(1998) 07 MAD CK 0036

In the Madras High Court

Case No : Writ Petition No. 8532 of 1989

Precot Mills Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 30-07-1998

Acts Referred:
Income Tax Act, 1961 — Section 143, 144, 214

Citation : (2000) 245 ITR 464

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Advocate : R. Meenakshisundaram, for the Appellant; S.V. Subramanian, for the Respondent

Judgement

Y. Venkatachalam, J.—Invoking article 226 of the Constitution of India, the petitioner herein has come forward with the present writ

petition seeking'' for a writ of certiorari to call for the records, in Revision Case No. 1411(31)/1986-87/CBE., dated February 3, 1989, on the file

of the respondent and to quash the same.

2. In support of the writ petition, the petitioner herein has filed an affidavit wherein they have narrated all the facts and circumstances that forced

them to file the present writ petition and requested this court to allow the writ petition as prayed for. Whereas on behalf of the respondent, though

no counter affidavit has been filed, they have argued the matter.

3. Heard learned counsel appearing for the respective parties. I have perused the contents of the affidavit and all other relevant material documents

that are available on record in the form of typed set of papers. I have also taken into consideration the various points raised by learned counsel

appearing for the parties during the course of their arguments.

4. In such circumstances, the only question that arises for consideration in this writ petition is as to whether there are any valid grounds to allow this

writ petition or not.

5. The brief facts of the case of the petitioner as seen from their affidavit is as follows : The petitioner-company was assessed to Income Tax for

the assessment year 1981-82 by the Income Tax Officer, Company Circle 1, Coimbatore. The assessment had been made on March 1, 1984, u/s

143(3) read with Section 144B of the Income Tax Act. The assessment was on a sum of Rs. 52,95,520. The tax payable thereon was determined

at Rs. 23,72,673. During the relevant previous year, the petitioner had paid advance tax under the provisions of the Act in a sum of Rs.

13,00,000. After giving credit to the advance tax paid and to the tax deducted at source, a sum of Rs. 17,57,548 was determined to be payable

by the petitioner. There was an appeal to the Commissioner of Income Tax (Appeals) which was disposed of by order dated January 10, 1985.

The petitioner had agitated several disallowances and additions. The Commissioner of Income Tax (Appeals), gave relief to the petitioner

aggregating Rs. 43,76,880. The order of the Commissioner of Income Tax (Appeals) was given effect to by the Inspecting Assistant

Commissioner of Income Tax (Assessment), Range II, Coimbatore, by revised assessment order No. 47921-CO-9333, dated March 4, 1989.

As a consequence of giving effect to the order of the Commissioner of Income Tax (Appeals) a refund in the sum of Rs. 8,30,281 was made to the

petitioner. Subsequent to this, the Inspecting Assistant Commissioner of Income Tax revised the order twice on January 30, 1988, and February

20, 1988, giving effect to a rectification u/s 154 and a revision of the assessment by the Commissioner of Income Tax u/s 263 of the Income Tax

Act. The petitioner has paid the taxes as demanded as a result of these revisions. Subsequently, the petitioner filed an appeal against the order of

the Commissioner of Income Tax u/s 263 of the Act. The Inspecting Assistant Commissioner of Income Tax also filed an appeal against the order

of the Commissioner of Income Tax (Appeals). Both these appeals were disposed of by the Income Tax Appellate Tribunal, Madras Bench ""D

on March 21,1988. The appeal of the petitioner has been allowed by the Tribunal and that of the Department had been dismissed except on one point which was conceded by the petitioner in view of a retrospective amendment to the Act. The Income Tax authorities are yet to give effect to

these orders of the Appellate Tribunal. As a result of the orders of the Appellate Tribunal, the total tax assessed will be Rs. 10,31,750 against

which the petitioner has paid an advance tax of Rs. 13,00,000. The petitioner filed two applications before the Inspecting Assistant Commissioner

of Income Tax (Assessment) bringing to his notice, on October 4, 1985, and March 17, 1986, the fact that certain refunds had become due as a

consequence of the reduction of assessment in appeals by the appellate authorities and that the petitioner was eligible for interest u/s 214 of the

Act. The Inspecting: Assistant Commissioner of Income Tax (Assessment) rejected the application of the petitioner for grant of interest u/s 214 by

order dated March 19, 1986. Aggrieved by the rejection of the applications made by the petitioner for grant of interest u/s 214 of the Act, the

petitioner filed a revision application u/s 264 of the Act to the Commissioner of Income Tax, Coimbatore. The said application was rejected.

Hence, this writ petition.

6. Having seen the entire records it is clear that the only request made in the revision petition filed before the Commissioner of Income Tax, Coim-

batore is for grant of the interest u/s 214. Even according to the said Commissioner of Income Tax after giving credit to the tax deducted at source

and advance tax payments the revision resulted in a refund of Rs. 8,30,281. The assessee requested for grant of interest u/s 214 on this refund

amount up to the date of revision and that was rejected by the then Inspecting Assistant Commissioner of Income Tax (Assessment). Aggrieved by

the said rejection, the assessee/petitioner herein has filed a revision before the respondent herein and in which he has passed the order impugned in

this writ petition.

