
(2009) 06 MP CK 0012
In the Madhya Pradesh High Court

Universal Cables Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 25-06-2009

Acts Referred:

Income Tax Act, 1961 — Section 192, 194, 194A, 2, 200

Citation : (2010) 191 TAXMAN 370

Hon'ble Judges : K.S. Chauhan, J; Dipak Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dipak Misra, J.—The present appeal preferred u/s 260A of the Income Tax Act 2(7), 1961 (hereinafter referred to as "the Act") was admitted on the following substantial questions of law:

1. Whether the appeal before the first appellate authority was maintainable in law ?

2. Whether in the facts and circumstances of the case, the Tribunal was justified in holding that as refund has been issued under Circular No. 285, independently of the Income Tax Act, 1961, the appellant is not entitled for interest on the refunded sum?

2. The facts which are essential to be stated for the purpose of adjudication of this appeal are that the appellant, M/s Universal Cables Ltd., erroneously deducted the tax out of interest payments made to IDBI regard being had to the provisions contained in Section 194(3)(iii)(b) of the Act. The tax deducted at source (for short TDS") was Rs. 7,06,022 on payment of interest to IDBI Bombay. The IDBI objected to the deductions of Income Tax as no tax was required to be deducted in respect of payment made to the financial corporation established by or under a Central/State or Provincial Act and the IDBI is covered under the same and, therefore, no tax was required to be deducted on the payment of interest made to IDBI. In view of the same the appellant requested

the Income Tax Officer (TDS) to refund an amount of Rs. 7,06,022 which was erroneously deducted and credited to the account of Central Government. There upon the CIT, Jabalpur by order dated 2-2-1996 directed the Income Tax Officer (TDS) to refund an amount of Rs. 7,06,022 to the assessee.

3. After grant of refund the appellant requested the department to grant interest on the refund u/s 244A. The Income Tax Officer (TDS) declined to grant interest. Being aggrieved the appellant preferred an appeal before the Commissioner (Appeals) who directed the Income Tax Officer (TDS) to grant interest u/s 244A of the Act on the refunded sum from the date of payment to the Government treasury to the date of issue of refund voucher.

4. Commissioner (Appeals) by the order dated 4-3-1996 directed the Assistant Commissioner (TDS), Jabalpur to grant interest u/s 244A of the Act on the refunded sum.

5. Being aggrieved by the order of Commissioner (Appeals) the revenue preferred an appeal before the Income Tax Appellate Tribunal, Jabalpur (hereinafter referred to as "the Tribunal") forming the subject-matter of ITA No. 442/Jab/1997. The appellant also filed cross-objection in support of the order passed by the first appellate authority.

6. Before the Tribunal the revenue raised an additional ground that the refund which was directed to be given to the appellant by way of an administrative measure on equitable ground and hence, - cannot be treated as a refund as envisaged u/s 237 of the Act. It was contended that as the refund was not made under the provision of the Act the appeal could not have been entertained by the Commissioner (Appeals). It was put forth that the appellant was a tax deductor and not an assessee in terms of the provisions of Section 2(7) of the Act. The Tribunal upon hearing the parties expressed the view that the present appellant is not an assessee under the Act and but only a tax deductor. In addition to the same the Tribunal also addressed whether the appellant is entitled to any interest on the amount of Rs. 7,06,022. While addressing the said issue the Tribunal came to hold that the present appellant had deducted the interest payment payable to IDBI, Bombay which is covered u/s 194A(3)(iii)(b) and, therefore, no tax was deductible on interest payment. The Tribunal referred to Board's Circular No. 285, dated 21-10-1980 and the provisions contained in Sections 237 243 244A and 244 of Act and came to hold that the provisions contained in Sections 243 244 and 244A pertain to grant of interest on delayed refund. It has further expressed the view that the tax refunded by the department is not a refund as per Section 237 of the Act and, therefore, there is no occasion to claim interest u/s 244A of the Act. The Tribunal came to hold that the refund was made on the basis of a circular of the Board and, therefore, interest is not payable. Being of this view, the Tribunal allowed the appeal of the revenue.

