
(2000) 02 KAR CK 0090
In the Karnataka High Court
Case No : IT Reference Case No. 328 of 1998

Commissioner of Income Tax

APPELLANT

Vs

N.G.E.F. Ltd.

RESPONDENT

Date of Decision : 12-02-2000

Acts Referred:

Citation : (2001) 115 TAXMAN 590

Hon'ble Judges : V.K. Singhal, J; T.N. Vallinayagam, J

Bench : Division Bench

Advocate : E.R. Indrakumar, for the Appellant; G. Sarangan and S. Parthasarathi, for the Respondent

Final Decision : Allowed

Judgement

V.K. Singhal, J.—The Tribunal has referred the following question of law arising out of its order dated 23-7-1997 for the assessment year 1977-78 : Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that self-assessment tax paid by the assessee gets adjusted against the assessed tax and, thus, partakes of the character of tax paid in pursuance of the assessment order, and in that view in directing the Assessing Officer to allow interest u/s 244(1A) of the Act after considering the self-assessment tax paid by the assessee also as tax paid in pursuance of the assessment?

The issue before the Tribunal was whether interest u/s 244(1A) is allowable even on self-assessment tax payments made by the assessee or not. The net tax payable as per the appellate order after giving credit for IDBI deposit, TDS and advance tax paid was Rs. 4,27,518. However, after giving credit in respect of the self-assessment tax paid u/s 140A amounting to Rs. 31,14,202, the gross amount of refund payable to the assessee was arrived at Rs. 26,86,684. After adjusting the refund already issued, the Assessing Officer determined the net refund payable at Rs. 12,62,470. However, the claim of the assessee towards payment of interest u/s 244(1A) was negated by the Assessing Officer. In the first appeal also, the Commissioner (Appeals) held that interest u/s 244(1A)

becomes due to an assessee only on any amount paid by him in pursuance of any order of assessment or penalty. He concluded that in the instant case, no payment had been made by the assessee in pursuance of any order of assessment or penalty inasmuch as self-assessment tax paid by the assessee does not partake of such character. Accordingly, he upheld the action of the Assessing Officer in rejecting the assessee's claim.

In further appeal filed by the assessee before the Tribunal, the Tribunal held that when an assessment is completed, the self-assessment tax already paid gets adjusted against the assessed tax and, thus, partakes of the character of tax paid in pursuance of the assessment order itself. The Tribunal, thus, held that the self-assessment tax paid by the assessee should also be taken care of for the purpose of allowing interest to the assessee u/s 244(1A). The Tribunal directed the Assessing Officer accordingly to allow refund and interest u/s 244(1A) in the above manner.

2. The controversy now stands concluded by the decision given in the case of *Modi Industries Limited, Modinagar and Others Vs. Commissioner of Income Tax, Delhi and Another*, That decision has taken into consideration various provisions by which the interest is payable. Interest u/s 244(1A) is payable even when the tax or penalty paid by the assessee pursuant to the order of assessment is reduced in appeal. It was observed that after computation of the total income u/s 143, the ITO will have to determine the tax payable by an assessee. This he can do only after giving credit to the assessee for the amount of income tax standing to his credit. Once the amount of advance tax has been treated as income tax payable by the assessee and dealt with as such in the assessment order, there is no scope for treating it as advance tax once again. The excess realisation of advance tax, upon assessment and adjustment, becomes refundable u/s 237. No further interest is payable on it u/s 214. Interest, if any, on the interest is payable u/s 243. If a further sum of money becomes refundable as a result of any appellate order, that amount has to be refunded u/s 240 and with interest, if any, u/s 244. The refund amount is not treated any more in the Act as a portion of the advance tax paid by the assessee. What is refunded pursuant to an appellate order is a portion of what was treated and dealt with as payment of income tax by the assessee. Its character is in no way different from the tax paid pursuant to notice of demand u/s 156 by an assessee. Any tax refundable pursuant to the appellate order has to be dealt with in accordance with the provisions of sections 240 and 244. There is no scope for invoking the provisions of section 214 in such a situation. Thus, the only exception is that the interest u/s 244(1A) cannot be paid in addition to the interest u/s 214(1A). The tax which has been paid by way of self-assessment u/s 140A gets adjusted against the assessed tax and, thus, partakes of the character of tax paid in pursuance of the assessment order. The Tribunal, therefore, was right in directing the Assessing Officer to allow the interest u/s 244(1A) of the Act after considering the self-assessment tax paid by the assessee also as tax paid in pursuance of the assessment.

The reference is answered in favour of the assessee and against the revenue.