
(2014) 05 P&H CK 0090
In the Punjab And Haryana At Chandigarh
Case No : IT Appeal No. 25 of 2004

Vipan Kumar Sudesh Kumar (Huf)

APPELLANT

Vs

ITO

RESPONDENT

Date of Decision : 02-05-2014

Acts Referred:

Income Tax Act, 1961 — Section 214, 214(1A), 244, 244(1 A), 244(1)

Citation : (2014) 05 P&H CK 0090

Hon'ble Judges : Rajive Bhalla, J; Bharat Bhushan Parsoon, J.

Bench : Division Bench

Advocate : Alok Mittai, for the Appellant; Vivek Sethi, for the Respondent

Judgement

Rajive Bhalla, J.?The assessee impugns order dt. 1-8-2013, passed by the Tribunal, Amritsar Bench, Amritsar, on the following substantial question of law :

"Whether interest allowed under section 244(1) can subsequently be withdrawn in view of creation/restoration of demand in subsequent appeal."

2. The facts, in brief, that have led to the filing of the appeal are that the assessee filed a return of income-tax on 26-8-1985, declaring an income of Rs. 47,200. The return was revised to an income of Rs. 49,620 on 28-10-1986 but a protective assessment was made on 19-2-1988 treating the income as Rs. 1,67,534. A demand was consequently raised for Rs. 1,13,163. An appeal filed by the assessee was dismissed by the Commissioner (Appeals), on 26-9-1988. The Tribunal, vide order dt. 7-9-1991, set aside the order passed by the Commissioner (Appeals) and restored the appeal to the Commissioner (Appeals).

3. The Commissioner (Appeals) upheld the protective assessment but reduced the quantum of income by Rs. 1,93,780. During pendency of the appeal before the Tribunal, the ASSESSING OFFICER gave effect to the order passed by the Commissioner (Appeals) which resulted in a refund of Rs. 24,423, to the assessee. The Tribunal, vide order dt. 14th Dec, 1994, directed that assessment be framed in substantive capacity. The ASSESSING OFFICER gave effect to this

order which led to withdrawal of interest of Rs. 29,380 already allowed to the assessee. The assessee filed an appeal before the Dy. CIT which was dismissed. The appeal filed by the assessee before the Tribunal against withdrawal of interest was dismissed by relying upon a judgment of the Hon''ble Supreme Court in *Modi Industries Limited, Modinagar and Others Vs. Commissioner of Income Tax, Delhi and Another*, , by holding as follows :

"Here, we are concerned with the third conclusion (which) was arrived at by their lordship. As per this conclusion, with effect from 1-4-1985, interest payable under section 214 will increase or decrease in accordance with the variation in the quantum of the excess payment of tax brought about by orders passed subsequent to the regular assessment as mentioned in Sub-section (1A). In the aforesaid case of *Modi Industries Ltd. & Anr. v. CIT (supra)*, their lordship has observed at p. 807 as under :

Interest under sub-section (1A) of section 244 is payable when the tax or penalty paid by an assessee pursuant to an order of assessment has been reduced in appeal or any other proceeding, In such a case, an excess amount of tax or penalty paid by the assessee will have to be refunded and the Central Government has to pay interest on the excess amount from the date on which such amount was paid to the date on which the refund was granted. Of course, there can be no question of paying interest both under section 214(1A) and section 244(1A) simultaneously. The rate of interest being the same under both the provisions, there would be no difference in the actual amount of interest payable whichever provision is applied.

5.1 From the above, it would be clear that the interest under section 244(1A) would be payable by taking into consideration the result of any appellate order. Therefore, in the instant case, the ASSESSING OFFICER rightly withdrew the interest which was not payable after giving the appeal effect. On a similar issue, the Hon''ble Calcutta High Court in the case of *ANZ Grindlays Bank PLC Vs. Commissioner of Income Tax*, that:

With regard to the question that whether the interest paid under section 214 to the assessee can be withdrawn or can be recovered or can be adjusted, sub-section (1A) of s. 214 provides that where on completion of the regular assessment the amount on which the interest so paid under sub-section (1) has been reduced, the interest shall be reduced accordingly, and the excess, if any paid, shall be deemed to be tax payable by assessee and the provisions of this Act shall apply. Admittedly, the net result after regular assessment as well after giving effect to the orders of the Tribunal for the asst. yr. 1978-79 is that the assessee has not paid the tax deducted at source or advance tax more than the tax assessed. Therefore, in any case, if the interest has been paid, which is not payable under section 214, that can be recovered.

It has been further held that the interest under section 214 and section 244(1A) which was not due at all, or payable by the Revenue to the assessee, has rightly

been adjusted."

From the above, it would be clear that where the tax deducted at source and advance tax paid by the assessee did not exceed the tax assessed either on regular assessment or after giving effect to the orders of the Tribunal, interest under sections 214 and 244(1 A) granted to the assessee was not due at all and had to be recovered from the assessee.

In the instant case also, there was no interest due after the final appeal effect given by the ASSESSING OFFICER. Therefore, the assessing officer was justified in withdrawing interest and to recover the same from the assessee.

