(1990) 11 KL CK 0026

In the High Court Of Kerala

Case No : Writ Appeal No. 604 of 1990 in Original Petition No. 4994 of 1990-T

Kar Mobiles Ltd. APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 02-11-1990

Acts Referred:
Income Tax Act, 1961 — Section 143, 143(3), 144, 214, 214(1)

Citation : (1991) 190 ITR 324

Hon'ble Judges : K.S. Paripoornan, J;K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : C.M. Devan and C.N. Ramachandran Nair, for the Appellant; P.K. Ravindranatha Menon and N.R.K. Nair, for the Respondent

Judgement

K.S. Paripoornan, J.—The petitioner in Original Petition No. 4994 of 1990, a public limited company, is the appellant in this writ appeal. In the original petition, the prayer was to quash exhibit P-9 order passed in revision by the second respondent-Commissioner of Income Tax, dated November 17, 1988. The appellant is an assessee to Income Tax. For the assessment year 1971-72, the appellant filed the return of income on October 15, 1971. The assessment was originally made on March 27, 1974. Subsequently, there were appeals and the matter was finally decided by the Income Tax Appellate Tribunal on January 31, 1986. The Income Tax Officer gave effect to the order of the Appellate Tribunal on April 16, 1986. The assessee claimed interest for the period from April 1, 1971, to the date of issue of the refund order of the Income Tax Officer, on the entire advance tax paid amounting to Rs. 13,46,950 and the tax deducted at source, viz., Rs. 1,680 and the amounts paid on April 27, 1974 and August 12, 1974, in the sum of Rs. 4,35,873. This was declined by the income tax Officer. In revision, the Commissioner of Income Tax, relying on the Full Bench decision of this court in COMMISSIONER OF Income Tax, KERALA-II, ERNAKULAM Vs. G. B. TRANSPORTS, GURUVAYUR., , construed the words "regular assessment" occurring in Section 214(1) of the Income Tax Act as the initial assessment or the first assessment made by the Income Tax Officer u/s 143(3) or u/s 144 of the Act and held that it does not include any modified or revised order passed by the Income Tax Officer subsequently to give effect to any appellate order. It was held that, u/s 214(1) of the Act, interest should be paid only up to the date of the regular assessment from first April of the assessment year. The plea of the assessee was negatived. In the original petition, the assessee/petitioner attacked the order passed in revision by the Commissioner of Income Tax, evidenced by exhibit P-9. A learned single judge of this court, relying on the Full Bench decision of this court in COMMISSIONER OF Income Tax, KERALA-II, ERNAKULAM Vs. G. B. TRANSPORTS, GURUVAYUR., , held that the relief prayed for in the original petition cannot be granted and the original petition was dismissed. The assessee/petitioner has come up in writ appeal.

2. We heard counsel for the appellant, Mr. C.M. Devan. The only question that arises for consideration is about the date of the "regular assessment" up to which the Revenue is bound to pay interest for the advance tax paid during the financial year. There is a short cleavage of judicial opinion on this point. The Calcutta, Gujarat and Rajasthan High Courts, in the decisions in Chloride India Ltd. Vs. Commissioner of Income Tax and Others, ; General Fibre Dealers Ltd. Vs. Income Tax Officer and Others, ; Bardolia Textile Mills Vs. Income Tax Officer, Circle II, Ward-e, Surat, and Commissioner of Income Tax Vs. M.L. Sanghi, have held that a fresh or revised order passed in pursuance of the appellate order is none the less a regular assessment order u/s 143 of the Act and, in this view, the assessee is entitled to interest on the advance tax up to the date of the revised order of assessment. These decisions fully support the appellant. But, a Full Bench of this court, in COMMISSIONER OF Income Tax, KERALA-II, ERNAKULAM Vs. G. B. TRANSPORTS, GURUVAYUR., , has taken a different view and has held that, in such cases, interest is payable only up to the date of the original assessment. A similar view has been taken by the Allahabad, Punjab and Haryana, Andhra Pradesh and Bombay High Courts-- Lala Laxmipat Singhania Vs. Commissioner of Income Tax and Others, ; Commissioner of Income Tax Vs. Rohtak Delhi Transport P. Ltd., ; Commissioner of Income Tax Vs. Ambala Electric Supply Co. Ltd., ; Trustees of H.E.H. Nizam''s Religious Endowment Trust Vs. Income Tax Officer, A-Ward and Another, and Commissioner of Income Tax, Bombay City - IV Vs. Carona Sahu Co. Ltd., .

3. The Full Bench decision of this court in COMMISSIONER OF Income Tax, KERALA-II, ERNAKULAM Vs. G. B. TRANSPORTS, GURUVAYUR., is binding on us. So in agreement with the learned single judge, we are of opinion that exhibit P-9 order assailed in the original petition is not liable to be annulled or quashed. The original petition was rightly dismissed by the learned single judge.

4. The writ appeal is without merit. It is dismissed.