
(2014) 10 KL CK 0045
In the High Court Of Kerala
Case No : O.P. No. 14238 of 2002 (T)

Joseph Korah

APPELLANT

Vs

The Income Tax Officer

RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Income Tax Act, 1961 — Section 132B(1)(4), 132B(4), 244(1A), 244A

Citation : (2015) 229 TAXMAN 331

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : John Ramesh K.I. John, Advocate for the Appellant; P.K.R. Menon, Sr. Counsel, GOI (Taxes) and George K. George, SC for IT, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The original petition was filed by the petitioner, an agriculturist residing at Kottayam, who was an assessee on the files of the respondent. The prayer in the original petition is for a direction to the respondent to grant interest on interest, on the amounts that were due to the assessee by way of refund pursuant to appellate orders that set aside the demand made on the assessee in the assessment and penalty orders for the assessment year 1976-77. During the pendency of the original petition, the petitioner expired and accordingly his legal heirs were impleaded as additional petitioners 2 to 5 as per order dated 11.12.2007 in I.A. No. 16112/2007.

2. The brief facts relevant for a disposal of the original petition are as follows:

"The income tax assessment of the petitioner for the assessment year 1976-77 was completed by an order dated 17.5.1979. The assessment was consequent to a search carried on in the premises of the petitioner, and an amount of Rs. 1,12,700/- had been seized from the petitioner on 20.9.1975 during the course of the search conducted by the authorities under the Central Excise Act. The said amount was subsequently transferred to the Income Tax authorities, who completed the assessment, under the Income Tax Act, on the petitioner. While

completing the income tax assessment for the year 1976-77, the respondent adjusted the tax amount of Rs. 62,935/- from out of the amount seized from the petitioner at the time of search. A further amount of Rs. 46,800/- was also adjusted towards penalty that was imposed on the petitioner. The balance amounts that remained were refunded to the petitioner in May, 1984. The facts would reveal that, in the interregnum, the appeals preferred by the petitioner, against the orders of assessment and penalty, were allowed by the First Appellate Authority and thereafter confirmed by the Appellate Tribunal. As a result, the petitioner became entitled to a refund of the amounts that were confirmed against him in the assessment and penalty orders."

3. The respondent initially, while granting the refund that was due to the petitioner consequent to the appellate orders passed in his favour, chose to grant interest under Section 132B(4) of the Income Tax Act alone. The interest contemplated under Section 244(1A) of the Income Tax Act, on the refund amounts that were due to the petitioner, were not computed and granted to the petitioner. This led the petitioner to prefer a representation before the respondent. When the representation did not yield any response, the petitioner approached this Court, which, by Ext.P4 judgment, directed the respondent to consider the matter and pass orders thereon. By Ext.P5 order dated 19.9.2001, the respondent found the petitioner entitled to interest under Section 244(1A) for the period from 1.6.1979 to 31.1.2001. The grant of interest under Section 132B(1)(4) from 1.7.1976 to 17.5.1979 was also affirmed by the respondent in the said order. The respondent did not, however, find merit in the claim of the petitioner for the grant of interest on interest on the amount of refund that was due to him. It was under these circumstances that the petitioner approached this Court challenging the action of the respondent in not granting interest on interest on the amounts due to him by way of refund.

4. In response to the claim of the petitioner in the writ petition, the respondent has filed statements before this Court in 2006 and 2008. In the statement filed in 2008, through I.A. No. 11465/2008, a computation is provided as Ext.R1(A) which would show that as per the records of the respondent, after granting interest in accordance with Ext.P5 order, an amount of Rs. 1,91,066/- remained to be paid to the petitioner, as on 30th August, 2008, the date of the statement. The stand of the respondent, with regard to the claim of the petitioner in the original petition, is that the petitioner is not entitled to any amount by way of interest on interest on the amounts due to him by way of refund.

5. I have heard Sri. John Ramesh, the learned counsel appearing on behalf of the petitioner as also Sri. P.K.R. Menon, the learned Senior Standing counsel appearing on behalf of the respondent Income Tax Department.

6. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I am of the view that the original petition, insofar as it claims interest on interest on the amounts that were due to the petitioner by way of refund, must necessarily fail. The issue of whether an

assessee under the Income Tax Act would be entitled to receive any amount by way of interest on interest under the Income Tax Act has been considered by the Supreme Court in a number of cases. While, in the decision in *Sandvik Asia Ltd. Vs. Commissioner of Income Tax-I, Pune and Others*, , the Supreme Court had, on the facts of the case before it, found that although the assessee was not entitled to interest on interest under the Income Tax Act, he was nevertheless entitled to a reasonable amount by way of compensation for the delayed payment of amounts that were due to him by way of refund of tax and interest thereon, the Supreme Court on the facts of that case, proceeded to grant the assessee an additional amount towards compensation for the period during which the Department had delayed the payment of refund, and interest thereon, to the assessee. The aforesaid decision of the Supreme Court came up for consideration before a larger Bench of the Supreme Court in *Commissioner of Income Tax, Gujarat Vs. Gujarat Fluoro Chemicals*, . In the said decision, while noting the judgment of the Supreme Court in *Sandvik Asia Ltd.*'s case [supra], and observing that in the said case, what the Supreme Court had done was to grant a compensation by way of interest to the assessee in that case, the Supreme Court went on to find in paragraph 8 as follows:

"8. Further, it is brought to our notice that the Legislature by the Act No. 4 of 1988 (with effect from April 1, 1989) has inserted section 244A to the Act which provides for interest on refunds under various contingencies. We clarify that it is only that interest provided for under the statute which may be claimed by an assessee from the Revenue and no other interest on such statutory interest."

In the light of the clarification given by the Supreme Court as above, the matters before the Supreme Court were then remitted back to the two Judges Bench to consider each of the cases independently and take appropriate decisions in the matter. The aforesaid clarification of the Supreme Court has been taken note of by the Madras High Court in the decision reported in *The Commissioner of Income Tax, Chennai Vs. M/s. Brakes India Limited*, wherein, the court found that as per the provisions of the Income Tax Act, there was no right in an assessee to claim interest on interest on amounts due to him by way of refund. In the light of the authoritative pronouncements of the Supreme Court on the subject, I find that the prayer in the original petition with regard to interest on interest cannot be granted. While the petitioner would point out that, even if interest on interest was not granted, it was open to this Court to consider the issue of grant of appropriate compensation in lieu of interest on interest, I am of the view that insofar as the computation shown by the respondent in Ext.R1(A) reveals that the respondent has computed interest in accordance with the provisions of the Act for the entire period for which they had withheld the amounts due to the petitioner by way of refund, there is no scope for the issuance of a direction to grant a compensation over and above the statutory interest that has already been reckoned for the purposes of computation of the amounts due to the petitioner. Thus, the original petition fails and is accordingly dismissed.

The learned counsel for the petitioner would submit that there is some ambiguity with regard to whether the amounts found due and payable to the petitioner, as shown in Ext.R1(A) statement of the respondent, has in fact been paid to the petitioner or his legal representatives. Taking note of this submission, I direct the respondent to ascertain from its records as to whether the balance amounts, shown as due and payable to the petitioner as per Ext.R1(A) statement, has in fact been paid to him. If, on verification by the respondent, it is found that the amounts have not been paid, the respondent shall take steps to pay the amount within a period of three months from the date of receipt of a copy of this judgment. In order to avoid any confusion, it will be open to the petitioner to produce such records, as are available with him, to show what amounts he has actually received from the respondent. The petitioner shall produce any such document that he has, before the respondent, within a period of one month from the date of receipt of a copy of this judgment.