(1989) 08 GAU CK 0019

In the Gauhati High Court

Case No : Civil Rule No. 56 of 1983

Moheema Ltd. (No. 2) APPELLANT

Vs

Commissioner of Income Tax and Others RESPONDENT

Date of Decision : 16-08-1989

Acts Referred:

Income Tax Act, 1961 — Section 141A, 143(1), 143(3), 209, 210

Citation : (1990) 182 ITR 377

Hon'ble Judges : H.K. Sema, J;B.L. Hansaria, J

Bench : Division Bench

Advocate : P.K. Goswami and J.P. Sharma, for the Appellant; D.N. Choudhuri and K.H. Choudhuri, for the Respondent

Judgement

B.L. Hansaria, J.—The petitioner is an Income Tax assessee. Its assessment for the year 1977-78 was completed on March 22, 1979, u/s 143(3) of the Income Tax Act, 1961 (for short "the Act"), and a sum of Rs. 813 was found refundable on account of excess payment of advance tax. A rectification proceeding was subsequently initiated. This was relatable to the loss of the previous year which was not set off. The assessment was accordingly modified and a sum of Rs. 35,696 became refundable. The petitioner claimed interest up to the date of rectification which was January 5, 1981, This was disallowed. A revision was, thereafter, preferred before the Commissioner of Income Tax who also refused to pay interest up to the date of rectification. Feeling aggrieved, this petition has been filed by the assessee.

2. The question for determination is whether interest in a case of the present nature was payable till the date of rectification or the entitlement of the assessee to receive interest was confined to the date of assessment first made u/s 143(3) of the Act. The answer to this question depends on the interpretation of the expression "regular assessment" finding place in Section 214 of the Act. Let us read the section as it stood at the relevant time :

"214. (1) The Central Government shall pay simple interest at twelve per cent.

per annum on the amount by which the aggregate sum of any instalments of advance tax paid during any financial year in which they are payable under Sections 207 to 213 exceeds the amount of the tax determined on regular assessment, from the 1st day of April next following the said financial year to the date of regular assessment for the assessment year immediately following the said financial year, and where any such instalment is paid after the expiry of the financial year during which it is payable by reason of the provisions of Section 213, interest as aforesaid shall also be payable on that instalment from the date of its payment to the date of regular assessment :

Provided that in respect of any amount refunded on a provisional assessment u/s 141A, no interest shall be paid for any period after the date of such provisional assessment.

(1A) Where on completion of the regular assessment the amount on which interest was paid under Sub-section (1) has been reduced, the interest shall be reduced accordingly and the excess, if any, paid shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly.

(2) On any portion of such amount which is refunded under this Chapter, interest shall be payable only up to the date on which the refund was made."

3. It may be pointed out that the expression "regular assessment" has been defined in Section 2(40) of the Act to mean, unless the context otherwise requires, "assessment made u/s 143 or Section 144" of the Act. The contention of the Department is that the expression "regular assessment" finding place in the aforesaid section refers to the first order of regular assessment, whereas, according to the assessee, the meaning of the expression cannot be confined to the first order of regular assessment--it would also take within its fold the assessment made pursuant to the rectification proceedings or orders passed on remand after the matter has been sent back by the appellate/revisional authority.

4. There has been a cleavage of opinion among the different High Courts of the country right from 1957 which had dealt with the present question in the context of the Indian Income Tax Act, 1922. The first decision which is cited in this connection is that of Chagla C. J. in Sarangpur Cotton Manufacturing Co. Ltd. Vs. Commissioner of Income Tax, Bombay North, It was held in this Division Bench decision that the mere fact that an assessment made unde Section 23 of the old Act was set aside on appeal by the Appellate Assistant Commissioner and a fresh assessment was made on a subsequent date would not entitle the assessee to interest on the advance tax up to the date of the subsequent assessment inasmuch as liability to pay arises once an assessment is made. This decision was referred with approval in Sir Shadilal Sugar and General Mills Ltd. Vs. Union of India (UOI) and Another, This decision held that the expression "regular assessment" refers to the first or, one might say, original assessment order made by the Income Tax Officer. It was pointed out that, after the original assessment order is made and a notice of demand is issued, the assessee is under an

obligation to pay the tax demanded and no question can arise of his being compensated by way of interest for any payment made by him in satisfaction of the demand. The compensation is intended only for the period during which there was no obligation to pay the tax, that is, up to the date of the first assessment by the Income Tax Officer.