7. We have heard Mr. A.P. Shrivastava, learned Counsel along with Mr. Sapan Usrate, advocate for the appellant and Mr. Rohit Arya, learned senior counsel

along with Mr. Sanjay Lal, advocate for the respondent revenue.

8. Though a question had been framed whether the appeal that was preferred by the appellant before the Commissioner (Appeals) was maintainable or not, we think it apt to restrict our order to the second question as the learned Counsel for the parties stated at the Bar that as the Tribunal has dealt with the issue on merits, they have no objection if this Court deals with the case on merits which is coming in the compartment of second question. Hence, we restrict our delineation to the second question.

9. As has been pointed out, the facts are not in dispute. The appellant had deducted the tax at source with regard to interest payment to IDBI. The amount has been refunded to it but no interest was paid. As is perceivable from the order passed by the Tribunal that the interest is not payable as it is not a refund under the Act and the appellant is not an assessee for the said purpose. It has also been held by the Tribunal that the appellant is a tax deductor and not an assessee and therefore, it cannot claim any interest on the grant of refund. Mr. A.P. Shrivastava, learned counsel appearing for the appellant has invited our attention to Section 2(7) of the Act which defines the term "assessee". Learned Counsel has also drawn our attention to Section 201(1) of the Act. He has commended us to the decisions rendered in *Kalyanmal Mills Ltd. Vs. Income Tax Officer and Others*, *Laxmiben Hemdas Patel Vs. S.B. Rohtagi*, *Income Tax Officer, Chimanlal S. Patel Vs. Commissioner of Income Tax and Another*, *Central Concrete and Allied Products Ltd. and Others Vs. Deputy Commissioner of Income Tax and Others*, *Mohd. Usman Vs. Union of India and Others*, *Radhey Shyam Gupta Vs. Commissioner of Income Tax and Others*, *The Income Tax Officer, New Delhi Vs. Delhi Development Authority*, *Commissioner of Income Tax Vs. Narendra Doshi*, *Sandvik Asia Ltd. Vs. Commissioner of Income Tax-I, Pune and Others*, *Director General of IT v. Diamondstar Exports Ltd.* (2007) 293 ITR 438 (SC), *CIT v. Cholanmandalam Investment & Finance Co. Ltd.* (2007) 294 ITR 438 (Mad), *CIT v. Sardar Balwant Singh Gujral* (1990) 86 CTR (MP) 64, *CIT v. Hope Textiles Ltd.* (2007) 295 ITR 571 (MP), *Jwala Prasad Sikaria, Satya Narayan Sikaria, Banwarilal Sikaria, Basudeo Sikaria and Gangadhar Sikaria Vs. Commissioner of Income Tax and Others*, .

10. Mr. Rohit Arya, learned senior counsel for the revenue has submitted that once a person is not an assessee, even if he gets refund he cannot claim interest on refunded sum as that is payable to the assessee on refund being made. He has laid immense emphasis on Section 244A which clearly postulates that refund of any amount becomes due to the assessee under this Act.

11. To appreciate the aforesaid submissions raised at the Bar, it is appropriate to refer to Section 2(7) of the Act. It reads as under:

2(7) "assessee" means a person in respect of whom any proceeding under this Act has been taken for the assessment of his income or assessment of fringe benefits or of the income of any other person in respect of which he is

assessable, or of the loss sustained by him or by such other person or of the amount of refund due to him or to such other person--

(b) every person who is deemed to be an assessee under any provision of this Act;

(c) every person who is deemed to be an assessee in default under any provision of this Act.

12. In this context, we may refer with profit to Section 201 which reads as follows:

201. Consequences of failure to deduct or pay--(1) Where any person, including the principal officer of a company--

(a) who is required to deduct any sum in accordance with the provisions of this Act; or

(b) referred to in Sub-section (1A) of Section 192, being an employer does not deduct, or does not pay or after so deducting fails to pay, the whole or any part of the tax as required by or under this Act, then such person, shall without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

Provided that no penalty shall be charged under, Section 221 from such person, unless the assessing officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.

