

(1979) 07 KL CK 0019

In the High Court Of Kerala

Case No : O.P. No's. 3120 of 1976-D, 3165, 3167 and 3168 of 1976-I, 3171 of 1976-J, 3224 of 1976-A and 3244 of 1976-C

N. Devaki Amma and Others

APPELLANT

Vs

Income Tax Officer, A-Ward

RESPONDENT

Date of Decision : 27-07-1979

Acts Referred:

Income Tax Act, 1961 — Section 214, 214(1), 214(1A), 214(2), 215

Citation : (1980) 14 CTR 154 : (1980) 1 ILR (Ker) 65 : (1980) 122 ITR 272

Hon'ble Judges : K. Bhaskaran, J; George Vadakkal, J

Bench : Division Bench

Advocate : K.P. Radhakrishna Menon, for the Appellant; P.K. Ravindranatha Menon, for the Respondent

Judgement

Bhaskaran, J.—In these writ petitions the facts are simple and are not in dispute ; what assumes importance is the question of law, as raised by the parties, whether the petitioners-assesseees are entitled u/s 214 of the Income Tax Act, 1961 (Act XLIII of 1961), hereinafter referred to as "the Act", to interest on the advance tax refunded to them as a result of the decision of the AAC reducing the total income determined by the ITO. The contention of the petitioners is that the Central Government in terms of s. 214 of the Act is bound to pay interest on the advance tax eventually refunded to them ; the stand of the revenue, however, is that the petitioners are entitled to claim interest under the section only on advance tax ordered to be refunded to them by the ITO on regular assessment made at the first instance u/s 143 of the Act (Section 144 not being applicable to the facts of the present case), unaffected by the refund, if any, that might be subsequently ordered as a result of the recomputation of the tax liability in pursuance of the direction given by a higher authority. For the sake of convenience, we would hereinafter refer to "regular assessment" made by the ITO at the first instance u/s 143 of "the Act as the "original regular assessment" and the subsequent order passed by the ITO for giving effect to the directions of the higher authority as the "revised regular assessment ".

2. To appreciate the background in which the writ petitions happened to be filed, we would narrate briefly the facts as stated in O.P. No. 3120 of 1976. On the AAC allowing deduction of a sum of Rs. 62,374 claimed by the petitioner, the total income in his hands found liable to be assessed for the assessment year 1970-71 was reduced to Rs. 11,551 resulting in the refund of Rs. 29,492 paid by way of advance tax in compliance with the provisions of the Act in that regard; the ITO, however, did not allow interest on the amount refunded. The petitioner took up the question of interest on advance tax refunded in revision u/s 264 of the Act before the Commissioners, Ex. P-1 being the copy of the revision petition. The Commissioner by his order dated March 6, 1976, a copy of which is Ex. P-2, rejected Ex. P-1 revision petition. It is on being aggrieved by the orders of the ITO and the Commissioner on the question of interest on advance tax refunded, that this writ petition has been filed. Two reliefs are sought: (1) the issue of a writ of certiorari quashing Ex. P-2 order; and (2) the issue of a writ of mandamus directing the respondents to pay the petitioner interest on the amount of advance tax refunded in accordance with the provisions contained in Section 214 of the Act. The prayer for the issue of a writ of mandamus, it may be noticed, is couched in such language as to suggest that the question of granting that relief would arise only if Ex. P-2 is quashed on the ground that it is violative of Section 214 of the Act.

3. Sri K. P. Radhakrishna Menon, the counsel for the petitioners, submitted that the refund eventually ordered in all these cases is also on "regular assessment" within the meaning of that term as defined in Section 2(40) of the Act inasmuch as the recomputation of the income and tax made by the ITO for giving effect to the reliefs granted by the AAC, which resulted in such refund, is done under no other authority than what he derived from Section 143 of the Act (Section 144 not being applicable to the present cases). His argument is that for the purpose of allowing interest on the amount of advance tax paid in excess, it should not make any difference, whether such excess is found in the "original regular assessment" itself or in the "revised regular assessment", the position being that where a "revised regular assessment", happens to be passed that is the only valid and effective regular assessment, the "original regular assessment" standing superseded. He also submitted that if a narrow interpretation is given to the expression "regular assessment" so as to confine it to "original regular assessment", it would create anomalous situations, particularly in the application, of Sections 209 and 210 of the Act wherein also this expression appears. While we notice the force of the contention that a "revised regular assessment" in effect and substance is as much a regular assessment made u/s 143 or 144 of the Act, as the case may be, we do not find ourselves persuaded to accept the reasoning of Sri Radhakrishna Menon that, because "revised regular assessment" also is to be deemed to be "regular assessment" made u/s 143 or 144 of the Act, as the case may be, the expression "regular assessment" appearing in Section 214 of the Act should be so interpreted as to refer only to "revised regular assessment" where the "original regular assessment" was set

aside or modified as a result of the decision of a superior authority.

