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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Nov-22-1990

Reported in : (1991)36ITD540(Delhi)

Judge : M Bakshi, J Kathuria

Appellant : inspecting Assistant

Respondent : Universal Steel Alloys Ltd.

Judgement :

1. This appeal by the Revenue is directed against the order of CIT(A)I, New Delhi on the following grounds : On the facts and in the circumstances of the case, the learned CIT(A) erred in directing to allow interest under Section 244(A).

2. In any case, the issue being capable of two interpretations there was no mistake apparent from records which could be rectified under Section 154.

2. The brief facts giving rise to this appeal are that the assessee company was liable to pay advance-tax for the assessment year 1982-83 in three equal instalments on 15th June, 15th September and 15th December, 1981. The assessee, however, made the payments as under : Assessment was completed on the basis of which a refund of Rs. 20,903 was granted to the assessee. Application under Section 154/214 of the Income-tax Act, 1961 was filed on 20th August, 1985 requesting the Assessing Officer to grant interest under Section 214. The Assessing Officer vide order dated 8th November, 1985 held that the payment

of advance-tax by the assessee was not in accordance with Sections 207 to 212 of the Income-tax Act, 1961 and accordingly interest under Section 214 was not payable to the assessee. Assessee appealed to the CIT(A)-I, New Delhi against this order who vide its order dated 7-11-1986 directed the Assessing Officer to pay interest under Section 214 of the Income-tax Act, 1961 to the appellant considering the entire payment made during the financial year 1981-82 as advance-tax payment. The matter did not rest there. Assessee filed another application under Section 154 dated 7th October, 1986 requesting the Assessing Officer for adjustment of brought forward losses determined in consequence of the order of the CIT(A) for asst. years 1979-80 and 1981-82. By this application assessee also requested the Assessing Officer to grant interest under Section 214/244(1A) amounting to Rs. 2,85,565. The Assessing Officer accepted the application of the assessee to the extent of determination and set off of carry forward losses. However, in respect of interest the Assessing Officer held that since payment of advance-tax was not made in accordance with Section 210 of the Income-tax Act, no interest under Section 244(1 A) could be granted.

The Assessing Officer further pointed out in this order that the request of the assessee regarding grant of interest under Section 214 had already been rejected vide order dated 8th November, 1985. Assessee appealed against the order of the Assessing Officer and the CIT(A) vide order dated 26th June, 1987 directed the Assessing Officer to grant interest to the assessee under Section 244(1 A) from the date of regular assessment to the date of refund by treating payment of advance-tax made during the financial year 1981-82 to have been paid in pursuance of the regular assessment and in satisfaction thereof. The CIT(A) in arriving at its conclusions relied upon the decision of the Delhi High Court in the case of National Agricultural Co-operative Marketing Federation of India Ltd. v. Union of India [1981] 130 ITR 3. The Revenue is aggrieved by this decision of the CIT(A). The learned D.R. Smt. Sheba Bhattacharya contended that the decision of the Delhi High Court in the case of National Agricultural Co-operative Federation of India Ltd. (supra) has been stayed by their Lordships of the Supreme Court vide order dated 26th November, 1984. When the Assessing Officer passed the order, the decision of the Delhi High Court had already been stayed by the Supreme Court. The CIT(A) thus erred in following the decision, operation of which had

been stayed by the jurisdictional High Court. The learned D.R. further contended that the decision of the jurisdictional High Court having been stayed, the issue as to whether assessee was entitled to interest under Section 244(1 A) was thus a debatable question of law and accordingly provisions of Section 154 could not be invoked. She relied upon the decision of the Supreme Court in the case of T.S. Balaram, ITO v. Volkart Bros. [1971] 82 ITR 50 and urged that the decision of the CIT(A) may be set aside and that of the Assessing Officer restored.

