
(2011) 01 DEL CK 0458
In the Delhi High Court
Case No : Writ Petition (C) 7780 of 2009

Mohit Singh

APPELLANT

Vs

Asst. Commr. of Income Tax and Another

RESPONDENT

Date of Decision : 18-01-2011

Acts Referred:

Income Tax Act, 1961 — Section 132, 132B(4), 143(3), 153A, 214

Citation : (2011) 241 CTR 244

Hon'ble Judges : Dipak Misra, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Ankur Saigal and Gaurav Singh, for the Appellant; N.P. Sahni, for the Respondent

Judgement

1. The proceeding u/s 132 of the Income Tax Act, 1961 (for short "the Act") was carried out at the residential premises of the Petitioner, and panchnama was prepared on 12.9.2003. As stated, search and seizure operation, u/s 132 of the Act, was finally concluded. Eventually, as the factual matrix would exposit, the block assessment was completed on 23.3.2006 for the assessment years 1998-99 to 2003-04 u/s 153A and assessment for the year 2004-05 u/s 143(3) of the Act. Ultimately, it was held by the assessing officer that there was no tax liability.

2. As pleaded, the Assessee entered into communication with the assessing officer for return of Rs. 17,00,000/- (Rupees Seventeen Lakhs only) vide letter dated 11.12.2006 and finally, the amount was refunded on 15.4.2008. Thereafter, the Assessee-Petitioner represented for grant of interest and the revenue granted interest @6% amounting to Rs. 1,91,704/- (Rupees One Lakh Ninety One Thousand Seven Hundred Four only) on 16.5.2008 covering the period from 7.5.2004 to 23.3.2006. This was as per Section 132B(4) of the Act, which reads as under:

(132-B. Application of seized or requisitioned assets.-

(4)(a) The Central Government shall pay simple interest at the rate of (one-half per cent for every month or part of a month) on the amount by which the aggregate amount of money seized u/s 132 or requisitioned u/s 132-A, as reduced by the amount of money, if any, released under the first proviso to Clause (i) of Sub-section (1), and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in Clause (i) of Sub-section (1), exceeds the aggregate of the amount required to meet the liabilities referred to in Clause (i) of Sub-section (1) of this section.

(b) Such interest shall run from the date immediately following the expiry of the period of one hundred and twenty days from the date on which the last of the authorisations for search u/s 132 or requisition u/s 132-A was executed to the date of completion of the assessment (under Section 153-A or) under Chapter XIV-B.

Explanation.-In this section,-

(i) "block period" shall have the meaning assigned to it in Clause (a) of Section 158-B;

(ii) "execution of an authorisation for search or requisition" shall have the same meaning as assigned to it in Explanation 2 to Section 158-BE.)

3. Thereafter, as set forth, the Petitioner claimed interest for the delayed payment of the amount of Rs. 17 Lakhs with effect from 23.3.2006 till 15.4.2008. As the same was not addressed to, the present writ petition has been filed for grant of interest for the said period on the capital sum as well as the interest on interest.

4. We have heard Mr. Ankur Saigal, learned Counsel for the Assessee-Petitioner and Mr. Sahni, learned Counsel for the revenue.

5. Learned Counsel for the Petitioner has commended us to the decisions in Suresh B. Jain Vs. P.K.P. Nair and others, , Commissioner of Income Tax Vs. Narendra Doshi, , D.J. Works Vs. Deputy Commissioner of Income Tax, , Commissioner of Income Tax Vs. Hynoup Food and Oil Industries Ltd., , Sandvik Asia Ltd. Vs. Commissioner of Income Tax-I, Pune and Others, , Commissioner of Income Tax, Uttar Pradesh and Others Vs. Jawahar Lal Rastogi, , Bhagwan Prasad Agrawal Vs. Commissioner of Income Tax and Another, , K. Choyi Vs. Syed Abdulla Bafakky Thangal and Others, , National Horticulture Board Vs. Union of India and Others, .

6. In Sandvik Asia Ltd. (supra) the Apex Court dealing with the refund and interest has opined thus:

The facts and the law referred to in paragraph (supra) would clearly go to show that the Appellant was undisputably entitled to interest under Sections 214 and 244 of the Act as held by the various High Courts and also this Court. In the instant case, the Appellant's money had been unjustifiably withheld by the