4. u/s 214 of the Act interest is payable "on the amount by which the aggregate sum of any instalments of advance tax paid.....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 the regular assessment". The section contemplates the payment of interest if the advance tax paid exceeds the amount of tax determined on regular assessment. The questions, therefore, are what the amount of tax determined on regular assessment is, and by what amount the advance tax paid exceeds it. The answers to these questions, would take us to a further question as to the particular regular assessment under which the refund is ordered--whether it is under the "original regular assessment" or under the "revised regular assessment". Sri P. K. Ravindranatha Menon, the standing counsel for the revenue, submitted that the expression "regular assessment", wherever it occurs in the Act, no doubt, carries the same meaning as defined u/s 2(40) of the Act "unless the context otherwise requires". According to him, even when it is conceded that the "revised regular assessment" also should be deemed to be passed u/s 143 or 144 of the Act, as the case may be, in conformity with the requirements of Section 2(40) of the Act, it is certainly open to the court to consider whether, in the particular context in which it occurs, the expression connotes "original regular assessment" or "revised regular assessment". When Section 214(1) of the Act speaks of "regular assessment", without anything more, in our opinion, it is difficult to construe that the legislature had in mind not only the plain meaning of "original regular assessment" as understood in the normal or popular sense, but also a restricted meaning in a qualified sense that it could also be "revised regular assessment" where, on a recomputation in pursuance of the direction of a superior authority, reduction of tax has been ordered. Sri Ravindranatha Menon has a case that the safeguards provided in Section 212 of the Act are adequate" to remove the difficulty, if any, that might be experienced in the working of Sections 209 and 210 on account of the anomalous situation apprehended by Sri Radhakrishna Menon ; however, our view being that the expression "regular assessment" occurring in the Act has to be read and understood in the particular context in which it is used, we only propose to notice this submission made by Sri Ravindranatha Menon without considering the merits of the point in depth.

5. In support of his contention that the expression "regular assessment" appearing in Section 214(1) of the Act has reference only to the "revised regular assessment" where the "original regular assessment" happens to be modified or set aside, and a recomputation of the income and tax is made in the "revised regular assessment", giving effect to the relief to the assessee allowed by the higher authority, Sri Radhakrishna Menon places strong reliance on the following observation of Sabyasachi Mukharji J. in *Chloride India Ltd. Vs. Commissioner of Income Tax and Others*, :

"Regular assessment is certainly different from the first assessment or

provisional assessment. But regular assessment is not confined to first assessment. When an assessment is modified pursuant to the order of the appellate authority or direction, the subsequent order will be regular assessment and must supersede and replace the earlier assessment order. Having regard to the scheme of the Act and the context in which the expression has been used, in my opinion, regular assessment u/s 214 would include in the particular facts and circumstances of the case, an assessment made by the order of the Income Tax Officer pursuant to the direction of the Appellate Assistant Commissioner."

6. With due respect, we are unable to subscribe to the view expressed above. In our opinion, the expression "regular assessment" by itself would not indicate whether it is the "original regular assessment" or the "revised regular assessment" that is meant; and it may have to be construed in the particular context in which it is used. This position, we believe, could be best illustrated and understood with reference to Section 214 itself, on a comparison of the different contexts in which the expression "regular assessment" has been used in Sub-section (1) on the one hand, and in Sub-section (1A) on the other. Sub-section (1A) of Section 214 reads as follows:

"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."

