

(2013) 11 GAU CK 0031
In the Gauhati High Court
Case No : Writ Petition No. 10342 of 2003

Raj and Company	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 12-11-2013

Acts Referred:

Citation : (2014) 264 CTR 209

Hon'ble Judges : K. Sreedhar Rao, J;B.D. Agarwal, J

Bench : Division Bench

Advocate : R. Goenka, A. Goenka and U.K. Borthakur, for the Appellant;

Judgement

K. Sreedhar Rao, J.—The petitioner had transactions with the ITC (Indian Tobacco Company). In course of transactions the petitioner was liable to pay interest component to the ITC. In view of the provisions contained in s. 194A of the IT Act, the petitioner has effected TDS from the interest portion payable, and remitted to the Revenue on various dates. It is submitted that the ITC when filed its returns did not seek deduction of the TDS effected by the petitioner nor claim refund of the same. TDS amounts remitted by the petitioner to the Department were admitted to be an excess payment of tax liability of the ITC. The ITC is demanding TDS certificates from the petitioner. Petitioner is in turn requesting the Department to refund the TDS amounts remitted to the account of the ITC, since the ITC had already paid the tax liability in making the TDS amounts remitted by the petitioner.

2. The Department has refunded TDS amounts to the petitioner; however, the petitioner has claimed interest on TDS amounts from the date of remittance till refund. It is the contention of the Department that the petitioner is not an assessee and that the liability to pay interest on the refund arises only in respect of an assessee, and in these transactions the petitioner is not an assessee and hence is not entitled to interest. The counsel for the Revenue has relied on a decision rendered by the Madhya Pradesh High Court in Universal Cables Ltd. Vs. Commissioner of Income Tax,

On perusal of the facts and the ratio we find that the said decision is not applicable to the facts of the case, In the cited case, the principal officer of the company has deducted TDS without there being any obligation under the law, under an erroneous impression. Later on, refund was directed to be made vide Circular No. 285, dt. 21st Oct., 1980 [(1981) 20 CTR (St) 15]. In the said context, the Madhya Pradesh High Court has held that the principal officer cannot be considered as a deemed-assessee in law and also that the refund not being in pursuance of the provisions of the IT Act, no interest need be payable. But, in the present case, the petitioner stands on a different footing. Here In this case, the petitioner had an obligation to deduct TDS; and was remitted to the Department with some amount of delay notwithstanding, petitioner was also refunded the TDS so remitted. The Department now cannot contend that it has no liability to pay interest. Such a stand amounts to making a claim of unjust enrichment on the part of the State. The petitioner is otherwise an assessee and also a deemed-assessee in respect of the transactions as far as his TDS is concerned. The Department is liable to pay interest on the refund of TDS to petitioner from the date of assessment of the returns of the ITC in respect of the TDS in question till the date of refund. Accordingly the writ petition is disposed of.