
(1989) 01 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No's. 181 and 182 of 1980

Commissioner of Income Tax

APPELLANT

Vs

S.L. Chopra

RESPONDENT

Date of Decision : 24-01-1989

Acts Referred:

Income Tax Act, 1961 — Section 154, 155, 215, 215(3), 217

Citation : (1989) 179 ITR 65

Hon'ble Judges : S.S. Sodhi, J;Gokal Chand Mital, J

Bench : Division Bench

Advocate : L.K. Sood, for the Appellant; K.L. Kapoor and M.L. Nanda, for the Respondent

Judgement

Gokal Chand Mital, J.—There were six partners of Handa and Chopra, Amritsar, one of them being the assessee before us. For the assessment years 1971-72 and 1972-73, regular assessments were framed and since the assessee had paid advance tax more than the tax liability, interest was allowed to the assessee on the amount found refundable. Later on, the Income Tax Officer, by his orders passed u/s 154, read with Section 155 of the Income Tax Act, 1961, computed the income of the assessee at a higher figure and since the tax payable was found to be more, interest was charged on the enhanced tax liability. The assessee challenged the levy of interest. He remained unsuccessful before the Appellate Assistant Commissioner, but, on further appeal to the Tribunal, the orders of the Income Tax Officer and the Appellate Assistant Commissioner were set aside with the observation that the charging of interest u/s 215/217, by invoking the provisions of Section 154/155 of the Income Tax Act was not justified. The Commissioner of Income Tax sought reference and the Income Tax Appellate Tribunal, Amritsar Bench, has referred the following two questions for the assessment year 1971-72 for the opinion of this court:

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in setting aside the order of the Appellate Assistant

Commissioner upholding the order passed by the Income Tax Officer u/s 154/155, read with Section 217(1A) of the Income Tax Act, 1961, charging interest of Rs. 1,553 for the assessment year 1971-72?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the Income Tax Officer could not charge interest u/s 215/217 of the Income Tax Act, 1961, by invoking the provisions of Section 154/155 of the Act after the regular assessment has been completed u/s 143(3) of the Act ?"

2. The second question is similar for the assessment year 1972-73 and as regards question No. 1, it is also similar except that the amount of interest charged for the assessment year 1972-73 is more than the interest charged for the assessment year 1971-72.

3. Yesterday, we had occasion to decide a similar question in ITR No. 197 of 1980 (Panna Lal Vs. Commissioner of Income Tax,) and we came to the conclusion that in view of the provisions of Section 215(3) of the Income Tax Act as it stood before April 1, 1985, no interest was chargeable on the enhanced liability to tax created by an order passed u/s 154/155 of the Act as there was no provision to levy interest on the creation of enhanced liability and rather the provision was for payment of interest on the amount found refundable to the assessee. It is only with effect from April 1, 1985, that provision was made for payment of interest, whether on enhancement of liability or reduction of liability to tax.

4. For the reasons recorded in that decision, we answer both the questions for the assessment years 1971-72 and 1972-73 in favour of the assessee, in the affirmative, to the effect that the Tribunal was right in setting aside the order of the Appellate Assistant Commissioner upholding the order of the Income Tax Officer charging interest u/s 215 of the Act on the basis of an order passed u/s 154/155 for both the assessment years.

5. Under question No. 1, an additional provision, namely, Section 217(1A) of the Act, has also been mentioned. We have gone through this provision. It is not applicable to the facts of the case. It only applies at the stage of regular assessment and interest can be charged if the assessee does not send the estimate referred to in the provision noticed in the section. We are dealing with a case of a subsequent order by the Income Tax Officer u/s 154/155 of the Act.