
(1984) 07 KL CK 0043
In the High Court Of Kerala
Case No : Writ Appeal No. 572 of 1982

Income Tax Officer

APPELLANT

Vs

A.V. Thomas and Co. Ltd.

RESPONDENT

Date of Decision : 06-07-1984

Acts Referred:

Income Tax Act, 1961 — Section 154, 155, 156, 215, 216

Citation : (1985) 21 TAXMAN 292

Hon'ble Judges : Varghese Kalliat, J;U.L. Bhat, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; K.A. Nayar, for the Respondent

Final Decision : Dismissed

Judgement

Varghese Kalliat, J.—This is an appeal by the ITO. The facts of this case are simple. The respondent is an assessee. He was assessed to income tax for the year 1976-77. The assessment order is evidenced by Ext. P 1. Pursuant to Ext. P 1, the assessing authority issued a demand notice u/s 156 of the income tax Act, 1961 ("the Act"). The respondent paid the tax as demanded. The respondent challenged the assessment in appeal before the AAC. The appeal was allowed. The tax was reduced. The respondent got entitlement to a refund of the tax paid. The department refunded the excess tax collected.

2. The AAC's order was challenged in appeal before the Tribunal by the department. The Tribunal allowed the department's appeal. The original order of the assessing authority was restored. When the original order was restored, the assessee was liable to pay back the amount he received by way of refund. Demand was made by the department by directing the assessee to pay an amount of Rs. 45,767. The department also demanded interest on the amount.

3. The department claimed interest u/s 220(2) of the Act. They claimed interest from 30-9-1977 to 26-2-1980. 30-11-1977 is the date on which excess amount

of tax collected was refunded. 26-2-1980 is the date of the proceedings of the ITO after the order of the Tribunal. The order directing payment of interest and the balance amount of tax is Ext. P5. The assessee admitted his liability to pay the tax portion of Ext. P5. He disputed his liability to pay interest on the amount refunded by the department and challenged the order to the extent it directed the payment of interest.

4. Kochu Thommen, J. allowed the original petition and held that the assessee had no liability to pay any amount to the department by way of interest until Ext. P5, demand notice, was served on him, consequent on the reversal of the order of the AAC by the Tribunal. It was held that the petitioner's liability to pay interest, therefore, commenced only from 26-2-1980, which is the date of Ext. P5. Ext. P5, insofar as it has levied interest u/s 220(2) from 30-11-1977 to 26-2-1980, was found unsustainable in law and, accordingly, Ext. P5 order was quashed to the extent it directed payment of interest. The department has filed this writ appeal.

5. The short question to be considered in this case is whether u/s 220(2) the department is entitled to levy interest on an amount refunded by the department consequent on the reversal of the assessment order by the AAC which order was set aside by the Tribunal restoring the original order. Section 220(2) reads thus:

"If the amount specified in any notice of demand u/s 156 is not paid within the period limited under sub-section (1), the assessee shall be liable to pay simple interest at twelve per cent per annum from the day commencing after the end of the period mentioned in sub-section (1) :

Provided that, 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 had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded."

We shall quote here also section 156 :

"When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the income tax Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable."

6. Section 220(2) provides that an assessee is liable to pay interest if the amount specified in the notice u/s 156 is not paid within the period limited under sub-section (1) of section 220. Sub-section (1) of section 220 provides a period of thirty-five days for payment of the amount demanded.

7. The appellant admits that in this case, the department can claim interest only u/s 220(2). So essentially the controversy in this case has to be determined on a proper interpretation and a clear understanding of section 220(2). The learned counsel for the appellant placed before us several provisions of the Act which

