

Oriental Fire and General Vs. Inspecting Assistant

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Jan-11-1985

Reported in : (1985)13ITD15(Delhi)

Judge : S Grover, V Dongzathang

Appellant : Oriental Fire and General

Respondent : inspecting Assistant

Judgement :

1. This second appeal is directed against the order dated 6-6-1983 passed by the Commissioner (Appeals) in respect of the assessment year 1975-76 and the grievance is that the IAC's action in rejecting the assessee's claim for interest payable by the Government under Section 244(1A) of the Income-tax Act, 1961 ('the Act'), on refunds of tax amounting to Rs. 16,73,362, has been wrongly upheld on the ground that there was no appeal provided remedying the situation under Section 246(1)(c) of the Act.

2. The assessee- filed an appeal before the Commissioner (Appeals) against the order dated 27-1-1982 passed by the IAC giving effect to the order of the Tribunal, Delhi Bench 'E', in IT Appeal Nos. 1326 and 1554 (Delhi) of 1979 and 423 and 4071 (Delhi) of 1980, dated 30-11-1981, in which three contentions were raised as follows : (a) that the IAC erred in not allowing deduction of Rs. 3,21,570 in respect of entertainment expenses in recomputing the taxable income ; (b) that the appellant company was wrongly denied payment of interest by the Government

under Section 244(1 A) in respect of refund worked out in favour of the assessee ;
(c) that the credit for tax deducted at source should have been allowed at Rs. 75,48,492 instead of Rs. 68,06,440.

3. By the time hearing took place before the Commissioner (Appeals), the IAC had passed an order under Section 154 of the Act allowing deduction of Rs. 3,21,570 in relation to entertainment expenses. In respect of tax deducted at source, the Commissioner (Appeals) directed that the assessee's claim be examined and necessary credits should be given for tax deducted at source.

4. The ground regarding interest in respect of refund came to be rejected and we would like to reproduce paragraph No. 3 of the Commissioner (Appeals)'s order in this regard : 3. The next ground of appeal is that the IAC erred in not allowing the appellant company, interest payable by the Government under Section 244(1 A) of the Income-tax Act, 1961. Under Section 244(1 A) of the Income-tax Act, where refund referred to in Sub-section (1) of Section 244 becomes due to the assessee as a result of any payment of tax made by him after 31-3-1975 and the amount of tax so paid is found to be in excess as a result of appeal or other proceedings, the Central Government is directed to pay to such assessee simple interest at the rate of 12 per cent on the amount of such excess payment from the date on which such amount was paid to the date on which the refund is granted. The authorised representative contended that, in the instant case, the provisions of Section 244(1A) became applicable but the IAC has not granted the interest due to the appellant company under Section 244(1A). I pointed out to the authorised representative that the Commissioner (Appeals) has jurisdiction to hear appeals against orders specified in Sub-section (2) of Section 246 of the Income-tax Act, the grant of interest under Section 244(1A) does not appear to be one of the items in respect of which an appeal can be filed before the Commissioner (Appeals) and I express my inability to deal with this matter as there is no appeal provided against the action or inaction of the ITO/IAC in respect of claim for interest under Section 244(1 A). Accordingly, this ground of appeal is rejected.

5. Before us, Shri K.K. Mehra, the chartered accountant appearing for the assessee, referring us to the judgment of the Hon'ble Delhi High Court in the case

of CIT v. Mahabir Parshad & Sons [1980] 125 ITR 165, submitted that since the appeal was otherwise validly treated by the Commissioner (Appeals), the ground regarding interest came to be wrongly rejected.

6. The principle laid down by the Hon'ble Delhi High Court in Mahabir Parshad & Sons' case (supra) is that what Section 246(c) provides is for an appeal by the assessee to the first appellate authority against an order of assessment. The qualifying words setting out the four categories of objections are only to indicate the conditions precedent for the filing of an appeal, the object being that a purely academic appeal should be avoided. That is why the clause says that a person can appeal against an order of assessment only when he has a real grievance there against such grievance being in relation to Income-tax loss or status ; it does not mean that the grounds for consideration in such an appeal can only be in regard to these four matters. Once the grievances or any of them or that what is before the first appellate authority for consideration is the order of assessment, it is open to the assessee to contest every one of the findings, observations and directions contained in the assessment order.

7. Sub-section (2) of Section 246 provides that an assessee can file a valid appeal before the Commissioner (Appeals) against orders specified in Clauses (c) to (o), both inclusive, of Sub-section (1), when such order is made by the IAC in exercise of the powers or functions conferred on or assigned to him under Section 125 or Section 125A of the Act.

8. Clauses (a) and (c) of Sub-section (2) of Section 246 enlarged the assessee's right to approach the Commissioner (Appeals). Therefore, the principle laid down in Mahabir Parshad & Sons' case (supra), though refers to the provision of Section 246(1)(c), governs right of filing of appeal under Section 246(2) also, which has the effect of making the judgment governing the present case also.

9. There is no dispute from the revenue that the assessee-company filed a valid appeal before the Commissioner (Appeals) and the latter did decide one ground in favour of the assessee and did not consider it necessary to decide the second ground because the grievance had already come to be remedied under Section 154. Such being the case, the Commissioner (Appeals) was certainly in error in

rejecting the ground regarding nonpayment of interest in respect of refund on the short ground that no remedy was provided under Section 246(2).

10. Shri Mehra also referred us to the following two judgments for his contention that the Commissioner (Appeals) unjustifiably rejected the assessee's contention regarding payment of interest : Triplicane Urban Co-operative Society Ltd. v. CIT [1980] 126 ITR 125 (Mad.) and Reliance Jute & Industries Ltd. v. CIT [1981] 127 ITR 842 (Cal.).

11. We are not referring to the above judgment because the judgment in Mahabir Parshad & Sons' case (supra) is a binding authority, which we are legally obliged to follow. Besides, we are in respectful agreement with the reasonings and the decision of the Hon'ble Delhi High Court.

In view of the above, we direct the IAC/Assessing Officer to pay interest to the appellant company in relation to refund worked out in its favour in respect of the assessment year under appeal.

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