5. Shri Goswami has, however, referred to Chloride India Ltd. Vs. Commissioner of Income Tax and Others, [1977]106ITR38(Cal) wherein a learned single judge of the Calcutta High Court (Sabyasachi Mukharji J. as his Lordship then was) took the view that regular assessment means the assessment as modified pursuant to appeal, etc. In coming to this decision, reference was made to Sections 209 and 210 of the Act and it was pointed out that "regular assessment" of which these sections speak was not confined to the first assessment but would include the assessment made by the Income Tax Officer pursuant to the direction of the appellate authority. This decision of the Calcutta High Court was not approved in Lala Laxmipat Singhania Vs. Commissioner of Income Tax and Others, The Division Bench of the Allahabad High Court did not agree with the Calcutta High Court view by pointing out that though the meaning of the expression "regular assessment" in Sections 209 and 210 of the Act may lead to anomaly if the meaning is confined to the first regular assessment, that is no reason for giving a wider meaning to the expression in so far as Section 214 of the Act is concerned. The Division Bench, therefore, expressed their dissent with the Calcutta view and followed what was stated by Chagla C. J. in Sarangpur Cotton Manufacturing Co. Ltd. Vs. Commissioner of Income Tax, Bombay North, and what was decided in Sir Shadilal Sugar and General Mills Ltd. Vs. Union of India (UOI) and Another, It was stated that the context may otherwise require in finding out the meaning of the expression "regular assessment" as finding place in Sections 209 and 210, but there is no such compulsion in finding out the meaning of this expression as used in Section 214. i The matter came to be examined again by the Calcutta High Court in General Fibre Dealers Ltd. Vs. Income Tax Officer and Others, . This is a decision by the learned judge who had decided Chloride India Ltd. Vs. Commissioner of Income Tax and Others, and on attention being drawn to the disagreement of the Allahabad High Court to the views expressed in Chloride India Ltd. Vs. Commissioner of Income Tax and Others, [1977]106ITR38(Cal) the learned judge observed that the same meaning has to be given to a word or expression appearing in the same Chapter of an enactment and no good reason was found to confine the meaning of the expression "regular assessment" to the first assessment.

6. It was, however, held in National Agricultural Co-operative Marketing Federation of India Ltd. Vs. Union of India and others, that the expression "regular assessment" in Section 214 should be construed as referring only to the first or initial regular assessment and not to subsequent modification thereof. It was pointed out in Trustees of H. E. H. Nizam''s Religious Endowment Trust v. ITO [1980] 131 ITR 239 that the words "regular assessment" refer to the assessment made by the Income Tax Officer u/s 143 or Section 144 on the first

occasion and do not include the consequential order passed by him as a result of an order under appeal. It was pointed out that Section 214 is a general section dealing with interest on advance tax refundable consequent on regular assessment, whereas Sections 240 to 244 specifically deal with refund of Income Tax, consequent on the passing of any appellate order. As per the view adopted in this decision, when refund of Income Tax, including advance tax paid by the assessee, is to be effected consequent on the appellate order passed by an appellate authority, the refund has to be effected u/s 240 ; Section 214 has no application in such a case. The same view was reiterated by the Andhra Pradesh High Court in Warner Hindustan Limited Vs. Commissioner of Income Tax, The Punjab and Haryana High Court in Commissioner of Income Tax Vs. Ambala Electric Supply Co. Ltd., followed the views adopted by the Allahabad and Delhi High Courts.

7. We may lastly refer to a Full Bench decision of the Bombay High Court in Commissioner of Income Tax, Bombay City - IV Vs. Carona Sahu Co. Ltd., in which it was held that the expression "regular assessment" means only the first order of regular assessment and not the last operative order of regular assessment at any given point of time as a result of appellate or revisional proceedings. In this connection, reference was made to Section 215 of the Act and it was stated that it is a counterpart of Section 214 and its interpretation is of cardinal importance in the interpretation of Section 214. It was pointed out that Section 215(3) creates an obligation to refund the excess interest paid if the amount computed under Sub-section (1) is reduced consequent upon an order in appeal and/or revision. There is no such obligation, express or implied, under Sub-section (1) or anywhere else. Subsection (3) was, therefore, regarded as not clarificatory nor was it inserted as a measure of abundant caution. The court observed that where the Legislature intended to provide for a contingency arising out of an order of appeal on refund, specific provision was made. It was, therefore, held that as it was deemed necessary by Sub-section (3) to provide for the contingency that might arise if the amount computed under Sub-section (1) was reduced consequent upon an order in appeal or revision, the same clearly indicated that the words "regular assessment" in Section 215 means only the first order of regular assessment and not the last operative order of regular assessment at any given point of time passed in an appellate or revisional proceeding.