enjoin the department to pay interest to an assessee when the assessee is entitled to a refund. The counsel also referred to certain provisions of the enactment which enjoin the assessee to pay interest when the assessee is in default of making the return or making a wrong estimate in regard to payment of advance tax. The counsel referred to sections 215, 216, 217(2), 243 and 244(1A) of the Act. What the counsel wanted to impress on us is that the Act provides for payment of interest in case where there is delay in making any payment to the assessee by way of refund or otherwise. He wants us to understand the provision contained in section 220(2) as a provision authorising the department to collect interest from the assessee as and when the department is entitled to the amount of tax. The counsel further submits that the reversal of the order of the assessing authority by the AAC, whose decision was reversed by the Tribunal, has no effect on the liability of the assessee in the matter of payment of interest. In substance, the appellant wants us to interpret section 220(2) in the light of the scheme of the Act in regard to payment of interest and in the spirit of the section rather than on the literal meaning of the section. He wants us to adopt a method which they call in English, by strange words, the schematic and teleological method of interpretation. It is not really so alarming as it sounds. All it means is that the Judges do not go by the literal meaning of the words or by the grammatical structure of the sentence. They should go by the design or purpose which lies behind it. When they come on a situation which is to their minds within the spirit but not the letter of the legislation, they solve the problem by looking at the design and purpose of the Legislature and the effect which it was sought to achieve. They then interpret the legislation so as to produce the desired effect. We have no doubt that a taxing provision also should be interpreted "fairly, reasonably and in accordance with justice". It is axiomatic that if the person sought to be taxed will not come within the letter of the law, he cannot be taxed by a mere reference to the spirit of the law or taking into account the hardship that may be caused. Of course, it does not mean that fiscal statute like any other statute should not receive fair and reasonable construction. The observations in *Tenet v. Smith* 1982 AC 150 can be usefully relied on for the aforesaid proposition. Similar is the view taken in *IRC v. Jamieson* 1964 AC 1445 and in *Commissioner of Wealth-tax, Bihar and Orissa Vs. Kripashankar Dayashanker Worah*,

8. The approach to be made in the matter of construction of fiscal statute has been stated succinctly and with considerable brevity and clarity in the decision of the House of Lords in *Ormond Investment Co. Ltd. v. Beits* 1928 AC 143.

Lord Atkinson stated the principle thus:

".....it is well established that one is bound in construing revenue Acts to give a fair and reasonable construction to their language without leaning to one side or the other, that no tax can be imposed on a subject by an Act of Parliament without words in it clearly showing an intention to lay the burden on him, that the words of the statute must be adhered to and that so-called

equitable constructions of them are not permissible."

Lord Jenkins stated the same principles as follows in Jamieson's case (supra) :

"The task of the courts, as in any other revenue case, is to construe the provisions of the taxing enactment according to the ordinary and natural meaning of the language used and then to apply that meaning to the facts of the case. If by the application of this process the taxpayer is brought fairly within the net, he is caught, otherwise he goes free, but there must be no straining of language either way."

Lord Donovan on the same question of interpretation observed in Mangin v. IRC 1971 AC 739 thus :

"First, the words are to be given their ordinary meaning. They are not to be given some other meaning simply because their object is to frustrate legitimate tax avoidance devices. As Turner, J. said in his (albeit dissenting) judgment in Marx v. IRC [1970] NZLR 182, moral precepts are not applicable to the interpretation of revenue statutes :

Secondly,..... one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be implied. One can only look fairly at the language used" [Per Rowlatt J. in Cape Brandy Syndicate v. IRC [1921] (1) KB 64 approved by Viscount Simon LC in Canadian Eagle Oil Co. Ltd. v. Regem [1945] 2 All ER 499.

Thirdly, the object of the construction of a statute being to ascertain the Will of the Legislature it may be presumed that neither injustice nor absurdity was intended. If, therefore, a literal interpretation would produce such a result and the language admits of an interpretation which would avoid it then such an interpretation may be adopted.

Fourthly, the history of an enactment and the reasons which led to its being passed may be used as an aid to its construction."

In AIR 1940 183 (Privy Council) , the Judicial Committee observed :

"The principle of all fiscal legislation is that if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be."

We feel the statutory provision in section 220(2) is clean and clear. It is not difficult to understand what are the requirements under the provision, which will attract payment of interest. As stated by Lord Jenkins, our task is to construe the provision, section 220(2), according to the ordinary and natural meaning of the language used and to apply that meaning to the facts of the case. As stated

earlier, the facts of the case are simple. When the assessing authority demanded payment of tax as assessed by the assessment order, Ext. P1, the assessee paid the tax. Section 220(2), which provides for payment of interest, enjoins certain conditions for attracting the liability of payment of interest. The condition is that even after the notice of demand u/s 156 and after a further period of 35 days as provided u/s 220(1), the assessee should continue as a defaulter in the matter of payment of tax demanded. Only in case of the assessee's default of non-payment of tax assessed, even after 35 days' notice of demand u/s 156, the liability to pay interest accrues. It is admitted that the assessee has paid the tax when he received the demand notice u/s 156. The requirements u/s 220(2) for attracting the liability to pay interest are not present in this case.