Department for 17 years without any rhyme or reason. The interest was paid only at the instance and the intervention of this Court in Civil Appeal No. 1887 of 1992 dated 30.04.1997. Interest on delayed payment of refund was not paid to the Appellant on March 27, 1981, and April 30, 1986, due to the erroneous view that had been taken by the officials of the Respondents. Interest on refund was granted to the Appellant after a substantial lapse of time and hence it should be entitled to compensation for this period of delay. The High Court has failed to appreciate that while charging interest from the Assesseees, the Department first adjusts the amount paid towards interest so that the principle amount of tax payable remains outstanding and they are entitled to charge interest till the entire outstanding is paid. But when it comes to granting of interest on refund of taxes, the refunds are first adjusted towards the taxes and then the balance towards interest. Hence as per the stand that the Department takes they are liable to pay interest only upto the date of refund of tax while they take the benefit of Assesseees funds by delaying the payment of interest on refunds without incurring any further liability to pay interest. This stand taken by the Respondents is discriminatory in nature and thereby causing great prejudice to the lakhs and lakhs of Assesseees. Very large number of Assesseees are adversely affected inasmuch as the Income Tax Department can now simply refuse to pay to the Assesseees amounts of interest lawfully and admittedly due to them as has happened in the instant case. It is a case of the Appellant as set out above in the instant case for the assessment year 1978-79, it has been deprived of an amount of Rs. 40 lakhs for no fault of its own and exclusively because of the admittedly unlawful actions of the Income Tax Department for periods ranging up to 17 years without any compensation whatsoever from the Department. Such actions and consequences, in our opinion, seriously affect the administration of justice and the rule of law.

COMPENSATION:

The word "compensation" has been defined in P. Ramanatha Aiyar's Advanced Law Lexicon 3rd Edition 2005 page 918 as follows:

An act which a court orders to be done, or money which a court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price of a privilege purchased; something given or obtained as an equivalent; the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value; a recompense given for a thing received; recompense for the whole injury suffered; remuneration or satisfaction for injury or damage of every description; remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or wages

given to an employee or officer.

There cannot be any doubt that the award of interest on the refunded amount is as per the statute provisions of law as it then stood and on the peculiar facts and circumstances of each case. When a specific provision has been made under the statute, such provision has to govern the field. Therefore, the court has to take all relevant factors into consideration while awarding the rate of interest on the compensation.

This is the fit and proper case in which action should be initiated against all the officers concerned who were all in charge of this case at the appropriate and relevant point of time and because of whose inaction the Appellant was made to suffer both financially and mentally, even though the amount was liable to be refunded in the year 1986 and even prior thereto. A copy of this judgment will be forwarded to the Hon'ble Minister for Finance for his perusal and further appropriate action against the erring officials on whose lethargic and adamant attitude the Department has to suffer financially.

By allowing this appeal, the Income Tax Department would have to pay a huge sum of money by way of compensation at the rate specified in the Act, varying from 12 per cent. to 15 per cent. which would be on the high side. Though, we hold that the Department is solely responsible for the delayed payment, we feel that the interest of justice would be amply met if we order payment of simple interest at 9 per cent. per annum from the date it became payable till the date it is actually paid. Even though the Appellant is entitled to interest prior to March 31, 1986, learned Counsel for the Appellant fairly restricted his claim towards interest from March 31, 1986 to March 27, 1998 on which date a sum of Rs. 40,84,906/- was refunded.

The assessment years in question in the four appeals are the assessment years 1977-78, 1978-79, 1981-82 and 1982-83. Already the matter was pending for more than two decades. We, therefore, direct the Respondents herein to pay the interest on Rs. 40,84,906/- (rounded off to Rs. 40,84,900) simple interest at 9 per cent. per annum from March 31, 1986 to March 27, 1998 within one month from today failing which the Department shall pay the penal interest at 15 per cent. per annum for the above said period.

7. As noticed above Rs. 17 lacs were seized u/s 132 of the Act on 11th September, 2003. Block assessment was initiated for assessment years 1998-99 to 2003-04 u/s 153A of the Act. Block assessment order was passed on 23rd March, 2006 and there was no additional tax liability. Assessment order for the assessment year 2004-05 was passed u/s 143(3) of the Act but without creating any further liability. Thus, in accordance with Section 132B(4) the amount of Rs. 17 lacs along with interest became refundable. This amount should have been refunded immediately i.e. shortly after the date of determination, 23rd March, 2006. A request was made by the Petitioner on 11th December, 2006 to refund the amount with interest. After about two years a sum of Rs. 17 lacs was paid on

15th April, 2008, thereafter a sum of Rs. 1,91,704/- was paid on 16th May, 2008, covering the period from 7th May, 2004 to 23rd March, 2006. No interest has been paid for the period 23rd March, 2006 till the 15th April, 2008. It is evincible that on 23rd March, 2006, it was determined that there was no tax liability of the Assessee-Petitioner and Rs. 17 lacs was to be refunded. It was the duty of the Respondent to refund the amount. There is no explanation or reason for this delay. Accordingly we feel that the Petitioner is entitled to interest with effect from 24th March, 2006 till the payment of Rs. 17 lacs was made i.e., 15th April, 2008.

8. In our considered opinion, the cause of justice would be best subserved if the Revenue pays interest @ 7.5% from 24th March, 2006 till 15th April, 2008 i.e. the date of the refund. The writ petition is allowed to the extent indicated above without any order as to costs.