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Court : Delhi

Decided On : Apr-30-2002

Reported in : (2002)175CTR(Del)112

Appeal No. : IT Ref. No. 245 of 1983 30 April 2002 A.Y. 1968-69

Appellant : Escorts Ltd.

Respondent : Cit

Advocate for Pet/Ap. : S.K. Aggarwal, *for the assessed* S.K. Jha & R.C. Pandey with Ms. Premlata Bansal, *for the Revenue*

Judgement :

S.B. Sinha, C.J.

The short question which arises for consideration in this reference made by the Tribunal, Delhi Bench 'E' under sub-section (1) of section 256 of the Income Tax Act, is as follows :

'Whether, on the facts and in the circumstances of the case, the Tribunal had erred in not allowing interest under section 244 on the entire amount of refund irrespective of the fact that the informations required by the Income Tax Officer for giving effect to the order of the Appellate Assistant Commissioner was furnished after the expiry of the period mentioned in the said section.'

2. The basic fact of the matter is not in dispute. The assessment year in question is 1968-69. The assessed is a company. The assessment was completed by the assessing officer on or about 25-3-1972, in terms whereof it was held that a sum of Rs. 3,01,634 was still payable as income-tax. The said demand, however, later on was reduced to Rs. 2,93,931 by reasons of two certificatory orders, dated 11-5-1972, and 16-10-1973. An appeal was preferred there against by the assessed and by a judgment, dated 30-10-1975, the appeal was allowed in terms whereof the assessed obtained relief to the extent of Rs. 3,07,022. As regards assessed's claim to relief under sections 80G and 80J of the said Act (a claim to development rebate), the appellate authority asked the Income Tax Officer to carry out the directions contained in the said appellate order. The assessing officer, pursuant to or in furtherance thereof, by an order dated 29-8-1977, made reassessment in terms whereof the total income of the assessed stood computed at Rs. 41,28,437. The assessing officer inter alia, held that the assessed was entitled to carry out its deficient claim under section 80G in respect of industrial undertaking to the extent of Rs. 1,15,953. However, it was observed that the assessed has failed to furnish evidence on certain points so as to enable the assessing officer to carry out the directions of the Appellate Assistant Commissioner wherefor he was asked to produce evidence. The assessed furnished relevant information and material in bits up to 8-6-1977, whereupon the said claim was allowed. Pursuant to the aforementioned order dated 29-8-1977, the assessed became entitled to refund amounting to Rs. 4,57,055. the said refund was made available to the assessed on the same date i.e., 29-8-1977.

3. The Appellate Assistant Commissioner, however, held that the assessed was not entitled to interest under section 244(1) on the said refund amount for the period 1-2-1976, to 29-8-1977. An application purported to be under section 154 of the Income Tax Act was file pressing its claim for interest stating :

(a) that interest due under section 214 had not been allowed on the excess amount of advance tax; and

(b) that interest as due under section 244 had not been allowed on the entire amount of refund.

4. The said claim was rejected. However, on appeal, the Commissioner (Appeals) accepted the assessed's contention that he was entitled to interest on the entire refund amount of Rs. 4,57,055 for the period, 1-2-1976, to 29-8-1977.

5. Feeling aggrieved, the revenue preferred an appeal. The Tribunal, by reason of the order dated 17-5-1982, held :

'Though bifurcation of the refund amount of Rs. 4,57,055 has not been made available to us, it is common case of the parties that a component or part of the said refund amount could have been straightway paid by the department to the assessed in terms of the quantum relief given by the Appellate Assistant Commissioner inasmuch as giving of relief to that extent called for no further investigation or verification and tax figure could be calculated at that rate applicable to companies. It was only regarding the balance amount concerned involving relief under sections 8OG and 80J and development rebate that further verifications or investigation by the Income Tax Officer was necessary before effect could have been given to the appellate order of the Appellate Assistant Commissioner.