8. We have also to apply our mind to Sub-section (1A) of Section 214 of the Act. As for this sub-section, it has been stated in the aforesaid judgment that the same has to be read along with Section 141A and the proviso to Sub-section (1). According to the Full Bench, the proviso to Sub-section (1) was intended by the Legislature to create an obligation to pay interest at the time of making the refund of advance tax on a provisional assessment u/s 141A. The Bench pointed out that a reading of the proviso thus does not render otiose any word or words and enables every piece of the section to fall into place. In so far as Sub-section (1A) is concerned, it was pointed out that the same was introduced

consequential upon the insertion into the Act of Section 141A relating to provisional assessment and refund following it. So read, it was held that the expression "on completion of regular assessment" in Sub-section (1A) meant the completion of the first order of regular assessment subsequent to a provisional assessment which meaning has to be given to the expression regular assessment in all the sub-sections of Section 214.

9. In so far as Section 214 is concerned, it was pointed out that the same had no bearing on the interest on refunds provided by Sub-section (1) as those refunds are under Chapter XIX, and not under Chapter XVII with which Sub-section (2) deals. It was, however, stated that Chapter XVII as it stood at the relevant time contained no provision for refund, but the proviso to Sub-section (3) of Section 210 as it stood prior to 1963 made provision for refund of advance tax. The Bench was of the view that Sub-section (2) must be read in the context of the proviso to Section 210(3) as it stood at the relevant time. Where a refund has been made of advance tax in the contingencies provided for by the proviso to Section 210(3) as it then stood, and it had been found on regular assessment that the amount of advance tax originally paid was in excess of the tax assessed by the amount refunded or more, interest was payable upon the amount refunded and by virtue of Section 214(2), it was payable only up to the date of the refund.

10. The above would show that the Full Bench had considered all aspects of the matter and thereafter came to the conclusion that the expression "regular assessment" in Section 214(1) meant the first order of regular assessment passed by the Income Tax Officer and not the last operative order of regular assessment at any point of time passed as a result of appellate or revisional proceedings. We are in respectful agreement with the view taken by the Full Bench ; we do not propose to lengthen this judgment by traversing the entire ground covered by the Full Bench.

11. Shri Goswami has, however, contended that rectification proceedings form part of assessment proceedings as was pointed out in S. Sankappa and Others Vs. The Income Tax Officer, Central Circle II, Bangalore, Though this is so, it cannot be held that rectification is a part of regular assessment--it is rather an aberration. We are also not satisfied that any order passed u/s 154 (rectification of a mistake) can be said to be an "assessment made u/s 143 or 144" which is the definition of "regular assessmenf" as given in Section 2(40) of the Act.

12. Learned counsel then submits that the amendment to Section 214 in 1984 by the Taxation Laws (Amendment) Act, 1984, by which a new Sub-section (1A) was substituted would show that any action taken pursuant to an order, inter alia, u/s 154 would be covered by the expression "regular assessment" as used in Sub-section (1). As to this it may be pointed out that the aforesaid Sub-section (1A) is more or less analogous to Sub-section (3) of Section 215 which had not been noted by the aforesaid Full Bench of the Bombay High Court and what was stated in this regard about Section 215(3) would apply to what is

contained in Section 214(1A) as substituted with effect from April 1, 1985. This only shows that an obligation is created to refund the excess amount paid if the amount computed under Sub-section (1) is reduced consequent upon an order of rectification and/or passed in appeal or revision. As there was no such obligation, express or implied, u/s (1) of Section 214, such a provision has to be made. The same has, however, no effect on the interpretation of the words "regular assessment" finding place in Section 214(1) of the Act.

13. The last submission of learned counsel for the assessee in this regard is that Section 143, as amended in 1971, visualises the passing of two assess ment orders--one under Sub-section (1) and the other under Sub-section (3) of Section 143. As to this view, we would like to observe that the expression "regular assessment" used in Section 214 should take within its fold not only the assessment order passed u/s 143(1) but the one passed under Sub-section (3) as well. We do not, however, think that the same reasoning should apply to an order of rectification passed u/s 154.

14. In view of what has been stated above, we are of the opinion that the expression "regular assessment" in Section 214(1) of the Act has to be confined to the first order of assessment passed by the Income Tax Officer u/s 143(1) of the Act as modified by the order, if any, passed u/s 143(3). In this view of the matter, we are not satisfied that any case for interference with the stand taken by the Revenue has been made out. We would, therefore, dismiss the petition.

H. K. Sema, J.

15. I agree.

