(1980) 01 MAD CK 0008

In the Madras High Court

Case No : Writ Petition No. 445 of 1977

Rayon Traders (P.) Ltd. APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 21-01-1980

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1918 — Section 23(3)
Income Tax Act, 1922 — Section 23, 23(3)
Income Tax Act, 1961 — Section 141A, 143, 144, 2(40), 207

Citation : (1980) 3 TAXMAN 443

Hon'ble Judges : V. Balasubrahmanyan, J;Sethuraman, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sethuraman, J.—This is a writ petition for the issue of a writ of certiorari and to quash the order of the Commissioner dated 15-7-1976,

under the following circumstances : For the assessment year 1973-74, the assessment on the assessee on a total income of Rs 3,68,090 made on

31-1-1975, resulting in the determination of the gross tax of Rs 2,51,247. After adjustment of the tax deducted at source of Rs 5,709 and the

advance tax of Rs 2 32,735, there was a demand of Rs. 12,803. The assessee filed an appeal before the AAC disputing the disallowance of (a)

the claim u/s 35B for Rs. 54,54,546; (b) gratuity of Rs. 71,720 and (c) the claim for deduction u/s 80G of Rs. 20,00. When the matter came to be

heard by the AAC, the assessee restricted its claim as regards the disallowance u/s 35B to Rs. 13,367 as against Rs. 54,546. The AAC allowed

the three amounts as ultimately pressed before him. The result was that the ITO came to pass an order on 21-1-1976 resulting in a refund of Rs

52,121 The assessee was not granted any amount as and by was of interest u/s 214 of the income tax Act, 1961. The assessee filed a revision

petition u/s 264 of the Act before the Commissioner claiming that it was entitled to interest u/s 214 of the Act on the sum of Rs 52,121 which was

refunded on the ground that the order of the ITO giving effect to the appellate order was itself an order u/s 143 of the Act within the meaning of

section 2(40) of the Act The Commissioner by his order dated 15-07-1976, held that interest u/s 214 was payable to an assessee only up to the

date of ""regular assessment"". He relied on the definition of ""regular assessment"" in section 2(40) of the Act as assessment made u/s 143 or section

144 and also on the decision of the Allahabad High Court in the case of Sir Shadilal Sugar and General Mills Ltd. Vs. Union of India (UOI) and

Another, . As in the regular assessment, there was no refund, he rejected the claim for interest. The matter has thus been brought before this Court

under article 226 of the Constitution of India.

2. The only question that arises for consideration in whether the assessee is eligible for any interest on the amount refunded by the order dated 21-

1-1976.

3. There is no dispute about the fact that the assessee had paid a sum of Rs. 2,32,735 as advance tax, that the original assessment after adjusting

the advance tax and also the tax deducted as source involved a demand of only Rs. 12,803 and that the assessee had paid this amount in due

course. As a result of the AAC''s order, the assessee became entitled to the refund of Rs. 52,121 and the point for consideration is whether with

reference to this amount, the assessee was entitled to interest u/s 214 of the Act.

4. Section 214 is one of the provisions occurring in Chapter XVII of the Act dealing with ""Collection and recovery of tax"". It runs as follows:

214.(1) The Central Government shall pay simple interest at twelve 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 tax

determined on regular assessment, 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 assessment:

Provided that in respect of any amount refunded on a provisional assessment u/s 141A, no interest shall be paid for any period after the date of

such provisional assessment.

(1A) 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.

(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"".

5. The first part of section 214 provides for the Central Government paying simple interest on the amount by which the total of the advance tax

paid in any financial year exceeded the amount of the tax determined on regular assessment. The expression ""regular assessment"" has been defined

in section 2(40) as meaning ""the assessment made u/s 143 or section 144"". The starting point of interest is the first day of April next following the

financial year in which the advance tax was paid. The terminal is fixed as the date of the regular assessment.

6. Section 214 is the counterpart of section 18A(5) of the Indian income tax Act, 1922. The liability to pay tax arises ordinarily upon the making of

an assessment order and the issue of a notice of demand as laid down by the Privy Council in Doorga Prasad v. Secretary of State (1933) 1 ITR

285. Section 18A was introduced with a view to collecting the amount of tax payable by the assessee in advance, that is, even before the

assessment order was made and a demand was issued for the payment of tax. Section 18A(5), as enacted originally, obliged the Central

Government to pay to an assessee interest on the amount of advance tax paid by him and this was in recognition of the fact that the assessee had

been deprived of money belonging to him, which he was entitled to retain and utilise so long as an assessment order was not made and a demand

for tax was not issued. u/s 18A(5), the period of interest was to run from the first day of the assessment year following the financial year in which

the advance tax was paid and ended with the ""date of the assessment made u/s 23"", which was called ""regular assessment"" in the provision itself.

Thus, while section 18A(5) of the 1922 Act itself contained the definition of the expression ""regular assessment"", this definition has now been

transposed into section 2(40) of the 1961 Act. There is no other difference in the statutory provision.

