
(1989) 02 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 45 of 1982

Commissioner of Income Tax

APPELLANT

Vs

Leader Engineering Works

RESPONDENT

Date of Decision : 23-02-1989

Acts Referred:

Income Tax Act, 1961 — Section 214, 219, 244(1A)

Citation : (1990) 81 CTR 222 : (1990) 1 ILR (P&H) 3 : (1989) 178 ITR 529 :
(1989) 45 TAXMAN 329

Hon'ble Judges : S.S. Sodhi, J;Gokal Chand Mital, J

Bench : Division Bench

Advocate : L.K. Sood, for the Appellant; N.K. Sood, for the Respondent

Judgement

Gokal Chand Mital, J.—For the assessment year 1973-74, the Income Tax Officer completed the assessment on January 27, 1977. The assessee had paid advance tax before March 31, 1975, and the advance tax was adjusted against the liability created by the aforesaid assessment order. On the assessee's appeal, the tax liability was reduced and the excess amount was refunded. The assessee claimed that the Income Tax Officer should have allowed interest on the refunded amount u/s 244(1A) of the Income Tax Act, 1961 (hereinafter called "the Act"), from the date the advance tax was adjusted pursuant to the assessment order till the date of refund. The Income Tax Officer declined the request but on appeal, the Commissioner of Income Tax (Appeals) granted the prayer which was affirmed by the Income Tax Appellate Tribunal, Amritsar, and at the instance of the Revenue, the following two questions have been referred for the opinion of this court:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the provisions of Section 154 of the Income Tax Act, 1961, were applicable to this case ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the adjustment of advance tax towards the demand

assessed was a payment for the purpose of allowing interest u/s 244(1A) of the Income Tax Act ?"

2. For the decision of question No. 2, which is the main question, Sections 219 and 244(1A) deserve consideration. Section 219 provides for credit for advance tax and the payment of advance tax has to be treated as payment of tax in respect of income of the period which would be the previous year for assessment for the assessment year next following the financial year in which it was payable and credit thereof has to be given to the assessee in the regular assessment. The moment credit is given, it ceases to be advance tax and takes the place of payment of tax in pursuance of the regular assessment.

3. Section 244(1A) provides that if an assessee is entitled to refund of an amount as a result of the appellate order or other proceedings under the Act, the assessee is entitled to interest at the specified rate on the amount so found to be in excess from the date on which such amount was paid to the date on which the refund is granted. This provision further notices that the provision will relate to the amounts having been paid after March 31, 1975. Since the advance tax was paid before March 31, 1975, the claim of the Revenue was that Section 244(1A) was not applicable, whereas the case of the assessee was that the payment of tax would be deemed to have been made on January 27, 1977, when the regular assessment was made by adjustment of the advance tax towards the tax liability created by the regular assessment order dated January 27, 1977, and, therefore, it should be taken that the tax was paid on January 27, 1977, pursuant to the regular assessment order and, therefore, the provision was applicable.

4. On a consideration of the matter, we are of the opinion that the advance tax loses its identity the moment it is adjusted towards the tax liability created under the regular assessment and takes the shape of payment of tax in pursuance of an order of assessment and in this case this happened on January 27, 1977, when the regular assessment order was made and this happened after March 31, 1975, and, therefore, Section 244(1A) was clearly applicable. Section 214 provides for payment of interest to an assessee on the excess amount of advance tax with effect from the first 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. This further shows that after adjustment of advance tax at the time of regular assessment, if some balance remains to the credit of the assessee, that balance is treated as advance tax and the amount adjusted therefrom is treated as payment of tax. If the amount adjusted towards tax is found refundable in pursuance of the appellate order or other proceedings u/s 244(1A) of the Act, the assessee is entitled to interest thereon at the rate specified in Section 244(1) of the Act. Hence, the Tribunal was right in allowing payment of interest to the assessee u/s 244(1A) of the Act on the amount which was found refundable on the basis of the appellate order.

5. For the reasons recorded above, we answer the second question in favour of the assessee, in the affirmative. Question No. 1 does not arise in view of the

answer to question No. 2 and is returned unanswered. No costs.