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(2011) 04 PAT CK 0287

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 19262 and 19390 of 2010

State Bank of India — APPELLANT

Vs

CIT and Another — RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Citation : (2011) 04 PAT CK 0287

Judgement

Ms. Rekha Manharlal Doshit, C.J.—With the consent of the learned advocates these two writ petitions are heard and decided today.

2. These two writ petitions under article 226 of the Constitution are filed by the State Bank of India, Raj Bhavan Branch, Patna (hereinafter referred to as "the bank") against the orders dated August 25, 2010, made u/s 154 of the income tax Act, 1961 (hereinafter referred to as "the Act"), by the Commissioner of income tax (TDS), Patna (hereinafter referred to as "the Commissioner TDS") for the assessment year 2003-04.

3. The matter in dispute pertains to the amount of tax deducted by the petitioner-State Bank of India at source from the amount of interest paid to the depositors. The income tax Officer, TDS Ward -2(1), Patna, initiated proceedings against the bank for not deducting the appropriate amount of tax at source from the amount of interest payable to the depositors for the financial year 2003-04. Under order dated July 6, 2004, made by the income tax Officer, TDS Ward-2(1), Patna, u/s 201 of the Act, the bank was held to be in default in deducting the tax at source from the amount of interest accrued to the depositors to the extent of Rs. 2,39,098 and the bank was directed to pay a sum of Rs. 2,39,098. Feeling aggrieved the bank filed a revision application before the Commissioner of income tax, Patna, u/s 264 of the Act. The Commissioner of income tax, Patna, under his order dated October 25, 2005, accepted the defence of the bank partially in respect of certain depositors who had submitted Form 15H. He modified the order dated July 6, 2004, made u/s 201 of the Act and reduced the liability of the bank to Rs. 1,90,287. The Commissioner of income tax, Patna, did

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not consider the plea that the interest paid to the Government of Bihar and to its departments was not taxable and, therefore, no tax was required to be deducted at source.

4. Consequent to the aforesaid finding of shortfall in deduction of tax at source, the Additional Commissioner of income tax, Range-2, under his order dated March 31, 2005, made u/s 271C of the Act imposed penalty of Rs. 2, 37,985 upon the bank. The said order was partially modified by the Commissioner of income tax-1, Patna. Under his order dated March 23, 2006, made u/s 264 of the Act. He reduced the penalty u/s 271C of the Act to Rs. 1,28,916.

5. Feeling aggrieved, the bank filed applications for rectification of the above referred orders u/s 154 of the Act. The said applications were made to the Commissioner of income tax on February 27, 2007. The same were required to be decided within six months of the receipt of the application as envisaged by sub-section (8) of section 154 of the Act, but that was not done. It is the claim of the bank that the bank did give repeated reminders to the Commissioner of income tax, Patna, for decision on the applications for rectification made u/s 154 of the Act.

6. Both the above referred applications for rectification made u/s 154 of the Act have been dismissed by the Commissioner TDS on August 25, 2010, as time barred. Therefore, the present petitions.

7. According to the bank, many of its depositors are the Government of Bihar and its departments. The interest paid to such depositors is exempt from taxation under article 289 of the Constitution. Under order dated July 6, 2004, made by the income tax Officer, TDS Ward all such interest except one item of Rs. 11,140, the amount of interest paid to the Cabinet Vigilance Department, has erroneously been treated as taxable. The bank is wrongly held to be a defaulter in deducting the amount of tax at source.

8. Learned advocate Mr. D. V. Pathy appears for the bank. He has submitted that the particular branch of the bank holds huge amounts of Government money for which it paid interest. The particulars of the account holders and the interest paid to them were placed before the assessing officer as well as before the Commissioner. He has submitted that the assessing officer failed to appreciate that the interest paid to the State Government is exempt from taxation. The finding that the bank was a defaulter in deducting the tax at source is ex facie erroneous, made in contravention of article 265 of the Constitution. The same was, therefore, required to be rectified in application made u/s 154 of the Act. The concerned authority sat over the said applications and did not decide the same. On restructuring of the Department the papers ought to have been transferred to the Commissioner TDS. That having been not done, the bank was constrained to file applications on April 5, 2010, as it is noted in the impugned orders. He has submitted that it was the duty of the Commissioner TDS to decide the applications on the merits. Delay on the part of the authority cannot defeat

