

Bst Ltd. Vs. Inspecting Assistant

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Nov-30-1989

Reported in : (1990)32ITD586(Delhi)

Judge : V Elhence, J Kathuria

Appellant : Bst Ltd.

Respondent : inspecting Assistant

Judgement :

1. These cross appeals arise out of the consolidated order dated 9.1.1987 of the learned Commissioner of Income-tax (Appeals), New Delhi for the assessment years 1973-74, 1974-75 and 1975-76.

2. The assessee is a limited company. The common question involved in these appeals relates to the allowability of interest under Section 244(1 A) of the Income-tax Act, 1961 in respect of payments made before and after 31.3.1975 which were adjusted in assessments framed after 31.3.1975. The facts are not in dispute and can be conveniently expressed as follows:-----

Assessment	First	appeal	TDS	Advance	tax	Self-
Amount-----						(1)
(2)		(3)		(4)		(5)
(6)-----						

Assessment Vide CIT(A)'s Rs. 60,654 framed on order dated (1) Rs. 9,65,000 Rs.

19,84,925 24.2.1977 26.7.1980 on 14.9.72 on 14.6.73 Under Section income deter-
(2) Rs. 9,65,000 Rs. 8,04,814 on Rs. 3 mined at on 14.12.72 on 12.3.74 crores on
which Rs. 10,92,500 (3) Rs. 15,35,850 Rs. 48,88,566 tax payable was on which tax
on 14.3.73 on 6.9.80 Assessment Vide CIT(A)'s Rs. 69,232 Rs. 11,77,820 framed
on order dt (1) Rs. 9,65,000 on 29.8.74 Rs. 17,58,522 1.3.1978 on 19.4.79 on
14.9.73 on various on which tax determined at (2) Rs. 32,49,000 payable was Rs.
1,26,69,416 on 14.12.73 Rs. 2,31,21,927. on which tax (3) Rs. 23,000 payable was
on 29. 12.73 Rs. 73,16,613 (4) Rs. 32,72,000 as determined on
14.3.74 Assessment Vide CIT(A)'s Rs. 91,082 made on order dt.

(1) Rs. 10,92,358 Rs. 40,50,183 Rs. 20,31,916 23.8.79 on 30.7.80 on 12.9.74 on
29.9.75 on 6.9.80 an income of income (2) Rs. 37,97,178 and Rs. 5,74,14,100
determined at on 13.12.74 Rs. 29,020 on which tax Rs. 1,86,44,514 (3) Rs.
37,54,722 on 30.1.81 payable was on which tax on 25.2.75 Rs. 3,51,56,643 vide
order dt.

(4) Rs. 42,456 Vide rectifi- 14.8.80 came on 14.3.75 cation order to Rs.
7,67,222.-----

The assessee filed applications under Section 154 requesting that it be allowed
interest under Section 244(1A) with reference to the amounts of TDS, advance tax
and self-assessment tax. However, the Income-tax Officer rejected the assessee's
claim observing that no part of the refund could be said to be due to the assessee
"as a result of any amount having been paid after 31.3.1975 in pursuance of
assessment order and such amount or any part thereof having been found in
appeal under the Income-tax Act, 1961 to be in excess of amount which the
assessee was allowable to pay as tax." However for the assessment year 1974-
75, he held that only an amount of Rs. 5,238 was due to the assessee as interest
under Section 244(1A) on account of payment of Rs. 1,74,662 (refund for the A. Y.
1971-72 adjusted on 18.12.1978 against the total demand created on 1.3.1978).
This amount of Rs. 5,238 was refunded to the assessee on 24.5.1979.

3. Against the said orders, the assessee came up in appeal before the learned
Commissioner of Income-tax (Appeals). The learned CIT(A) held that in view of
the binding decision of the jurisdictional High Court of Delhi in the case of National

Agricultural Co-operative Marketing Federation of India Ltd. v. Union of India [1981] 130 ITR 928 the assessee's claim for interest with regard to advance tax paid prior to 31.3.1975 but adjusted in an assessment made after the aforesaid date was to be allowed by the Income-tax Officer. However, so far as payment of tax by way of TDS and payment of self-assessment tax under Section 140A is concerned, he held that if such payments took place before 31.3.1975, no interest was allowable under Section 244(1A).

4. The assessee has come up in appeals for the assessment years 1973-74 and 1974-75. It has obviously not come up in appeal for the assessment year 1975-76 for which the tax deducted at source as well as self-assessment tax were paid after 31.3.1975. However, the department has come up in appeal for all the three assessment years. Shri M.L.

Gupta, the learned counsel for the assessee strongly relied on the provisions of Sections 140A, 199, 219 and 244(1 A). He pointed out that the view taken by the Delhi High Court in the case of National Agricultural Co-operative Marketing Federation of India Ltd. (supra) was also taken by the Punjab & Haryana High Court in the case of CIT v. Leader Engg. Works [1989] 178 ITR 529. He also referred to a Third Member decision of the Appellate Tribunal in the case of Phelps & Co.

(P.) Ltd. v. ITO [1988] 25 ITD 96 (Delhi) (TM). Lastly he reiterated the reliance on the following decisions of the Tribunal which had been cited before the learned Commissioner of Income-tax (Appeals) as well:- On the other hand, Shri Puneet Gangal, the learned Departmental Representative strongly relied upon the orders of the Income-tax Officer for these years.

