(2004) 01 GUJ CK 0012

In the Gujarat High Court

Case No : IT Ref. No. 85 of 1992

Commissioner of Income Tax APPELLANT

Vs

Synbiotics Ltd. RESPONDENT

Date of Decision : 22-01-2004

Acts Referred:
Income Tax Act, 1961 — Section 216

Citation : (2004) 187 CTR 472 : (2004) 266 ITR 674

Hon'ble Judges : M.S. Shah, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : Manish R. Bhatt, for the Appellant; R.K. Patel, for the Respondent

Judgement

M.S. Shah, J.—In this reference at the instance of the Revenue, the following question of law has been referred for our opinion for the asst. yr. 1974-75 :

"Whether, the Tribunal is right in law and on facts in deleting the interest charged u/s 216 of the IT Act amounting to Rs. 11,940?"

2. We have heard Mr. M.R. Bhatt, learned Standing Counsel for the Revenue, and Mr. R.K. Patel, learned counsel for the respondent-assesses.

3. The IAC(Asst.) while passing order u/s 216 of the IT Act observed that the assessee had wilfully estimated its income at Rs. 15 lakhs on 15th Sept., 1973 and Rs. 14.33 lakhs on 14th Dec., 1973 and thereby deferred the payment to the Government exchequer. After calculations, he observed that the assessee had deferred the payment of Rs. 1.66 lakhs for the first instalment and Rs 66,000 for the second instalment. He, therefore, levied interest u/s 216 amounting to Rs. 11,940.

The CIT(A) not only relied on the decision of the Tribunal in the assessee''s own case for the asst. yr. 1980-81 but also gave reasons for deleting interest charged u/s 216.

The Tribunal relied on its earlier decision in the assessee''s own case for the asst.

yr. 1980-81 and also decision of the Andhra Pradesh High Court in Addl. Commissioner of Income Tax Vs. Vazir Sultan Tobacco Company Ltd., and confirmed the order made by the CIT(A).

4. At the hearing of this reference, Mr. M.R. Bhatt, learned standing counsel for the Revenue has submitted that since the Tribunal had relied on its own earlier decision in assessee''s own case for the asst. yr. 1980-81 which give rise to IT Ref. No. 170 of 1986 and in the said reference, this Court set aside the orders passed by the Tribunal and the CIT and remanded the matter to the ITO for passing a fresh order as contemplated by Section 216 of the Act [which decision is reported in Synbiotics Ltd. Vs. Commissioner of Income Tax, hence in the instant case also, the order passed by the Tribunal and the CIT(A) in favour of the respondent-assessee may be set aside and the matter be remanded to the ITO for passing a fresh order as contemplated by Section 216 of Act.

5. On the other hand Mr. R.K. Patel, learned counsel for the respondent-assessee, has submitted that in the above case the matter was remanded to the AO as he had not given any reasons for levying interest u/s 216 of the Act but in, the instant case, the CIT(A) has given detailed reasons for setting aside levy of interest u/s 216 and, therefore, there is no need for remanding the matter to the AO.

6. We may, therefore, note at this stage the following reasons given by the CIT(A) for setting aside levy of interest u/s 216 of the Act:

"......... It is further seen that the total variation in the figure of actual sales of the assessee and those made the basis of the estimate for advance tax has been marginal. In fact, the variation in the figures upto July, 1973 has been for 0.01 lakhs (giving 0.01 per cent) has less than the actuals and upto October, 1973 Rs. 0.23 lakhs in excess (giving a percentage of variation of 0:17). .... ..

3. In the present appeal, the question mainly is whether the assessee-company had followed any new, unusual or a deliberately misleading method for submitting its estimate of income. The worksheets maintained by the assessee-company for making out the tax calculations in respect of each year reflect that the assessee had followed the same procedure, method, and basis of estimate of sales as in the past. Therefore, there is no indication of any supersession on the part of the assessee to suggest that the advance tax was partly withheld. The IAC has not brought any facts on record to suggest that the default, if any, on the part of the assessee was deliberate."

7. Having heard the learned counsel for the parties, we are of the view that since the CIT(A) has given cogent reasons for setting aside the levy of interest and looking to the smallness of the amount involved (i.e., Rs. 11,940), it is not necessary to set aside the orders of the Tribunal and the CIT(A) merely for remanding the matter to the AO.

8. In view of the above discussion, our answer to the question is that the

Tribunal is right in law and on facts in confirming the order of the CIT(A) in deleting the interest charged u/s 216 of the IT Act amounting to Rs. 11,940. We accordingly answer the question in the affirmative i.e., in favour of the assessee and against the Revenue.

9. The reference accordingly stands disposed of.

