

Tata Engineering and Locomotive Vs. Dcit, Spl Range-2

Tata Engineering and Locomotive Vs. Dcit, Spl Range-2

SooperKanoon Citation : sooperkanoon.com/72888

Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Dec-17-2003

Reported in : (2005)92ITD111(Mum.)

Judge : G Gupta, P Kumar, Am

Appellant : Tata Engineering and Locomotive

Respondent : Dcit, Spl Range-2

Judgement :

1. This appeal, filed by the assessee, is directed against the order dated 1st December 1997 passed by the CIT(A) in the matter of ascertainment of withholding tax liability under section 195 of the Income Tax Act.
2. The only question requiring our adjudication in this appeal is whether, in the case of a successful appeal under section 248 of the Income Tax Act, 1961 (i.e. a person denying his liability to deduct the tax at source under section 195 or under section 200), an appellate authority can direct that the tax already deposited by such an appellant be refunded to that appellant. Revenue's objection is that since, under the scheme of section 198 and 199 of the Act, tax deduction is to be considered as income of the person from whose income the tax is so deducted and since on the tax being so deposited by the person denying his liability to deduct tax at source, the same is to be treated as a payment of tax on behalf of the person from whose income the deduction is made and credit is to be given to him for the amount so deducted, the refund can only be claimed by the person

from whose income tax is so deducted or paid.

3. The above question is set out in the background of stand taken by the CIT(A) who, having held that the assessee was not required to deduct tax at source on account of estimated local living expenses/out of pocket expenses, further observed as follows : "Another aspect of this appeal is the contention raised by the A.R. that the appellant company is entitled to the refund of tax which was wrongly directed by the A.O. to be deducted from the said expenses. However, I find that this plea cannot be upheld. Any deduction made by the appellant in terms of S. 195 and paid to the Central Government is treated as a payment of tax on behalf of the non resident and the credit shall be given to the non resident for the amount so deducted for the assessment made under this Act, This is clearly provided in S. 199. It is also provided that in s. 198 that the tax deducted u/s 195 shall, for the purpose of computing income of the assessee, be deemed to be income received by the assessee. In the present case, the appellant before me is the person who had deducted the tax at source and cannot be treated as an assessee within meanings of S. 2(7) of the Act inasmuch as the appellant in this case is an assessee in default, and, therefore, it is not an assessee under the Act. A reading of the relevant provisions of the Act shows that the appellant company namely TELCO is not entitled to any refund." Aggrieved by these observations of the CIT(A), and aggrieved by his declining to issue directions to the Assessing Officer to refund the taxes already deposited by the appellant the assessee is in further appeal before us.

4. Shri Dinesh Vyas, learned Senior Advocate, appeared for the assessee, and Shri Anurag Prasad, learned Departmental Representative, appeared for the revenue. Learned Representatives have been conscientiously heard, orders of the authorities below carefully perused, and applicable legal position duly considered.

5. We may first reproduce the provisions of section 198, 199 and 248 of the Income Tax Act. for ready reference.

All sums deducted in accordance with provisions of sections 192 to 194 section 194A, section 194B, section 194BB section 194C, section 194D, section 194E, section 194EE, section 194F, section 194G, section 194H, section 194I, section

194J and section 194K, 194L section 195, section 196A, section 196B, section 196C and section 196D shall, for the purpose of computing the income of an assessee, be deemed to be income received.

Any deduction made in accordance with the provisions of sections 192 to 194 section 194A, section 194B, section 194BB, section 194C, section 194D section 194E, section 194EE, section 194F, section 194G, section 194H, section 194-I, section 194J and section 194K, 194L section 195, section 196A section 196B, section 196C and section 196D and paid to the Central Government, shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or depositor or owner of property or of unit-holder or the share hold, as the case may be, and credit shall be given to him for the amount so deducted on the production of the certificate furnished under section 203 in the assessment made under this Act for the assessment year for which such income is assessable.

(2) Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income, such payment of tax has been made and credit shall be given to him for the amount so paid on production of the certificate furnished under section 203 in the assessment under the Act for the assessment year for which such income is assessable.

Every person deducting tax in accordance with the provisions of sections 192 to 194 section 194A, section 194B, section 194BB, section 194C, section 194D, section 194e, section 194EE, section 194F, section 194G, section 194H, section 194-I, section 194J and section 194K, 194L section 195, section 196A, section 196B, section 196C and section 196D shall, within such period as may be prescribed from the time of credit or payment of the sum, or, as the case may be, from the time of issue of a cheque or warrant for payment of any dividend to a shareholder, furnish to the person to whose account such credit is given or to whom such payment is made or the cheque or warrant is issued, a certificate to the effect that tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be

prescribed.

Any person having in accordance with the provisions of sections 195 and 200 deducted and paid tax in respect of any sum chargeable under this Act, other than interest, who denies his liability to make such deduction, may appeal to the Commissioner (Appeals) to be declared not liable to make such deduction.

