
(1987) 08 RAJ CK 0006

In the Rajasthan High Court

Case No : Income Tax Reference No. 13 of 1980

Commissioner of Income Tax

APPELLANT

Vs

M.L. Sanghi

RESPONDENT

Date of Decision : 05-08-1987

Acts Referred:

Income Tax Act, 1961 — Section 2(40), 214(1)

Citation : (1988) 170 ITR 670

Hon'ble Judges : J.S. Verma, C.J;I.S. Israni, J

Bench : Division Bench

Advocate : R.N. Surolia, for the Appellant; V.K. Singhal, for the Respondent

Judgement

1. This reference u/s 256(1) of the Income Tax Act, 1961, at the instance of the Revenue is to answer the following question of law :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee was entitled to interest u/s 214 of the Income Tax Act, 1961 ? "

2. The only point involved for decision is, whether the assessee is entitled to interest in accordance with Section 214(1) of the Act on the amount of tax ordered to be refunded as a result of the order made by the Appellate Assistant Commissioner in the quantum appeal filed by the assessee against the Income Tax Officer's order of assessment. In the present case, a sum of Rs. 4,781 was found to be the excess amount of tax deposited by the assessee as a result of the Appellate Assistant Commissioner's order deciding the assessee's quantum appeal and the same was directed to be refunded to the assessee together with interest payable in accordance with Section 214(1) of the Act read with Rule 119A of the Income Tax Rules, 1962. The Revenue appealed against the award of interest to the Tribunal, but the Tribunal has upheld the direction given by the Appellate Assistant Commissioner. Thereafter, this reference has been made at the instance of the Revenue to answer the above question of law.

3. The contention of the Revenue is that the expression " regular assessment" occurring in Section 214(1) of the Act means the original order of assessment made by the Income Tax Officer and not the appellate order made by the Appellate Assistant Commissioner in a quantum appeal. There is a basic fallacy in this contention. In the first place, the order of the Appellate Assistant Commissioner in the quantum appeal is really a direction to the Income Tax Officer to correct the earlier order of assessment in the manner directed by the Appellate Assistant Commissioner, so that the final assessment order made as a result of the directions given in the appellate order quantifying the amount of tax determined as the assessee's liability is really by the Income Tax Officer himself in compliance with the directions given in the appellate order. Accordingly, even the narrow construction suggested by the Revenue presents no difficulty since the actual assessment order quantifying the tax liability is by the Income Tax Officer in accordance with the decision in the appeal. In fact, the original order of the Income Tax Officer no longer survives after the modification made in this manner and the only order of regular assessment in existence as a result of the appellate order is that the order of the Income Tax Officer which is made in compliance with the directions given in the appellate order. This alone is sufficient to indicate that where the assessee is found entitled to a refund of the excess amount of tax deposited by him as a consequence of an order made in appeal, he is also entitled to interest in accordance with Sub-section (1) of Section 214 of the Act on the amount of refund. We find that the Tribunal has really relied on a decision of Sabyasachi Mukharji J., as he then was, in *Chloride India Ltd. Vs. Commissioner of Income Tax and Others*, for reaching the same conclusion. With respect, we are in full agreement with the same.

4. Several decisions of different High Courts were cited at the bar on this point. We find that a Full Bench of the Gujarat High Court in *Bardolia Textile Mills Vs. Income Tax Officer, Circle II, Ward-e, Surat*, has taken the same view and it has considered earlier decisions on the point. With respect, we concur with this view. We regret that the reasoning in some of the decisions taking the contrary view does not appeal to us and, therefore, we are unable to subscribe to the contrary view.

5. Consequently, the reference is answered against the Revenue and in favour of the assessee by holding that the Tribunal was justified in its conclusion that the assessee is entitled to interest u/s 214 of the Income Tax Act, 1961, on the amount of refund of tax due to it.

6. No costs.