way of adjustment against the demand for the assessment year 1977-78. So the balance amount of Rs. 20,51,641 was not refunded on provisional assessment.

4. By an order dated February 10, 1983, u/s 154 of the Act, the Assessing Officer rectified the said provisional assessment order and reduced the amount of refund from Rs. 21,32,494 to Rs. 8,98,257. As a sum of Rs. 80,853 was already refunded, the balance amount of Rs. 8,17,404 was refunded on the basis of the order dated February 10, 1983, passed u/s 154 of the Act.

5. The Commissioner of Income Tax (Appeals) by an order dated January 6, 1984, allowed the appeal preferred by the respondent against the order passed u/s 154 of the Act by which he cancelled the order passed u/s 154 of the Act by the Assessing Officer.

6. On March 19, 1984, the Assessing Officer refunded a sum of Rs. 12,34,227 which became refundable to the respondent on the basis of the order of the Commissioner of Income Tax (Appeals).

7. On March 28, 1985, the Assessing Officer completed the assessment for the assessment year 1982-83 u/s 143(3) of the Act and computed the total income at Rs. 97,60,310 as against the returned income of Rs. 86,94,100. By the said order, the Assessing Officer computed a sum of Rs. 16,43,171 as refundable. As the sum of Rs. 21,32,494 was refunded to the respondent, the Assessing Officer computed a sum of Rs. 4,89,323 as payable by the respondent. The respondent preferred an appeal against the said assessment order.

8. By an order dated September 20, 1985, the Tribunal dismissed the appeal preferred by the Revenue against the order of the Commissioner of Income Tax (Appeals) allowing the claim of the respondent against the order u/s 154 of the Act.

9. The Commissioner of Income Tax (Appeals) passed an order on September 30, 1985, allowing the appeal in part against the regular assessment made u/s 143(3) of the Act allowing depreciation and investment allowance on the original cost. As a result of the said order, substantial refund became due to the respondent.

10. By a letter dated January 27, 1986, the respondent requested the Assessing Officer to give effect to the appellate order of the Commissioner of Income Tax (Appeals) dated September 30, 1985, and to refund the amount to the respondent which became refundable for the assessment year 1982-83 with interest thereon u/s 214 of the Act.

11. On February 19, 1986, the respondent received an order dated nil passed by the Assessing Officer in conformity with the observation made by him in the

assessment order for the assessment year 1982-83 by which he gave appeal effect. By the said order, he allowed the additional amount of depreciation and investment allowance in consequence of which he computed the revised total income for the said year at Rs. 34,94,070. In view of the said order, a sum of Rs. 51,75,764 became refundable to the respondent out of which a sum of Rs. 21,32,494 was already refunded to the respondent. Thus, a sum of Rs. 30,43,270 became refundable to the respondent along with interest thereon under Sections 214 and 244 of the Act. The Assessing Officer, however, allowed interest u/s 214 of the Act only of Rs. 1,49,268 and computed the amount refundable at Rs. 31,92,538.

12. The respondent made a revision petition on April 9, 1986, u/s 264 of the Act before the Commissioner of Income Tax requesting him to issue necessary directions upon the Assessing Officer to pay full interest to the respondent as per Section 214 of the Act as interpreted by this court in the case of Chloride India Ltd. Vs. Commissioner of Income Tax and Others, as also interest u/s 244 of the Act.

13. While the revision application u/s 264 of the Act was pending, by a letter dated June 18, 1987, the respondent also requested the Income Tax Officer being respondent No. 2 to give the petitioner interest u/s 244 of the Act, but no reply has been received by the respondent and no interest has been paid as requested by the respondent by the said letter.

14. By an order dated August 8, 1989, passed u/s 264 of the Act, the Commissioner of Income Tax held that the respondent is entitled to interest on Rs. 15,47,723 for a period of seven months from April 1, 1982, to October 31, 1982, amounting to Rs. 1,08,339 and the respondent is not entitled to any other refund or interest for the assessment year 1982-83. The Commissioner further held that the decision of this court in Chloride India Ltd. Vs. Commissioner of Income Tax and Others, was not accepted by the Department.

15. The respondent moved this court under Article 22(5) of the Constitution of India. The main contention was that the Commissioner of Income Tax by the order dated August 8, 1989, u/s 264 of the Act and the Income Tax Officer concerned refused to pay full interest to the respondent u/s 214 of the Act. It is also the case that the Income Tax authorities refused to pay interest u/s 244 of the Act for the assessment year 1982-83. The learned judge held that the ratio of the decision in Chloride India Ltd. Vs. Commissioner of Income Tax and Others, as affirmed by the Division Bench will squarely apply to the facts of the present case and accordingly the learned judge followed the said decision and allowed the writ application. The learned judge directed the Income Tax authorities to pay to the respondent interest on the amount of refund u/s 214 and Section 244 of the Act.

16. Mr. Sunil Kumar Mitra, learned advocate appearing for the appellant, has not disputed that the expression "regular assessment" has been interpreted by this

court in Chloride India Ltd. Vs. Commissioner of Income Tax and Others, . He has, however, submitted that the Division Bench decision of this court in Commissioner of Income Tax and Others Vs. Chloride India Ltd., , has not been accepted by the Department and that some other High Courts have taken a contrary view. We are, however, bound by the Division Bench decision of this court on the identical issue.

17. The Division Bench in Commissioner of Income Tax and Others Vs. Chloride India Ltd., has held that interest is payable by the Government u/s 214 of the Act on the amount of advance tax paid by an assessee during the financial year, if it exceeds the taxes due and payable on regular assessment. The word "regular assessment" will include within its purview even the order passed by the Income Tax Officer finally giving effect to the appellate order. In this case, the Commissioner of Income Tax (Appeals) passed his appellate order for the assessment year 1982-83 on September 30, 1985. As a result of this appellate order, the respondent-assessee became entitled to receive a refund of Rs. 51,75,764 for the said year as against which a sum of Rs. 21,32,494 had already been refunded to the assessee-company in pursuance of the provisional assessment made by the Assessing Officer u/s 141A of the said Act. The Assessing Officer gave effect to the appellate order in February, 1986, and this order is undoubtedly an order of "regular assessment" within the meaning of Section 214 of the said Act. This view was again endorsed by this court in Commissioner of Income Tax Vs. Pixray (India) Ltd. (formerly Picker X-Ray (India) Ltd.), . The assessee-company is, therefore, entitled to claim interest u/s 214 till the date of passing of the order by the Assessing Officer giving effect to the appellate order as aforesaid.

18. The respondent-assessee is also entitled to get interest u/s 244(1) of the said Act in accordance with law since the amount refundable to the respondent-assessee was not refunded within a period of three months from the end of the month in which the appellate order was passed by the Commissioner of Income Tax (Appeals). The requirement for the entitlement to interest on refund under Sub-section (1) of Section 244 is quite clearly expressed. This interest falls payable under two conditions:

- (i) the refund arises in pursuance of an order passed in appeal;
- (ii) the refund has not been granted within a period of three months from the end of the month in which such order is passed.

19. It is mandatory that since the conditions aforesaid having been satisfied, the interest running from the date following the expiry of the period of three months till the date on which the refund is granted has to be paid to the assessee. There is no room for any dispute on this reading of the provisions of Section 244(1) of the Act.

20. For the reasons aforesaid, we are of the view that there is no merit in this appeal and the appeal is dismissed without any order as to costs.

Shyamal Kumar Sen, J.

21. I agree.