
(2000) 09 MP CK 0078

In the Madhya Pradesh High Court

Case No : Income Tax Reference No. 58 of 1996 18 September 2000 A.Y.
1989-90 & Income-tax Reference No. 58 of 1996

Commissioner of Income Tax

APPELLANT

Vs

Satish Traders

RESPONDENT

Date of Decision : 18-09-2000

Acts Referred:

Income Tax Act, 1961 — Section 139, 143(1), 143(1A), 234B, 256(1)

Citation : (2001) 166 CTR 88 : (2001) 114 TAXMAN 390

Hon'ble Judges : S.K. Kulshrestha, J; C.K. Prasad, J

Bench : Division Bench

Advocate : R.L. Jain, for the Appellant; G.M. Chaphekar, for the Respondent

Judgement

C.K. Prasad, J.—The assessee filed the return of income on October 31, 1989, for the assessment year 1989-90. In the return it had appended a note mentioning that "during the year it has received cash compensatory support of Rs. 10,98,368. The same has been treated as a capital receipt in view of the decision of the Income Tax Appellate Tribunal, Delhi Bench, in the case of Gedore Tools (India) Pvt. Ltd." After filing of the return, by the Finance Act, 1990, clause (iiib) was inserted in Section 28 of the Income tax Act, 1961, with retrospective effect from April 1, 1967. According to Section 28(iiib), cash compensatory support became chargeable to Income Tax under the head "Profits and gains of business". The return filed by the assessee was processed u/s 143(l)(a) of the Act and an intimation u/s 143(l)(a) of the Act dated July 23, 1990, was issued to the assessee. In this intimation, the Assessing Officer had made prima facie adjustment in respect of the cash compensatory support of Rs. 10,98,368 and this amount was brought to tax. On the basis of this addition, additional tax and interest u/s 234B was also charged. The assessee on receipt of the intimation filed an application on August 28, 1990, objecting to the said adjustment but the objection of the assessee was turned down. Aggrieved by the same, the assessee preferred an appeal before the Commissioner of Income Tax, but the appeal was also dismissed. Thereafter, the assessee carried the matter before the Income

Tax Appellate Tribunal, Indore Bench (hereinafter referred to as "the Tribunal"). By order dated March 29, 1996, it has held that no additional tax can be levied in respect of the amount of compensatory support and no interest u/s 234B can be charged on the tax of the said amount. While doing so, the Tribunal has held as follows :

"As regards the levy of additional tax and charge of interest u/s 234B we feel that there is force in the stand of the assessee. As per the decision of the Special Bench of the Tribunal that was available at the time of filing of the return, the cash compensatory support could be treated as a capital receipt. In the return filed the same was claimed as exempt on the basis of such decision of the Tribunal. By a subsequent amendment in the Act, the said amount became taxable. In such a situation, we are of the opinion that it would be unjust to penalise the assessee for no fault of his and it would be inequitable to charge additional tax and interest u/s 234B of the Act. A similar situation had come up for consideration before the Tribunal in Hindustan Electrographite Limited (supra) and in that case the Tribunal had held that no additional tax can be levied nor interest u/s 234B can be charged. While cancelling the levy of additional tax and the interest charged u/s 234B in connection with the addition made on account of cash compensatory support, the Tribunal had observed as under :

"We have heard learned counsel for the assessee and learned standing counsel for the Department at length. It is crystal clear that there was no mistake of the assessee in filing the return of income as on the date it was filed. The assessee was further supported by the order of the Special Bench of the Tribunal in the case of Gedore Tools (India) Pvt. Ltd. v. IAC (supra). It cannot, therefore, be said that there was a lack of bona fides in claiming the cash compensatory support as capital receipt and thereby not including the same in its income and not paying advance-tax thereon. Section 143(I)(a), no doubt empowers the Assessing Officer to make the adjustment but no adjustment for the purpose of levy of additional tax can be permitted to be made in the light of subsequent retrospective legislation. The return of income has to be examined in the light of the law prevalent on the date of filing the return. The expression "prima facie inadmissible" appearing in clause (iii) of the first proviso to Section 143(I)(a) has to be understood in proper perspective. It must be borne in mind that the retrospective operation of the amendment did not mean to put the assessee in trap. In case additional Income Tax is levied on cash compensatory support, it would clearly be a case of improper exercise of power".

2. After the judgment of the Tribunal, the Commissioner of Income Tax requested the Tribunal to refer the following question for opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that even though the Assessing Officer was justified in making prima facie adjustments in respect of cash compensatory support but levy of additional tax and charge of interest u/s 234B were not correct ?"

3. The request has been acceded to and accordingly the question stated above has been referred for our opinion u/s 256(1) of the Income Tax Act.

4. From the judgment of the Tribunal extracted above, it is apparent that the Tribunal formed its opinion on the basis of its earlier judgment in the case of Hindustan Electrographite Ltd. The view taken by the Tribunal in the case of Hindustan Electrographite Ltd. came up for consideration before a Division Bench of this court on a reference u/s 256(1) of the Income Tax Act, in the case of Commissioner of Income Tax Vs. Hindustan Electrographite Ltd., . In the said case it has been held as follows (page 21) :

"In the present case, as we have already pointed out above, at the time when the assessee filed the return, the Finance Act of 1990, had not come into being, much less making it to be retrospective with effect from April 1, 1967. Section 143(1A) will only come into play when the return is filed and it is found to be wanting by the Assessing Officer, then it will expose the assessee to the additional tax. That is not the case here, in the present case. Therefore, construing Sections 139 143(1A) and Section 28(iib) cumulatively, the effect would be that where the assessee has voluntarily filed the return at the time when a particular law was in existence and if it is retrospectively amended, the assessee cannot be held liable for filing a wrong return and cannot be subjected to levy of additional tax. This interpretation will be advancing the cause of justice."

5. We have heard Shri R. L. Jain for the Revenue, and Shri G. M. Chaphekar, senior advocate, for the assessee. In fairness to Shri Jain, I must state that he concedes that the question referred to us has been squarely answered against the Revenue in the case of Commissioner of Income Tax Vs. Hindustan Electrographite Ltd., . However, he prays for deferment of the hearing of the reference on the ground that special leave has been granted by the Supreme Court against the judgment of this court in the case of Commissioner of Income Tax Vs. Hindustan Electrographite Ltd., .

6. We are not inclined to accede to this prayer. Thus, the question falling for consideration in this reference has been squarely answered by a Division Bench of this court in the case of Commissioner of Income Tax Vs. Hindustan Electrographite Ltd., . We are in respectful agreement with the reasoning and conclusion arrived at in the said case.

7. In view of what has been stated above, the reference has to be answered against the Revenue and in favour of the assessee. We do so accordingly.