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**(2002) 07 MAD CK 0026**

**In the Madras High Court**

**Case No : Tax Case No. 268 of 1988 2 July 2002**

EMico KCP Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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**Date of Decision : 02-07-2002**

**Acts Referred:**

**Citation : (2002) 124 TAXMAN 48**

**Hon'ble Judges : V.S. Sirpurkar, J;N.V. Balasubramanian, J**

**Bench : Full Bench**

**Advocate : Senthilkumar and Uttam Reddy, for the Assessee T.C.A. Ramanujam, for the Revenue, for the Appellant;**

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## **Judgement**

V.S. Sirpurkar, J.

Two questions are referred to us at the instance of the assessee and under the directions of this court. They are :

1. Whether, on the facts and in the circumstances of the case, the assessee is entitled to interest u/s 214 of the Income Tax Act, 1961, on the net

refund amount determined at Rs. 1,95,951 ?

2. Whether, on the facts and in the circumstances of the case and having regard to the provisions of sections 208 to 219 of the Income Tax Act,

1961, a payment of Rs. 12,00,000 made on 14-3-1979 should be treated as advance payment of tax ?

The two questions are inter-linked and they are not happily worded in the sense that the questions did not display the real controversy which will

be clear from the following facts.

2. The assessment year is 1979-80. The assessee, who was liable to pay the advance tax, filed an estimate on 13-9-1978. The assessee estimated

the payable amount at Rs. 14,18,506 and made the payment of Rs. 4,75,000 on 15-9-1978. It made another payment of Rs. 5,60,000 by way of

second instalment on 15-12-1978. The assessee then filed a revised estimate in the month of March, i.e., before the third and final instalment on

13-3-1979 wherein the assessee had estimated the advance tax payable at Rs. 21,80,000. However, instead of paying the amount to complete the

payment of Rs. 21,80,000, i.e., Rs. 11,45,000, the assessee had made the payment of Rs. 12 lakhs, which was in excess of the required payment

by Rs. 55,000. This was on 14-3-1979. Thus, instead of Rs. 21,80,000 which was the estimated tax, the assessee paid Rs. 22,35,000. The

assessment was completed and a total income of Rs. 35,30,820 and the tax was determined at Rs. 20,39,049. As per that, the excess tax paid

would have been Rs. 1,95,951. Any excess amount paid by way of advance tax carries interest u/s 214 of the Income Tax Act, 1961 (hereinafter

referred to as "the Act"). However, the assessing authority did not grant interest on the total amount of Rs. 1,95,951 and instead took a view that

the amount on which the interest was liable to be paid should be calculated as under :

Rs.

Advance tax payable as per estimate filed on 13-3-1979 21,80,000

Less : Tax due 20,39,049

Balance 1,40,951

The assessing authority ordered the interest only on this amount of Rs. 1,40,951. The assessee contested this as, according to the assessee, it

should have been paid the interest on Rs. 1,95,951 and for that purpose, the calculation should have been as per the following formula :

Total advance tax paid tax amount due = Refundable amount carrying interest u/s 214 of the Act

The assessee, therefore, filed an appeal which was allowed on the basis of the decision in Commissioner of Income Tax, Andhra Pradesh Vs.

Andhra Pradesh State Road Transport Corporation, . The Tribunal took a contrary view and held that the assessee could not be entitled to the

interest on the whole amount of Rs. 1,95,951 and would be entitled to have the interest on only Rs. 1,40,951, Thus, the order of the assessing

authority was restored by the Tribunal. The assessee, being aggrieved by this,

sought a reference and as a result the questions have been now referred to us.

3. If two questions are read together, then alone the real controversy could be properly understood. The real controversy is whether the excess amount of advance tax paid would also be entitled to earn interest u/s 214. We are of the clear opinion that the Tribunal was absolutely right in not awarding the interest on the excess amount of advance tax paid of Rs. 55,000 for the following reasons:

3.1 The entitlement to interest comes by way of section 214. The language of sub-section (1) would be most relevant and it reads as under :

Interest payable by government.(1) The Central Government shall pay simple interest at twelve per cent per annum 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...

From this language, it is clear that for arriving at the excess amount, which is refundable and which also carries the interest, two components are contemplated by the section. The first component is the aggregate sum of instalments of advance tax paid during any financial year in which they are payable under sections 207 to 213 of the Act; the second component is the amount of the tax determined on the regular assessment. When the first component exceeds the second component, the resultant amount would carry the interest. Now it will be seen that the first component is not the aggregate sum of the instalments paid during the financial year. This is qualified by the further words in which they are payable under sections 207 to 213. Therefore, obviously the instalments should be only such instalments which are payable under sections 207 to 213. Therefore, it will be proper to see as to what kind of instalments are payable under sections 207 to 213.

