
(1998) 07 MAD CK 0015

In the Madras High Court

Case No : W. P. No. 8532 of 1989, 30 July 1998

PRECOT MILLS LTD.

APPELLANT

Vs

COMMISSIONER OF INCOME TAX

RESPONDENT

Date of Decision : 30-07-1998

Acts Referred:

Citation : (1999) 106 TAXMAN 492

Hon'ble Judges : Y. Venkatachalam, J;V. Kanagaraj, J

Bench : Division Bench

Judgement

1. Invoking article 226 of the Constitution of India, the petitioners 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 3-2-1989 on the file of the respondent and to quash the same.

2. In support of the writ petition, the petitioners herein have 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, through no counter-affidavit has been filed, they have argued the matter.

3. Heard the learned counsels appearing for the respective parties. 1 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. 1 have also taken into consideration the various points raised by the 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 petitioners as seen from their affidavit is as follows:-The petitioner-company was assessed to Income Tax for

the assessment year 1981-82 by the ITO, Company Circle 1, Coimbatore. The assessment had been made on 1-3-1984 u/s 143(3), read with

section 144B, of the Income Tax Act, 1961. 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 lakhs. 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 (Appeals) which was disposed of by order dated 10-1-1985. The petitioner. had several disallowances

and additions. The Commissioner (Appeals) gave relief to the petitioner aggregating to Rs, 43,76,880. The order of the Commissioner (Appeals)

was given effect to by the IAC (Assessment), Range 11, Coimbatore by revised assessment Order No. 47,92 1-CO-9333 dated 4-3-1989. As a

consequence of giving effect to the order of the Commissioner (Appeals) a refund in the sum of Rs. 9,30,281 was made to the petitioner.

Subsequent to this, tile JAC revised the order twice on 30-1-1988 and 26-2-1988 giving effect to a rectification u/s 154of the Act and a revision

of the assessment by the Commissioner u/s 263 of the 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 u/s 263 of the Act. The IAC also filed an appeal against the

order of the Commissioner (Appeals). Both these appeals were disposed of by the Tribunal, Madras Branch U, on 21-3-1988. The appeal of the

petitioner has been allowed by the Tribunal and that of the department has 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 Tribunal. As a

result of the orders of the Tribunal, the total tax assessed will be Rs. 10,31,750 against which the petitioner has paid an advance tax of Rs. 13

lakhs. The petitioner filed two applications before the IAC of bringing to his notice on 4-10-1985 and 17-3-1986 the fact that certain refunds had

become due as a consequence of the deduction of assessment in appeals by the appellate authorities and that the petitioner was eligible for interest

u/s 214. The IAC (Assessment) rejected the application of the petitioner for grant of interest u/s 214 by order dated 19-3-1986. Aggrieved with

the rejection of the applications made by the petitioner for grant of interest u/s 214, the petitioner filed revision application u/s 264 of the Act to the

Commissioner, 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, Coimbatore, is for

grant of interest u/s 214. Even according to the said Commissioner, after giving credit to the TDS and advance tax payments the revision resulted

in a refund of Rs. 8,30,28 1. The assessee requested for grant of interest u/s 219 on this refund amount upto the date of revision and that was

rejected by the IAC (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 which is dealing with the subject "Interest payable by Government which runs as follows:

Interest payable by Government (1) The Central Government shall pay simple interest at fifteen percent 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 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 : (IA) whereas 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 the Act, shall apply accordingly. (2) on any portion of such amount which is refunded under this chapter,

interest shall be payable only upto the date on which the refund was made."

From the above it is clear that interest is liable to be paid in respect of 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 1-3-1984 u/s 143(3) read with section 144 B 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, lakhs. Now the claim made by the petitioner is only on the refunded 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 upto 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 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 it is paid till the date of refund. It is paid

only upto the date of regular assessment. Further, it has been clarified by the Supreme Court in the *Modi Industries Ltd.*'s case (*supra*) that in the

context of section 140A, 141 and 141 "a 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:

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, 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." (p.76 1)

Further, it has been specifically stated by the Supreme Court as follows:

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 (I A)." (p.762)

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 IAC

(Assessment) and the Commissioner 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 IAC and the Commissioner 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.

8. Therefore, for all the aforesaid reasons and in the facts and circumstances of this case and also in view of the 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.

9. 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.