5. We have considered the rival submissions as also the decisions referred to above. As before the learned CIT(A), so also before us, it was not disputed that a matter of the present nature could be gone into under Section 154. The only question which falls for consideration therefore is whether in terms of the decision of the jurisdictional High Court of Delhi in the case of National Agricultural Co-operative Marketing Federation of India Ltd. (supra), the claims made by the assessee under Section 244(1A) for grant of interest could be said to lie. Section

140A(I) relates to the payment of self-assessment tax and Sub-section (2) of that section provides that after a regular assessment under Section 143 or Section 144 has been made, any amount paid under Section 140A(I) shall be deemed to have been paid towards such regular assessment. Section 199 which relates to TDS provides that such deduction shall be treated as a payment of tax. Section 219 which relates to advance tax is also to the same effect. Section 244(1 A) is to the following effect:- Where the whole or any part of the refund referred to in Sub-section (1) is due to the assessee, as a result of any amount having been paid by him after the 31st day of March, 1975, in pursuance of any order of assessment or penalty and such amount or any part thereof having been found in appeal or other proceedings under this Act to be in excess of the amount which such assessee is liable to pay as tax or penalty, as the case may be, under this Act, the Central Government shall pay to such assessee simple interest at the rate specified in Sub-section (1) on the amount so found to be in excess from the date on which such amount was paid to the date on which the refund is granted: The crucial expression used in the said provision is "... as a result of any amount having been paid by him after the 31st day of March, 1975 in pursuance of any order of assessment...". In the case of National Agricultural Co-operative Marketing Federation of India Ltd. (supra) where the Hon'ble Delhi High Court was dealing with advance tax it was held by the Hon'ble High Court that the payment of advance tax has material significance only till the initial regular assessment is made and thereafter it has no separate existence by itself but gets merged in the tax demand payable by the assessee and therefore, even the payment of advance tax can be worked into the provisions of Section 244(1 A). It was farther held that on the language of Section 219, the advance tax paid is treated as a payment of tax for the assessment year and is given credit for at the time of the regular assessment which means that when the regular assessment is made in the first instance, the advance tax paid earlier is treated as having been paid in pursuance of the regular assessment and in satisfaction thereof. Thus the advance tax paid earlier will get converted into a payment on the date of the initial assessment of the tax due for the assessment year.

Carrying this fiction to its logical extent, the assessee was held entitled to interest on the amount of advance tax also to the extent it was found refundable from the

date of the excess payment right up to the date of the actual refund. We have already seen that the wordings of Section 199 are in pan materia with Section 219 and that so far as Section 140A is concerned, it is so widely worded as to provide that after a regular assessment has been made, any amount paid under Section 140A(l) shall be deemed to have been paid towards such regular assessment. This language is wider and stronger than the language used in Section 199 or 219. Therefore, the decision of the jurisdictional High Court of Delhi in the case of National Agricultural Cooperative Marketing Federation of India Ltd. (supra) would apply with equal force to the case of TDS and self-assessment tax. The assessee in the present case has asked for interest from the date of adjustment to the date of refund. In fact in the Third Member decision of Delhi Bench 'B' in the case of Phelps & Co. (P.) Ltd. (supra) the Tribunal Was dealing with self assessment tax under Section 140 A and it held that the ratio in the case of National Agricultural Co-operative Marketing Federation of India Ltd. (supra) was attracted and that there could be no room for holding that self-assessment tax was not covered by Section 244(1 A).

It was held that interest on the impugned refund was due to the assessee in terms of Section 244(1 A). In that case the payments as self-assessment tax under Section 140A were made on 29.12.1975 and 19.7.1977. Therefore, in our view there was an apparent mistake in so far as interest was not allowed by the Income-tax Officer at all under Section 244(1 A) with reference to TDS, advance tax paid and self-assessment tax under Section 140A whereas the learned CIT(A) took the view that interest under Section 244(1A) was not claimable with regards to TDS and payment of self assessment tax where they were made before 31.3.1975. The assessee is, therefore, entitled to succeed in its appeals for the assessment years 1973-74 and 1974-75 and the department's appeals for these years would fail for the same reason. So far as the department's appeal for the assessment year 1975-76 is concerned, it appears to be misconceived in so far as it is in the following terms whereas advance tax had been paid for that year prior to 31.3.75 in terms of the decision of the Hon'ble Delhi High Court in National Agricultural Co-operative Marketing Federation of India Ltd.'s case (supra) and so far as TDS and self assessment were concerned/they having been paid after 31.3.1975, were not hit by the order of the learned Commissioner of Income-tax

(Appeals):- On the facts and in the circumstances of the case the learned CIT(A) erred in allowing/the assessee's claim for interest Under Section 244(1 A) with regard to advance tax paid prior to 31.3.1975 but adjusted in an assessment made after the aforesaid date.

Therefore, in whatever way the matter is looked at even for the assessment year 1975-76, we find no force in the department's appeal.

6. In the result ITA Nos. 998 & 999/Del/87 filed by the assessee are allowed whereas ITA Nos. 1187 to 1189/Del./787 filed by the department fail and are dismissed.

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