

(2008) 08 KAR CK 0045
In the Karnataka High Court
Case No : Income Tax Appeal No. 466 of 2004

Karnataka Urban Infrastructure Development Finance Corporation

APPELLANT

Vs

The Commissioner of Income Tax and Another

RESPONDENT

Date of Decision : 04-08-2008

Acts Referred:

Income Tax Act, 1961 — Section 201, 201 (1A)

Citation : (2008) ILR (Kar) 4512 : (2009) 308 ITR 297

Hon'ble Judges : K.L. Manjunath, J;A.S. Pachhapure, J

Bench : Division Bench

Advocate : Ashok Kulkarni and K.R. Prasad, for the Appellant; M.V. Seshachala, for the Respondent

Judgement

K.L. Manjunath, J.—This appeal is by the assessee challenging the concurrent findings of the order passed by the Commissioner of Income Tax (Appeals) and the Income Tax Officer and so also by the Income Tax Appellate Tribunal, Bangalore Bench "C in ITA No. 712/2001 dated 22.3.2004.

2. The facts relevant to this case are as hereunder:

The appellant is a public sector company wholly owned by the State of Karnataka. The appellant/Company has entrusted certain contracts to a foreign company known as M/s. Louis Berger International Inc., USA, which is a non resident company to provide technical know how and consultancy to the appellant in terms of the contract. Similarly, it also entered into another contract with a Company situated in UK. As per the terms and conditions of the agreement, the appellant/company in addition to making the payment towards the consultancy fees, the appellant has to reimburse the expenditure that may be incurred by those two companies, when they are in Karnataka. (for the accommodation and conveyance of the staff of these two companies, when they are in India). In terms of the agreement, the appellant/company has to take care of the tax liability of the non resident companies. Proceedings were initiated by

the Income Tax Officer invoking the provisions of Sections 201 and 201(1A) of the Income Tax Act on the ground that the appellant/company as required u/s 195 of the Act did not deduct the tax at source and remit the same in accordance with law, in so far as the reimbursement of expenditure portion only. Reply was sent by the assessee stating that it was under bonafide impression that no tax was required to be deducted in regard to the reimbursement since it was only an amount spent by the appellant/company towards the conveyance and accommodation to the officers/employees of non resident companies, when they were in India for the purpose of execution of the agreement. The explanation offered by the assessee was not accepted. Accordingly, an order was passed u/s 201 and also u/s 201(1A) of the Income Tax Act. This order was challenged by the assessee by filing an appeal before the Commissioner of Income Tax (Appeals) which appeal came to be dismissed on 15.6.2001. Against which, the second appeal filed before the Income Tax Appellate Tribunal also ended in dismissal. Being aggrieved by the concurrent findings of the Courts below, the present appeal is filed.

3. After hearing, we have reformulated the questions of law as hereunder:

(1) Whether on the facts and in the circumstances of the case, the Assessing Officer, Commissioner of Income Tax (Appeals) as well as the Tribunal were justified in passing an order u/s 201 of the Income Tax Act, without considering the cause and explanation shown by the appellant.

(2) Whether the Assessing Officer was justified in levying interest invoking Section 201(1A) of the Income Tax Act?

4. Having heard the Counsel for the parties, we are of the opinion that the Assessing Officer has not considered the explanation offered by the assessee in levying the penalty u/s 201 of the Income Tax Act. According to the learned Counsel for the appellant, when the appellant being a company wholly owned by the State of Karnataka and had deducted taxes on behalf of the non resident companies, it was under the bonafide belief that the amount spent towards accommodation and conveyance of the officers/employees of the non resident companies was not required to be treated as a part of their income. He further submits that when tax was deducted at source in respect of the fee payable towards consultancy and technical know how, there was no difficulty for the assessee to deduct the tax payable on the amount spent towards the reimbursement charges. He therefore contends that the Assessing Officer as well as the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal did not consider properly the explanation offered by the assessee. The learned Counsel for the revenue submits all the authorities have considered the reply sent by the assessee. However, we are of the opinion that the explanation offered by the assessee has not been properly considered by the Assessing Officer and so also by the other appellate authorities for the following reasons.