6. Let us, in the light of the above legal provisions, try to appreciate, in its correct perspective, the scheme of the Indian Income Tax Act, 1961. Section 198 provides that even if a sum is deducted as tax at source from a payment, it still constitutes income of the recipient. It specifically provides that for the purpose of computing the income of an assessee', the tax deducted at source shall be deemed to be income in the hands of the recipient. What thus follows is that the recipient of income is liable to pay the tax on gross sum payable and not the net sum, i.e. the net payment after deducting tax at source. Coming to Section 199, it provides that any deduction of tax, inter alia, under section 195 is to be treated as a payment of tax on behalf of the person from whose income the deduction was made and credit shall be given to the person deducted on the production of the certificate furnished under section 203 in the assessment made under this Act for the assessment year for which such income is assessable.' The tax credit being given to the person from whose income deduction is made is, thus, dependent on the production of certificate furnished under section 203 of the Act. In other words, unless a TDS certificate is issued, credit for taxes deducted at source cannot be given to the person from whose income taxes are deducted. As far as provisions of section 203 are concerned, it is made obligatory for every person 'deducting tax in accordance with the provisions of', inter alia, section 195, to issue, within prescribed time and in prescribed manner, a certificate setting out the prescribed particulars. It is noteworthy that this obligation to issue certificate is cast only on the persons deducting tax at source under the scheme of, inter alia, section 195.

In other words, 'liability' to deduct tax at source under section 195, in the case before us, in the foundation of assessee's obligation to issue the certificate under section 203, but, on the facts of this case, it is not even necessary to go into that question because it is an undisputed position that TDS certificate has not been

issued in respect of the amount in appeal before us, and nobody is aggrieved of the same. Now, section 248 provides that any person having in accordance with the provisions of section 195 and 200 deducted and paid tax in respect of any sum chargeable under this Act, other than interest, who denies this liability to make such deduction, may appeal to the Commissioner (Appeals) to be declared "not liable to make such deduction". This follows that once the appellant succeeds in the appeal, the revenue authorities have to proceed on the basis that the appellant did not have any liability to make the impugned deduction of tax at source. As a corollary to his position as successful appellant cannot be said to be even under an obligation to issue certificate under section 203, i.e. TDS certificate. On the assessee being successful in appeal under section 248, on the facts of the present case, the provisions of section 198 cease to be relevant because once an income is held to be not exigible to tax under the Income Tax Act, the question of taxability on gross amount or net amount is wholly irrelevant and absolutely academic. As far as section 199 is concerned, as we have taken note earlier, the tax credit being given to the person from whose income deduction is made is entirely dependent on the production of certificate furnished under section 203 of the Act, and when admittedly no such certificate is issued, there can not be any question of affording any credit to the person from whose payment, and not 'income' as is the expression employed in the statute, the tax is deducted at source. In the light of these discussions, it is deducted at source. In the light of these discussions, it is clear that the learned Commissioner (Appeals) failed to appreciate that the credit to the person from whose payment the tax is deducted at source is not automatic, but dependent on issuance of a prescribed TDS certificate - a condition not admittedly satisfied in this case. Learned Commissioner (Appeals) also did not take into-account the fact that, under the scheme of section 198 of the Act, the tax deducted at source constitutes income of the assessee for no purposes other than the purpose of computation of income of that person but then once it is held that payment in question does not comprise of income, as was necessary to hold that no tax is deductible therefrom on the facts of this case, this aspect is a purely academic issue. The objection taken by the learned Commissioner (Appeals), in our considered view, is, therefore, devoid of legally sustainable merits.

7. There is another, and perhaps even more fundamental, aspect of the matter. The suggestion that once the assessee makes a payment of tax deductible at source, as he is required to do before filing of an appeal under section 248, the refund can only be granted to the persons from whose payments tax was deductible and upon ascertainment of their tax liability, is in our considered view, contrary to the scheme of the Act, which, by the virtue of section 248, gives specific right of appeal to the assessee denying his liability to make such deductions under section 195. What difference will it then make as to whether the person, making the payment, wins or loses the appeal. In either case, the person, making payment, does not get refund and in either case the question of taxability is to be finally adjudicated in the hands of the person receiving the payment. In case this interpretation is to be upheld, an appeal under section 248 will be reduced to an empty formality and a meaningless ritual.

