

(2010) 07 P&H CK 0235

In the Punjab And Haryana At Chandigarh

Case No : IT Appeal No. 851 of 2008 & IT Appeal No. 851 of 2008 (A.Y. 2001-02)

Jacob Export House

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 20-07-2010

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 143(3), 208, 234B, 260A

Citation : (2011) 330 ITR 53 : (2011) 10 TAXMAN 107

Hon'ble Judges : Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the assessee u/s 260A of the Income Tax Act, 1961 (for short, "the Act") against order dated 31st July, 2008 of the Tribunal, Chandigarh in ITA No. 318/Chd/2008 for the assessment year 2001-02, proposing following substantial questions of law:

(1) Whether Tribunal was justified in setting aside the issue of charging of interest u/s 234B of the Income Tax Act, 1961 for fresh adjudication to the file of Commissioner (Appeals) having decided the issue in favour of the appellant in view of the judgment of CIT v. Haryana State Co operative Supply & Marketing Federation Ltd. (2007) 34 IT.R 441 (P&H) with a rider that once the assessee is found to have defaulted in payment of advance tax on the basis of law as prevalent in the relevant financial year, its subsequent variation on account of further disallowances suffered because of changed legal position would still empower the assessing officer to charge interest u/s 234B of the Act, which is illegal, perverse and leads to allowing a second innings to the lower authorities which is unwarranted and uncalled for ?

(2) Whether, on the facts and circumstances of the case, the findings of Tribunal, are perverse and against the evidences on record thus unsustainable in law ?

(3) Whether the Tribunal has misdirected itself in being influenced by irrelevant

factors and applying erroneous criteria while deciding the issue of eligibility for claiming deduction u/s 80IB of the Income Tax Act, 1961 ?

2. Facts necessary for adjudication of this appeal may be noticed. The assessee did not pay advance tax as per provisions of Section 208 of the Act on the ground that its income was not liable to be taxed in view of provisions under Sections 80HHC and 80IB of the Act. Claim of the assessee was not accepted for deduction under the said provisions by the assessing officer. Demand of interest was also raised u/s 234B of the Act. On appeal, the Commissioner (Appeals) upheld the plea of the assessee that since advance tax was not paid under a bona fide belief, interest u/s 234B of the Act was not attracted. On appeal by the revenue to the Tribunal, the view of the Commissioner (Appeals) was reversed. It was held that bona fide belief of the assessee to estimate taxability of income could not be valid ground to avoid liability to pay interest u/s 234B of the Act on advance tax ultimately found due.

3. We have heard learned Counsel for the parties and perused the record.

4. Learned Counsel for the assessee submitted that the Tribunal is in error in holding that even if the assessee on a bona fide calculation found that no advance tax was payable, still liability of interest u/s 234B of the Act will be attracted. He relied upon following judgments:

(i) CIT v. Haryana State Co-operative Supply & Marketing Federation Ltd. (2007) 34 IT R 441 (P&H);

(ii) Commissioner of Income Tax Vs. Kanti Kumar Sharma, ;

(iii) United Commercial Bank Vs. Commissioner of Income Tax, ;

(iv) Saurashtra Packaging Pvt. Ltd. Vs. Commissioner of Income Tax, ;

(v) Kewalchand Kailashchand Jain (HUF) v. CWT (2008) 5 DTR (MP) 342.

5. On the other hand, learned Counsel for the revenue argued that Finance Act, 2001 has amended Explanation 1 to Section 234B of the Act retrospectively with effect from 1-4-1989 and has laid down that assessed tax would mean tax on total income determined u/s 143(1) or Section 143(3) of the Act as reduced by certain amount mentioned therein. He relied upon judgments of this Court in Raj Kumar Singal Vs. Union of India (UOI) and Others, and Parkash Agro Industries v. Dy. CIT (2008) 2 DTR (P&H) 356 : (2008) 170 Taxman 479 (P&H)

6. It would be advantageous to reproduce Explanation 1, as amended by Finance Act, 2001 retrospectively with effect from 1-4-1989, which reads as under:

Explanation 1. In this section, assessed tax means the tax on the total income determined under Sub-section (1) of Section 143 or on regular assessment as reduced by the amount of tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income.

7. The matter is no longer *res integra*. This Court in *Parkash Agros* case (*supra*), while considering the effect of amendment to Explanation 1 retrospectively with effect from 1-4-1989 had held that an assessee is liable to pay interest u/s 234B of the Act on the amount of income assessed u/s 143(1) or 143(3) of the Act and not on the basis of income declared in the return by the assessee. The relevant observations read as under:

9. It is no doubt true that prior to the amendment brought by Finance Act, 2001, which has been made effective retrospectively from 1-4-1989, the interest u/s 234B of the Act was chargeable with reference to the total income as had been declared by the assessee in its return and not on the assessed income. Explanation 1 to Section 234B of the Act was amended by Finance Act, 2001. It reads thus:

Explanation 1.--In this section, assessed tax means the tax on the total income determined under Sub-section (1) of Section 143 or on regular assessment as reduced by the amount of tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income.

(b) in Sub-section (3), for the words one and one-half per cent, the words one and one-fourth per cent shall be substituted with effect from 1-6-2001.

10. The said Explanation was subject-matter of challenge before this Court in *Raj Kumar Singhal's* case (*supra*) where the Division Bench while upholding the validity of the said provision, interpreted it as under:

“A comparison of the two provisions shows that under the original provision interest was leviable on the income as declared in the return filed by the assessee. By the amended provision, the interest is leviable on the income as determined by the assessing authority minus the income on which the tax has been paid or deducted. The amendment is only calculated to clarify the ambiguity that was felt in the original provision. It is not arbitrary or unreasonable.”

8. The judgments relied upon by the assessee are distinguishable as the effect of amendment by Finance Act, 2001 was not under consideration in those cases. In view of clear provision incorporated in the Explanation and judgment of this Court in *Parkash Agros* case (*supra*), chargeability of interest is beyond question.

9. As regards question No. 3, a perusal of impugned order shows that there was no ground raised relating to claim u/s 80IB of the Act before the Tribunal and, therefore, the same does not arise from the said order.

10. Accordingly, we do not find any merit in the appeal. No substantial question of law arises.

The appeal is dismissed.