

(1992) 11 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No"s. 17068 to 17070 of 1988

Vikrant Tyres Ltd.

APPELLANT

Vs

First Income Tax Officer

RESPONDENT

Date of Decision : 26-11-1992

Acts Referred:

Income Tax Act, 1961 — Section 146, 155, 156, 220 (2), 250
Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 —
Section 3

Citation : (1993) 115 CTR 210 : (1993) ILR (Kar) 402 : (1993) 202 ITR 454 :
(1993) 37 KarLJ 196

Hon'ble Judges : R. Ramakrishna, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : K.S. Ramabhandran, for the Appellant; H. Raghavendra Rao, for the
Respondent

Judgement

This Judgment has been overruled by : M/s. Vikrant Tyres Ltd. Vs. The First Income Tax Officer, Mysore, (2001) 166 CTR 1 : (2001) 2 JT 455 : (2001) 1 SCALE 720 : (2001) 3 SCC 76 : (2002) 127 STC 5 : (2001) AIRSCW 624 : (2001) 1 Supreme 633

K. Shivashankar Bhat, J.—An interesting question pertaining to levy of interest is involved in this writ petitions. The petitioner has challenged the invocation of section 220, sub-section 2, of the Income Tax Act, 1961, under the following circumstances.

2. The assessment years in question are 1977-78, 1978-79, and 1980-81. In respect of each of this years, assessment orders were made and demand notices were issued. The petitioner complied with the demands by paying the tax due. However, the petitioner challenged the order by filling a appeals. The appellate authority allowed the appeals filled by the petitioner. Consequently, the taxes paid were refunded to the petitioner. The appeals filed by the revenue before the Appellate Tribunal were also dismissed. However this court took a different view

from that of Appellate Tribunal and upheld the view taken by assessing authority resulting in upholding of all assessment orders. Consequently, the assessee had to pay tax has assessed. After the high court disposed of the references, consequential orders were made by Appellate Tribunal u/s 260. Thereafter, fresh demands were raised and assessee paid the taxes has assessed. Not being satisfied with the success before the high court the revenue invoked section 220(2) of the act and demanded interest of assessed tax for the period commencing with the refund of the taxes consequent on the first appellate order till the taxes were finally paid after disposal of the references.

3. According to the petitioner, section 220(2) is not at all attracted to the fact situation. Mr. Ramabhadran, learned counsel for petitioner, contended that the assessee is not at all at default in the present case and the original demands do not survive at all, because the assessee paid the taxes in compliance with those demands and the original demands did not survive consequent on the order of the appellate authority and, therefore, this is not a case where the assessee petitioner fail to comply with the demands issued.

4. Learned counsel for the revenue, on the other hand contended that the order of assessment, the appellate orders and the order made on the references resulting in the consequential order are only different steps in the same proceedings and ultimate orders relates back to the original order itself and that, further, in view of section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act 1964 (Referred to as Validation Act), the original demand notices are revived by operation of law and due effect shall have to be given to such revival. According to Mr. Ramabhadran, the operation of Validation Act, shall have to be confined to the purpose of recovery of the assessed tax and provision of such Act cannot be extended to treat an assessee as a defaulter and to pass an order to the effect that the assessee is liable to pay interest.

5. Section 220 so far as it relates to our purpose, reads thus :

"220. (1) Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand u/s 156 shall be paid within 30 days of service of the notice at the place and to the person mentioned in the notice :

Provided that, the Assessee Officer has any reason to believe that it will be detrimental to the Revenue if the full period of 30 days aforesaid is allowed, he may with the previous approval of Deputy Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a period less than 30 days aforesaid, as may be specified by him in the notice of demand.

(2) If the amount specified in any notice of demand u/s 156 is not paid within the period limited under the sub-section (1), the assessee shall be liable to pay simple interest at one and one-half percent. For every month or the part of the month comprised in the period commencing from the day immediately following the end of the period mentioned in the sub-section (1) and ending with the day on which the amount is paid :

Provided that, where as a result of an order u/s 154 or section 155, or section 250, or section 254, or section 260, or section 262, or section 264, or an order of Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under this section has been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded :".

6. Sub-section (4) reads thus :

"(4) If the amount is not paid within the time limited under sub-section (1) or extended under sub-section (3), as the case may be at the place and to the person mentioned in the said noticed the assessee shall be deemed to be in default."