A similar issue has also been decided by the Hon'ble jurisdictional High Court in the case of Commissioner of Income Tax Vs. Hansa Agencies Pvt. Ltd., , by following the judgment of the Hon'ble Supreme Court in the case of Modi Industries Limited, Modinagar and Others Vs. Commissioner of Income Tax, Delhi and Another, . The Hon'ble High Court of Punjab & Haryana held that the assessee was entitled to interest on entire amount or pre-assessment tax paid and found in excess of regular demand after giving effect to appellate order for the assessment year 1976-77 under section 244(1A) of the Income Tax Act. From the above, it would also be clear that the interest, if any, is required to be paid to the assessee after giving effect to the appellate order.

5.2 As regards the decision of the Chandigarh Bench of the Tribunal, as relied upon by the learned counsel for the assessee is concerned, the assessment years involved in that case were 1983-84 and 84-85 i.e. before the amendment which came into effect from 1st April, 1985. It is pertinent to mention here that the Hon'ble Gujarat High Court in the case of Cibatul Ltd. Vs. Inspecting Assistant Commissioner of Income Tax, held that the interest cannot be withdrawn under section 244(IA) of the Income Tax Act, even when the order as a result of which refund became payable, is subsequently reversed. However, the Hon'ble Supreme Court has granted Special Leave to the Department to appeal against the aforesaid judgment of the Hon'ble Gujarat High Court vide order dt. 23rd July, 1993 in SLP No. 10954 of 1993. Before us, neither of the representatives of both the parties could throw any light as regards to the outcome of the judgment of the Hon'ble Supreme Court in the regular appeal. Therefore, we are unable to follow the judgment of the Hon'ble Gujarat High Court.

In view of the aforesaid discussion and keeping in view the ratio laid down by the Hon'ble Supreme Court in the case of Modi Industries Ltd. & Anr. v. CIT & Anr. (supra), by the Hon'ble Calcutta High Court in the case of ANZ Grindlays Bank Pic v. CIT (supra) and by the jurisdictional High Court in the case of CIT v. Hansa Agencies (P) Ltd. (supra), we are of the opinion that the learned Dy. Commissioner (Appeals) had rightly confirmed the action of the assessing officer in withdrawing the interest while giving effect to the appellate order. In that view of the matter, we do not see any valid ground to interfere with the findings of the learned Dy. Commissioner (Appeals) on this issue."

4. Counsel for the assessee submits that as interest has been paid by giving effect to an order passed in appeal, it cannot be withdrawn under section 244(1A) of the Income Tax Act 1961 (hereinafter referred to as the Act) by giving effect to a subsequent order passed in another appeal. The Tribunal has while upholding the withdrawal of interest failed to consider the judgment of the Gujarat High Court in *Cibatul Ltd. Vs. Inspecting Assistant Commissioner of Income Tax*, wherein it has been clearly held that interest cannot be withdrawn under section 244(1 A) of the Act even when the order as a result of which the refund became payable, is subsequently reversed. It is further submitted that section 244 of the Act does not apply to the facts of the present case. It is further submitted that as judgment of the Gujarat High Court in (supra) has been affirmed by the Hon"ble Supreme Court, the impugned order may be set aside. It is further submitted that the Raj as than High Court has taken a similar view in *Commissioner of Income Tax Vs. Udaipur Distillery Co. Ltd.*, .

5. Counsel for the Revenue submits that the judgment of the Hon"ble Supreme Court in *Modi Industries Ltd. & Anr. v. CIT & Anr.* case (supra) applies on all fours to the controversy in hand whereas the judgment of the Gujarat High Court in *CIT v. Ahmedabad New Cotton Mills Co. Ltd.* (supra) does not apply to the present controversy.

6. We have heard counsel for the parties, perused the statutory provisions and the judgments referred to by counsel for the parties.

7. The controversy, in the present appeal succinctly put, is whether the amount paid to the assessee as interest can be withdrawn under section 244 of the Act, while giving effect to an appellate order which has led to variation of the amount? The Tribunal has answered the question against the assessee after placing reliance upon a judgment of the Hon"ble Supreme Court in *Modi Industries Ltd. & Anr. v. CIT & Anr.* (supra), a judgment of the Calcutta High Court in *ANZ Grindlays Bank PLC Vs. Commissioner of Income Tax*, , a judgment of this High Court in *Commissioner of Income Tax Vs. Hansa Agencies Pvt. Ltd.*, , which hold that interest can be withdrawn. We are inclined to agree with this view. As regards judgment of the Gujarat High Court in *CIT v. Ahmedabad New Cotton Mills Co. Ltd.* (supra), which is to the contrary, the Tribunal has refused to consider the said judgment as counsel for the parties could not inform the Tribunal about the fate of the appeal pending before the Hon"ble Supreme Court. We have repeatedly asked counsel for the parties to inform us about the fate of the appeal pending before the Hon"ble Supreme Court and even kept the judgment reserved for a few months but neither counsel has come forward to inform us about the fate of the appeal. An attempt was also made to search for this judgment on the internet but to no avail.

8. In this view of the matter, we are not inclined to accept the appeal or to hold that any substantial question of law arises for adjudication particularly in view of judgment of the Hon"ble Supreme Court in *Modi Industries Ltd. & Anr. v. CIT & Anr.* (supra). The appeal is consequently dismissed but with no order as to costs.