(2011) 06 CAL CK 0073

In the Calcutta High Court

Case No : G.A. No. 1329 of 2011 and A.P.O.T. No. 203 of 2011

Haralal Harendralal Roy Estates Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 17-06-2011

Acts Referred:
Income Tax Act, 1961 — Section 244(1A)

Citation : (2012) 340 ITR 69 : (2011) 202 TAXMAN 279

Hon'ble Judges : Sambuddha Chakrabarti, J;Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : R. Bharadwaj, for the Appellant;R.N. Bandopadhya and P. Dhundoria, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—This appeal is at the instance of a writ petitioner and is directed against an order dated 10-3-2011 passed by a learned Single Judge of this Court by which His Lordship dismissed the writ application filed by the appellant in which the writ petitioner prayed for direction upon the income tax Department to pay interest at the rate of 15 per cent per annum for the delay in paying interest after the lapse of about four years from the date of refund.

2. Being dissatisfied, the writ petitioner has come up with the present appeal.

3. There is no dispute that the income tax Department accepted the position that the writ-petitioner paid excess tax and as such, an order of refund was passed in respect of two separate assessment years.

4. In respect of assessment years 1962-63 to 1977-78, there was an order of refund of Rs. 8,94,665 and such refund was made on 21-5-1992. Similarly for the assessment years 1978-79 to 1979-80 a sum of Rs. 1,70,047 was ordered to be refunded and such refund was made on 24-5-1993.

5. However, at the time of making payment of refund, no interest was paid in

terms of section 244(1A) of the income tax Act and subsequently, interest in terms of section 244(1A) for the assessment years 1962-63 to 1977-78 amounting to Rs. 16,74,594 was made on 23-4-1996 and a further sum of Rs. 3,42,645 for the assessment years 1978-79 to 1979-80 was made on 23-4-1996 although those amounts of interest ought to have been paid earlier on 21-5-1992 and 24-5-1993 respectively.

6. In view of such fact, the writ-petitioner complained before the Respondent/ Authority that he should be entitled to get further interest on delayed payment of interest in terms of section 244(1A) of the Act. Such demand was turned down by the income tax Authority on 19th February, 2002 by specific order which was the subject-matter of challenge in the writ-application out of which the present appeal arises.

7. The learned Single Judge by the order impugned herein held that as under the income tax Act there is no provision for payment of interest over interest, the writ-petitioner was not entitled to the relief claimed in the application.

8. Mr. Bhardhwaj, the learned counsel appearing on behalf of the appellant, strongly contended before us that the learned Single Judge erred in law in not following the decision of the Supreme Court in the case of Sandvik Asia Ltd. v. CIT (2006) 150 Taxman 591 where the Supreme Court has specifically held that even in the absence of any provision of the income tax Act, if interest is not paid along with the refund, the assessee is entitled to get further interest till the date of payment of interest.

9. Mr. Banerjee, the learned Advocate appearing on behalf of the Revenue, has, on the other hand, opposed the aforesaid contention of Mr. Bhardwaj and has contended that prior to the decision of the Supreme Court in the case of CIT v. Narendra Doshi (2002) 122 Taxman 717 which has been followed in the case of Sandvik Asia Ltd. (supra), there was no law laid down by the Supreme Court directing payment of interest on interest. According to Mr. Banerjee, the law laid down by the Supreme Court in the above decision has no application to the facts of the present case where interest was paid earlier to the decision of the Supreme Court in the case of Narendra Doshi (supra). In other words, according to Mr. Banerjee, in the case before us, the interest paid belatedly having been received by the assessee prior to the decision of the Supreme Court in the case of Narendra Doshi(supra), the principles laid down in that decision of the Supreme Court cannot have any application to the facts of the present case. Mr. Banerjee, therefore, prays for dismissal of this appeal.

10. Therefore, the first question that arises for determination in this appeal is whether a law declared by the Supreme Court on interpretation of a statutory provision is binding prospectively.

11. The law on that point is now settled. The following observations of the Supreme Court in the case of M.A. Murthy Vs. State of Karnataka and Others, will give the answer to the issue :

Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in I.C. Golak Nath and Others Vs. State of Punjab and Another, . In Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., the view was adopted. Prospective overruling is apart of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See Ashok Kumar Gupta and Another Vs. State of U.P. and Others, , Baburam Vs. C.C. Jacob and Others, . It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision.

(Emphasis supplied)

12. After going through the decision in the case of Narendra Doshi(supra), we find that there is no indication of prospective application of the decision in that case. The short judgment in that case is quoted below :

ORDER

1. The question that the High Court was called upon to answer read thus :

Whether on the facts and in the circumstances of the case, the income tax Appellate Tribunal was justified in law in upholding the order of the Deputy CIT(A), Indore, directing to allow interest on interest, when the law points for grant of simple interest only?

It answered it in the affirmative and in favour of the assessee, relying upon judgments which laid down that interest was payable on the excess amount paid towards income tax.

2. The Tribunal, whose decision the High Court affirmed, had relied upon the decision of the Gujarat High Court in the case of DJ. Works v. Dy. CIT which had been followed by the same High Court in Chimanlal S. Patel v. CIT. These decisions hold that the Revenue is liable to pay interest on the amount of interest which it should have paid to the assessee but has unjustifiably failed to do.

3. The Revenue has not challenged the correctness of the two decisions of the Gujarat High Court. They must, therefore, be bound by the principle laid down therein. Following that principle, the question has, as we find, been rightly answered in the affirmative and in favour of the assessee.

4. The civil appeal is dismissed.

5. No order as to costs.

13. Therefore, we do not find any substance in the aforesaid contention of Mr. Banerjee. The principle laid down by the Supreme Court in the case of Narendra Doshi(supra) is the law declared by the Apex Court on the question of payment of interest on interest on interpretation of the income tax Act. Moreover, the decision of the Supreme Court in the above case of Narendra Doshi (supra) was delivered on 21-7-2001 (although reported subsequently) whereas in this case, the order impugned in the writ-application refusing interest on interest was passed on 19-2-2002. Therefore, Mr. Banerjee is factually incorrect in his submission that at the time of passing of the order impugned in this writ-application the decision in the case of Narendra Doshi (supra) was not in existence.

14. In this connection, it will be profitable to refer to the following observations of the Supreme Court in a recent decision in the case of Alok Shankar Pandey v. Union of India (2007) 74 SCL 198 where the Apex Court made the following comments on the object of interest:

It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B.

(Emphasis supplied)

15. Thus, by following the principles of equity, the Supreme Court in the cases of Narendra Doshi (supra) and Sandvik Asia Ltd (supra), passed the direction for payment of interest on interest.

16. It appears that the learned Single Judge totally overlooked the aforesaid settled law of the land in holding that there was no scope for grant of interest on interest.

17. We, therefore, set aside the order impugned and allow the writ-application by directing the income tax Authority to pay to the appellant interest at the rate prevailing at the relevant time for refund u/s 244(1A) of the Act for the assessment years 1962-63 to 1977-78 for the period from 21-5-1992 to 23-4-1996 and for assessment years 1978-79 to 1979-80 for the period from 24-5-1993 to 23-4-1996 within two months from today. In default, the amount will carry penal rate of interest at the rate of 18 per cent per annum.

18. The Appeal is, thus, allowed to the extent indicated above.

19. In the facts and circumstances, there will be, however, no order as to costs.

Sambuddha Chakrabarti, J.

20. I agree.

