(2003) 05 AHC CK 0124

In the Allahabad High Court

Case No : Income-tax Reference No. 214 of 1983

Upper Doab Sugar Mills Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 06-05-2003

Acts Referred:
Income Tax Act, 1961 — Section 216

Citation : (2003) 185 CTR 344 : (2003) 263 ITR 97

Hon'ble Judges : Ghanshyam Dass, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : Gulati, for the Appellant; Shambhoo Chopra, for the Respondent

Judgement

1. At the instance of the assessee the following question has been referred u/s 256(1) of the Income Tax Act, 1961 (hereinafter called "the Act"), for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in sustaining levy of interest u/s 216 of the Income Tax Act ?"

2. The assessee is a company incorporated under the Companies Act, 1956, and runs a sugar mill in Shamli, District Muzaffarnagar. For the assessment year 1978-79, the return was submitted for the income derived from manufacture and sale of sugar, showing an estimate of Rs. 15 lakhs. Subsequently, the revised return was filed in December, 1977, on an estimate of Rs. 65 lakhs. The assessment order dated July 31, 1980, was passed on the basis of the revised return on the income of Rs. 65,29,900. The last part of the order runs as under :

"Charge interest as per law. Issue notice u/s 274/273(a). Charge interest u/s 215. Assessed. Issue demand notice and challan."

3. It appears that while issuing the demand notice along with the demand of charge of interest u/s 215, interest was also demanded u/s 216 of the Act. Being aggrieved, the assessee filed an appeal on the ground that the assessing

authority has not passed any order for charging the interest u/s 216 of the Act. His appeal was accepted vide order dated January 23, 1981, and it was held that the interest u/s 216 could not be recovered as it has not been directed by the assessing authority. Being aggrieved, the Revenue filed the appeal before the Tribunal, which has been allowed. Hence, the present reference.

4. We have heard Shri Gulati, learned counsel appearing for the assessee, and Shri Shambhoo Chopra, learned standing counsel for the Revenue.

5. It has been submitted by Shri Gulati, on behalf of the assessee, that as the assessing authority did not pass any order to charge interest u/s 216 of the Act nor any finding was recorded by him to the extent that the return was filed on the basis of underestimate, it was improper for the Revenue to charge the interest u/s 216 of the Act and unless there was something to show that underestimation was with a view to pay reduced tax, the provisions of Section 216 of the Act are not attracted. He has submitted that some underestimation may not always attract any provision of Section 216 of the Act.

6. On the contrary, Shri Chopra, learned standing counsel for the Revenue, has submitted that the difference in the first estimate and subsequent estimate had been Rs. 48 lakhs and there was no explanation of the assessee for the unexpected increase in the income. The underestimation was with regard to pay reduced tax, and therefore, the provisions of Section 216 of the Act are attracted. Section 216 of the Act reads as under :

"216. Interest payable by assessee in case of underestimate, etc.--Where, on making the regular assessment, the Assessing Officer finds that any assessee has -

(a) u/s 209A or Section 212 underestimated the advance tax payable by him and thereby reduced the amount payable in either of the first two instalments ; . . ."

7. Section 215 of the Act provides that 15 per cent. interest shall be leviable for the period during which the demand was deficient on the difference between the amount paid and the amount which should have been paid having regard to the aggregate advance tax actually paid during the year.

8. In Commissioner of Income Tax Vs. Lankashi Tea and Seed Estate (P.) Ltd., the Gauhati High Court held as under (page 136) :

"It is difficult to accept the contention of the assessee that in order to decide whether there is any underestimation of advance tax for the purpose of levy of interest u/s 216, one should not take into account any underestimation of current income by the assessee. The estimation of advance tax u/s 212(3A) is dependent on the estimation of current income. Therefore, it is not possible, artificially, to sever the two. Undoubtedly, there may also be other reasons for underestimation of advance tax such as an error in calculation or taking into account certain deductions which may be erroneous and so on. But Section 216 refers to underestimation of advance tax under Sub-sections (1), (2), (3) and

(3A) of Section 212. It does not limit such underestimation of advance tax to underestimation for reasons other than underestimation of current income."

9. In Commissioner of Income Tax Vs. Elgin Mills Co. Ltd., , this court held that furnishing of underestimation should be deliberate to attract the provisions of Section 216 of the Act. However, in Oudh Sugar Mills Ltd Vs. Commissioner of Income Tax, , it has been held that whenever there is or has been underestimation of advance tax payable due to underestimation of aggregate income, interest can be imposed u/s 216 of the Act.