7. The expression ""regular assessment"" came up for interpretation by this Court in M. Rm. M.M.N. Natarajan Chettiar Vs. Income Tax Officer,

III Additional Circle, Karaikudi, and Another, . In that case the assessee was assessed for the assessment years 1947-48 to 1952-53 u/s 23(3) of

the 1922 Act. Subsequently the ITO reopened the assessment u/s 34 of that Act and recomputed the assessee''s total income for the different

years at figures which were in excess of the original figures. Further tax demands as a result of the reassessments came to be made. The ITO

included a certain sums as interest payable by the assessee u/s 18A(6) of the 1922 Act. The assessee took exception to this charge of interest and

also applied to the I AC, Madurai Range, for reduction or waiver of the interest paid by the assessee. This application was rejected, and

thereupon the matter was brought before this Court under article 226 of the Constitution of India. Panchapakesa Iyer, J., who came to consider

the matter in the first instance, observed that he failed to see how a ""reassessment"" would not be a ""regular assessment"" and that surely it was not

an irregular assessment and that, therefore, the assessee was obliged to pay interest right up to the date of the assessment made u/s 34. The

assessee appealed and in the Judgment of the Division Bench, it was pointed out that the amount ascertained on the basis of the regular assessment

u/s 23 as originally made brought about a finality, subject only to the provisions contained in the second proviso to section 18A(6) which related to

the reduction of the amount on which interest was payable as a result of an appeal, revision or a reference. It was held that there was no provision

to meet the contingency where the amount of tax payable by the assessee was increased by proceedings taken u/s 34 of the Act. The result was

that the assessee was held as not being liable to pay any interest on the amount subsequently demanded u/s 34, even though the said amount was in excess of the advance tax paid by the assessee.

8. This decision is authority for the proposition that the expression ""regular assessment"" means only the assessment made u/s 23(3) of the 1922 Act

and not a reassessment. The same position will hold good even under the 1961 Act as the definition in section 2(40) is identical in context. We

have, in the case of Triplicane Urban Co operative Society v. CIT (1980) 3 Taxman 64, held that an order passed in pursuance of the appellate

order would itself be an order u/s 143 of the Act. However, the question as to whether it was a regular assessment falling u/s 214(1) and whether

the assessee would be entitled to interest on the amount being refunded as a result of the appellate order did not come up for consideration in that

case. It is clear from section 214(1) that the assessee would be entitled to interest from the 1st day of April next following the financial year in

which the advance tax was paid up to the date of the ""regular assessment"".

9. The problem that now arises for consideration in the present case is whether the assessee would be entitled to interest on the difference between

the amount paid and the actual tax payable as a result of the order giving effect to the appellate order. In the light of the decision of this Court, the

order passed in pursuance of the latter order giving effect to the appellate order would be an order u/s 143. The result will be that there are two

regular assessment orders, though the second order replaces the first. The source of the power to pass that order is section 143. When the earlier

order is only modified and not affected, that order would continue to be the regular assessment order. As pointed out by the Allahabad High Court

in Sir Shadilal Sugar & General Mills Ltd. v. Union of India (supra), the words ""regular assessment"" have been used in contradistinction to

provisional assessment and that order would furnish the terminal point for interest.

10. If sub-section (1) of section 214 alone were to be taken into account, it would not be necessary to discuss the matter. Further, as the assessee

would be entitled to interest only up to the date of the regular assessment. So long as that assessment is not set aside on appeal or revision, that

would be the regular assessment. Its modification in appeal would not destroy its existence. This is a case of only modification of the order.

However, sub section (2) of section 214 introduces a new aspect. Sub-section (2) was in the form of the proviso to section 18A(5) of the 1922

Act. Now, it has been enacted as a substantive provisions affecting the entire Chapter ""Collection and recovery of tax"" as it states that on any

portion of the amount refunded under this Chapter, i.e., Chapter XVII, interest shall be payable only up to the date on which the refund was made.

It is difficult to find the significance of the expression ""only"" occurring in this provision. It purports to import a limitation on paying interest only up to

the date of refund. The implication is that if the word ""only"" were not there, it would extend to a further period. When once the date of actual

refund is fixed as the terminal, it is not clear to what other date the period would have extended if the word were not there. The section would

make sense even if the word is not there and its addition as seen above does not improve matters. It has thus to be concluded that the word is only

a surplusage and need not be given any special significance.

11. As the first part of section 214 granted a right to interest to the assessee up to the date of the regular assessment, it may be asked as to why

sub-section (2) provides for payment of interest up to the date on which the refund was made. Sub-section (1) does not, however, provide for any

refund to. the assessee. It is only designed to grant a right to interest on the advance tax paid in excess. Section 219 provides for the adjustment of

advance tax paid against the tax demand and the refund in consequence of the credit would follow. In other words, while sub-section (1) gave a

right to the assessee to the interest at a particular rate from the 1st day of April next following the financial year in which the advance tax was paid,

it does not provide for any refund as such. With reference to the amount that is refunded under the Chapter, i.e., by virtue of the credit

contemplated by section 219, sub-section (2) of section 214 provides that interest has to be paid up to the date on which refund was made. This

sub section is virtually an appendage to section 219, as it has no relevance to section 214(1).