7. In the scheme of the Act, the contexts demand the expression "regular assessment" occurring in Sub-section (1) to be construed differently from that expression occurring in Sub-section (1A); it appears to us that it connotes "original regular assessment" in the former sub-section and "revised regular assessment" in the latter sub-section. This is so because it is fairly clear that the reference to "interest paid under Sub-section (1)" made in Sub-section (1A), quoted above, is to a past event, what was paid on (original) regular assessment, and the expression "on completion of the regular assessment" occurring in Sub-section (1A) connotes a regular assessment subsequently made, namely, "revised regular assessment" Though Sri Ravindranatha Menon contended for the position that the expression "on regular assessment" used in Sub-section (1) and the expression "on completion of the regular assessment" used in Sub-section (1A) have the same meaning, namely, "original regular assessment", on a careful consideration of the provisions in the two sub-sections, we are inclined to take the view that the contexts require the expressions to be understood differently from one another as already indicated by us. We also like to add that we are not impressed with the argument of Sri Ravindranatha Menon that "interest paid" referred to in Sub-section (1A) must be so construed as to mean interest paid on the amount of advance tax ordered to be refunded u/s 141A, to which Section reference is made in the proviso to Sub-section (1) of Section 214 of the Act, for, as far as we could see, that Section { Section 141A) in terms does not provide for the payment of interest on advance tax refunded

on provisional assessment. We find no scope for reading into Section 141A a provision whereby either a power is vested in or a duty is cast on the ITO to pay interest on the amount of advance tax refunded on provisional assessment, particularly so, in view of the express provision contained in that behalf in Section 214(1) of the Act. In fact, it appears that the very sub-section (sub-s. (1A)) makes it abundantly clear that the reference is not to any interest paid u/s 141A, but to interest paid under Sub-section (I) of that Section (Section 214), which in turn means on a regular assessment u/s 143 prior to the "completion of the regular assessment" mentioned in that sub-section [Sub-section (1A)]. It would be worthwhile here also to notice that the proviso to Sub-section (1) of Section 214 of the Act only lays down that in respect of any amount refunded on a provisional assessment u/s 141A, no interest would be payable, for any period after the date of such provisional assessment; and this again implies that interest is payable on such amount refunded according to the terms of Section 214(1) itself till the date of such provisional assessment.

8. Sri Radhakrishna Menon drew our attention to Circular No. 91 issued by the CBDT which reads as follows :

"Any refund of tax on the provisional assessment will be deemed to have been granted in respect of the regular assessment when such assessment is completed. Where, on completion of the regular assessment, it is found that the refund already granted on provisional assessment is in excess of the refund, if any, actually due, the excess amount, together with interest, if any paid thereon, is deemed to be tax payable by the taxpayer, and will be recoverable accordingly."

9. He argued that the above circular proceeds not only on the basis that refund of tax on the provisional assessment should be deemed to have been granted in respect of the regular assessment, but also that, where, on completion of regular assessment, it is found that the refund already granted on provisional assessment is in excess of the refund actually due, such excess amount together with interest, if any, paid thereon, has to be deemed to be tax payable by the taxpayer. We have not been shown any provision in Section 141A pertaining to payment of interest on the amount ordered to be refunded on provisional assessment. Presumably the words "together with interest, if any, paid thereon" have been added in the circular by way of abundant caution so that, when, for practical purposes, the refund on the provisional assessment is taken as one granted on regular assessment, by stretching the fiction interest thereon also is paid in any case, such amount by way of interest paid on refund made in excess of the refund which was actually due, could or may also be recovered. This circular, in our view, cannot be treated as an authority for the proposition that interest is payable on the amount of refund ordered u/s 141A at that stage or that the reference in Sub-section (1A) of Section 214 to interest paid is to the interest paid under that Section (Section 141A). The provision in the proviso to Sub-section (1) of Section 214 also cannot lend any support to the argument that interest paid referred to in Sub-section (1A) of Section 214 is interest paid u/

s 141A, as the proviso, as has already been found, only says that in respect of any amount refunded on provisional assessment made u/s 141A no interest shall be payable for any period after the date of such provisional assessment, implying that under Sub-section (1) of Section 214 interest on such amount refunded could be and should be paid on regular assessment till that date.

10. There is yet another important point to be noticed from Sub-section (1A) of Section 214 of the Act. While that sub-section provides that where on completion of regular assessment (which expression, we are inclined to hold, means a regular assessment made subsequent to the one under which interest on advance tax paid in excess was paid) the amount on which interest was paid under Sub-section (1) has been reduced, interest shall be reduced accordingly, and the excess, if any, paid shall be deemed to be tax payable by the assessee, there is no corresponding provision to pay interest to the assessee on the amount where the position is the reverse. The absence of a specific provision in that behalf cannot be considered to be accidental or due to oversight. Section 215 of the Act, which contains a provision converse to that in Section 214, provides for payment by the assessee of interest on the amount by which the advance tax paid by him on the basis of his own estimate u/s 212 falls short of 75% of the tax determined on regular assessment. The assessee's liability under the charging provisions contained in Sub-section (1) of that section is subject to the provisions contained in Sub-section (3) of the section which reads as follows :

"Where as a result of an order u/s 154 or Section 155 or Section 250 or Section 254 or Section 260 or Section 262 or Section 264, the amount on which interest was payable under this section has been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded."

