(1991) 02 CAL CK 0049

In the Calcutta High Court

Case No : Matter No. 1589 of 1990

Graphite India Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 07-02-1991

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 154, 210, 214, 251

Citation : (1995) 78 TAXMAN 391

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mrs. Ruma Pal, J.—In this writ application, the petitioner has challenged the three orders by which its claim for payment of interest u/s 214 of the income tax Act, 1961 (''the Act'') has been rejected. As a consequential relief, the petitioner has claimed payment of interest u/s 214. The petitioner''s accounting year for the relevant period ended on 31-12-1982. On 14-6-1982, the petitioner submitted an estimate of advance tax for the assessment year 1983-84. The estimated tax was paid in three installments, i.e., 14-6-1982, 13-9-1982 and 15-12-1982. On 15-3-1983, the petitioner submitted a revised estimate and paid a further sum of Rs. 30 lakhs by way of advance tax for the assessment year 1983-84. The returned income of that year was Rs. 30,88,760.

2. By an order dated 28-2-1986, the Assessing Officer completed the assessment for the assessment year 1983-84 u/s 143(3) of the Act. The assessed income was Rs. 57,16,460. The Assessing Officer computed the tax and surcharge payable by the petitioner in respect of such income after giving credit for the entire amount paid by the petitioner by way of advance tax including the said sum of Rs. 30 lakhs. The petitioner preferred an appeal from the order dated 28-2-1986. By an order dated 24-11-1988, the appeal was partially allowed by the Commissioner (Appeals).

3. By an order dated 14-3-1988, the Assessing Officer made a fresh assessment in respect of the assessment year 1983-84 in accordance with the order dated 20-2-1988, u/s 251 of the Act. By a notice u/s 154 of the Act dated 14-3-1988, the Assessing Officer gave notice of rectification and proposed to include a sum of Rs. 2,50,000 in the petitioner''s total income for the assessment year in question. By an order dated 28-3-1988, a rectification order was passed computing the total income for the assessment year 1983-84 at Rs. 36,50,980. The petitioner preferred an appeal from the order dated 28-3-1988. By an order dated 6-10-1988, the Commissioner (Appeals) set aside the order dated 28-3-1988. Thereafter, the Assessing Officer, while giving effect to the appellate order, determined the total income of the petitioner for the assessment year 1983-84 at Rs. 33,17,620. The Assessing Officer treated the amount paid by the petitioner on 14-6-1982,13-9-1982 and 15-12-1982, as payment u/s 210 of the Act and the sum of Rs. 30 lakhs as otherwise paid. However, credit was given for the total sum inclusive of the amount of Rs. 30 lakhs in determining the amount refundable to the petitioner.

4. The order dated 28-3-1988, was received by the petitioner on 12-4-1988. On 28-7-1988, the petitioner made an application to the Commissioner (Appeals) u/ s 264 for an order directing the Assessing Officer to allow due interest on the amount refunded/refundable out of the payment of Rs. 30 lakhs.

On 21-11-1989, the matter was heard by the Commissioner who rejected the application of the petitioner on the basis that the accounting period of the petitioner ended on 31-12-1982, whereas the payment of Rs. 30 lakhs was made on 15-3-1983. He held that the amount having been paid beyond the relevant accounting period, cannot be treated as advance tax and, therefore, cannot qualify for payment of interest u/s 214.

5. An identical question was decided by this Court on a reference u/s 256 of the Act in the case of Commissioner of Income Tax Vs. Ajoy Paper Mills Ltd., The Division Bench held that, if the installment of advance tax had been paid during the financial year and the aggregate sum of the installments exceeds the amount of tax determined at regular assessment, interest becomes payable u/s 214. The reasoning of the Commissioner''s order dated 28-11-1989 was expressly negatived in the said judgment. The Court held as follows :

"... If credit given by the department for the belated payments made during the financial year in calculating the tax due on regular assessment, we fail to see how such tax could not be treated as advance tax. It is a payment in advance towards tax to be determined on regular assessment. If the revenue, for the purpose of determining the tax due on regular assessment, cannot ignore such payment, then for the purpose of calculating interest also, such payment cannot be kept out of consideration.

Even otherwise, in view of the reference to the date from which interest is to be calculated, namely, 1st April, next following the financial year in which the advance tax was payable, that tax must be given credit for in calculating the amount of interest. Any payment made prior to 1st April, i.e., before the commencement of the relevant assessment year, has to be taken into account.

For the reasons aforesaid, we are of the opinion that the assessee is entitled to interest if the conditions stated in section 214 are satisfied even though the assessee might not have paid the advance tax by installments on the due date(s)." (p. 457)

6. The date of regular assessment for the purpose of section 214 of the Act in this case would be 4-8-1989 when effect was given by the Assessing Officer to the appellate order dated 6-10-1988 [See Chloride India Ltd. Vs. Commissioner of Income Tax and Others, and General Fibre Dealers Ltd. Vs. Income Tax Officer and Others,

7. Although directions for filing affidavits were given as far back as on 2-5-1990, no affidavit-in-opposition has been filed by the respondents till today. The allegations contained in the petition are, therefore, uncontroverted.

At the hearing also, no submission was made by the counsel appearing on behalf of the respondents regarding the date up to which the calculation of interest should be made.

Accordingly, the orders dated 28-3-1988, 4-8-1989, and 29-11-1989, insofar as they have refused the payment of interest to the petitioner u/s 214, are set aside. The respondents are directed to pay the petitioner interest on the refunded amount as prayed for by the petitioner.

8. After the hearing was concluded, the respondents'' counsel submitted that in Kalidas Mullick (No. 1) Charitable Trust v. CIT [IT Reference No. 117 of 1982], a Division Bench of this Court had held a different view from the decision in Ajoy Paper Mills Ltd.''s case (supra). It was stated that the judgment had been delivered on 29-1-1990. The matter was adjourned twice in order to enable the respondents to produce the judgment. It has not yet been made available to this Court. Consequently, it is not possible to consider the same.

9. Reliance was also placed by the respondents on the decision of the Andhra Pradesh High Court in the case of Kangundi Industrial Works (P.) Ltd. Vs. Income Tax Officer, A-Ward, As far as this Court is concerned, the Division Bench decision of this Court in Ajoy Paper Mills Ltd. ''s case (supra) is binding. The writ petition is, therefore, allowed. There will be no order as to costs. However, in view of the possibility of conflicting decisions on the main point involved in the case, I grant a stay of the operation of this judgment for four weeks from date.