4. The learned counsel for the assessee Shri M.C. Gupta, contended that the effect of the stay gran ted by the Supreme Court in the case of National Agricultural Marketing Federation of India Ltd. (supra) has been considered by various benches of the Tribunal and the position of law analysed. According to Shri Gupta, the view of various benches is in accordance with the decision of the Andhra Pradesh High Court in the case of Koduru Venkata Reddy v. LAO [1988] 170 ITR 15 wherein it has been held that when a judgment of Full Bench of a High Court is suspended, the only effect of such suspension is that the judgment cannot be executed or implemented. But so long as the Full Bench judgment stands, the dicta laid down therein are binding on all courts including single judges and Division Benches of that High Court. The dicta laid down therein cannot be ignored unless the Court after hearing a particular case doubts and correctness of the dicta and thinks it proper to consider them afresh. The learned counsel cited the following decisions of the Tribunal in support of the above proposition : The learned counsel contended that there is only one decision to his knowledge where a contrary view has been taken, i.e., in the case of ITO v. Mohan Meakins Ltd. [IT Appeal No. 94 (Delhi) of 1987] for asst.

year 1980-81. According to the learned counsel the Third Member decision and other decision of the Tribunal had not been brought to the notice of the Bench in Mohan Meakins Ltd. (supra). Otherwise the same view would have been taken. The learned counsel contended that a decision of the Andhra Pradesh High Court and the Third Member decision in the case of Phelps Co. (P.) Ltd. (supra) support the case of the assessee. The learned counsel pleaded that the dicta laid down by their Lordships of the Delhi High Court cannot be ignored by this Tribunal working under its jurisdiction. It was accordingly pleaded, that the decision of the CIT(A)

being in conformity with the decision of the Hon'ble Delhi High Court, may be confirmed.

5. With regard to applicability of Section 154, the learned counsel contended that non-consideration of a statutory provision is a mistake apparent from record. The Assessing Officer had to give effect to provisions of Section 244 and had he failed to do so a mistake would have occurred which was rectifiable under Section 154. The learned counsel relied upon the decision of the Hon'ble Punjab and Haryana High Court in the case of Indian Woollen Textile Mills (P.) Ltd. v. CIT [1978] 111 ITR 205 in support of his contention, "that where a statutory provision is lost sight of the matter could be treated as an error apparent on record". He accordingly pleaded that the order of the CIT(A) may be confirmed and appeal of the revenue dismissed.

6. We have given our careful consideration to the rival contentions. We may examine the scheme of assessment under the Income-tax Act, 1961.

When an assessment is made by the Assessing Officer a demand notice follows if tax is found payable on the basis of assessment. However, if the tax paid before the assessment is found to be in excess of the demand created, excess amount paid is refundable to the assessee.

Section 240 of the Income-tax Act, 1961 provides that where as a resultef any order passed in appeal or other proceedings under the Act, refund of any amount becomes due to the assessee, the Assessing Officer shall, except as otherwise provided in the Act, refund the amount to the assessee without his having to make any claim in that behalf.

Section 244 of the Income-tax Act, 1961 provides for payment of interest @ 15% p.a. if the refund due to the assessee in pursuance of an order referred to in Section 240 is not paid within three months from the end of the month in which such order is passed. Section 244(1 A) which is subject matter of dispute in this case is reproduced hereunder : 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.

As is evident from Section 244(1 A) interest is payable on payments made after 31 st 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 the Act to be in excess of the amount which such assessee is liable to pay as tax or penalty. Now in this case Assessing Officer passed an order under Section 154 adjusting the brought-forward losses as determined in consequence of appellate orders for asst. years 1979-80 and 1981-82. By this order income of the assessee was reduced to Rs. 55,33,410 as against assessed income of Rs. 67,50,954. From this order it is evident that CIT(A) had also allowed a relief of Rs. 1,48,722 to the assessee vide order dated 8-11-1985. In consequence of this order of 11th December, 1986 passed by the Assessing Officer under Section 154 for set off of brought forward losses, further refund became due to the assessee. Section 240 was thus attracted. Assessing Officer passed consequential order and refund was granted to the assessee. Once refund was found due to the assessee it was obligatory for the Assessing Officer to see if interest under Section 244(1 A) was payable to the assessee. The Assessing Officer performed this obligation though it is a different matter that he declined to grant interest to the assessee, on the ground that payments not made in time during the financial year did not qualify for consideration under Section 244(1A) and as the contention of the assessee had been rejected earlier in respect of interest under Section 214 vide order dated 8th November, 1985.

