
(1999) 04 GUJ CK 0031

In the Gujarat High Court

Case No : Income-tax Application No. 264 of 1998

Commissioner of Income Tax

APPELLANT

Vs

Saurashtra Prints (P.) Ltd.

RESPONDENT

Date of Decision : 05-04-1999

Acts Referred:

Income Tax Act, 1961 — Section 154, 190, 191, 192, 193

Citation : (2001) 165 CTR 257 : (2001) 252 ITR 289 : (2001) 119 TAXMAN 520

Hon'ble Judges : Rajesh Balia, J; Anil R. Dave, J

Bench : Division Bench

Advocate : Manish R. Bhatt, for the Appellant; S.N. Divetia, for the Respondent

Judgement

Rajesh Balia, J.—This is an application u/s 256(2) of the Income Tax Act, 1961, as the Income Tax appellate authority has refused to refer the following two questions of law said to be arising out of its order dated January 5, 1996 :

"1. Whether the Tribunal is right in law and on facts in confirming the order passed by the Commissioner of Income Tax (Appeals) allowing the application u/s 154 and thereby directing the Assessing Officer to allow interest on the amount of refund of TDS payment ?

2. Whether the Tribunal ought not to have appreciated the issue was debatable and the claim could not have been allowed u/s 154 of the Act ?"

2. The facts giving rise to this application are that the assessee had deposited as advance tax u/s 210 for the assessment year 1984-85 a sum of Rs. 2,45,000. The assessee was also entitled to credit of Rs. 94,030 by way of tax deducted at source of different incomes earned by him. In the first instance the assessee was granted a refund of Rs. 62,144 on which interest in terms of Section 214 was also granted which amounted to Rs. 25,960. In giving this refund credit of tax deducted at source was not taken into account. As a result of the order of the Commissioner of Income Tax (Appeals), dated July 1, 1988, for giving effect thereto further refund of Rs. 85,603 was calculated by order dated March 14,

1988, by taking into account credit to the assessee on account of tax deducted at source. However, on this additional sum of refund no interest was calculated. The assessee, therefore, made an application dated May 23, 1989, claiming interest u/s 214 of the Income Tax Act, 1961. In its order dated August 30, 1989, captioned u/s 154 the Deputy Commissioner of Income Tax (Assessment), Special Range, Ahmedabad, worked out the computation of amount refundable vide order dated March 14, 1988, as under :

Rs. "Tax payable as per order dated March 14, 1988 1,91, 283 Less : Advance tax paid u/s 210 2,45,000 53,717 Interest due on excess advance tax of Rs. 53,717 Less : Refund granted as per order u/s 62,144 143(3), dated March 14, 1988

Demand 8,427 Less: IDS payment 94,030 Refund allowed as per order dated March 14. 1988 85,603

3. However, it held that no interest was payable on refund of tax deducted at source u/s 214 of the Income Tax Act and disallowed the application. On appeal the Commissioner of Income Tax (Appeals) held the order to be erroneous and upheld the contention of the assessee. He directed the Assessing Officer to recalculate the interest u/s 214 first deducting the tax deducted at source from the tax payable and thereafter giving credit for advance tax paid.

4. The Revenue's appeal before the Tribunal was dismissed on January 5, 1998, the Tribunal agreeing with the Commissioner of Income Tax (Appeals). It relied on the decision of the Supreme Court in *Modi Industries Limited, Modinagar and Others Vs. Commissioner of Income Tax, Delhi and Another*, which laid down that where any tax is paid after March 31, 1975, which includes tax deducted at source and advance tax to the extent the same has been retained by the Assessing Officer as payment of tax in discharge of the liability under the assessment order and the same becomes refundable as a result of the orders in appeal or revision, whole or in part, is subject to payment of interest u/s 244(1A) of the Act. The amount of advance tax and tax deducted at source must be treated as payment of tax pursuant to an order of assessment on and from the date of the assessment order.