10. In Commissioner of Income Tax Vs. Hindusthan Sanitary Ware and Industries Ltd., , it has been held by the Calcutta High Court that levy of interest u/s 216 is not obligatory, rather it is discretionary. Unless there is a finding regarding default of the assessee, interest cannot be charged u/s 216 of the Act.

11. In Chief Commissioner (Adm.) and another Vs. Mysore Minerals Ltd., , the Karnataka High Court held that in the absence of any finding given by the assessing authority of underestimation, which is a jurisdictional fact, to attract Section 216 of the Act, the interest cannot be levied.

12. In Commissioner of Income Tax Vs. Pure Beverages Ltd., , the Gujarat High Court has held that where the assessee''s sales were much lower than in the previous year and there was reasonable cause for the underestimation of advance tax, the provisions of Section 216 may not be applicable for the purpose of payment of interest. While deciding the case, the court placed reliance upon the earlier judgment of the Gujarat High Court in Shree Digvijay Woollen Mills Ltd. Vs. Commissioner of Income Tax, , wherein the court has held that levy of interest under the said provision was directory and not mandatory, though the underestimation may result in reduction of the amount payable as advance tax. But underestimation in itself may not always be in all cases with a view to reduce the amount payable as advance tax. Such an underestimation might be because of a bona fide mistake, the doubtful position of law or circumstances beyond the control of the assessee. The court further held as under (page 59):

"If the Legislature wanted interest levied u/s 216 to be compensatory in character, then it would have used a different phraseology and would not have conferred a discretion on the Income Tax Officer. If payment of interest under this Act was intended to be compensatory, then on mere underestimation of the advance tax payable and less payment of advance tax and mere deferment of the payment of advance tax, the Legislature would have made payment of interest automatic. The intention of the Legislature in enacting Section 216 clearly appears to be to make that the assessee pays interest who deliberately or intentionally paid less advance tax. Thus, in each case, if the Income Tax Officer finds an underestimation or deferment of payment of advance tax, he will have to hold an inquiry and find out whether the underestimation was done by the assessee with a view to reduce the amount of advance tax payable, or he had wrongly and deliberately deferred payment of advance tax . . ."

13. Thus from the above, it becomes clear that the underestimation in itself may not be sufficient to attract the provisions of Section 216 of the Act for levying the interest if there had been bona fide mistake on his part while making the underestimation.

14. The learned Income Tax Appellate Tribunal is the final court of findings of fact. In the instant case, the Tribunal has considered every aspect of the matter including the submission of the assessee that the assessment order did not specifically provide for charging interest u/s 216 rather it specifically provided for charging interest u/s 215 of the Act only. The assessing authority itself has mentioned charge interest as per law. The Tribunal held that it was never for levying the interest u/s 216 being the statutory provision in the Act. Imposition of interest u/s 216 was held to be justified by the Tribunal observing as under :

"In brief the assessee''s argument in support of the contention that the estimate dated June 9, 1977, was not an underestimate was two fold. Firstly, that there was owing to liberal release of quota by the sugar directorate, a spurt in the turnover of the assessee during the period from June 9, 1977, to September 30, 1977, giving rise to additional income and, secondly, that there was excise rebate ordered subsequent to June 9, 1977, which went to add to assessment''s estimated current income.

Thus, the said rebate orders, both bearing dates subsequent to September 30, 1977, did not give rise to any unexpected income to the assessee. Impugned estimate dated June 9, 1977, was thus an underestimate clearly to the extent of over Rs. 16 lakhs at least.

In other words, the assessee has not been able to establish that there was unexpected increase in income to the extent of Rs. 48 lakhs. The Appellate Commissioner''s finding is set aside and the Income Tax Officer''s finding is restored . . . ."

15. Thus before this court, Shri Gulati could not furnish any explanation for the difference of Rs. 48 lakhs in the first return and in the revised return, and thus, the assessee miserably failed to furnish any satisfactory explanation for this unexpected increase in the income to the extent of Rs. 48 lakhs, and that being a question of fact recorded by the Tribunal in the absence of any satisfactory explanation by the assessee, we are of the view that the Tribunal has rightly recorded the said finding setting aside the order passed by the appellate authority.

16. Thus, in view of the above, we are of the opinion that the Tribunal was justified in law in sustaining the levy of interest u/s 216 of the Act.

17. Accordingly, we answer the question in the affirmative, i.e., in favour of the Revenue and against the assessee.

