(2004) 04 DEL CK 0002

In the Delhi High Court

Case No : Writ Petition (C) No. 1117 of 1988

Modipon Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 22-04-2004

Acts Referred:
Income Tax Act, 1961 — Section 220(2), 244(1A)

Citation : (2004) 192 CTR 110 : (2004) 270 ITR 257 : (2005) 142 TAXMAN 92

Hon'ble Judges : B.C. Patel, C.J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : S.K. Aggarwal, for the Appellant; R.D. Jolly and S.C. Sharma, for the Respondent

Judgement

1. The petitioner has filed this writ petition, inter alia, challenging the order made u/s 264 of the Income Tax Act, 1961, for the assessment years 1976-77 and 1980-81 passed by the Commissioner of Income Tax on February 12, 1988. Against the assessment made by the Assessing Officer, the appeal was preferred and as a consequence of an appellate order, the Assessing Officer was required to compute the figures. It appears that the Assessing Officer pointed out in the computation sheet as under :

"Refund consequent upon the order made by the Commissioner of Income Tax (Appeals) dated May 21, 1984 :

1. Rs. 67,12,797 by way of tax and interest Section 139(8) 1,05,927 Section 216 49,557 Section 220(2) 10,66,591

2. The Assessing Officer has thereafter separately calculated the amount of interest payable to the assessed u/s 244(1A) of the Act on Rs. 9,56,254. The matter was argued at length by learned counsel for the petitioner. Two issues essentially arises in this matter, which are as under :

1. Whether the assessed is entitled to interest u/s 244(1A) in respect of interest payments u/s 220(2) of the Income Tax Act, 1961 ?

2. Whether the assessed is entitled to interest u/s 244(1A) of the Act in respect of interest already due u/s 244(1A) on delayed payment of refund ?

3. So far as the first question is concerned, it requires no more debate as the question is answered by the Gujarat High Court in Commissioner of Income Tax Vs. Gujarat State Warehousing Corporation, and the question therein referred was as under (page 597) :

"Whether the assessed is entitled to interest u/s 244(1A) in respect of interest payments under Sections 215, 217 and 220(2) of the Income Tax Act, 1961 ?"

4. The court after considering various decisions finds the question in favor of the assessed and against the Revenue and we find no reason to take a different view.

5. The contention is raised by learned counsel for the petitioner that the assessed is also entitled to get interest u/s 244(1A) of the Act. It is required to be noted that after hearing the matter, learned counsel did not press this issue and, Therefore, this petition is required to be allowed only to the aforesaid extent that is to say, that the assessed is entitled to interest u/s 244(1A) in respect of the interest payments u/s 220(2) of the Income Tax Act, 1961.

6. It goes without saying that in view of the order passed by the Division Bench of this court on October 12, 1988, the assessed will be entitled to get the amount of interest at 12 per cent. Counsel for the petitioner states that the assessed would be entitled to get Rs. 71,995 from the date of filing of the writ petition till the date of disposal, that is today.

7. With the aforesaid directions, the petition stands disposed of.