So far as the said balance amount is concerned, we agree with the Income Tax Officer's finding that delay was attributable to assessed itself. In this regard there is sufficient material available from the Income Tax Officer's order dated 29-8-1977 itself. Further, a certain portion from that order has also been extracted by the Income Tax Officer while disposing of assessed's petition headed section 154 Income Tax Act. In the result, we modify the learned Commissioner's order and hold that assessed is entitled to interest for the period from 1-2-1976, to 28-8-1977, on that portion of the refund amount, which required no further investigation or verification at the Income Tax Officer level. As regards the balance claim of the assessed there was no mistake apparent from the record.'

Hence this reference.

6. Mr. Aggarwal, learned counsel appearing on behalf of the assessed would submit that the learned Tribunal committed an error in passing the impugned order insofar as it failed to take into consideration that in terms of section 244 of the

Income Tax Act, the interest becomes payable as soon as the refund becomes due and if the same is not paid within a period of three months, interest becomes automatically payable. Strong reliance in this connection has been placed on Trustees of HEH the Nizam's Miscellaneous Trust v. CWT & Anr. : [1984]150ITR423(AP) and CIT v. Graphite India Ltd. : [1994]209ITR318(Cal) .

7. The learned counsel would contend that any delay attributable on the part of the assessed cannot be taken into consideration for rejecting the claim of interest inasmuch such a provision has been made only in section 243 of the Income Tax Act.

8. Mr. Pandey, the learned counsel appearing on behalf of the revenue, on the other hand, would contend that no interest was payable under sub-section (1) of section 244 as the reassessment could not be completed owing to delay attributable on the part of the assessed. Strong reliance in this connection has been placed on National Horticulture Board v. Union of India & Ors. .

9. Sections 243 and 244 of the Income Tax Act read thus :

'243. Interest on delayed refunds.(1) If the assessing officer does not grant the refund,

(a) in any case where the total income of the assessed does not consist solely of income from interest on securities or dividends, within three months from the end of the month in which the total income is determined under this Act, and

(b) in any other case, within three months from the end of the month in which the claim for refund is made under this Chapter,

the Central Government shall pay the assessed simple interest at fifteen per cent per annum on the amount directed to be refunded from the date immediately following the expiry of the period of three months aforesaid to the date of the order granting the refund.

Explanation.If the delay in granting the refund within the period of three months aforesaid is attributable to the assessed, whether wholly or in part, the period of

the delay attributable to him shall be excluded from the period for which interest is payable.

244. Interest on refund where no claim is needed.(1) Where a refund is due to the assessed in pursuance of an order referred to in section 240 and the assessing officer does not grant the refund within a period of three months from the end of the month in which such order is passed, the Central Government shall pay to the assessed simple interest at fifteen per cent per annum on the amount of refund due from the date immediately following the expiry of the period of three months aforesaid to the date on which the refund is granted.

(1A) Where the whole or any part of the refund referred to in sub-section (1) is due to the assessed as a result of any amount having been paid by him after the 31-3-1975, in pursuance of any order of assessment or penalty and such amount or any part thereof having been found in appeal or other proceeding under this Act to be in excess of the amount which such assessed is liable to pay as tax or penalty, as the case may be, under this Act, the Central Government shall pay to such assessed 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 :

Provided that where the amount so found to be in excess was paid in Installments, such interest shall be payable on the amount of each such Installment or any part of such Installment, which was in excess, from the date on which such Installment was paid to the date on which the refund is granted :

Provided further that no interest under this sub-section shall be payable for a period of one month from the date of the passing of the order in appeal or other proceeding :

Provided also that where any interest is payable to an assessed under this subsection, no interest under sub-section (1) shall be payable to him in respect of the amount so found to be in excess.

(2) Where a refund is withheld under the provisions of section 241, the Central Government shall pay interest at the aforesaid rate on the amount of refund ultimately determined to be due as a result of the appeal or further proceeding for the period commencing after the expiry of three months from the end of the month in which the order referred to in section 241 is passed to the date the refund is granted.

(3) The provisions of this section shall not apply in respect of any assessment for the assessment year commencing on the 1-4-1989, or any subsequent assessment years.'