11. Mark the difference--while the liability of the assessee to pay interest under Sub-section (1) of Section 215 of the Act is subject to subsequent corrections, amendments or results of appeal, revision or reference, if any, the liability of the Central Government to pay interest u/s 214(1) is not extended by any other provision; on the other hand, the provisions of the proviso to Sub-section (1) and the provisions of Sub-sections (1A) and (2) of Section 214 are seen incorporated to safeguard the interest of the Central Govt. by reducing its liability in the circumstances mentioned therein. Are we to believe that these sections have been enacted without the Legislature being conscious of the significance and the scope of the provisions made in each of them ?

12. The scheme of the Act provides sufficient indication that it was never the intention of the Legislature to cast on the Central Govt. a liability u/s 214(1) of the Act to pay interest to the assessee on the advance tax refunded on "revised regular assessment". Once, on "regular assessment", the tax payable by the assessee is determined and notice of demand pursuant thereto is issued, there is nothing which prevents, the ITO from appropriating or adjusting the advance tax paid by the assessee towards liability to tax which is in the nature of a debt due to the Govt. from the assessee. In fact, Section 219 of the Act lays down that

any sum paid or recovered as advance tax has to be treated as tax and credit therefore has to be given to the assessee in the regular assessment. Thus, on assessment, and after appropriation and disposal of the amount as aforesaid, the advance tax ceases to have its identity as such, and from the date of such regular assessment interest ceases to run on the advance tax. In a sense, after the stage of regular assessment, the amount paid by way of advance tax ceases to remain in the state of suspense, inasmuch as the amount goes in satisfaction of the tax determined, and the balance, if any, is refunded to the assessee. All that the Legislature appears to have contemplated while providing for payment of interest u/s 214(1) of the Act is to compensate in some measure the assessee with respect to the amount which he had to pay by virtue of the provisions contained in Sections 207 - 213 of the Act before the regular assessment was made and to the extent it exceeds the tax liability as determined on regular assessment. It is reasonable to construe that the Legislature presumed that the ITO ordinarily passes a valid order u/s 143 or Section 144 of the Act, and it is on that basis the expression "on regular assessment" is used in Section 214(1) of the Act. If the Legislature had any intention to extend the application of the Sub-section to the refund ordered eventually as a result of the directions given by the appellate or revisional authority, that would have certainly found a place in the section itself. In the absence of such a specific provision, if regard be had to the scheme of the Act, it seems to us that the Legislature meant the Central Govt. to pay interest under the section only on the amount of advance tax paid in excess of the tax determined on regular assessment made at the first instance unaffected by the reduction in tax, if any, subsequently allowed on recomputation in pursuance of the direction given by the superior authority. It may also be noticed that the expression used in Sub-section (1) of Section 214 "is "tax determined on regular assessment", not "tax in respect of or under regular assessment". There could be a case in which the assessee did not pay any advance tax; however, he might be constrained on demand to pay the tax determined on regular assessment, which ultimately was set aside in appeal or revision. During the period material for the present cases, under the law, as it then stood, the amount by way of tax paid on demand in pursuance of such regular assessment, when ordered to be refunded as a result of the decision of the appellate authority, could not have carried interest even though, from the date of payment on demand till the refund, the Govt. had the use of the money. (We notice that this position has now been changed with the insertion of Section 244(1A) into the statute by the Taxation Laws (Amendment) Act, 1975, with effect from 1st October, 1975). Could the position have been any the different where the appropriation towards tax liability was made by adjustment from or out of advance paid by the assessee as in the present cases, before the coming into force of Section 244(1A) of the Act ? Are we to imagine that when refund is ordered on revised regular assessment, in cases like these, where the satisfaction of the tax under the original regular assessment was entered by adjustment of the advance tax paid, such refund is not of tax paid in excess, but of advance tax paid in excess ? Credit having been given to advance tax in the

