(2001) 07 GUJ CK 0083

In the Gujarat High Court

Case No : Income-tax Reference No. 123 of 1986

Commissioner of Income Tax — APPELLANT

Vs

Vishwajit M. Mehta — RESPONDENT

Date of Decision : 04-07-2001

Acts Referred:
Income Tax Act, 1961 — Section 154, 155, 215(3)

Citation : (2002) 173 CTR 329 : (2002) 254 ITR 66 : (2002) 123 TAXMAN 725

Hon'ble Judges : D.A. Mehta, J;Anil R. Dave, J

Bench : Division Bench

Advocate : B.B. Naik, for Manish R. Bhatt, for the Appellant;

Judgement

A.R. Dave, J.—At the instance of the Revenue, the following question has been referred to this court for its opinion under the provisions of

Section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as ""the Act""), by the Income Tax Appellate Tribunal, Ahmedabad Bench ""A"".

Whether, on the facts and in the circumstances and in law the Tribunal was right in coming to the conclusion that the interest u/s 215 of the Income

Tax Act could not be levied as a result of an order passed u/s 154 or 155 of the Income Tax Act ?

2. The learned advocate, Shri B.B. Naik, has appeared for the applicant, whereas, though served, nobody has appeared for the respondent-

assessee.

3. The short question which this court has to decide is whether for the assessment year 1979-80 the assessee could have been made liable to pay

additional interest under the provisions of Section 215(3) as a result of the order passed u/s 155 read with Section 154. In the process of assessment for the assessment year 1979-80, the Assessing Officer passed an order under the provisions of Section 155 read with Section 154 of

the Act whereby income of the assessee had been increased and therefore interest u/s 215(3) had been levied. Being aggrieved by the order, the

assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) had quashed the order

on the ground that the assessee was not heard before the order was passed by the Assessing Officer.

4. Being aggrieved by the order passed by the Commissioner of Income Tax (Appeals), the Revenue filed an appeal before the Tribunal. The

Tribunal ultimately upheld the order of the Commissioner of Income Tax (Appeals) on an additional ground to the effect that at the relevant time

Section 215(3) did not permit increase in the interest. It is pertinent to note that Section 215(3) at the relevant time stood as under :

(3) Where as a result of an order u/s 154 or Section 155 or Section 250 or Section 254 or Section 260 or Section 262 or Section 264, the

amount on which interest was payable under this section has been reduced, the interest shall be reduced accordingly and the excess interest paid, if

any, shall be refunded.

5. Sub-section (3) of Section 215 of the Act has been subsequently amended, but at the relevant time there was no provision with regard to

levying additional interest.

6. The Tribunal considered this fact and in view of the legal position, which prevailed at the relevant time, it came to the conclusion that the

Assessing Officer was not empowered to levy or increase the amount of interest u/s 215(3) of the Act.

7. Looking to the provisions of Section 215(3) of the Act, it is very clear that for the assessment year 1979-80, the Assessing Officer had no

power to levy further interest u/s 215(3) of the Act and, therefore, in our opinion, interest u/s 215(3) of the Act could not have been levied as a

result of the order passed u/s 154 or Section 155 of the Act for the relevant assessment year,

8. In the circumstances, we answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue.

9. The reference thus stands disposed of with no order as to costs.