10. It is true that on a plain reading of section 244 of the Income Tax Act, it would appear that interest becomes payable on expiry of three months. However, in this case, the refund was not to be made by reason of the order of the Appellate Assistant Commissioner. For all intent and purport, the directions issued by the Appellate Assistant Commissioner were to be carried out by the assessing officer on the basis of the evidences which were to be furnished by the assessed. It is not in dispute that he failed and/or neglected to do so and as and when such evidences were furnished, an order of refund was passed. To the said extent, there was no delay in making the refund of the amount to which the assessed was entitled to.

11. 'Lex non cogit ad impossibilia' is a well-known maxim. It means the law does not compel a man to do which he cannot possibly perform. If the assessing officer could not perform his duties to complete the order of assessment in the absence of any evidence furnished by the assessed, the department cannot be blamed thereforee.

12. A law cannot be interpreted in vacuum. It has to be interpreted having regard to the facts and circumstances involved in each case.

13. In a situation of this nature, the refund must be held to have become payable on 29-8-1977. Furthermore, it is true that interest is payable by way of recompense but a person cannot claim any compensation if he is the contributing factor for non-payment. A person cannot claim damages even under common law

either by way of interest or otherwise, if the statutory order could not be passed owing to his own conduct. A person, as is well-known, cannot take advantage of his own wrong. If such claim is permitted, the same would not advance the cause of justice.

14. In Nizam's Miscellaneous Trust (supra), a Division Bench of the Andhra Pradesh High Court was dealing with a matter of refund under Wealth Tax Act. In the fact of that case, it was held that the assessed was entitled to refund in terms of section 34A of the Wealth Tax Act, 1957, in terms whereof such refund is liable to be paid as a result of order passed in appeals including a rectification proceeding and secondly, the amount has to be refunded to the assessed 'without his having to make any claim in that behalf.'

15. In the instant case, the claim for refund did not arise directly as a result of any order passed in appeal but only pursuant to the directions issued therein in terms whereof the assessing officer was required to pass a separate order on the basis of the evidence which was to be furnished by the assessed himself.

16. In Graphite India (supra), following observations were made :

'The respondent-assessed is also entitled to get interest under section 244(1) of the said Act in accordance with law since the amount refundable to the respondent-assessed was not refunded within a period of three months from the end of the month in which the appellate order was passed by the Commissioner (Appeals). The requirement for the entitlement to interest on refund under sub-section (1) of section 244 is quite clearly expressed. This interest falls payable under two condition :

(i) the refund arises in pursuance of an order passed in appeal;

(ii) the refund has not been granted within a period of three months from the end of the month in which such order is passed.'

17. The question which has been raised in the instant case did not arise in the aforementioned cases.

18. A Division Bench of Punjab & Haryana High Court in National Hoitculture Board (supra) on the other hand, upon interpreting the provisions of section 244A of the Income Tax Act, observed :

'A conjoint reading of the provisions quoted above shows that the assessed is entitled to receive interest on the amount of refund at the rates prescribed in clauses (a) and (b) of sub-section (1) of section 244A. The rationale underlying this provision is to compensate the assessed in lieu of the deprivation of his property right by virtue of unlawful collection of tax. If the proceedings resulting in the refund are delayed due to reasons attributable to the assessed, then the period of delay has to be excluded from the period for which the interest is payable. In other words, if the assessed is responsible for the delay in the finalisation of the proceedings on the basis of which he becomes entitled to refund, then the period of delay is to be excluded from the total period for which interest becomes payable. However, there is nothing in the plain language of sub-sections (1) and (2) of section 244A from which it can be inferred, that the assessed can be deprived of the interest in respect of the period during which his application for refund remains pending before the competent authority.'

19. In view of our findings aforementioned, we are of the opinion that the assessed has rightly been held to be not entitled to the refund (sic-interest) by the Tribunal.

20. The answer to the question must be rendered in the negative i.e., in favor of the revenue and against the assessed.

21. The reference is disposed of accordingly.

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