(1997) 10 AHC CK 0019

In the Allahabad High Court

Case No : Income-tax Reference No. 85 of 1980

Commissioner of Income Tax APPELLANT

Vs

Modi Industries RESPONDENT

Date of Decision : 14-10-1997

Acts Referred:
Income Tax Act, 1961 — Section 154, 214

Citation : (1999) 157 CTR 427 : (1999) 235 ITR 464

Hon'ble Judges : R.A. Sharma, J;Om Prakash, J

Bench : Division Bench

Judgement

1. Pursuant to the direction given by the High Court u/s 256(2) of the Income Tax Act, 1961 (briefly the Act), the Income Tax Appellate Tribunal drew up a statement of the case and referred the following question relating to the assessment year 1971-72 for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, was the Tribunal correct in cancelling the order u/s 154 passed by the Income Tax Officer on the ground that the question is debatable and involves long drawn arguments both on question of law as well as on facts ?"

2. In its order dated May 7, 1977, relating to the assessment years 1967-68 and 1968-69, the Appellate Tribunal observed as under ;

"Likewise, for the assessment year 1971-72, the Income Tax Officer noted that the regular assessment u/s 143(3) was completed on March 30, 1974. The tax payable was computed at Rs. 1,18,69,285. The advance tax paid in respect of the assessment year 1971-72 amounted to Rs. 1,21,03,966. Thus, the advance tax paid exceeds the amount of determined by Rs. 2,34,681. Interest u/s 214 was calculated and allowed on the excess of Rs. 2,34,681 from April 1, 1972 to March 30, 1974, at Rs. 77,366. According to the Income Tax Officer, the assessment was revised u/s 154 on May 7, 1974, and on the amount of Rs. 5,500 found refundable the assessee was allowed further interest u/s 214 at Rs.

1,815."

3. The stand taken by the Income Tax Officer was that u/s 214 interest is allowed only on the difference of tax determined on regular assessment and the advance tax paid. He was of the view that further interest on refunds computed u/s 154 which are not regular assessments could not have been allowed and payment of interest on refund resulting from the rectification order was a mistake apparent from the record, liable to be rectified u/s 154 of the Act.

4. In Commissioner of Income Tax Vs. Tata Chemicals Ltd., , the Bombay High Court held that the assessee is entitled not only to interest on the amount required to be refunded by reason of the order of rectification, but he is also entitled to such interest up to the date of the order of rectification. This view was taken by the Bombay High Court in view of the circular instruction of the Central Board of Direct Taxes, which the Board was authorised to issue. In view of the decision of the Bombay High Court, the question whether interest can be paid u/s 214 in view of the rectification order is not free from debate. In the decision of the Bombay High Court, it is implicit that the assessee will be entitled to interest in view of the rectification order. From this decision it is apparent that two views on the question referred to this court for the opinion, are possible and, therefore, we are of the view that the question considered by the Income Tax Officer was highly debatable and that was beyond the purview of Section 154. The Tribunal was, therefore, right in cancelling the order passed by the Income Tax Officer u/s 154 of the Act.

5. We, therefore, answer the aforementioned question in the affirmative, that is, in favour of the assessee and against the Revenue.