5. In the light of the facts stated above, the computation of refund in the order of the Deputy Commissioner of Income Tax (Assessment), reveals that as per order in appeal passed by the Commissioner of Income Tax (Appeals) on January 7, 1988, the total tax payable for the assessment year 1984-85 came to Rs. 1,91,283, for the satisfaction of which two amounts were to the credit of the assessee, viz., advance tax deposited by the assessee at Rs. 2,45,000 and tax deducted at source on the income accrued or received by the assessee by the person from whom such income was to flow. The Assessing Officer has given the credit of advance tax deposit by the assessee in the first instance and calculated the amount of refund on that basis, then adjusted the amount of refund already made and thus finding that out of advance tax deposited extra sum has been

refunded found outstanding to be recoverable from the assessee, then adjusted the same from the tax deducted at source amount and the balance was found refundable. In the order he also mentioned that on the initial amount of refund interest u/s 214 was calculated and granted to the assessee.

6. As will be seen presently the ground in which the Commissioner of Income Tax (Appeals) has allowed the claim of interest to the assessee, that in the first instance the amount of tax deducted at source ought to have been adjusted and thereafter the advance tax, is faultlessly obvious from the scheme of the Act.

7. The provisions of the Income Tax Act in this connection are clear. There cannot be two opinions, that before the advance tax can be adjusted against the demand, against the computation of tax arrived at as a result of assessment, the tax deducted at source, if any, has to be adjusted. Chapter XVII of the Act deals with modes of collection and recovery of tax payable under the Act. Section 190 prescribes the mode of collection of tax earlier than the regular assessment, in two ways, namely, either it is collected by deduction or collection at source, that is to say, the amount at a prescribed rate is deducted by the person from whom the receipt containing income flows to the assessee or by advance payment of tax by the assessee himself directly under the provisions contained in Part C of Chapter XVII notwithstanding that the regular assessment in respect of any income for the relevant assessment year is to be made in a later assessment year in accordance with the provisions of the Act. Section 191 envisages that it is only where Income Tax has not been deducted at source in accordance with the provisions of this Chapter, the Income Tax shall be payable by the assessee directly. The advance tax payment is payment of tax towards tax liability yet to be determined and is by the assessee directly. Thus, in view of Section 191, liability to pay directly whether by way of advance tax or as a result of the regular assessment is after taking into consideration the tax collected by deduction at source. For this tax deducted at source of the income, u/s 199 the assessee is to be given credit for the assessment year for which such income is assessable.

8. It will be apposite to refer to the relevant provisions of Part C of Chapter XVII relating to the assessee's liability to pay advance tax, as they stood at the relevant time of the assessment year 1984-85 with which we are concerned. Section 207 declared the assessee liable to pay advance tax on its current income, that is to say income relating to the concerned assessment year in accordance with the provisions of Sections 208 to 219. Section 208 declared that the liability to pay tax that will arise where the total income of the assessee excluding the income under the head "Capital gains", exceeds the limit prescribed therein. It further said that where the total advance tax payable by him did not exceed fifteen hundred rupees, the assessee other than a company, a local authority or a registered firm, shall not be liable to pay advance tax. Section 209 provides for computation of advance tax payable by the assessee. The provision clearly envisages that the liability to pay advance tax is to be

computed only after giving credit of tax deducted at source from the tax payable. We reproduce the relevant provision for the present purposes Sub-section (1)(a) of Section 209 as it stood during the relevant assessment year :

"209. (1) The amount of advance tax payable by an assessee in the financial year shall, subject to the provisions of Sub-sections (2) and (3), be computed as follows :

(a) (i) his total income of the latest previous year in respect of which he has been assessed by way of regular assessment shall first be ascertained ;

(ii) the amount of capital gains and income referred to in sub-clause (ix) of clause (24) of Section 2, if any, included in such total income shall be deducted therefrom, and on the balance, Income Tax shall be calculated at the rates in force in the financial year ;

(iii) the Income Tax so calculated shall be reduced by the amount of Income Tax which would be deductible during the said financial year in accordance with the provisions of Sections 192 to 194, Section 194A, Section 194C, Section 194D and Section 195 on any income (as computed before allowing any deductions admissible under this Act) on which tax is required to be deducted under the said Sections and which has been taken into account in computing the said total income."