7. If we read Section 240 in conjunction with Section 244, it is clear that once the Assessing Officer finds that as a result of any order passed in appeal or other proceedings under the Act, refund of any amount becomes due to the assessee he is bound to grant the refund to the assessee without assessee making any claim. As a necessary consequence it is imperative on the Assessing Officer to

examine as to whether any interest under Section 244(1 A) is payable or not. If the Assessing Officer fails to consider the applicability of the provisions of the Act, by applying the law laid down by their Lordships of the Punjab and Haryana High Court in the case of Indian Woollen Textile Mills (P.) Ltd. (supra) the Assessing Officer would commit a mistake in losing sight of the statutory provisions. Thus we are of the view that it was necessary for the Assessing Officer to consider the applicability of provisions of Section 244(1A) after having determined a refund on adjustment of brought-forward losses of earlier years.

8. The Calcutta High Court in the case of Chloride India Ltd. v. CIT [1977] 106 ITR 38 has held that the order giving effect to the appellate order is in the nature of regular assessment. Similar view has been expressed by Bombay High Court in the case of Binod Mills Co.

Ltd. v. S.A. Kadri, EPTO [1980] 122 ITR 778 and by the Madras High Court in the case of Rayon Traders (P.)Ltd. v. ITO [1980] 126 ITR 135.

In the case of Central Provinces Manganese Ore Co. Ltd. v. CIT [1986] 160 ITR 961, their Lordships of the Supreme Court have held that levy of interest under the provisions of the Income-tax Act is part of process of assessment. By the same analogy the grant of interest to the assessee under the provisions of the Income-tax Act could be held as part of process of assessment. Viewing the issue in the light of aforementioned decisions we are of the firm view that the Assessing Officer has acted in accordance with law in considering the claim of the assessee under Section 244(1A) of the Income-tax Act, 1961 and his action was not without jurisdiction. The contention of the revenue in this regard is accordingly rejected.

9. We would like to point out that the revenue has attempted to make out altogether a new case before us in this behalf. When the assessee made a request to the Assessing Officer to consider the claim under Section 244(1 A), the Assessing Officer did not refuse to consider the claim though no relief was granted to the assessee on the ground that assessee was no entitled to it. The CIT(A) considered the issue on merits. If at all order of the Assessing Officer was without jurisdiction, the proper course for the revenue would have to take recourse to the provisions of Section 263 for cancellation of the order passed by the Assessing

Officer. At this stage it is not open to the revenue to challenge the jurisdiction of the Assessing Officer in considering a claim. It would have been a different matter if the Assessing Officer had ruled that he had no jurisdiction to pass an order under Section 244(1A). That is not the case before us.

10. Now coming to the next question as to whether, despite stay granted by the Supreme Court to the judgment of Delhi High Court's case, authorities working under its jurisdiction could ignore the dicta laid down by the Supreme Court.

11. The stay granted by the Supreme Court in Civil Misc. Petition No.26717 dated 26th November, 1984 is reproduced hereunder for the sake of facility : The application for stay abovementioned being called on for hearing before this court on the 26th day of November, 1984, upon hearing counsel for the parties herein, this Court both order that pending the hearing and final disposal by this Court of the appeal abovementioned, there shall be interim stay of the judgment and order dated the 17th September, 1980 of the Delhi High Court at New Delhi in Writ Petition No. 878 of 1978 directing the payment of interest under Sections 214 and 244(1 A) of the Income-tax Act.

12. This order of the Hon'ble Supreme Court was considered by the Delhi Bench 'B' of the Tribunal and by a Third Member decision in Phelps Co.

(P.) Ltd.'s case (supra) it was held that the stay order granted by the Court effects only the parties to the dispute before it and that the ratio of the judgment being that of the jurisdictional High Court would still bind the subordinate authorities functioning in its jurisdiction in the case of Kodu.ru Venkata Reddy (supra) their Lordships of the Andhra Pradesh High Court held as under: When a judgment of a Full Bench of a High Court is the subject-matter of an appeal and the said judgment is suspended, the only effect of such suspension is that that judgment cannot be executed or implemented. But, so long as the Full Bench judgment stands, the dicta laid down therein are binding on all courts including single judges and Division Benches of that High Court. The dicta laid down therein cannot be ignored unless the court after hearing a particular case doubts the correctness of the dicta and thinks it appropriate that it should be reconsidered.

13. In the case of State of Andhra Pradesh v. CTO [1988] 169 ITR 564 Andhra Pradesh High Court and in the case of Siemens India Ltd. v. K.Subramanian, ITO [1983] 143 ITR 120, Bombay High Court have held that merely because an appeal has been filed or a Special Leave Petition is pending against the decision, would not denude that decision of its binding effect and until set aside, that decision is binding on all upon whom it operates as a precedent, unless the operation of that judgment has been stayed by Supreme Court. It was further held that not to follow the decision of the Supreme Court within whose jurisdiction the ITO acts, would tantamount to committing contempt of that court.