7. To complete the narration we may also refer to section 221 which provides for the levy of penalty when assessee is in default or is deemed to be in default in making the payment of tax. This penalty is in addition to the amount of arrears and the amount of interest payable u/s 220(2). The language of section 221 indicates discretionary power is given to the assessee authority to levy the penalty. Before proceeding further, it is also necessary to refer the circular issued by the Central Board of the Direct Taxes as per Circular No. 334 dated April 3, 1982. The Circular reads thus see [1982] 135 ITR 10

"Subject : Levy of interest u/s 220(2) when the original assessment is set aside-Instructions regarding.

Doubts have been raised as to quantum of interest chargeable u/s 220(2) of the Income Tax Act when the original assessment order passed by the Income tax Officer is -

(i) cancelled by him u/s 146 of Income Tax Act.

(ii) Set aside/cancelled by an appellate/provisional authority and such appellate/provisional order has become final; or

(iii) Set aside by one appellate authority but, on further appeal, the order setting the assessment is varied by the second appellate authority and demand gets finally determined.

2. These issues were comprehensively examined in consultation with the Ministry of Law and Board had been advised :

(i) Where an assessment order is cancelled u/s 146 or cancelled/set aside by an appellate /revisional authority and the cancellation/setting aside becomes final (i.e., it is not varied as a result of further appeal/revision), no interest u/s 220(2) can be charged pursuant to the original demand notice. The necessary corollary of this position will be that even when the assessment is reframed, interest can be charged only after the expiry of 35 days from the date of service of demand notice pursuant to such fresh assessment order.

(ii) When the assessment made originally by the Income Tax Officer is either varied or even set aside by one appellate authority but, on further appeal, the original order of the Income tax Officer is restored either in part or wholly, the interest payable u/s 220(2) will be computed with reference to due date reckoned from the original demand notice and with reference to tax finally determined. The fact that during an intervening period, there was no tax payable by the assessee under any operative order would make no difference to this position."

8. Learned counsel for the petitioner submitted that the petitioner is not a defaulter in the instant case. The petitioner was prompt in comply with the demands raised immediately in the making of the assessment order. The refund was obtained by the petitioner, because the appellate authority reversed the order to the assessing authority. In fact, even the Appellate Tribunal upheld the contention of the assessee. In this circumstances it cannot be said the assessee did not paid the tax specified in any notice of demand u/s 156.

9. Sub-section (2) of section 220 is attracted if the amount specified in any notice of demand u/s 156 is not paid within the period limited under sub-section (1), that is to say, within 30 days from the service of the notice. The petitioner has complied with this demand by paying the tax originally. Learned counsel also refereed to a decision of Kerala High Court in Income Tax Officer Vs. A.V. Thomas and Company, A Division Bench of the Kerala High Court accepted a similar contention. At page 823, the court observed thus :

"We feel that statutory provision in section 220(2) is clean and clear. It is not difficult too understand what are the requirements under the provision which will attract payment of interest. As stated by Lord Jenkins, our task is to construe the provision, section 220(2), according to the ordinary and natural meaning of the language used and to apply that meaning to the fact of case. As stated earlier the fact of the case is simple. When the assessing authority demanded payment of tax as assessed by the assessment order, exhibit P-1, the assessee paid the tax. Section 220(2) which provides for payment of interest enjoins certain condition for attracting the liability payment of interest. The condition is that even after the notice of demand u/s 156 and after a further period of 35 days as provided u/s 220(1), the assessee should continue as a defaulter in the matter of payment of tax demanded. Only in case the assessee defaults in payment of tax assessed, 35 days after the notice of demand u/s 156, the liability of tax accrued. It is admitted that the assessee has paid the tax when he received the demand notice u/s 156. The requirement u/s 220(2) for attracting the liability to pay interest are not present in this case.

The counsel for department relied on the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 (Act 11 of 1964). The counsel particularly relies on the section 3 of Act 11 of 1964. He contends that the original notice u/s 156 of Act survives by virtue of section 3 of Act 11 of 1964. He also refereed to us to the decisions in Income Tax Officer, Kolar and Another

Vs. Seghu Buchiah Setty, In that case the Supreme Court held that as and when an assessment is challenged and the order so assessment is set aside or modified by the appellate authority, and all consequential proceedings pursuant to the assessment order are also rendered ineffective. So a notice issued u/s 156 Act pursuant to an assessment order which was set aside subsequently by the appellate authority would not remain in force and the Department has to be proceed afresh by issuing a fresh demand notice u/s 156 Act. This decision cause great difficulty for the Revenue and in order to tide over the difficulty, the said act, namely, the Taxation Law (Continuation and Validation of Recovery Proceedings) Act, 1964 was passed. Section 3 of the said Act provided that if the assessment order is set a side or modified by the appellate authority and, subsequently, the original order is restored by second appellate authority, the action taken pursuant to the first order including the demand notice will survive and a fresh demand notice is unnecessary. Basing on this provision, counsel developed this argument by urging that so long as no fresh demand notice is required under law, the assessee is liable to pay interest on the bases of original notice of demand. It is difficult to accept this contention. Perhaps, no fresh demand notice may be necessary and the original notice u/s 156 of the Act may be revived. Even if we accept that the original notice is revived it has no consequences. The assessee has paid the amount demanded as per the original notice. In a case where assessee has paid the demand made in the original notice, there is no liability on the part of assessee to pay interest. So even if we take it that the original notice is revived, the Department may not be justified in demanding the interest from the date of the original notice. The non-compliance with the original notice is the event which attracts the payment of interest. In this case, there is no non-compliance with the original notice and so the assessee is not liable to pay interest."

