(1998) 02 CAL CK 0005

In the Calcutta High Court

Case No : Income-tax Reference No. 195 of 1992

Commissioner of Income Tax APPELLANT

Vs

Haripada Khatua RESPONDENT

Date of Decision : 18-02-1998

Acts Referred:

Income Tax Act, 1961 — Section 214, 215(1), 215(3)

Citation : (1998) 146 CTR 559 : (1998) 146 CTR 558 : (1998) 230 ITR 560

Hon'ble Judges : Y.R. Meena, J;Bijitendra Mohan Mitra, J

Bench : Division Bench

Judgement

Y.R. Meena, J.—By this application u/s 256(1) of the Income Tax Act, 1961, the following question has been referred for our opinion :

"Whether, on the facts and in the circumstances of the case, particularly in view of the fact that in the original assessment no interest u/s 215(1) of the Income Tax Act, 1961, was levied as the advance tax paid was in excess of the "assessed tax", the Tribunal was justified in law in holding that interest under Sub-section (3) of Section 215 of the said Act cannot be levied on the reassessment made u/s 147 of the said Act ?"

2. The assessee is a partner with a 40 per cent. share in the firm Maha-laxmi Rice Mills, Sabang Road, Bally Chawk, District Midnapore. The business of the firm is rice milling and sale of fertilisers and pesticides. The firm is registered under the provisions of the Income Tax Act, 1961. In the year 1989, a search, u/s 132 of the Act, was conducted at the residence of the assessee and in the course of search total cash amount of Rs. 84,27,126 was found in addition to the gold ornaments. On the basis of the search material, the assessment was reopened and as per reassessment the assessee had to pay Rs. 60,748 and Rs. 36,975 for the assessment years 1987-88 and 1988-89, respectively. But, it is submitted that advance tax paid by the assessee was more than the tax assessed in the regular assessment.

3. It is the admitted case of the Revenue that the assessee has paid more tax than the tax assessed as per regular assessment.

4. What is regular assessment--their Lordships have considered the same in the case of Modi Industries Limited, Modinagar and Others Vs. Commissioner of Income Tax, Delhi and Another, , where their Lordships observed as under (page 800) :

"For all the above reasons--particularly having regard to the scheme of the Act and use of the phrase ''regular assessment'' in various sections of the Act--we are of the view that in Section 214, ''regular assessment'' has been used in no other sense than the first order of assessment passed u/s 143 or Section 144. If any consequential order has to be passed by the Income Tax Officer to give effect to an order passed by the higher authority, that consequential order cannot be treated as the ''regular assessment'' nor can the date of the consequential order be treated as the date of the regular assessment."

5. When the assessee had paid more tax than the tax assessed in the regular assessment, interest cannot be charged u/s 215 on the basis of any subsequent assessment or reassessment.

6. In view of these undisputed facts and the position of law, we answer the question in the affirmative, i.e., in favour of the assessee and against the Revenue.

Bijitendra Mohan Mitra, J.

7. I agree.

