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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Nov-19-1990

Reported in : (1991)36ITD363(Delhi)

Judge : M Agarwal, A Kalayanasundharam

Appellant : inspecting Assistant

Respondent : Cement Distributors Ltd.

Judgement :
1. These are two appeals by the Revenue and raise identical issues.

They were, therefore, heard together and are disposed of by this common order. We have heard the learned Departmental Representative and the learned counsel for the assessee and have perused the material placed before us.

2. In ITA No. 4766/87 which arises out of the assessment for assessment year 1979-80 the facts are : The assessee filed a return of income on 29-6-1979 showing nil income after adjustment of unabsorbed losses and unabsorbed investment allowance. There was tax deducted at source amounting to Rs. 31,123. A provisional assessment under Section 141A was made on nil income and on 31-12-1979 the aforesaid amount of Rs. 32,123, which had been deducted from the assessee's income at source was refunded to the assessee. Thereafter a regular assessment was completed on 14-7-1982 on an income of Rs. 3,14,170. A demand of Rs. 2,52,178 resulted from the said assessment. This demand included

a sum of Rs. 70,759 on account of interest under Section 215. A demand notice was served on the assessee and the entire amount of demand as paid by the assessee on 19-8-1982, i.e., within the time allowed by the demand notice. Against the assessment the assessee appealed to the CIT(Appeals), who reduced the income to Rs. 1,84,374 thereby reducing the demand for tax and interest under Section 215 to Rs. 1,35,450. The amount of interest under Section 215 was calculated at Rs. 28,977. As a result of the order passed by the CIT(A) the assessee was entitled to a refund which was granted to the assessee on 17-4-1984. The total amount refunded was Rs. 1,36,567 which included interest under Section 244(1 A) at Rs. 19,839.

3. Against the order passed by the CIT(A) the Revenue filed an appeal before the Tribunal and vide Tribunal's order dated 14-5-1986 the income was increased to Rs. 2,60,567 resulting in a tax demand of Rs. 1,40,478, which after adjusting the earlier payments, refunds etc.

resulted in a net additional demand of Rs. 44,005. While giving effect to the Tribunal's order the assessing officer computed additional interest under Section 215 at Rs. 17,160. In doing so he also included in the tax the amount of TDS, which was refunded to the assessee in terms of the provisional assessment. The interest referable to the sum of Rs. 32,123 was Rs. 9,630 and the interest referable to the additional tax of Rs. 44,005 was Rs. 17,160. While giving effect to the Income-tax Appellate Tribunal's order the assessing officer also charged interest under Section 220(2) on the sum of Rs. 73,345 w.e.f.

17-4-1984 to 20-2-1987. Such interest amounted to Rs. 30,969 and the amount of Rs. 73,345 was made up of the following items :- 4. Against the order dated 20-2-1987 passed by the assessing officer giving effect to the Tribunal's order in the manner aforesaid the assessee filed an appeal before the CIT(A). The learned CIT(A) held that the amount of Rs. 32,123 cannot be treated as part of assessed tax within the meaning of Section 215(5) and no interest can be charged on it. He also held that the assessee having paid the amount in terms of the demand notice served on the making of a regular assessment, no interest under Section 220(2) could be charged for the intervening period, i.e., the refund allowed to the assessee as a consequence of the order passed by the CIT(A) and the Tribunal's order. It is against these directions of the CIT(A) that the present appeal by the Revenue has been filed.

5. The first ground raised by the Revenue is that no appeal was maintainable before the CIT(A) against the levy of interest under Sections 215 and 220(2). For this proposition reliance is placed on a judgment of the Hon'ble Supreme Court in the case of Central Provinces Manganese Ore Co. Ltd. v. CIT [1986] 160 ITR 961/27 Taxman 275. The learned counsel for the assessee, on the other hand, also relied on the same ruling to contend that an appeal lies against the levy of interest as well. In the aforesaid case the Hon'ble Supreme Court was concerned with the levy of interest under Sections 139(8) and 215. The Hon'ble Supreme Court held that levy of interest is a part of the process of assessment. Therefore, when the assessing officer was passing the impugned order dated 20-2-1987 to give effect to the order passed by the Tribunal and the CIT(A) and when he re-worked the amount of various interests he was only exercising the power of making an assessment conferred on him under Section 143. On this aspect of the matter there was no dispute between the parties before us. The learned Departmental Representative, however, contended that the Hon'ble Supreme Court has held that the question whether a case is made out for waiver or reduction of the interest levied under Section 215 or Section 139(8) cannot be the subject matter of an appeal under Section 246(c) of the Income-tax Act. This according to the Hon'ble Supreme Court was a matter which can more appropriately be dealt with by the Commissioner in exercise of his revisional jurisdiction. It was in this light that the Hon'ble Supreme Court held that no appeal lay in regard to the improper exercise of discretion to waive or reduce the interest. At page 967 of the Report the Hon'ble Supreme Court has specifically stated that it is open to an assessee to contend in appeal against an order of assessment that he is not liable to pay any advance-tax at all or that the amount of advance-tax determined as payable by the ITO is not correct. In the case before us the assessee, when it filed an appeal before the CIT(A), was not invoking the jurisdiction of the Revenue to waive or reduce the amount of interest leviable on the assessee. What it was disputing was the correctness of the calculation of interest made by the assessing officer. According to the assessee, the amount on

which interest under Section 215 was calculated was not correct and for the interest under Section 220(2) the assessee's case was that it having paid the demand within the period prescribed by the notice of demand, it was not in default and no interest was leviable on it. Thus, the assessee was denying its liability to the levy of interest and was patently not seeking waiver or reduction. In our view, therefore, the appeal filed by the assessee before the CIT(A) was maintainable in terms of Section 246(c). We hold accordingly and reject this contention of the Revenue.

