(2010) 06 KL CK 0038

In the High Court Of Kerala

Case No : Income Tax A. No. 1428 of 2009

Koya APPELLANT

Vs

The Commissioner of Income Tax RESPONDENT

Date of Decision : 08-06-2010

Acts Referred:

Income Tax Act, 1961 — Section 220(2), 244A
Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 — Section 2, 3(2)

Citation : (2010) 3 KLT 801

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : V.P. Mohandas and K.A. Salil Narayanan, for the Appellant; Jose Joseph, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—Appeal is filed against the order of the Tribunal holding that appellant is liable to pay interest u/s 220(2) of the Income Tax Act for the entire period of default commencing from the date of service of original demand till payment after appeal was disposed of by the Tribunal.

2. We have heard counsel for the appellant assessee and standing counsel for the respondent.

3. The assessment pertains to the year 1994-95. As against a total demand of Rs. 20,31,824/-, assessee paid only Rs. 9,76,211/- leaving a balance unpaid tax of Rs. 10,55,613/-. The appeal filed by the assessee against assessment was successful and consequent upon the appellate order, assessment was revised vide Annexure-B order wherein assessee is found to be eligible for refund of Rs. 3,5 6,010/- being excess tax paid by the assessee. The assessee was granted a total refund of Rs. 3,10,836/-, which is computed after adding default interest for some period u/s 220(2) and after reducing the interest entitlement for the assessee u/s 244A of the I.T.Act. However, on departmental appeal, the appellate

order was vacated and the original assessment and the original demand were restored. Consequently, revised order was issued vide Ext.P7 by which the department has charged interest u/s 220(2) of the I.T. Act for the entire period of default on the sustained demand, that is, from the date of the original demand till date of re-computation of liability. Assessee did not succeed in the two level appeals against levy of interest before the C.I.T. (AppeaIs) and before the Tribunal. Consequently, this appeal is filed against the order of the Tribunal sustaining the demand of interest.

4. The decisions relied on by the assessee and the department are that of the Supreme Court in Vikrant Tyres Ltd. Vs. First Income Tax Officer, and the Division Bench of this Court in Income Tax Officer Vs. A.V. Thomas and Company, . The assessee''s counsel relied on the refund order and submitted that no interest could be levied u/s 220(2) until default happens after receipt of notice of demand. Standing counsel, on the other hand, relied on Section 2 of the Taxation laws (Continuation and Validation of Recovery Proceedings) Act, 1964, hereinafter referred to as the "Act" and contended that interest is payable on the entire balance amount due from original date of default till date of making payment.

5. We have already noticed that, in the first place, both the decisions relied on are cases where full tax amount had been paid in terms of the demand by the assessee and later, after first appellate order, the amounts have been refunded. However, in this case, out of the original demand of over Rs. 20 lakhs, the assessee had paid only Rs. 9,76,211/-leaving a balance of Rs. 10,55,613A. By virtue of the provisions of Section 3(2) of the Act, the notice of demand on the balance amount will revive once the original demand is revived consequent upon Tribunal''s order. However, what is seen in Annexure-B is that the assessing officer granted a refund of Rs. 3,10,836/- based on the first appellate order. We are of the view that Section 220(2) does not apply for the period after assessee was granted a refund because, during such period there was no subsisting demand and consequently assessee cannot be said to be a defaulter. Even though by virtue of the provisions of the Act, the notice of demand will survive, the provisions of the said Act do not tally with substantive provisions on interest, which are covered only u/s 220(2) of the Act. Default is a necessary pre-condition for demand of interest u/s 220(2) and there can be no dispute that, after grant of refund, assessee cannot be held to be a defaulter, no matter, without issuing a fresh notice of demand, assessee could be called upon to pay the balance demand arising after Tribunal''s order based on original notice of demand issued by invoking the provisions of the Act. Since the original demand is restored only by virtue of the Tribunal''s order, the default in payment of Rs. 10,55,613/- starts after Tribunal''s order restoring the original demand. So much so, interest u/s 220(2) is payable for the balance demand ultimately sustained for period of default after Tribunal''s order. However, no interest could be levied from the date of issue of refund order till date of Tribunal''s order. We, therefore, allow the appeal in part directing the assessing officer to revise the demand of

interest by excluding the period during which the amount was refunded to the assessee till date of revival of original demand based on Tribunal''s order.