(1A) Without prejudice to the provisions of Sub-section (1) if any such person, principal officer or company as is referred to in that Sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest at one per cent for every month or part of month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid and such interest shall be paid before furnishing the quarterly statement for each quarter in accordance with the provisions of Sub-section (3) of Section 200.

(2) Where the tax has not been paid as aforesaid after it is deducted the amount of the tax together with amount of simple interest thereon referred to in Sub-section (1A) shall be a charge upon all the assets of the person, or the company as the case may be, referred to in Sub-section (1).

13. We have referred to the aforesaid provisions to appreciate the concept of assessee under the Act.

14. Section 237 which deals with refunds is as follows:

237. Refunds--If any person satisfies the assessing officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess.

15. Section 244A used the phraseology where the refund of any amount due to the assessee under the Act. The decisions which have been commended to us by Mr. Shrivastava deal with the interest which is payable by the "assessee" or "deemed assessee" under Sections 201(1) and 201(1A). He has laid immense emphasis on the decision rendered in Delhi Development Authority (supra). In the said case the Delhi Development Authority was considered liable to be deducted TDS and it failed to do so, therefore, the order under Sections 201(1) and 201(1A) was passed raising a demand amount and tax was paid. The order was passed in the appellate proceedings under the Act. The High Court applied Sub-section (1) of Section 244 of the Act for determining the interest for the period in question. Their Lordships dealing with the question whether the Delhi Development Authority was assessee or not the Apex Court expressed the view as under:

From the above provision it is clear that term "assessee" includes actual assessee as well as deemed assessee under the provision of the Act. It is therefore, not correct to contend that unless there are actual assessment proceedings pertaining to any person, he cannot be considered to be an assessee. In the present case Delhi Development Authority was considered to be liable to deduct the tax at source. It failed to do so. Hence, the order under Sections 201(1) and 201(1A) was passed raising the demand and the amount of tax was paid. The order of refund was passed in appellate proceedings under the Act attracting Section 240 of the Act. Certain decisions were cited at the Bar to show the meaning of the words "assessee" and "assessment" and different stages of the assessment proceedings, need not be dealt with in view of the clear definition of the word "assessee" under the Act as quoted above.

16. In *Sandvik Asia Ltd. v. CIT* (supra) the Apex Court opined that the assessee was entitled to interest on the amounts of interest paid u/s 214 and/or Section 244, and that the department was bound to grant interest which had accrued for those periods.

17. We have referred to aforesaid two decisions as one has been delivered by the Apex Court by their Lordships by referring to the concept of deemed assessee. The other decision has been rendered regard being had to concept of compensation. The other decisions which have been cited relate to the orders passed granting compensation for delayed payment of amount. It is worth nothing in the decision rendered in Delhi Development Authority (supra) their Lordships have given emphasis on "deemed assessee". Submissions of Mr. A.P. Shrivastava, learned Counsel is that the petitioner is a "deemed assessee" u/s 201 of the Act. Section 201 clearly provides that if the principal officer of the company is liable to deduct Income Tax at source and fails to do he shall be deemed to be an assessee in default of tax. Section 2(7) of the Act includes an actual assessee as well as deemed assessee. In the present case the appellant was not liable to deduct the tax under the Act. It did so on its own on an erroneous impression and the IDBI clarified the said position. In view of the

aforesaid the appellant does not become a deemed assessee and further the refund is not under the Act. Once he is not an assessee as per Section 244 of the Act does not gets attracted. Refund that has been directed has been made in pursuance of the circular. The provisions under the Act relate to an assessee. As there was no statutory liability on the part of the appellant to deduct tax, we are of the considered opinion, he is not an assessee. As it is an appeal we cannot deal with the concept of compensation for the delayed payment for simple pure reason the appeal has to be decided within the parameters of statutory law.

18. Consequently, we do not perceive any merit in this appeal. It is accordingly dismissed. There shall be no order as to costs.