

(1994) 07 RAJ CK 0054

In the Rajasthan High Court

Case No : Income Tax Reference No. 11 of 1987

Commissioner of Income Tax

APPELLANT

Vs

Sunil Kumar

RESPONDENT

Date of Decision : 21-07-1994

Acts Referred:

Income Tax Act, 1961 — Section 154, 207, 208, 209, 210

Citation : (1995) 127 CTR 386

Hon'ble Judges : V.K. Singhal, J;V.G. Palshikar, J

Bench : Division Bench

Advocate : D.S. Shishodia and S. Bhandawat, for the Appellant;

Judgement

V.K. Singhal, J.—The Income Tax Appellate Tribunal has referred the following question of law arising out of its order dated December 9, 1985, in respect of the assessment year 1978-79 u/s 256(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in allowing interest on the entire refund of tax once u/s 214 and then again u/s 244(1A) of the Income Tax Act, 1961, whereas granting of interest u/s 244(1A) is a debatable point and the provisions of Section 154 were not applicable ?"

2. The brief facts of the case are that the assessee is a partner in the firm of Messrs. Vasant Trading Co. The assessment u/s 143(3) of the Income Tax Act Was completed on an income of Rs. 82,940 on which a tax of Rs. 31,290 was determined, vide order dated November 13, 1979. After giving credit for tax deducted at source, advance tax payments and self-assessment tax, a balance of Rs. 7,711 was determined as payable. The assessee moved an application u/s 154 on the basis of which the Income Tax Officer carried out the rectification, vide his order dated January 10, 1980. Giving effect to the appellate order the income was determined at Rs. 74,010 on the basis of which the tax payable came to Rs. 758, which was paid on February 12, 1981. The second appeal was

filed before the Income Tax Appellate Tribunal and the income was further reduced to Rs. 66,180 on the basis of which the assessee became entitled to refund of Rs. 4,731. The assessee submitted an application u/s 154 claiming interest u/s 214 at Rs. 190, u/s 244(1A) at Rs. 1,598 and u/s 243 at Rs. 130. This application was rejected by the Income Tax Officer on January 15, 1984, but an appeal was preferred before the Appellate Assistant Commissioner. The interest claimed u/s 243 was allowed and the claim of interest under Sections 214 and 244(1A) was rejected. In the second appeal preferred by the assessee before the Income Tax Appellate Tribunal it was held that the assessee is entitled to interest under Sections 214 and 244(1A) even in the rectification proceedings.

3. Before us, the submission of learned counsel for the Revenue is that in the proceedings u/s 154 the interest was not payable.

4. The provisions of Section 214 provides for payment of interest by the Government on the amount by which the aggregate sum of any instalments of advance tax paid during any financial year in which they are payable under Sections 207 to 213 exceeds the amount of the tax determined on regular assessment from the 1st day of April next following the said financial year to the date of the regular assessment for the assessment year immediately following the said financial year, and where any such instalment is paid after the expiry of the financial year during which it is payable by reason of the provisions of Section 213, interest as aforesaid shall also be payable on that instalment from the date of the payment to the date of the regular assessment. Sub-section (2) of Section 214 provides that on any portion of such amount which is refunded under Chapter XVII, interest shall be payable only up to the date on which the refund was made. This court in the case of Commissioner of Income Tax Vs. M.L. Sanghi, held that the expression "regular assessment" occurring in section 214(1) means the original order of assessment made by the Income Tax Officer as also the final order made as a result of any direction having been given by the appellate authority. Once the order is taken in appeal, the original order of the Income Tax Officer no longer survives after the modification by the appellate authority and the only order of regular assessment in existence as a result of the appellate order was the order of the Income Tax Officer which was made in compliance with the directions given in the appellate order. Therefore, where an assessee was found entitled to a refund of the excess amount of tax deposited by him as a consequence of the order made in appeal, he would also be entitled to interest u/s 214(1) on the amount of refund. The point which has been raised could have been considered to be debatable because other High Courts have taken a different view. But since the view taken by this court is binding on the Tribunal and other authorities under the Act in this State, it could not be considered to be a debatable point in view of the decision of this court in the case of Commissioner of Income Tax Vs. M.L. Sanghi,

5. It is submitted that the grant of interest u/s 244(1A) is debatable point. This contention of learned counsel has no force as it has been provided under Sub-

section (1) thereof that where a refund is due to the assessee in pursuance of an order referred to in Section 240 and the Income Tax Officer does not grant the refund within a period of three months from the end of the month in which such order is passed, the Central Government shall pay to the assessee simple interest at twelve per cent. per annum on the amount of refund due from the date immediately following the expiry of the period of three months aforesaid to the date on which the refund is granted. Section 244(1A) provides for payment of interest in pursuance of any order of assessment or penalty and such amount or part thereof having been found in appeal or other proceeding under the Act to be in excess of the amount which such assessee is liable to pay as tax or penalty. On such amount the assessee is entitled to simple interest at the rate specified in Sub-section (1) on the amount found to be in excess from the date on which such amount was paid to the date on which the refund is granted. Therefore, it is only in respect of the amount as contemplated u/s 244(1A) that the assessee is entitled to interest and it cannot be said to be a debatable point so as not to attract the provisions of Section 154. The payment of interest on the amount deposited under the self-assessment is a debatable issue arid, therefore, the interest is allowable on the amount which falls u/s 244(1A), i.e., deposited in pursuance of an order of assessment.

6. Following the decision in the case of Commissioner of Income Tax Vs. M.L. Sanghi, we are of the view that the Income Tax Appellate Tribunal was justified in allowing the interest on the entire refund of tax once u/s 214 and then again u/s 244(1A) of the Income Tax Act.

7. Consequently, the reference is answered in favour of the assessee and against the Revenue.