
(1997) 07 DEL CK 0037

In the Delhi High Court

Case No : CM No. 4990 of 1995 in CWP No. 2996 of 1995

Delhi Development Authority

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 31-07-1997

Acts Referred:

Citation : (1998) 147 CTR 385 : (1998) 230 ITR 9

Hon'ble Judges : R.C. Lahoti, J;J.K. Mehra, J

Bench : Division Bench

Advocate : Deokinandan, Adv K.M.L. Majele, for the Appellant;

Judgement

R.C. Lahoti, J.—This petitioner under Art. 226/227 of the Constitution of India seeks direction to the respondent for payment of interest on the amount refunded to the petitioner in the background of the facts stated hereinafter. It appears that the petitioner-Delhi Development Authority (DDA), undertook construction of flats and allotted the same to the buyers, having entered into contracts with each of them consistently with the scheme governing the allotment of flats. It also appears that the DDA was liable to payment of interest to the flat buyers on the amount paid by them, if the flats were not constructed and possession made over to the allottees in accordance with the terms agreed upon between the two. The DDA had to pay interest to the flat buyers for the period of delay in construction and delivery of possession. The ITO (TDS) Ward No. 8(6) formed an opinion that there was default on the part of the DDA in not deducting tax at source which was required to be done under s. 194A of the Act. A demand of Rs. 3,95,97,194 relevant to the asst. yrs. 1988-89, 1989-90 and 1990-91 was raised, vide order dt. 31st January, 1991 (annexure "A-1"). Notice of demand was issued followed by coercive process consequent to which recovery was made.

The petitioner went in appeal. The Tribunal, vide its order dt. 24th January, 1995, passed in ITA No. 5762 to 5764 of 1991 held that the DDA was not obliged to deduct the tax at source and hence the amount recovered from the DDA was

liable to be refunded to it. As the amount was not refunded, the petitioner filed Civil Writ Petn. No. 2996 of 1995 seeking direction to the respondent to refund the amount recovered from it along with interest.

During the pendency of the writ petition, the respondent passed an order under s. 254(1) of the Act giving effect to the appellate order of the Tribunal to refund the amount of Rs. 3,95,97,194. The respondent also calculated interest under s. 244(1) of the Act at Rs. 19,79,859 making the total amount refundable Rs. 4,15,77,053. An Income Tax refund order dt. 4th September, 1995, was drawn up and delivered to the petitioner. When the writ petition came up for hearing on 20th November, 1995, counsel for the respondent informed the Court that refund with interest had already been made. Counsel prosecuting the petition for the DDA was not present in the Court. The senior law officer of the DDA happened to be present. The Court directed the petition to be treated as disposed of in view of the statement made on behalf of the respondent.

On 12th August, 1996, C.M. No. 7216 of 1996 has been filed on behalf of the petitioner submitting that the interest due and payable to the petitioner was not rightly calculated by the respondent and appropriate direction deserved to be issued to the respondent to calculate interest under s. 244(1A) for the asst. yr. 1988-89 and under s. 244A for the asst. yrs. 1989-90 and 1990-91. This application was preceded by demands made by the petitioner to the respondent.

The prayer made by the petitioner has been opposed by the respondent. It is submitted that the principal amount together with interest due and payable as per law has already been paid to the petitioner. The claim made by the petitioner has been contested by the respondent mainly on three pleas : firstly, that s. 240 of the Act uses the words "refund of any amount", it applies only to refund of tax as the whole of Chapter XIX deals with refund of "tax" only but the amount refunded to the petitioner was not tax; secondly, ss. 244(1A) and 244A are not attracted, as the amount involved is neither any "advance tax" nor is it tax paid by the assessed; and thirdly, even if any interest is liable to be paid, it is to be paid only to such persons from whom the amount was to be deducted by the DDA and then deposited with the Revenue and not to the DDA.

2. We have heard learned counsel for the parties. We are of the opinion that the claim preferred by the petitioner finds support from the law and has to be sustained while the pleas raised on behalf of the respondent are liable to be rejected as untenable.

3. The following provisions which would be relevant for the purpose of this order are extracted and reproduced :

"244. (1) Where a refund is due to the assessed in pursuance of an order referred to in s. 240 and the AO did 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 assessed simple interest at fifteen 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.

