(2000) 01 GUJ CK 0022

In the Gujarat High Court

Case No : IT Ref. No. 323 of 1984

Commissioner of Income Tax APPELLANT

Vs

Mihir Textiles Ltd. RESPONDENT

Date of Decision : 24-01-2000

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 154, 214, 256(1)

Citation : (2000) 161 CTR 200 : (2000) 243 ITR 616 : (2002) 123 TAXMAN 1082

Hon'ble Judges : J.N. Bhatt, J;C.K. Buch, J

Bench : Division Bench

Advocate : Manish R. Bhatt, for the Appellant;

Judgement

J.N. Bhatt, J.—For the relevant asst. yr. 1977-78, Tribunal, at the instance of the Department - Revenue, forwarded following question for our opinion under s. 256(1) of the IT Act, 1961 :

(1) Whether, on the facts and circumstances of the case, the Tribunal has been right in law in holding that the assessee is entitled to interest under s. 214 from 1st April, 1977 to the date of orders, namely (a) provisional assessment, (b) order under s. 143(3), and (c) rectification order under s. 154 of the IT Act, 1961 ?

(2) Whether regular assessment occurring in s. 214 of the IT Act, 1961, includes order of reassessment and/or order of rectification also for the purpose of interest under the said section.

2. It appears from the statements of facts that this is a case of claim for interest under s. 214 of the IT Act, 1961. (hereinafter referred to as the IT Act). The assessee had paid an advance tax and a provisional assessment was made on 14th February, 1978, which entitled it to a refund of Rs. 3,692. Subsequently, on 27th September, 1980, an assessment under s. 143(3) came to be made which entitled the assessee to a further refund of Rs. 1,54,407. Again, on 14th December, 1981, ITO granted further refund of Rs. 1,22,422 by a rectification

order under s. 154 of the IT Act.

3. The concerned ITO granted interest on the refund amounts only from 1st April, 1977, to 14th February, 1978, in other words, to the date of the provisional assessment. The claim of the assessee is that he should have been granted the interest on the amounts which became due to him on the refunds upto the date of refund orders and not only upto the date of provisional assessment.

4. The observations of the CIT(A) are pertinent requiring mention at this juncture :

"The ITO appears to have allowed interest upto the date of regular assessment. But if he has not done so, he is directed to look into the same and allow interest as may be admissible upto the date of regular assessment. The apperant''s plea that it should be allowed interest upto the date of order passed under s. 154 cannot be accepted in view of clear provisions of the law."

5. Upon considering facts and circumstances and various decisions of the High Court, the Tribunal held that the interest is allowable upto the date of rectification order for which Tribunal relied on Board''s Circular.

6. The Tribunal, ultimately, held that the interest is payable to the assessee on the various amounts from 1st April, 1977, upto the date of order which entitled the assessee to the amounts, (a) on provisional assessment, and (b) on an order under s. 143(3), and (c) on rectification order.

7. After having heard and considering the facts, the Tribunal referred above two questions before us for our opinion by his order dt. 29th June, 1984 in respect of the asst. yr. 1977-78.

8. Our attention was invited by the learned counsel for the Central Government Mr. Bhatt to a decision of the Hon''ble Supreme Court rendered in Modi Industries Limited, Modinagar and Others Vs. Commissioner of Income Tax, Delhi and Another, . After considering the discussion in the aforesaid decision and the facts of the present case and the impugned order, we are of the clear opinion that the ratio propounded in Modi Industries case (supra), squarely, applies to the facts of the present case and, therefore, reference is required to be allowed accordingly.

9. In the result reference for our opinion is decided in favour of Revenue and against the assessee for the relevant asst. yr. 1977-78. Accordingly, this reference shall stand disposed of with no order as to costs.