6. The next ground raised in this appeal is that the CIT(A) has erred in holding that tax refunded on provisional assessment is not to be considered as tax determined on regular assessment while charging interest under Section 215. Under Section 215 an assessee is liable to pay interest if the amount of advance-tax paid by it on the basis of its own estimate is less than 75% of the assessed tax. Assessed tax has been defined in Section 215(5) to mean the tax determined on the basis of the regular assessment reduced by the amount of advance-tax or tax deducted at source. In this case the assessing officer has taken the view that the amount of Rs. 32,123, which was the tax deducted from the income of the assessee and which was refunded to the assessee in terms of the provisional assessment, would also form part of the tax determined on regular assessment for charging interest under Section 215. This action of the assessing officer is not shown to be authorised by any provision of law. The definition of assessed tax in Section 215(5) is clear and you cannot add anything to the tax determined on the basis of the regular assessment. On the order hand, the amount of Rs. 32,123 being the amount of the tax deducted at source, was to be reduced from the tax so determined to arrive at the tax assessed. The mere fact that the sum of Rs. 32,123 was refunded to the assessee as a consequence of the provisional assessment did not rob, this amount of the character of tax deducted at source and, therefore, in determining the amount of assessed tax this sum should have been deducted from the tax determined to arrive at the assessed tax. That does not seem to have been done but that point is not in controversy before us. The assessee's grievance was that the aforesaid sum could not be added to the tax determined on the basis of regular assessment and this has been accepted by the GIT(A). The ground raised by the Revenue is, therefore, thoroughly untenable and is hereby rejected.

7. The last ground raised in this appeal is about the levy of interest under Section 220(2), which provides that if the amount specified in any notice of demand under Section 156 is not paid within the period limited under Sub-section (1) (of Section 220), the assessee shall be liable to pay simple interest at 15% per annum from the day commencing after the end of the period mentioned in Sub-section (1). As noted above, in this case a notice of demand was served on the assessee after the regular assessment was completed. Admittedly the entire demand communicated to the assessee through the demand notice was paid on 19-8-1982, i.e., within the period specified in the demand notice.

Thus, the assessee has fully complied with the provisions of Section 220(1). It was thereafter that by virtue of an order passed by the CIT(A) the assessee was granted a refund on 17-4-1984 and by virtue of the Tribunal's order passed subsequently the demand was partially restored. According to the Revenue on the demand so restored the assessee is liable to pay interest in terms of Section 220(2) from 17-4-1984 onwards. This contention is negatived by the plain terms of Sub-section (2) of Section 220. If the amount mentioned in the notice of demand is paid within the time allowed thereby this provision of law does not at all come into play. An assessee becomes liable to pay interest under Section 220(2) only if he fails to comply with the notice of demand and such interest is leviable from the end of the period mentioned in Sub-section (1) of Section 220, i.e., 35 days from the service of the notice of demand. Therefore, if a default had been made by the assessee interest under Section 220(2) would have been leviable from on or about the 19th August, 1982 and not 17-4-1984 as now alleged by the Revenue. The very fact that the Revenue claims interest from 17-4-1984 itself shows that Section 220(2) was not applicable. The learned Departmental Representative referred to a Circular No. 334 dated 3-4-1982 reported in 135 ITR (St.) page 10 where it is stated that where the original order of the ITO is restored either in part or wholly, interest payable under Section 220(2) will be computed with reference to the due date reckoned from the original demand notice. This circular does not refer to a situation in which there was no default whatsoever within the meaning of Section 220(2), the assessee having paid the demand in its entirety within the time prescribed by law. Reliance was also placed on K.P. Abdul Kareem Hajee v. 770 [1983] 141 ITR 120(Ker.) and M.N. Jadav v. Fourth ITO [1986] 161 ITR 275/ 24

Taxman 686 (Kar.) in which it was held that interest under Section 220(2) would be leviable from the date of the expiry of the original notice of demand and an intervening reduction in tax was inconsequential. Both these authorities also relate to cases in which the demand was not paid in terms of the demand notice and, therefore, the default within the meaning of Section 220(2) had occurred and interest had started accruing. As is evident, in the case before us there was no default and, therefore, the liability to pay interest had not arisen. The view taken by the CIT(A), with which we agree, find support also from A.V. Thomas and Co. Ltd. v. ITO [1982] 138 ITR 275 (Ker.). For the reasons discussed above, the appeal by the revenue has no force and is hereby rejected.

8. As regards the appeal for assessment year 1980-81 the points involved are identical and only the figures and dates differ, which we do not consider it necessary to mention here. They have already been mentioned in the order passed by the assessing officer and the order passed by the CIT(A) which is now in appeal before this Tribunal. For the reasons given above we uphold the order passed by the CIT(A). This appeal too, therefore, shall stand dismissed.