

Additional Commissioner of Vs. Grindwell Norton Ltd.

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Dec-20-2005

Reported in : (2006)100ITD245(Mum.)

Judge : O Narayanan, S Chowla

Appellant : Additional Commissioner of

Respondent : Grindwell Norton Ltd.

Judgement :

1. This appeal by the revenue is against the order of the learned CIT(A) XV, Mumbai dated 21-9-2000 relating to assessment year 1998-99.

The only issue raised before us is against the direction of learned CIT(A) to allow interest under Section 244A of the Act on the amount of self-assessment tax paid by the assessee under Section 140A of the Act.

2. The brief facts of the case are that, the return of income filed by the assessee was processed by way of intimation under Section 143(1)(a) of the Act and no interest under Section 244 A was allowed by the Assessing Officer. In the appellate proceedings before CIT(A), the assessee had submitted that the Assessing Officer had not allowed interest on the refund determined at Rs. 48,71,729 i.e., on the amount paid as self-assessment tax on 30-9-1998. The Assessing Officer submitted the report dated 2-8-2000 before the learned CIT(A) in reply to the submissions made by the assessee and stated that the claim of the

assessee for interest under Section 244A is not admissible.

According to him, interest under Section 244(1)(a) is payable by the department in those cases where refund is out of TDS or advance tax paid by the assessee. Further, interest under Section 244A(1)(b) read with Explanation is payable to those cases where refund is out of any tax or penalty paid in pursuance of any notice of demand issued under Section 156. The Assessing Officer has pointed out that in this case refund has arisen on account of excess payment of self-assessment tax and Section 244A does not provide for any interest from refund arising out of self-assessment tax. The learned CIT(A) allowed the claim of the assessee observing that, the provisions of Clause (b) to Section 244A(1) are applicable "in any other case" which would include refund arising out of payment of self-assessment tax.

3. The learned Departmental Representative contended that the interest under Section 244A is allowable on excess payment of tax. He further contended that in Clause (a) to Section 244A(1) interest is allowable on the payment of tax deducted at source and advance tax paid by the assessee during the year under consideration. In Clause (b) to Section 244A(1) interest is allowable on taxes levied and paid under different heads but the payment of self-assessment tax is not covered under Clause (b) to Section 244A(1). He further stated that the learned CIT(A) has erred in allowing the claim of the assessee in disregard to the decision of the Hon'ble Supreme Court in the case of Union of India v. Orient Enterprises [1998] 146 CTR 546, 549, wherein the writ petition filed by the assessee seeking payment of interest on delayed refund of the amount paid by the assessee towards customs duties, redemption fine and penalty under the Customs Act, 1962 was found to be not maintainable, as the Customs Act, as it stood at that point of time, did not provide for any such interest. Accordingly, writ petition was dismissed.

4. The learned Authorised Representative drew our attention to the provisions of Section 244A(1) of the Act which starts with "where refund of any amount becomes due to the assessee under this Act". The section further provides that in addition to the said amount of refund the assessee shall be entitled to receive

interest under Clause (a) to Section 244A, Sub-section (1) on payment of advance tax or TDS and under Clause (b) in any other case of payment of tax or penalty. He further brought to our notice, the CBDT circular, regarding the insertion of new section 244A in lieu of sections 214, 243 and 244 of the Act by the Amending Act, 1987. It has been provided in the said Circular that the provisions of section 244A were inserted in order to simplify the provisions for the allowability of interest on the money remaining with the Government. It further stated that the old provisions apart from being complicated left certain gaps for which no interest was paid by the department to the assessee and in order to remove this inequity this new Section 244A has been inserted. These provisions were made applicable with effect from assessment year 1989-90. The learned Authorised Representative pointed out that on the plain reading of the main provision of Section 244A of the Act, and the Circular issued, it is very clear that interest is to be allowed to the assessee on all payments of taxes. Their Lordships of the Hon'ble Supreme Court in the case of *Navnitlal C. Javeri v. K.K. Sen*, AAC and [2001] 247 ITR 128 115 Taxman 147 have held that the Circulars issued by the CBDT are binding on the revenue. The learned Authorised Representative submitted that, department by relying on the Explanation to Section 244A of the Act had come to the conclusion that no interest is payable on the self-assessment tax paid by the assessee and further stressed that this reliance by the department is an error. He contended that the Explanation to Section 244A of the Act, does not cover the controversy and in any case the Explanation to any section is not to limit the provisions of the section as held by the Hon'ble Supreme Court in the case of *S. Sundaram Pillai v. V.R. Pattabiraman*. He further submitted that on similar claim in assessment year 1997-98 in the case of assessee itself the Mumbai Tribunal in ITA No. 5847/Mum./2000 following the Tribunal decision in the case of *Addl. CIT v. Novarits India Ltd.* in [ITA No. 5848 (Mum.) of 2000] have allowed the claim of the assessee regarding the entitlement of interest on self-assessment tax paid under Section 140A of the Act.