10. Further, sub-section (4) was referred to point out that the assessee becomes a defaulter only if the amount is not paid within the time limited under sub-section (1) or extended under sub-section (3). This is not a case where the assessee failed to pay the tax within 30 days of the demands issued earlier.

11. A literal reading of the provision, no doubt, prima facie supports the contention of the petitioner. But we cannot ignore the other provisions of relevant law which also operate on the fact situation.

12. In Income Tax Officer, Kolar and Another Vs. Seghu Buchiah Setty, the Supreme Court held that a demand notice issued consequent upto the assessment order would not survive if the said is reversed or modified in appeal or revision and, in such a situation, a fresh demand notice has to be served before he could be treated as a defaulter as a defaulter and recovery proceedings initiated against the assessee. To get over the difficulty caused by this decision, the Validation Act came to be passed. As per section 3(1)(a), a fresh demand notice shall have to be served upon the assessee only when the tax is enhanced. In case, the tax levied is reduced in an appeal or proceedings as per sub-clause

(3), a fresh notice need not be served upon the assessee as per sub-clause (3), a fresh notice may not be served upon the assessee for the amount payable sub-clause (c) states that no proceedings in relation to such governments dues (including the imposition of penalty or charging of interest) shall be invalid, by reason that no fresh notice of demand was served upon the assessee after the disposal of the appeal or the proceedings, in which there is a change in the liability of assessee. Sub-section (2) is quite relevant here which reads thus (see [1964] 52 ITR 64) :

"For the removal of doubts, it is hereby declared that no fresh notice of demand shall be necessary in any case where the amount of Government dues is not varied as a result of any order passed in any appeal or other proceeding under any Scheduled Act."

13. There is no dispute that Income Tax Act is one of the Scheduled Acts. This provision makes it very clear that, if the original assessment order is ultimately upheld, the question of issuing a fresh notice of demand does not arise.

14. The immediate purpose of enacting this Validation Act was the decision of the Supreme Court in Income Tax Officer, Kolar and Another Vs. Seghu Buchiah Setty, But the effect of the Validation Act cannot be ignored on the operation and the working of the Act. We are of the view that sub-section (2) of sections 3 of the Validation Act keeps alive the earlier demand notice or treats the said demand notice as having been kept alive all along if ultimately the assessment order is upheld by the higher forum.

15. While considering the provisions of sub-section (2) of section 220, we cannot ignore the purpose behind the provision providing for levy of interest. Interest is payable as a matter of compensation towards deprivation of the benefit of money which lawfully belongs to a person or authority. The Income Tax due to the State is certainly an amount which lawfully belongs to the State; if the payment is postponed for any reason, there can be doubt that the State is deprived of the benefit of the amount which lawfully belongs to the State. It is in this background that section 220 will have to be considered. We find similar provisions under sections 214 and 215 as well as section 244 either the assessee or the Revenue, as the case may be, has been provided for the payment of interest when the payment of the amount due by the assessee or the State gets postponed. The scheme of the Act thus is quite clear that it provides for awarding of compensation to the assessee or to the State by way of interest.

16. In Commissioner of Income Tax Vs. Deepchand Kishanlal, this court had to consider the scope of section 214 of the Act. The court pointed out that there is a substantial reciprocity between the class of taxpayers and the Revenue in sections 214 and 215 and that the fluctuation in the fortunes of an assessee or of the Revenue, depending upon the facts and circumstances of a particular case, is inevitable. The law has to be understood in a reasonable manner and the scheme of legislation should be deemed to have a logical base for it. The court also

pointed out that an initial order of assessment gets effaced by the appellate or revisional order and the only effective order is the ultimate order of the superior authority. We may add relate back to the date of the original order as, otherwise, the very concept of having a hierarchy of appellate and revisional forums will be defeated. The Bench observed at page 309 thus :

"Payment of interest, essentially, is compensatory in nature. Logically, the compensation should cover the entire period during which the person to whom the money belongs lawfully was made to part with it to another. To reduce the period for which compensation is payable, when, in fact, the person was deprived of his money for a longer period, is truncate the very concept of compensation."