original regular assessment, it does not survive or revive thereafter in that form to attract the provisions of Section 214(1) on revised regular assessment. This position also gives an indication that interest on advance tax paid in excess of tax determined on regular assessment ceases to run from the date of such (original) regular assessment and it could only be on the amount ordered to be refunded under that (original) regular assessment. Though the liability to Income Tax is fixed by the charging section, under the basic provisions of the Income Tax laws ordinarily the occasion for making payment would have arisen only upon the making of the assessment order and the consequential issue of the notice of demand. However, the introduction of Section 18A in the Indian I.T. Act, 1922, by Act 11 of 1944, marked a departure, requiring the assessee to pay the tax in advance on the basis of the principle "pay as you earn", without waiting for the determination of the actual liability on regular assessment. Section 18A(5) of the 1922 Act (now replaced by Section 214 of the Act) has been amended from time to time, and they give us an insight into the mind of the legislature on the principle adopted in the matter of payment of interest on advance tax paid in excess. The legislative history pertaining to the advance tax also strengthens our conclusion that the intention of the legislature, as the law stood during the material time, was to make the Central Govt. liable to pay assessee's interest on the amount of advance tax ordered to be refunded on original regular assessment, and that that liability did not in any way change as a result of the reliefs granted to them by the AAC reflected in the revised regular assessment.

13. Sri Ravindranatha Menon placed reliance on the decision of the Division Bench of the Bombay High Court in *Sarangpur Cotton Manufacturing Co. Ltd. Vs. Commissioner of Income Tax, Bombay North*, followed by the Division Benches of the Allahabad High Court in *Shadilal Sugar and General Mills Ltd. v. Union of India* [1932] 85 ITR 363 and *Lala Laxmipat Singhania Vs. Commissioner of Income Tax and Others*. Out of the three decisions mentioned above the two earlier decisions *Sarangpur Cotton Manufacturing Co. Ltd. Vs. Commissioner of Income Tax, Bombay North*, and *Sir Shadilal Sugar and General Mills Ltd. Vs. Union of India (UOI)* and *Another*, --are seen to have been referred to by Sabyasachi Mukharji J. in *Chloride India Ltd. Vs. Commissioner of Income Tax and Others*. In those two decisions the view taken is that the date of assessment (on regular assessment), stated in Section 18A(5) of the Indian I.T. Act, 1922 (replaced by Section 214 of the Act), is the date of assessment made by the ITO u/s 23 of the (1922) Act at the first instance. Sabyasachi Mukharji J. sought to distinguish the decisions in those cases, observing that in those cases the courts were primarily concerned with the question of the "date of assessment", not with the question as to what was the "tax determined on regular assessment" and that the provisions of the 1922 Act, with which the Division Benches of the Bombay and Allahabad High Courts were concerned, did not contain the definition of "regular assessment" as provided in Section 2(40) of the 1961 Act. The fact, however, remains that the provision so far as it relates to

the date of (regular) assessment is concerned, what is contained in Section 18A(5) of the 1922 Act is in para materia with the provisions contained in Section 214 of the Act. No doubt, there are other material differences in the two provisions; however, on the basic question as to the date of regular assessment with which we are concerned, there cannot be any difference. In our view, the observations made by Chagla C.J. in *Sarangpur Cotton Manufacturing Co. Ltd. Vs. Commissioner of Income Tax, Bombay North*, and Pathak J. in *Sir Shadilal Sugar and General Mills Ltd. Vs. Union of India (UOI) and Another*, , though made with reference to Section 18A(5) of the 1922 Act, would apply with equal force to cases falling u/s 214(1) of the Act. The Division Bench decision of the Allahabad High Court in *Lala Laxmipat Singhania Vs. Commissioner of Income Tax and Others*, , sharing the views of Chagla C.J. and Pathak J., referred to above, is rendered in a case where Section 214 of the Act itself came up for interpretation, and we are in respectful agreement with the line of reasoning adopted therein.

14. The general rule, we believe, is that the right to claim interest should be traceable either to an agreement between the parties or to a statutory provision in that behalf; as for agreement between parties, in these cases there is none; as for statutory provision, barring Section 244(1A) of the Act, which has no application to the present cases, we have not been shown anything in the Act which entitles an assessee to claim interest on the amount paid, appropriated or recovered towards tax liability on original regular assessment when the refund thereof is ordered on revised regular assessment.

15. In the light of the discussion above, our conclusion is that the petitioners-assessee herein are not entitled to claim interest u/s 214(1) of the Act on the amount, which was not ordered to be refunded by the ITO on regular assessment, at the first instance, but ordered by him subsequently on a recomputation of the income and tax in pursuance of the direction given by the AAC. The result, therefore, is that the writ petitions are dismissed ; however, in the circumstances of the cases, we make no order as to costs.