8. It is fairly well settled principle of interpretation that normally no word or expression used in any statute can be said to be redundant or superfluous. As observed by Hon'ble Supreme Court, in the case of CIT Vs. Distributors (Baroda) Pvt. Ltd. (83 ITR 377) "no part of the provisions of the statute can be just ignored by saying that legislature enacted it not knowing what it is doing". It is one of the basis principles of the interpretation of statutes that a legal provision should not be interpreted-in such a manner so as to make the provision infructuous or redundant. Hon'ble Calcutta High court, in the case of CIT v. Jayashree Charity Trust [1986] 159 ITR 280 (Cal.) has observed that, "To resolve(The) controversy, regard must be had to the language that has been employed and also to be object of the statute. It is well settled that, if possible, the words of a statute must be construed so as to give a sensible meaning to them. The words ought to be construed *ut res magis valeat quam pereat*". This latin maxim, i.e., *ut res magis valeat quam pereat*, means that the words of the statute should be given a sensible meaning so as to make them effective rather than making them redundant. The interpretation canvassed by the learned CIT(A), as evident from our discussions earlier in this order, will render assessee's right of appeal under section 248, de facto obliterated from the statute, and, therefore, also in order to give sensible meaning to the statute and making the statute workable rather than redundant, we are not inclined to uphold such an interpretation. This is of course,

besides that fact that the objections taken by the CIT(A), for the detailed reasons set out in paragraph 6 above, are not legally sustainable either.

9. Their Lordships of Hon'ble Supreme Court, in the case of CIT vs.

Wesman Engineering Co. Pvt. Ltd. (188 ITR 327), have taken note of the fact the right of appeal given under section 248 is clear and not restricted. Their Lordships took note of the provisions of section 251 which provides for the powers of the first appellate authority i.e. the Commissioner (Appeals) at present and particularly clause (c) of sub-section (1) which provides that, in a case like the one pertaining to assessee's liability under section 248, the first appellate authority "may pass such orders provision gives full power to the and observed that "The above provision gives full power to the appellate authority to pass such orders in the appeal as he thinks fit." Therefore, as observed by the Hon'ble Supreme Court in the above noted case, the powers of the CIT(A), while dealing with an appeal under section 248, are unrestricted and wide. It is also useful to recall that Hon'ble supreme Court, in the case of ITO Vs M K Mohd Kunhi, 2002-Taxindiaonline-122-SC-IT, had approved the proposition that "It is the duty of the judges to apply the laws, not only to what appears to be regulated by their express dispositions, but to all the cases where a just application of them may be made, and which appear to be comprehended either within the consequences that may be gathered from it" and that "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution. Cui jurisdiction date est, ea quoque concessa esse videntur, sine quibus jurisdiction explicari non potuit." Hon'ble Madras High Court has, in the case of Paulson Litho Works Vs ITO (208 ITR 676), has held that the above principles also apply in the context of the powers of the first appellate authority i.e. the Commissioner (Appeals). Their Lordships have observed thus: The supreme court has categorically held in ITO v. M. K. Mohammed Kunhi 2002-Taxindiaonline-122-SC-IT, that the right of appeal is a substantive right and questions of fact and law are at large and are open to be reviewed and decided untrammelled by any restrictions or inhibitions. There can be no serious dispute or controversy over the position that the powers of the appellate authority exercising powers under section 251 of the Act are as wide in their content and

amplitude and are not in any manner less vigorous or of restricted amplitude and extent, when compared to that of the Appellate Tribunal under Section 254 of the Act.

In the light of the school of thought emerging from the above legal precedents, the CIT(A) indeed erred in not only raising legally unsustainable objections on the scheme of section 198 and 199, but also in taking too modest a view about his powers under section 251 of the Act. The powers of the CIT(A) extend to, to use the proposition approved by Hon'ble Supreme Court in Mohd Kunhi's case, 2002-Taxindiaonline-122-SC-IT (supra), "not only to what appears to be regulated by their express dispositions, but to all the cases where a just application of them may be made, and which appear to be comprehended either within the consequences, or that may be gathered from it". Once it is not in dispute, as is our considered opinion on the facts of this case, that the CIT(A) had the powers to direct the Assessing Officer to give refund of taxes already deposited, it follows that where the circumstances justify of warrant exercise of such powers, the CIT(A) has a corresponding duty to exercise those powers.

It is also noteworthy that under Article 265 of the Constitution of India, "not tax shall be levied or collected except by the authority of law". This article is declaratory in nature. The terms of this Article leave no ambiguity that taxes collected without the authority of law have to be refunded. it is so held by the Hon'ble supreme Court in the case of Mefatlal Industries Limited Vs. Union of India (1997 (5) SCC 536) wherein therein Lordships have, inter alia, observed that "This (Article 269) no doubt means that taxes collected contrary to law have to be refunded". We have noticed that the CIT(A) has held that the appellant was "not liable to make such deduction", as a corollary to which, and particularly as the appellant did not issue the TDS certificates in respect of the disputed tax deduction at source liability which ensured that the person from whose payment the tax was deducted at source could not have availed the credit in respect thereof, it was a fit case where the CIT(A) should have directed the taxes deposited be refunded to the appellant. In our considered view, therefore, the appellant deserves to succeed inasmuch as, on the facts of this case, the CIT(A) ought to have directed the Assessing Officer to refund to taxes deducted and

deposited by the appellant.

10. For the detailed reasons set out above, we deem it fit and proper to vacate the impugned observations of the CIT(A) and direct the Assessing Officer to refund the taxes already deposited by the appellant, before filing of appeal under section 248 of the Act. To his extent, order of the CIT(A) stands modified.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com