
(1958) 08 BOM CK 0005

In the Bombay High Court

Case No : Miscellaneous Application No. 262 of 1957

Simplex Mills Ltd.

APPELLANT

Vs

P.S. Subramanyam, Income Tax Officer and Another

RESPONDENT

Date of Decision : 05-08-1958

Acts Referred:

Income Tax Act, 1922 — Section 15B, 15C, 18A(5), 34(1), 49A

Citation : (1958) 34 ITR 711

Hon'ble Judges : K.T. Desai, J

Bench : Single Bench

Advocate : N.A. Palkhivala, for the Appellant; G.N. Joshi, for the Respondent

Judgement

K.T. Desai, J.—The petitioners are a limited company registered under the Indian Companies Act, 1913. For the assessment year 1952-53 the petitioners made an advance payment of tax amounting to Rs. 10,75,017-9-0 pursuant to the provisions of section 18A(1) of the Indian Income Tax Act, 1922. On 30th August, 1952, the petitioners were regularly assessed u/s 23(3) of the Act for the said assessment year. The petitioners' total income for that year was determined to be Rs. 14,93,269, and a sum of Rs. 6,46,329-9-0 was determined as being the amount of tax payable by the petitioners for the said assessment year.

2. Under the provisions of section 18A(5) of the Act, as it then stood, it was provided as follows :

"The Central Government shall pay on any amount paid under this section simple interest at two per cent. per annum from the date of payment to the date of the provisional assessment made u/s 23B, or if no such assessment has been made, to the date of the assessment (hereinafter called the "regular assessment") made u/s 23 of the income, profits and gains of the previous year for an assessment for the year next following the year in which the amount was payable :

Provided that on any portion of such amount which is refunded under the foregoing provisions of this section interest shall be payable only up to the date on which the refund was made."

3. Pursuant to these provisions a sum of Rs. 14,720-14-0 was allowed to the petitioners as interest on the advance payment of tax made by them as aforesaid. The difference between the amount paid by way of advance payment of tax and the amount of tax at which the petitioners were actually assessed was refunded to the petitioners and the sum of Rs. 14,720-14-0 was paid by way of interest to the petitioners under the provisions of section 18A(5) of the Act.

4. On 24th May, 1953, the Income Tax Amendment Act of 1953 was passed. By section 13 of the amending Act the following proviso was added to section 18A(5) :

"Provided further that for any period beginning with the 1st day of April, 1952, interest shall be payable only on the amount by which the aggregate sum of any installments paid during any financial year in which they are payable under this section exceeds the amount of the tax determined on regular assessment calculated as hereunder :-

(i) in respect of such installments paid in any financial year before the said date, from the said date to the date of the regular assessment;

(ii) in respect of such installments paid after the said date, from the beginning of the financial year next following to the date of the regular assessment."

5. The said amendment was made effective as from 1st April, 1952. The result was that as from 1st April, 1952, the said amendment was liable to be deemed to be in existence for the purpose of payment of interest by the Central Government. As a result of the subsequent amendment made as aforesaid, only a sum of Rs. 9,404-5-0 was liable to be paid by the Central Government to the petitioners by way of interest in respect of the advance payment of tax made by them. Thus an excess payment of Rs. 5,316-9-0 was made by the Central Government to the petitioners.

6. In the month of March, 1957, the petitioners were served with a notice, dated 18th March, 1957, u/s 34 of the Income Tax Act by the first respondent, alleging that he had reason to believe that the petitioners' income assessable to Income Tax for the assessment year 1952-53 had been the subject of excessive relief and stating that he proposed to re-assess the said income. By the said notice the petitioners were called upon to submit their return of income. The petitioners submitted their return of income showing the same income as was shown by them in their original return. On 30th July, 1957, the first respondent passed an order of assessment on the petitioners for the assessment year 1952-53 under sections 22(3) and 34(1)(b) of the Income Tax Act assessing the petitioners' total income at the same figure at which it had been assessed in the original assessment order, viz., Rs. 14,93,269. In the said assessment order the first

respondent stated that in view of the amendment made in the Act the petitioners were entitled to interest in a smaller sum. In pursuance of the said assessment order the first respondent issued a notice of demand dated 3rd August, 1957, calling upon the petitioners to pay a sum of Rs. 5,316.56 nP. within 15 days from the receipt of the said notice.