12. In the present case, the refund came to be made on 21-1-1976. It is on that date that the ITO gave effect to the AAC''s order. The asses see

would be eligible for interest under sub section (2) of section 214 up to the said date.

13. Learned counsel for the Commissioner relied on the decision of the Allahabad

High Court in Sir Shadilal Sugar & General Mills Ltd. v. Union

of India (supra). In that case the ITO completed the assessment for the assessment year 1961-62 on 30-03-1966, and that assessment was

modified by an order dated 15-07-1969 to give effect to the appellate order of the AAC. As a result of the modified order, the assessee was

entitled to refund of Rs. 2,92,902 and the question was whether the assessee was eligible for interest up to that date. The Allahabad High Court

considered that the term ""regular assessment'' used in section 18A(5) referred only to the assessment made u/s 23 and that in the said case the said

regular assessment was only made on 30-03-1966 and not on 15-07-1969. In that case no arguments appear to have been advanced on the basis

of the proviso to section 18A(5) and, therefore, the Court had no occasion to consider the issue in the context of the said proviso. This decision

has been followed by the same High Court in Lala Laxmipat Singhania Vs. Commissioner of Income Tax and Others, . It was pointed out in the

latter decision that there was no difference between the provision of the 1922 Act and the 1961 Act in this connection. As the matter had not to be

debated in the light of section 214(2), this decision also cannot be of any assistance to the Commissioner in the present case.

14. Learned counsel for the assessee drew our attention to the decision of the Calcutta High Court in Chloride India Ltd. Vs. Commissioner of

Income Tax and Others, . In this case, for the assessment year 1964-65, the ITO demanded tax from the assessee on the basis that the public

were not substantially interested in it. On appeal, the AAC held that the assessee-company was one in which the public were substantially

interested, with the result that the tax rate was lower and a certain amount became due to the assessee as refund on account of excess tax paid in

advance. After giving deduction for the tax payable under the order of the ITO giving effect to the order of the AAC, there was a surplus to be

refunded to the assessee and the question was whether the assessee was entitled to the interest on the said amount up to the date of the order

giving effect to the order of the AAC. The learned single judge of the Calcutta High Court held that the assessee would be entitled to interest on

the said amount. However, even in this case no attention appears to have been paid to section 214(2) and, therefore, the learned judge had not to pronounce in it.

15. Section 215(3) provides for the reduction of interest payable by an assessee consequent on the modification of assessment by rectification or

by the appellate and other order. The absence of a provision for payment of interest by the Government consequent on similar modification of

assessment was emphasised as showing the legislative intent not to grant interest in such cases. We do not consider that this contention has any

force in the context of our conclusion based on section 219 read with section 214(2).

16. The result is that the assessee would be entitled to interest u/s 214(2) up to the date on which the refund was made. Sub-section (1) of section

214 provides for interest being paid from the 1st day of April next following the financial year in which the advance tax was paid up to the date of

the regular assessment, while sub-section (2) provides for payment of interest on the amount refunded up to the date on which the refund was

made. The two provisions will have to be read together. Section 214(1) would apply to cases where the refund is simultaneous with the regular

assessment. Where the refund is delayed, the assessee would be entitled to refund up to the date of refund. If the contention for the revenue were

to be accepted, section 214(2) would have no utility. It would be reduced to a dead letter. Such a construction should be avoided. The

construction placed by us avoids this result. Thus, when ever an assessee paid advance tax in excess of the tax found to be due, he would be

entitled to interest u/s 214(2) read with section 219 up to the date of refund if the refund is made or has to be made after the regular assessment.

17. Learned counsel for the Commissioner drew our attention to two other provisions which occur in Chapter XIX. Section 240 provides that

where, as a result of any order passed in appeal or other proceedings under the Act, refund of any amount becomes due to the assessee, the ITO

should refund the amount to the assessee without the assessee having to make any claim in that behalf. Section 244 provides that where a refund is

due to the assessee in pursuance of an order referred to in section 240, and the ITO does not grant the refund within a period of three months from

the end of the month in which such order was passed the Central Government should pay simple interest to the assessee 12 percent per annum on the amount or refund due from the date immediately following the expiry of the period of three months aforesaid to the date on which the refund

was granted. These provisions do not deal with a situation where advance tax was paid in excess. They refer to cases where the assessee had paid

the tax, as a result of the demand, and the appellate order resulted in a refund due to the assessee. These provisions are supplementary in nature

and give the assessee a further right to interest whenever there has been a delay on the part of the ITO in giving the refund due to the assessee as a

result of the orders referred to in section 240 were passed. These two provisions do not in any way cut down the scope of section 214(2). The

result is that the assessee would be eligible for interest claimed up to 21-1-1976, on the sum of Rs. 52,121 from 1-04-1973. The writ petition is

accordingly, allowed and the assessee would be entitled to its costs. Counsel''s fee Rs. 500.

