

Sag Construction Associates Vs. Union of India and Others

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Court : Delhi

Decided On : Jul-28-1998

Reported in : 1999IAD(Delhi)867; (1999)155CTR(Del)120;
[1998]234ITR501(Delhi); 1999RLR248

Judge : R.C. Lahoti and; C.K. Mahajan, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 244(1A)

Appeal No. : CW No. 2644 of 1991

Appellant : Sag Construction Associates

Respondent : Union of India and Others

Advocate for Def. : Sh. Sanjeev Khanna and ; Ms. Premlata Bansal, Advs.

Advocate for Pet/Ap. : Sh. Dharam Vir Singh Gupta, Adv

Judgement :
ORDER

R.C. Lahoti, J.

1. This is a petition by an assessed seeking direction to respondent No. 5 to release payment of interest to the petitioner under Section 244(1A) of the Income-tax Act, 1961.

2. The facts relevant may briefly be noticed. Amount of Rs. 7,235/- was deducted as TDS from the assessee. The assessee filed a return and an order of assessment was made on 22.2.83. There was an appeal wherein by order dated 13.12.85, the Asstt. Commissioner of Income Tax set aside the order of assessment. Thereafter a fresh order of assessment was made on 6.3.88. On 31.3.88, the petitioner moved an application to the ITO for awarding interest on the amount of Rs. 7,235/- which fell due and payable to the petitioner consequent upon the order of assessment. The prayer was reject-ed. The petitioner preferred an appeal which was held to be not maintainable. Thereafter the petitioner moved an application under Section 264 of the Act to the Commissioner of Income Tax. By order dated 22.6.90, the petitioner's application was rejected holding that Section 244(1A) was not attracted to the facts of the case. The writ petition has thereafter been filed by the petitioner.

3. The issue arising for decision is no more rest integra and stands concluded by the law laid down by the Supreme Court in *Modi Industries Vs . CIT* : [1995]216ITR759(SC) . At page 780, their Lordships have approved the view taken by Punjab & Haryana High Court in the case of *CIT Vs . Leader Engineering Works* holding that the advance tax paid lost its identity the moment it was adjusted towards the tax liability created under the regular assessment and took the shape of payment of tax in pursuance of the order of assessment. At page 787, their Lordships have held :-

'If the assessment order is set aside by a higher authority in its entirety and a direction is given to pass a fresh assessment order, the position will remain the same. The amount of advance tax paid by the assessee loses its character by virtue of Section 199 as soon as the first assessment order is made and the advance tax is set-off against the demand raised in the assessment order. In the assessment order is set aside, the adjusted amount of tax or the amount of tax refunded or refundable does not regain its character of advance tax once again. The argument made on behalf of the Revenue that in such a case a fresh assessment may be treated as 'regular assessment' is misconceived and is not in consonance with the scheme of the Act and the language of various sections dealing with regular assessment.'

4. It is, therefore, clear that with the passing of the order of assessment dated 22.2.83, without regard to the fact that assessment order was set aside by Asst. Commissioner of Income Tax, the amount of TDS lost its such character and the same was deemed to have been paid in pursuance to the order of assessment. Hence, Section 244(1A) would be clearly attracted.

5. The petition is, therefore, allowed. The order of the CIT dated 22.6.90 (page 26 of the paper book) and the order of the ITO dated 22.6.91 (copy not filed) - both declining payment of interest to the petitioner are hereby quashed and set aside. Admittedly the refund voucher was issued to the petitioner on 16.3.88. The respondent No. 5 shall within two months from the date of production of copy of this order before him calculate the interest due and payable to the petitioner in accordant with the provisions of Section 244(1A) of the Income-tax Act, 1961 on an amount of Rs. 7,235/- for the period 22.3.83 (the date falling one month after the date of first order of assessment) and 16.3.88 the date of refund voucher and release the same to the petitioner within one month thereafter.

6. The petition stands disposed of accordingly.

7. No order as to the costs.