17. That liability to pay Income Tax is a present liability though it becomes payable after it is quantified in accordance with ascertainable data. There is a perfected debt at any rate on the last day of the accounting year and not a contingent liability."

18. Therefore, juris prudentially, the Revenue is a creditor and the tax-payer is a debtor and there is nothing strange if the law contemplates that the debtor should compensate the creditor by paying interest on the amount due. The fact that the law postponed the discharge of tax liability to the date of issuance of a demand notice and the period of 30 days from the date of the demand, would not alter the nature of the said liability.

19. In M.N. Jadhav (Decd. by Legal Representatives) Vs. Fourth Income Tax Officer and Another, this court referred to the circular of the Board (which we have already quoted) and observed that this circular correctly expounds the legal position. The learned judge, in fact, referred to clause (ii) of the circular which state that the interest payable u/s 220(2) will be computed with reference to the tax finally determined. Mr. Ramabhadran, learned counsel, pointed out an earlier passage in the said decision from which it is clear that the assessee had not made the payment on receipt of the demand notice originally in the said case. That may be so, but we are concerned with the legal effect of sub-section (2) of section 220 read with section 3(2) of the Validation Act. The circular of the Board may not be blinding on the assessee and the interpretation of the provision of law cannot depend upon the meaning given by the Board in all cases. The circular has been issued to facilitate the due administration of the Act by the authorities under the Act. The effect of section 220(2) has been duly clarified by the Board while issuing the circular.

20. With utmost respect, we cannot agree with the view observations of the Kerala High Court referred to earlier. The nature of the interest payable under the Act has not been considered in the said decision.

21. The view we have taken is in accordance with the view taken by a Bench of the Delhi High Court in Bharat Commerce and Industries Ltd. Vs. Union of India and Others, The Delhi High Court held that the first notice of demand issued after the original assessment order was passed by the Income Tax Officer could

not be deemed to have been extinguished by virtue of the appeal having been filed before the Commissioner or the conditional stay of the operation of the assessment having been allowed by the Commissioner (Appeals), pending disposal of the appeal before him or by virtue of the subsequent reduction of the taxable income. The court pointed out that, under the order of the Tribunal which had attained finality the original assessment had been restored with the result that the first demand notice became operative and, therefore, section 220(2) was attracted. The Bench also pointed out that to levy interest on delayed payment of tax is not to penalise the party but to make a provision for compensating the Revenue on the failure of the assessee to make payment as per the first demand notice.

22. We have already referred to section 221 which provides for levy of penalty in case the assessee defaults in the payment of the tax demanded. The present argument of Mr. Ramabhadran certainly could be accepted in case the Department proceeds to levy any penalty. A comparison of sections 220(2) and 221. highlights the quality of the levy u/s 220(2) as compensatory in nature as against the penalty that is imposed u/s 221.

23. In *A.V. Thomas and Co. Ltd. Vs. Income Tax Officer, "A" Ward and Others*, it was observed (headnote) :

"Where the tax computed by the Income Tax Officer was paid in full and within time by the assessee and a portion of the tax was refunded to the assessee consequent to the order of the Appellate Assistant Commissioner but, on further appeal, the Tribunal reversed the order of the Appellate Assistant Commissioner and restored that of the Income Tax Officer and, thereafter, a fresh notice of demand was served on the assessee calling upon him to pay back to the Department the tax refunded to him, the liability to pay interest to the Department u/s 220(2) of the Income Tax Act, 1961, arises only from the date when the fresh notice of demand is issued to the assessee and not from the date when the tax was refunded to the assessee."

24. This decision was affirmed by the Division Bench which we have already referred to and reported in *Income Tax Officer Vs. A.V. Thomas and Company*,

25. In *K.P. Abdul Kareem Hajee Vs. Income Tax Officer, A-Ward and Another*, the learned judge held that the assessment order which was modified or reversed by the appellate authority which in turn was reversed by the Appellate Tribunal revives the original assessment order and, therefore, the liability for interest u/s 220(2) gets attracted from the date of the original demand. No doubt, in the said case, the assessee had not paid the tax demanded earlier, but, obviously, the assessee had the advantage of the interim order of stay made by the higher authorities.

26. Having regard to the nature and quality of interest leviable u/s 220(2), we have no hesitation in upholding the claim made by the Revenue in the instant case.

27. The writ petitions are accordingly dismissed and rule discharged. However, there shall be no order as to costs.