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the applications made by the assessee. In support thereof, he has relied upon Circular No. 73, dated 7-1-1972, (see [1972] 84 ITR (St.) 4) issued by the Central Board of Direct Taxes. The said Circular states that the application u/s 154(2) of the Act filed by an assessee within the statutory time limit, if "not disposed of by the authority concerned within the time specified under sub-section (7) of section 154, it may be disposed of by that authority even after the expiry of the statutory time limit, on the merits and in accordance with law." He has also relied upon the judgment of the Allahabad High Court in the matter of VITHALDAS Vs. Income Tax OFFICER, DISTRICT II(II), KANPUR.,

9. In the above matter, a similar issue came up before the Allahabad High Court. The court held (page 208) : "where the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of that duty would work serious general inconvenience or injustice to persons who had no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, such provisions should be construed as being directory only and not imperative".

10. The court also relied upon a passage from the Halsburys Laws of England, 3rd edition, volume XL as under :

If public officials or a public body fail to perform any public duty with which they have been charged, an order of mandamus will lie to compel them to carry it out, even though the time prescribed by statute for the performance of the duty may have passed.

11. Consequently, the court [held (page 208 of 71 ITR) :

it was the duty of respondent No. 1 to make the necessary correction in the initial assessment order. By omitting to carry out the necessary correction, respondent No. 1 cannot defeat the rights of the assessee. If respondent No. 1 failed to carry out his duty at the proper time, this court can give the appropriate direction to respondent No. 1 to do the needful now.

12. Sub-section (8) of section 154 reads as under :

Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made by the assessee on or after the 1st day of June, 2001, to an income tax authority referred to in sub-section (1), the authority shall pass an order, within a period of six months from the end of the month in which the application is received by it,--

(a) making the amendment; or

(b) refusing to allow the claim.

13. The above sub-section imposes a duty upon the income tax authority to make an order on an application for rectification within six months from the date of the receipt of the application. It thus enjoins a duty upon the income tax authority; at the same time it does not provide for consequences in case the

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income tax authority fails to perform his duty as envisaged by the above sub-section (8).

14. In our opinion, the above provision that enjoins the income tax authority to act within the specified time is directory. It cannot be construed to be a mandatory provision so as to defeat or frustrate the remedy available to an assessee on account, of failure of the income tax authority to perform his duty within the specified time.

15. It is not in dispute that the applications for rectification were filed within the period of limitation as envisaged by section 154 of the Act. It is also not in dispute that the officer concerned did not decide the said applications within six months as envisaged by sub-section (8) of section 154 of the Act. Pending those applications, in view of some restructuring within the Department, the jurisdiction to decide the applications u/s 154 of the Act was transferred to the Commissioner TDS. The Commissioner TDS has, since assuming the jurisdiction, rejected the applications by the impugned orders on the premise that the applications before him were made on April 5, 2010, long after the expiry of the period of limitation and that the earlier applications made in the year 2007 were not decided by the concerned authority within six months as envisaged by sub-section (8) of section 154 of the Act.

16. In the present case, as recorded hereinabove, the bank did approach the Commissioner of income tax-1, Patna, for rectification of the orders made u/s 264 of the Act within the time specified. Not only did the Commissioner of income tax-1 fail in discharging his duty to decide the said applications within six months; he did not care to transfer the papers to the Commissioner TDS on restructuring of the Department and transfer of jurisdiction to the Commissioner TDS; compelling the writ petitioner to make applications on April 5, 2010. The Commissioner TDS has manifestly erred in treating the said applications as applications made afresh and in rejecting the same as time barred. In our opinion, the Commissioner TDS ought to have decided the said applications on the merits as the same were filed within the specified time.

17. In the above circumstances, the petitions are allowed. The impugned orders dated August 25, 2010 (Annexure 7 to each petition) made by the Commissioner of income tax (TDS), Patna, are quashed and set aside. The Commissioner of income tax (TDS), Patna, is directed to decide the apply'' captions for rectification made by the petitioner-bank u/s 154 of the Act on the merits, after giving opportunity of hearing to the petitioner- bank.

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