7. On 27th August, 1957, the petitioners filed in petition, which is now before me, against the Income Tax Officer concerned and the Union of India for the issue of a writ in the nature of certiorari or other writ, direction or order under article 226 of the Constitution of Indian, calling for the records of the case and after going into the question of the legality thereof, quashing and setting aside the said assessment order dated 30th July, 1957, and the said notice of demand dated 3rd August, 1957. The petitioners have also prayed for the issue of a writ in the nature of mandamus and/or prohibition or other writs, directions or orders under article 226 of the Constitution of India restraining and prohibiting the respondents, their officers, servants and agents from demanding or recovering from the petitioners the said sum of Rs. 5,316.56 nP. or any part thereof or from taking any steps or proceedings in enforcement, furtherance, pursuance or implementation of the said assessment order or the said notice of demand.

8. The action complained of has been taken under the provisions of section 34(1) (b). The petitioners contend that the first respondent had no right to take action under the said section and that the provisions of the said section are totally inapplicable to the facts of the case. Section 34(1)(b) provides as under :

"34. (1) If -

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income Tax Officer has in consequence of information in his possession reason to believe that income, profits and gains chargeable to Income Tax have escaped assessment for any year or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under this Act, or that excessive loss or depreciation allowance has been computed,

he may..... at any time within four years of the end of that year, serve on the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22 and may proceed to assess or reassess such income, profits or gains or recompute the loss or depreciation allowance; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section."

9. The respondents contend that the section had become applicable as the Income Tax Officer had reason to believe that the income, profits or gains chargeable to Income Tax for the aforesaid assessment year 1952-53 had been made the subject of excessive relief under the Act. It is clear on the facts of the present case that a sum of Rs. 14,720-14-0 was allowed by way of interest

having regard to the provisions of law as they stood at the time when the order of assessment was made. Section 18A(5) as it then stood imposed an obligation upon the Central Government to pay the amount of such interest and the sum of ? Rs. 14,720-14-0 was in fact paid as interest in discharge of the obligation of the Central Government under the provisions of the Act. As a result of the amendment to which retrospective effect was given, the amount liable to be paid by the Central Government was reduced to Rs. 9,404-5-0. The question that I have to consider is whether, when the Central Government being under an obligation to pay interest as provided u/s 18A(5), as it originally stood, paid that interest, it was granting any relief under the Act and whether the income, profits or gains of the assessee for any assessment year had been made the subject of such relief. The obligation to pay interest is in respect of advance payment of tax made u/s 18A. Payment of such interest by the Central Government cannot be regarded as relief under the Act. The expression "relief" under the Act in respect of income, profits or gains is referable to various kinds of reliefs afforded to the assessee in respect of his income, profits or gains. Such sections are section 15B, 15C, 49A, 49B, 49C, 49D and section 60.

10. In this connection, it may be useful to refer to the provisions contained in section 29 of the Act. That section runs as follows :

"29. When any tax, penalty or interest is due in consequence of any order passed under or in pursuance of this Act, the Income Tax Officer shall serve upon the assessee or other persons liable to pay such tax, penalty or interest, a notice of demand in the prescribed form specifying the sum so payable."

11. It is clear from this section that the Act refers to three distinct and different items, viz., tax, penalty and interest. So far as the rules are concerned, rule 20 of the Indian Income Tax Rules, 1922, provides as under :

"20. The notice of demand u/s 29 shall be in the following form and shall be accompanied by the assessment form appended hereto : provided that the said assessment form need not accompany the notice in cases where a penalty has been levied subsequent to the assessment order and it is not practicable to include the amount of the penalty in the assessment form."

12. The prescribed assessment form appears at pages 222 to 226 of the Law and Practice of Income Tax by Kanga and Palkhivala, Vol. II, 4th Edition. The first part of the assessment form is headed : "Part I - Computation of Income." Part-II is headed : "Sums included in total income in respect of which Income Tax and/or super-tax is not payable." In the first column are shown various items in respect whereof relief is due. The heading is : "Amount upon which relief is due". The next column is headed : "For Income Tax relief" and the third column is headed "For Super-tax relief". There are various items, being items (a) to (k) appearing in that part under which relief would become due to the assessee. The expression "relief" as used in section 34 has reference to the reliefs granted in Part II of the Assessment Form. If any excessive relief has been granted in Part