(1A) Where the whole or any part of the refund referred to in sub-s (1) is due to the assessed, as a result of any amount having been paid by him after the 31st March, 1975, in pursuance of any order of assessment or penalty and such amount or any part thereof having been found in appeal or other proceeding under this Act to be in excess of the amount which such assessed is liable to pay as tax or penalty, as the case may be, under this Act, the Central Government shall pay to such assessed simple interest at the rate specified in sub-s. (1) on the amount so found to be in excess from the date on which such amount was paid to the date on which the refund is granted :

Provided that, where the amount so found to be in excess was paid in installments, such interest shall be payable on the amount of each such Installment or any part of such instalment, which was in excess, from the date on which such Installment was paid to the date on which the refund is granted :

Provided further that no interest under this sub-section shall be payable for a period of one month from the date of the passing of the order in appeal or other proceeding :

Provided also that where any interest is payable to an assessed under this sub-section, no interest under sub-s. (1) shall be payable to him in respect of the amount so found to be in excess

(3) The provisions of this section shall not apply in respect of any assessment for the assessment year commencing on the 1st April, 1989, or any subsequent assessment years.

244A. (1) Where refund of any amount becomes due to the assessed under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely :-

(a) where the refund is out of any tax collected at source under s. 206C or paid by way of advance tax or treated as paid under s. 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one per cent for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted :

Provided that no interest shall be payable if the amount of refund is less than ten per cent of the tax as determined under sub-s. (1) of s. 143 or on regular assessment;

(b) in any other case, such interest shall be calculated at the rate of one per cent for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date

on which the refund is granted.

Explanation. - For the purposes of this clause, "date of payment of tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under s. 156 is paid in excess of such demand

(4) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years."

4. The first question to be determined is whether the petitioner is an assessed and whether the amount recovered from it can be said to have been in pursuance of any order of assessment. It is not disputed that the respondent had determined the liability of the petitioner to deduct the tax at source and deposit the same with the respondent under s. 194A r/w s. 201 of the Act. Sub-s. (1) of s. 201 clearly provides that failure on the part of the person who is required to deduct and pay the tax shall be deemed to be an assessed-in-default in respect of the tax. Clause (7) of s. 2 of the Act defines an assessed to include, inter alia, such person who is deemed to be an "assessed-in-default" under any provision of the Act. The petitioner was, Therefore, an assessed. The word "assessment" is not defined under the Act. Clause (8) of s. 2 states merely that assessment includes reassessment. The definition is an inclusive one only.

5. In A.N. Lakshmana Shenoy Vs. The Income Tax Officer, Ernakulam and Another, , their Lordships have held that the three expressions "levy", "assessment" and "collection" are of the widest significance and embrace in their sweep all such proceedings for raising money by the exercise of the power of taxation. Their Lordships have quoted with approval from the speech of Lord Simon in Commissioners for General Purposes of Income Tax for the City of London vs. Gibbs (1942) AC 402 pointing out that the word "assessment" is used in the English Income Tax Code in more than one sense - one meaning is the fixing of the sum taken to represent the actual profit, and the other, the actual sum in tax which the taxpayer is liable to pay. In (1938) 6 ITR 414 (Privy Council) , their Lordships of the Privy Council have held that the word "assessment" is used in the IT Act as meaning sometimes the computation of income, sometimes the determination of the amount of tax payable, and sometimes the procedure laid down in the Act for imposing liability upon the taxpayer.

We are, Therefore, unhesitatingly of the opinion that the order dt. 31st January, 1991 (annexure "1-A"), which determined the liability of the petitioner to make payment and also the quantum thereof and whereunder recovery was made from the petitioner holding it to be an assessed-in-default, was an order of assessment and the petitioner was an "assessed" thereunder. The order having been set aside in appeal, the applicability of ss. 244 and 244A is clearly attracted.

6. It was submitted by learned counsel for the respondent that it is only Chapter

XIV of the Act which speaks of "procedure for assessment" wherein finds place s. 143 entitled "assessment". An assessment falling within Chapter XIV only would be an order of assessment and any order passed under s. 194A r/w s. 201 of the Act would not be an order of assessment. The contention has been stated, only to be rejected. We cannot put such a narrow construction on the meaning of the term assessment.

Looking at the provisions of sub-s. (3) of s. 244 and sub-s. (4) of s. 244A, it is clear that the entitlement of the petitioner to interest for the period covered by the asst. yr. 1988-89 shall be determined by reference to sub-s. (1A) of s. 244 and for the period thereafter shall be determined under s. 244A.

The respondent having failed in discharging its statutory obligation to pay interest, in spite of a demand having been made for the purpose, the petitioner is entitled to a writ of mandamus.

The application is allowed. The respondents are directed to deal with and dispose of the petitioner's claim for interest consistently with the observations made in paragraph 12 above and release the amount of interest to the petitioner, subject to adjustment for the amount of interest already paid, within a period of four weeks from today, failing which the respondent shall remain liable to pay further interest calculated at 15 per cent per annum on the amount found due and payable to the petitioner. No order as to costs.