5. Admittedly, the company is wholly owned by the State of Karnataka. In the

explanation, it is contended that the tax was deducted at source based on the actual payment made to the non- resident companies to provide technical know how and so also, the consultancy charges. Since small amount was spent by the company towards the accommodation and conveyance of the officers of non resident companies, when they visited India, under the bonafide belief the same was not deducted and there was no intention to violate the provisions of Section 195 of the Income Tax Act. We do see some force in the arguments advanced by the learned Counsel for the appellant on the first question of law. Since the authorities have not properly considered the explanation offered, when the assessee company had deducted the tax at source in respect of the major payments made by it to a non resident company, an ordinary man of prudence has to accept the explanation offered by the appellant. In the circumstances, we are of the opinion that the levy of penalty u/s 201 in respect of the tax not deducted on account of the reimbursement made by the assessee has to be set aside. Accordingly, Question No. 1 is answered in favour of the assessee. So far as Question No. 2 is concerned, the learned Counsel for the assessee contends that Section 201 as well as Section 201(1A) are to be read together and if the explanation offered by the assessee not to levy penalty u/s 201 as well as Section 201(1A) cannot be pressed into service, as it is only consequential one. According to him, if the assessee is not liable to pay the penalty, the Assessing Officer cannot levy interest as contemplated u/s 201(1A). According to him, these two Sections are not independent and they are to be read together. If these two sections are read together, the order levying interest has to be set aside and all the authorities did not consider the same properly.

6. The learned Counsel for the revenue contends that Section 201 and Section 201(1A) are independent and levy of penalty is all together a different from levy of interest. He further contends that levy of interest u/s 201(1A) is mandatory and no discretion is left with any other officer of the department and these two sections cannot be read conjunctively as they are independent and not linked with each other. Section 201 reads as hereunder:

201. (1) If any such person (referred to in Section 200) and in the cases referred to in Section 194, the principal officer and the company of which he is the principal officer does not deduct (the whole or any part of the tax) or after deducting fails to pay the tax as required by or under this Act, he or it shall, without prejudice to any other consequences which he or it may incur, be deemed to be an assessee in default in respect of the tax:

Provided that no penalty shall be charged u/s 221 from such person, principal officer or company unless the (Assessing) Officer is satisfied that such person or principal officer or company, as the case may be, has (without good and sufficient reasons) failed to deduct and pay the tax.

Section 201(1A) also reads as hereunder:

(1A). Without prejudice to the provisions of Sub-section (1), if any such person,

principal officer or company as is referred to in that Sub-section does not deduct (the whole or any part of the tax) or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest at {[twelve] per cent per annum] on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid [and such interest shall be paid before furnishing the quarterly statement for each quarter in accordance with the provisions of Sub-section (3) of Section 200].}

7. After reading these two sections, we are of the opinion that levy of penalty u/s 201 and levy of interest u/s 201(1A) are entirely different. By accepting the cause shown by the assessee, an Assessing Officer is having a discretion to drop the penalty proceedings. But if the tax is not deducted u/s 195 of the Income Tax Act, the assessee is bound to pay interest, as it is a mandatory provision. Even if the penalty proceedings are dropped u/s 201, the assessee cannot escape his liability to pay interest u/s 201(1A).

8. Therefore, we are of the opinion that both the sections are independent and they are not inter-linked and they cannot be read conjunctively as levy of interest and levy of penalty are two different proceedings. In the circumstances, we have to accept the arguments advanced by the revenue and reject the contention advanced by the learned Counsel for the assessee. Accordingly, we answer Question No. 2 in favour of the revenue and against the assessee.

9. In the result, the appeal is allowed in part. The order passed the Assessing Officer confirmed by the Commissioner of Income Tax (Appeals) and further confirmed by the Income Tax Appellate Tribunal in levying penalty u/s 201 of the Income Tax Act is hereby set aside. The order levying interest u/s 201(1A) of the Income Tax Act is hereby confirmed.