9. The counsel for the department relied on the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964. The counsel particularly relies on section 3 of the said Act. He contends that the original notice u/s 156 of the income tax Act survives by virtue of section 3. He also referred to us the decision of Income Tax Officer, Kolar and Another Vs. Seghu Buchiah Setty, . In that case, the Supreme Court held that as and when an assessment is challenged and the order of assessment is set aside or modified by the appellate authority, all consequential proceedings pursuant to the assessment order are also rendered ineffective. So a notice issued u/s 156 pursuant to an assessment order which was set aside subsequently by the appellate authority would not remain in force and the department has to proceed afresh by issuing a fresh demand notice u/s 156. This decision caused great difficulty for the revenue and in order to tide over the difficulty, the said Act, namely, the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act was passed. Section 3 provided that if the assessment order is set aside or modified by the appellate authority and subsequently the original order is restored by a second appellate authority, the actions taken pursuant to the first order including the demand notice will survive and a fresh demand notice is unnecessary. Basing on this provision, the counsel developed his argument by urging that so long as no fresh demand notice is now required under law, the assessee is liable to pay interest on the basis of the original notice of demand. It is difficult to accept this contention. Perhaps, no fresh demand notice may be necessary and the original notice u/s 156 may be revived. Even if we accept that the original notice is revived, it has no consequence. The assessee has paid the amount demanded as per the original notice. In a case where the assessee has paid the demand made in the original notice, there is no liability on the part of the assessee to pay interest. So even if we take that the original notice is revived, the department may not be justified in demanding the interest from the date of the original notice. The non-compliance of the original notice is the event which attracts payment of interest. In this case, there is no non-compliance of the original notice and so the assessee is not liable to pay interest.

10. The counsel relied on the decision reported in A.K. Haji v. ITO 1982 Tax LR NOC 137 (sic). The facts of this case are substantially different from the facts of

the present case. The crucial difference is that in A.K. Haji's case (supra) there was no occasion for a refund of tax. The assessee did not pay the tax as demanded u/s 156. In such a case, the department is fully justified in making the demand for payment of interest. This Court rightly held so.

11. The counsel for the department referred to us the decision in Orissa Ceramic Sales Vs. Income Tax Officer and Another, . We do not think that this decision has got any relevance to the question to be decided in this case. The other decision relied on by the counsel for the department, viz., Income Tax Officer, Central and Another Vs. Ghanshyamdas Jatia and Others, held that the combined effect of the income tax Act and the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 is that in the case of an order of the appellate authority reducing wholly the demand forming the basis of the certificate, the certificates preceding shall be kept in abeyance until such order becomes final and conclusive. It was further held that there is no question of extinction of the demand in such cases. Further, it was held that since the original order was restored, no fresh notice of demand is necessary in view of section 3(2). True perhaps that no fresh notice is required in this case. But a consequential order is necessary and that has been issued by the assessing authority which is evidenced in this case by Ext. P5. As stated earlier, issue of notice alone will not attract the liability to pay interest. The liability is attracted only if there is non-compliance of the demand made in the notice. In this case there is no non-compliance and so the ratio of the decision in Ghanshyamdas Jatia's case (supra) has no application.

12. The appellant relied on the Board's Circular No. 334, dated 3-4-1982- see Taxmann's Yearly Tax Digest & Referencer, 1983, p. 3.19, dealing with levy of interest u/s 220(2) when the original assessment is set aside. We find it difficult to rely on the circular. The circular only gives the view of the department in the matter. The provision has to be interpreted regardless of the views expressed in the circular. In Commissioner of Income Tax Vs. Malayala Manorama and Co. Ltd., , this Court held :

".....The Court will have to put its own construction upon the provisions of the Act regardless of the practice of the department and the directions for the guidance of the officials....."

13. In the result, we dismiss the writ appeal and confirm the judgment of the learned Single Judge. There will be no order as to costs. The counsel for the revenue asked for leave to appeal. We do not think that this case involves a substantial question of law of general importance which, in our opinion, needs to be decided by the Supreme Court. Leave refused.

Writ appeal dismissed.