Whereas Bombay High Court as well as the Andhra Pradesh High Court have laid down that the decision of the High Court would be binding even if appeal has been filed against the decision unless a judgment is stayed.

They have not considered as to whether dicta laid down by the jurisdictional High Court would still be binding upon the subordinate authorities. In the case of Koduru Venkata Reddy (supra), the Andhra Pradesh High Court has specifically considered the question and held that under the circumstances the dicta laid down would still be binding on all the Courts within its jurisdiction. Thus, respectfully following the decision of the Andhra Pradesh High Court in Koduru Venkata Reddy's case (supra), we hold that despite stay granted by the Supreme Court on judgment of Delhi High Court in the case of National Agricultural Co-operative Marketing Federation of India Ltd. (supra), the dicta laid down by their Lordships of the Delhi High Court is still binding for the subordinate Tribunals as well as the revenue authorities. This position would hold good unless the Hon'ble Supreme Court reverses the judgment of the Delhi High Court referred to above.

14. Whether assessee is entitled to interest under Section 244(1A) or not may be looked into from a different perspective as well. Assuming though not admitting that the dicta laid down by the jurisdictional High Court of Delhi in the case of National Agricultural Co-operative Marketing Federation (supra) is not binding upon the subordinate authorities within its jurisdiction, it does not follow that the authorities are bound to take a different view than the one taken by the jurisdictional High Court. As is clear from the facts the Hon'ble Supreme Court has

merely stayed the operation of the judgment and has not so far reversed the same. Even if the contention of the revenue that the dicta laid down by the jurisdictional High Court is not binding, were to be accepted, the matter has still got to be decided on merits. At best the decision rendered by the jurisdictional High Court could be treated as non est for the purposes of taking a decision. It would be open to the Tribunal and the revenue authorities to decide the issue on consideration of the other decisions of the High Courts and the decisions of the Tribunal if any, on the issue and arrive at its independent decision. Thus, in our view, the controversy as to whether the dicta laid down by the jurisdictional High Court is binding upon the subordinate Tribunals and authorities is of no consequence as the matter has got to be decided on merits, in any case.

15. In this case assessee has made payment of advance-tax during the financial year and on the basis of the appellate orders refund has been determined in favour of the assessee. Interest under Section 214 has been directed to be granted in respect of the payment of advance-tax made by the assessee. Now for purposes of payment of interest under Section 244(1A) various Benches of the Tribunal have taken the view that payment made in advance or under Section 140A is converted into payment in pursuance of regular assessment on the completion of regular assessment. As and when a regular assessment is made the payment made in advance loses its character as advance-tax payment and gets converted into payment towards regular^assess-mentby virtue of Section 219of the Income-tax Act, 1961. Thus, assessee is entitled to interest under Section 244(1A) of the Income-tax Act, 1961 on the excess payments made, from the date of regular assessment to the date of grant of refund. We find support for this view from the decisions of the ITAT in the case of Filmistan Exhibitors (P.) Ltd. (supra), Somany Pilkington's Ltd. v. IAC [1990] 34 ITD 531 (Delhi),/TO v. Delhi Cloth Mill Ltd. [1990] 33 ITD 44 (Delhi). In the case of Filmistan Exhibitors (P.) Ltd. (supra) the Bench has considered the decision of Full Bench of the Kerala High Court in the case of CIT v. G.B. Transporters [1985] 155 ITR 548 and held that the Kerala High Court has not taken a different view than the Delhi High Court in so far as the issue relating to the payment of advance tax for taking the character of payment towards regular assessment is concerned. It was held that there was no conflict between the decisions of the Delhi High Court and the Kerala High Court and that

the Kerala High Court did not consider the question of allowance of interest under Section 244(1A) on the advance tax paid. We respectfully agree with the view taken by this Bench of the Tribunal.

16. On the basis of above discussion, we hold that the assessee is entitled to interest under Section 244(1A) on the excess advance tax payments made, from the date of regular assessment to the date of refund.

17. The decision of the CIT(A) thus does not call for any interference.

The appeal of the revenue is accordingly dismissed.