3.2 section 207 speaks only about the liability to pay the advance tax while section 208 specifies the conditions of that liability. These two sections will not help us to understand the nature of the advance tax paid in instalments

for which section 209 would play a material role. Section 209 provides guidance for computation of such advance tax and thereby would indirectly control the payable instalments. However, section 209A is the most material section for deciding the present controversy which provides for the computation as well as the payment of advance tax by the assessee. Clause (c) of sub-section (1) of section 209 provides that in cases where an estimate (including a revised estimate) is sent by the assessee u/s 209A, the total income so estimated shall be taken for the purposes of calculation of tax u/s 209. Section 209A provides for giving the estimate. Clause (a) of sub-section (1) of section 209A specifically provides that where the assessee has been previously assessed by way of regular assessment, he shall send to the Income Tax Officer a statement of advance tax payable by him computed in the manner laid down in clause (a) or in sub-clause (i) of clause (d) of sub-section (1) of section 209. The section further dictates that the assessee shall pay such amount of advance tax in case falling under clause (a) as accords with the statement in equal instalments on the dates applicable in his case u/s 211. It is to be seen that the section directs to pay the advance tax in equal instalments but that payment has to be in accordance with the statement made under clause (a). This shows that it is not as if the assessee has to pay any amount of tax. The tax which he pays must be as per the statement that he gives. In our case, sub-section (4) would be more relevant because that sub-section contemplates the case of an assessee who is liable to pay the advance tax has more income than the income on which the advance tax payable by him is computed u/s 209. Such assessee is required to send the estimate of current income and the advance tax payable by him on the current income calculated in the manner laid down in section 209. The sub-section further goes on to say that the assessee shall pay such amount of advance tax as accords with his estimate on such of the dates applicable in his case u/s 211. Sub-section (5) provides for a revised estimate which was the case with the present assessee. Under that an assessee can send a revised estimate of the advance tax payable by him and adjust any excess or deficiency in respect of any instalment already paid in a subsequent instalment or in subsequent instalments. In this case also, the assessee had sent the revised estimate as the income of the

assessee was likely to be more and thereby the assessee was to make the payment of Rs. 11,45,000 which amount would have been in

accordance with its estimate. Seeing the scheme of section 209 and section 209A, it is clear that the instalments which are liable to be paid have to

be such as they accord with the estimate/ estimate sent by the assessee to the assessing authority. Even u/s 211, which regulates the payment of

instalments of the advance tax, the term "total income" used in sub-section (1) means the one on which the advance tax is paid by the assessee in

accordance with the statement sent by the assessee under sub-section (1) of section 209A or in accordance with the order of the Income Tax

Officer u/s 210. We are not concerned with the order of the Income Tax Officer because there was none in this case. Therefore, obviously, it is

not left to the sweet-will of the assessee to pay any amount by way of advance tax and such advance tax has to be in accordance with the estimate

or as the case may be, the revised estimate sent by the assessee to the assessing authority. In this case also, in fact, such estimate was sent and in

the revised estimate the assessee was liable to make the payment of Rs. 11,45,000. However, for the reasons best known, the assessee makes the

payment of Rs. 12 lakhs which is the excess payment by Rs. 55,000. Such excess amount would, therefore, be not coverable u/s 214 as the larger

component has to be the aggregate sum of the instalments which are payable under sections 207 to 213 and we have already shown that such

instalments have to accord with the estimate/estimates or as the case may be, the revised estimate sent u/s 209A. This appears to be the only

reason why the phrase "aggregate sum of any instalments of advance tax paid" is qualified by the words "payable" under sections 207 to 213. In

this view of the matter, it is clear that the Tribunal was absolutely right in allowing the appeal filed by the revenue.

4. The learned counsel for the assessee then drew our attention to the judgment of this court in Commissioner of Income Tax Vs. T.T. Investments

and Trades Pvt. Ltd., and relied on the observations in that judgment to the effect that any payment made before the end of the accounting year in

which the assessment to be made should be taken to be the advance tax. In our view, the decision cannot apply as the question was whether an

instalment of advance tax paid beyond the date as contemplated by section 211 could still be deemed to be advance tax. Therefore, the question

there was of the nature of the tax paid and not its payability. We are on entirely different question. Here though the assessee has shown as per its

estimate the payable instalments correctly, it had made excess payment and that excess payment be deemed to be the advance tax. In the present

situation, we are of the opinion that the excess payment which was not in accord with the estimate sent by the assessee could not be deemed to be

the advance tax. In our opinion, the decision is of no help to the assessee, particularly because it entirely differs on facts. It will be also seen that the

statement of advance tax or as the case may be the estimate has to be made under Form No. 28A. This was correctly shown by the assessee. The

assessee, however, paid the tax not in accord with the estimate but in excess thereof. Hence, the assessee could not be said to be entitled to earn

interest on that excess amount.

5. The learned counsel for the assessee also relied on the Supreme Court decision in *Modi Industries Limited, Modinagar and Others Vs.*

*Commissioner of Income Tax, Delhi and Another*, . However, we do not find anything which could help the assessee. The controversy in that case

was in respect of the period for which the interest was payable u/s 214 and also on the nature of the tax on which the interest was payable. The

controversy was much wider but, in our considered opinion, that decision does not apply to the present controversy at all.

6. In *Chandrakant Damodardas Vs. Income Tax Officer Ward, "A" (Company), Rajkot*, , which was relied on by the learned counsel for the

assessee, also the controversy was if the instalments were paid after the due date, did the aggregate of such instalments if found in excess of the tax

due was liable to attract the interest. We have already clarified that this is not the controversy before us. Therefore, even that decision would be of

no consequence.

7. In the result, we confirm the order passed by the Tribunal and answer the reference against the assessee and in favour of the revenue. No costs.