9. Thus, the very liability of advance tax is determined after adjusting the amount of tax deducted at source from the tax payable of the estimated income. This is further clear from Forms Nos. 28 and 28A prescribed under the rules for the purpose. Where advance tax has to be paid in pursuance of an order of the Assessing Officer, Form No. 28 prescribing form of order determining the net amount of tax payable as advance requires deduction of tax which is deductible under Sections 192 to 195 on any income which has been taken into account in computing the income which is subjected to advance tax. Likewise, under Form No. 28A, where the assessee is required to intimate the Assessing Officer about payment of advance tax also envisage adjustment of amount of tax deductible under Sections 192 to 195 on any income. The same position prevails under the existing provisions of Section 209(1)(d) as it now exists reads as under : "209. (1)(d) the Income Tax calculated under Clause (a) or Clause (b) or clause (c) shall, in each case, be reduced by the amount of Income Tax which would be deductible or collectible at source during the said financial year under any provision of this Act from any income (as computed before allowing any deductions admissible under this Act), which has been taken into account in computing the current income or, as the case may be, the total income aforesaid ; and the amount of Income Tax as so reduced shall be the advance tax payable."

10. Thus, from the perusal of the provisions of Income Tax Act and the rules framed thereunder, it becomes apparent that tax deducted at source has to be taken into account in the first instance as credit to the assessee's account for

discharge of his liability to pay tax under the Income Tax Act, before his liability to pay even advance tax is to be considered. It is only after adjustment of tax deducted at source during the relevant period for which advance tax is to be paid by the assessee that the liability of advance tax is computed and the assessee is required to discharge the remaining liability. As a necessary corollary it follows that on computation of tax payable as per the regular assessment, in the first instance credit has to be given to tax deducted at source. If any amount still remains payable it calls for adjustment against advance tax paid, if any, then only the question arises whether to issue a demand or order refund of the amount of balance.

11. Obviously, in the present case, the Assessing Officer has taken the reverse route while adjusting the credits of tax collected on assessee's account against the tax payable. As per the order dated March 14, 1988, before giving credit for the amount of tax deducted at source, he has adjusted advance tax paid u/s 210 separately. No credit envisaged u/s 199 is given to the assessee of the tax deducted at source. The provisions of Sections 191, 199 and 209 have not been kept in view which clearly mandate that advance tax liability itself is to be determined only after adjustment of tax deducted at source.

12. If that process is rectified the question whether interest is payable u/s 214 on the amount of refund which is referable to tax deducted at source would not arise in the present case inasmuch as the entire amount that would be refundable in the present case would be on the basis of excess payment of advance tax over the tax payable after giving the credit of tax deducted at source against the tax payable to which the assessee is entitled u/s 199, read with Section 209 before the estimation of advance tax payable under the Act is made.

13. The order of the Commissioner of Income Tax (Appeals) as affirmed by the Tribunal granting rectification by directing computation of interest on refund of Rs. 85,603 is founded on this obvious position that firstly credit of tax deducted at source has to be given and then advance tax paid is to be adjusted against tax payable, the other question that whether interest on any amount of refund referable to excess tax deducted at source deposit does not survive for consideration being academic.

14. Law is well settled that where the answer to any question required to be referred, is self-evident or is finally determined by the decision of the Supreme Court, the same need not be referred notwithstanding such may be a question of law. No question, which is academic for the purpose of determining the issue need be referred. The two questions required to be referred to this court under this application fall in the category of cases where the answer is self-evident. Merely because one has to look at various provisions of the statute does not make the answer any the less self-evident, unless the same requires a process of weighing pros and cons of evaluating different possible views.

15. As we have come to the conclusion that the mistake in the computation of refund amount by first adjusting advance tax and thereafter adjusting tax deducted at source is apparent on the face of the record and contrary to the clear provisions of the Act on which two opinions are not possible, no further question suggested by learned counsel for the Revenue would arise for consideration, viz., whether any sum is payable by way of interest on account of refund becoming due because of the excess payment of tax deducted at source as the same will be academic in the present case. Wt; are, therefore, of the opinion in the facts and circumstances of the present case, the answer being self-evident, the order declining to make reference cannot be said to be erroneous. We, therefore, decline to grant this application.

16. The application is rejected.