II, the same could be made the subject of proceedings u/s 34(1) (b). Then follows Part III which is headed "Computation of Tax". Part III ends with the words "Balance payable or refundable" appearing at page 226. The balance shown there as payable or refundable is the balance without taking into account any interest due to the Government or any interest payable by the Government u/s 18A(5). After the words "Balance payable or refundable" a line is drawn and thereafter the heading shown is "Interest u/s 18A". Under that heading first the total interest payable by the assessee has to be shown. Thereafter appear the words "Deduct interest payable by Government u/s 18A(5)". Then we have the words "Net amount of interest payable by assessee/Government". At the end appear the words "Total sum payable/refundable". The assessment form itself shows that the amount of interest u/s 18A(5) is not treated as relief. The provisions relating to payment of interest by the Central Government. The interest payable by the Central Government to the assessee cannot be regarded as relief granted by the Government in respect of any income, profits or gains chargeable to Income Tax. The amount of interest, which it is the statutory obligation of the Central Government to pay, represents a cross-demand that could be made by the assessee against the Central Government as against the demand for tax or penalty payable by the assessee to the Government. It is not relief against any tax or penalty, but is in the nature of an independent cross-demand which is liable to be set off. In the present case the advance payment of tax for exceeded the amount of tax payable by the assessee for the assessment year 1952-53, and the Government was bound to refund the excess amount of the advance payment of tax made by the assessee and in addition thereto was also liable to pay interest u/s 18A(5).

13. It is urged by the learned counsel for the respondents that the payment of interest is an integral part of the whole process of assessment and that when any excessive amount of interest is allowed, it should be equated with the payment of less amount by way of tax. There is no warrant either in fact or in law for this submission. Where there are cross-demands, a demand may be made for payment of the balance after setting off one demand against the other. But that does not mean that what is set off is by way of relief. As I have already stated, tax, interest and penalty are three distinct and different items dealt with under the Act. That appears not merely from section 29, but also from section 49E of the Act. Section 49E runs as follows :

"49E. Power to set off amount of refunds against tax remaining payable. -- Where under any of the provisions of this Act, a refund is found to be due to any person, the Income Tax Officer, Appellate Assistant Commissioner or Commissioner, as the case may be, may in lieu of payment of the refund, set off the amount to be refunded, or any part of that amount against the tax, interest or penalty if any, remaining payable by the person to whom the refund is due."

14. It is then urged by the learned counsel for the respondents that relief within the meaning of section 34 means relief from any burden by way of tax which the

assessee has to bear. I do not see how such relief would cover the obligation of the Central Government to pay interest u/s 18A(5). The relief to be relief within the meaning of section 34 has to be a relief in respect of any income, profits or gains chargeable to Income Tax. Payment of interest by the Central Government is neither relief nor is it attributable to income, profits or gains chargeable to Income Tax. It is not possible to equate excessive payment of interest by the Central Government with excessive relief in respect of Income Tax. The Income Tax Officer when he first assessed the petitioners did what he was in law under an obligation to do as the law then stood, viz., to retain out of the advance payment of tax the amount of tax actually assessed and to direct refund of the balance and to direct payment of the amount of interest that was then payable. I cannot consider that what the officer then did was to direct payment of a smaller sum by way of interest than that which he actually directed and hold that the recovered a less sum by way of tax. The first respondent could not possible know what the legislation was to be in future; he could not know that it was to have retrospective effect and that interest was to be calculated not on the full amount of the advance payment made by the assessee but only on such part of it as exceeded the amount of actual assessment. The admitted facts are that a sum of Rs. 14,720-14-0 was allowed by way of interest, which as a result of the amendment was in excess of what ought to have been paid having regard to that amendment. Such excess payment, though it may be liable to be recovered u/s 35, cannot be recovered u/s 34. In my view, section 34 has no application to the facts of the present case.

15. In the petition the petitioners have contended that even if the income had been subject to excessive relief due to the law being subsequently altered, the assessment could not be reopened u/s 34(1)(d). It is further contended that the Amending Act is not made retrospective to the extent of permitting the first respondent to reopen or revise u/s 34 the petitioners' completed assessment. These two contentions, however, were not pressed at the hearing by the learned counsel for the petitioners.

16. In the result, the petitioners are entitled to succeed. The petitioners are entitled to a writ of certiorari quashing and setting aside the assessment order dated 30th July, 1957, and the notice of demand dated 3rd August, 1957, and to a writ of prohibition restraining and prohibiting the respondents, their officers, servants and agents from demanding or recovering from the petitioners the said sum of Rs. 5,316.56 nP. or any part thereof or from taking any steps or proceedings in the enforcement, or the said notice of demand and I order accordingly. Respondents to pay to the petitioners the costs of the petition.

17. Petition allowed.