5. We have heard the rival submissions and perused the records and the legal propositions. The provisions of Section 244A of the Income-tax Act, applicable from assessment year 1989-90 were inserted by the Amending Act, 1987 in order to allow interest on the amounts due to the assessee by way of refund. These

provisions were inserted in lieu of Sections 214, 243 and 244 of the Act, which apart from being complicated left certain gaps for which no interest was paid by the department to the assessee for money remaining with the Government. The insertion of the new Section 244A in the Income-tax Act was clearly explained in the CBDT Circular issued in this regard. The Circular further provided that the provisions of new Section 244A are as under: (i) Sub-section (1) provides that where in pursuance of any order passed under this Act, refund of any amount becomes due to the assessee then: (a) if the refund is out of any advance tax paid or tax deducted at source during the financial year immediately preceding the assessment year, interest shall be payable for the period starting from the 1st April of the assessment year and on the date of grant of the refund. No interest shall, however, be payable if the amount of refund is less than 10 per cent of the tax determined on regular assessment.

(b) if the refund is out of any tax, other than advance tax or tax deducted at source or penalty, interest shall be payable for the period starting from the date of payment of such tax or penalty and ending on the date of the grant of the refund (Refer to example III in para 11.8) 6. In Sub-section (1) to Section 244A where refund of any amount becomes due to the assessee, it is stipulated that in addition to the refund the assessee shall be entitled to receive interest on the said refund under Clause (a) to Sub-section (1) of Section 244A of the Act, interest shall be payable on the refund of tax deducted at source or advance tax paid by the assessee and in Clause (b) to Sub-section (1) to Section 244A, the interest shall be paid on refund of any tax other than advance tax or TDS. The Explanation appended to Clause (b) to Section 244A clarifies the date of payment of tax or penalty. The binding effect of the Circular on the revenue has been clarified by the Hon'ble Supreme Court in various decisions including the decisions in the case of Navnitlal C. Javeri (supra) and in the case of Paper Products Ltd. (supra). The limited question for adjudication is whether the Explanation appended to Clause (b) to Section 244A(1) limits the allowability of interest on the payments made other than TDS and advance tax. Their Lordships of the Hon'ble Supreme Court in the case of S. Sundaram Pillai (supra) have considered the impact of the Explanation on statutory provisions of the Act and have elaborately dealt with the matter holding that "the word itself shows it is merely meant to explain or clarify

certain ambiguity which may have arisen in the statutory provisions". In the present case the assessee had claimed the interest on excess payment of self-assessment tax under Section 140A of the Act. In accordance with the provisions of Clause (b) to Section 244A(1) of the Act, interest is payable on such payments of tax. We do not agree with the contention of the Assessing Officer with regard to the applicability of provisions of Explanation to Clause (b) to Section 244A(1) of the Act. The provisions of the statute are to be given its full effect and in the instant case once the return has been processed under Section 143(1)(a) and refund is determined as payable to the assessee. The provisions of the Act clearly provide that in addition the interest is payable on such sums which are held and utilized by the Government over and above the tax dues of the assessee under the provisions of Income-tax Act. Accordingly in addition to the refund of the money the assessee was entitled to receive interest on the said excess amount paid by him. We find support from the decision of the Mumbai Bench in the case of assessee itself for assessment year 1997-98 and also in the case of Novarlis India Ltd. (both cited supra) which in turn relied on the decision of the Calcutta Bench in the case of Hooghly Mills Co. Ltd. v. Dy. CIT [2000] 74 ITD 309, wherein it has been held as under: The matter might be looked into from another angle also. The interest was required to be paid by the Government to the assessee for holding utilising the excess money paid by the assessee over and above its tax dues. In the instant case, the assessee had paid much more self-assessment tax than was required under the relevant provisions of law. Although, therefore, the payment had been claimed by the assessee and also considered by the departmental authorities, to be self-assessment tax, actually, the same was not exactly of the nature of self-assessment tax. The amount which the assessee was required to pay in addition to the tax deducted at source to meet up the tax liability arising out of the return should alone be considered as self-assessment tax. The balance amount of tax having no immediate connection with the return of income was enjoyed by the Government for a number of months. It was, therefore, fair and equitable on the part of the Government to pay interest on the same to the assessee when this excess amount was refunded to the assessee.

7. Their Lordships of the Hon'ble Apex Court in the case of Orient Enterprises (cited supra) relied upon by the learned Departmental Representative had the

occasion to dealt with the payment of interest on delayed refund of the amount paid by the assessee towards customs duties, redemption, fine and penalty in the absence of any provisions for providing any such interest under the Customs Act; but under the Income-tax, specific provision has been provided for allowing interest on excess amount paid by the assessee which are due to the assessee by way of refund and as such, the ratio laid down by the Hon'ble Apex Court with due respect is not applicable to the facts of the present case.

8. In view of the above we hold that the assessee is entitled to the interest under Section 244A of the Act on the excess self-assessment tax paid under Section 140A of the Act by it. We accordingly, confirm the order of the learned CIT(A) and reject the ground of appeal raised by the revenue.

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