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Court : Allahabad

Decided On : Nov-03-2004

Reported in : [2005]144TAXMAN833(All)

Appeal No. : IT Reference No. 101 of 1985 3 November 2004

Appellant : Amrit Banaspati Co.

Respondent : ito

Advocate for Pet/Ap. : A.N. Mahajan, *for the Revenue*.

Judgement :
ORDER

1. The Income Tax Appellate Tribunal, Delhi has referred the following two questions of law under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) for opinion to this Court:

'(i) Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that the appellant was not entitled to interest on the basis of the revised assessment order after the directions of the Appellate Authorities were given?

(ii) Whether on the facts and in the circumstances of the case the assessee is entitled to interest on the excess of advance tax refundable with reference to the revised assessment and whether the interest payable on such excess up to the date of such revised assessment?'

2. Briefly stated the facts giving rise to the present reference are as follows:

The applicant is a Public Limited Company and is engaged in the business of manufacture and sale of Vanaspati. The assessment years involved are 1970-71 and 1971-72.

The Income Tax Officer for these two assessment years did not redetermine the interest payable under section 214 of the Income Tax Act, 1961. However, in appeal the Commissioner (Appeals) following the decision of this court in the case of Lala Laxmipat Singhania v. CIT : [1977]110ITR289(All) had held that the liability to pay the interest on the excess amount of advance tax deposited would be only up to the date of the original assessment and not the date of the fresh assessment or modification of the assessment to give effect to the decision of the appeal or revisional authority. The order of the Commissioner (Appeals) has been upheld by the Tribunal.

3. We have heard Shri A.N. Mahajan, the learned standing counsel for the revenue. Illness slip has been sent by Sh. V. Gulati. We have rejected the illness Slip and have given reasons for taking up the case vide separate order passed on the order sheet. The learned counsel for the revenue submitted that the Apex Court in the case of Modi Industries Ltd. v. CIT : [1995]216ITR759(SC) has held that interest on advance tax is payable only up to the date of original assessment under sections 143/144 of the Act. In view of the decision of the Apex Court the Tribunal has rightly disallowed the claim of the assessee.

4. In view of the foregoing discussion, we answer the question No. 1 referred to us in affirmative, i.e., in favour of the revenue and against the assessee. The question No. 2 is answered in negative, i.e., in favour of the revenue and against the assessee. However, there shall be no order as to costs.