7. At this stage, it is relevant to extract Section 214 of the Income Tax Act, 1961, which is dealing with the subject ""interest payable by

Government"" which runs as follows :

214. (1) The Central Government shall pay simple interest at fifteen 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 assessed tax, from the 1st day of April next following the said financial year to the date of the 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 the regular

assessmen : . . .

(1A) Where as a result of an order u/s 147 or Section 154 or Section 155 or Section 250 or Section 254 or Section 260 or Section 262 or

Section 263 or Section 264, or an order of the Settlement Commission under Sub-section (4) of Section 245D, the amount on which interest was

payable under Sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and in a

case where the interest is reduced, the Assessing Officer shall serve on the assessee, a notice of demand in the prescribed form specifying the

amount of the excess interest payable and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice u/s 156

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.

8. From the above it is clear that interest is liable to be paid in respect of the excess amount paid in relation to the tax ultimately determined as

payable by the petitioner. In this case, it is significant to note that the original assessment was made on March 1, 1984, u/s 143(3) read with

Section 144B and the tax payable thereon was determined at Rs. 23,72,673 and during the previous year the petitioner had paid advance tax

under the provisions of the Act in a sum of Rs. 13,00,000. Now the claim made by the petitioner is only on the refund amount. Even as per the

impugned order it has been stated by the respondent that the assessee requested for grant of interest u/s 214 on the refund amount of Rs. 8,30,281

up to the date of revision. Such request was rejected by both the authorities. In this regard, viz., payment of interest by the Government it has been

held by the Supreme Court in Modi Industries Limited, Modinagar and Others Vs. Commissioner of Income Tax, Delhi and Another, that the interest payable u/s 214 on any excess amount standing to the credit of the assessee is limited to the date of the order of assessment and not to the

date of the refund. There is no right to get interest on refund except as provided by the statute. The interest on the excess amount of advance tax

u/s 214 is not paid from the date of payment of the tax but from the 1st day of April next following the financial year in which it is payable. Nor is it

paid till the date of refund. It is paid only up to the date of regular assessment. Further it has been clarified by the Supreme Court in the above

decision in Modi Industries Limited, Modinagar and Others Vs. Commissioner of Income Tax, Delhi and Another, that in the context of Sections

140A, 141 and 141A ""regular assessment"" could only mean the original assessment made u/s 143 or 144. Further, in the above decision, the apex

court of the land also observed as follows (headnote) :

Sections 214 and 215 with effect from April 1, 1985, have brought about important changes in the scheme of payment of interest by the Central

Government or the assessee, as the case may be. The period, therefore, for which the interest has to be paid remains the same, i.e., the first day of

the relevant assessment year to the date of the regular assessment (first assessment). But, the quantum of interest payable will depend upon the

amount of refund payable after the quantum of tax has been payable is finally determined in appeal, revision or any other proceeding.

9. Further it has been specifically stated by the Supreme Court as follows (headnote) :

With effect from April 1, 1985, interest payable u/s 214 will increase or decrease in accordance with the variation in the quantum of the excess

payment of tax brought about by orders passed subsequent to the regular assessment as mentioned in Sub-section (1A).

10. In the present case it is an admitted fact that after several rounds of attempts, viz., appeals, revisions, etc., the refund resulted was Rs.

8,30,281 (as mentioned in the impugned order). The assessee requested for grant of interest u/s 214 of this refund amount. But both the

authorities, viz., the Inspecting Assistant Commissioner of Income Tax (Assessment) and the Commissioner of Income Tax, have rejected the said

request. In view of the above Supreme Court decision and the clarifications made therein such rejection of the authorities concerned is illegal, arbitrary and against the provisions of the Act and also against the decisions of the courts and that, therefore, the impugned order is liable to be

quashed. Further, as could be seen from the impugned order, it transpires that both the authorities, viz., the Inspecting Assistant Commissioner and

the Commissioner of Income Tax have observed something about this court, viz., ""Madras High Court''s decision, has not been accepted by the

Department"". The authorities concerned or the Department have no jurisdiction or locus standi to make such observations. They are bound by the

decisions given by this court. If they are aggrieved they can prefer remedy before the next forum. Instead they have no business to make all these

observations. The Department or its authorities are bound by the decisions of this court. There is no question of the decisions of these courts (High

Courts) being accepted by the Department or its authorities.

11. Therefore, for all the aforesaid reasons and in the facts and circumstances of this case and also in view of my above discussions with regard to

the various aspects of this case and also in the light of the decision of the Supreme Court above mentioned. I am of the clear view that the

impugned order herein is liable to be quashed as the same is illegal, contrary to the provisions of the Act and also against the orders of the court.

12. In the result, the writ petition is allowed. No costs. Consequently, the impugned order is hereby quashed and the matter is remanded to the

respondent for a fresh disposal and he is also directed to keep in mind the observations made by this court in this order and also the guidelines

issued by the Supreme Court in this regard. The respondent herein shall dispose of the matter within 120 days from the date of receipt of a copy of

this order.