Executive Engineer, Pwd Vs. Ito

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SooperKanoon Citation : sooperkanoon.com/75901

Court : Income Tax Appellate Tribunal ITAT Amritsar

Decided On : Oct-05-2007

Judge : J Pall, A Jain

Appellant : Executive Engineer, Pwd

Respondent : ito

Judgement :

1. This is assessee's appeal for the assessment year 2002-03. The assessee claims that interest under Section 201(1A) of the Income Tax Act, which was not originally claimed by the authorities, has erroneously been demanded while passing the order under Sections 201(1) and 201(1A) read with Section 194C of the Act, without issuing any show cause notice, whereas no such interest is chargeable from the assessee.

2. The assessing officer charged tax and interest under Section 201(1A) of the Act, the interest amounting to Rs. 2,99,830, for the assessment year 2002-03, treating the assessee responsible person to be in default, for not depositing into the Central Government account, tax collected from contractors in financial year 2001-02.

3. The learned Commissioner (Appeal) having, by virtue of the impugned order, upheld the above action of the assessing officer, the assessee has filed the present appeal.

4. The case of the assessee is that it is a State Government institution; that it failed to transfer into the Central Government account, the tax collected from contractors; that however, it had debited the same in a suspense account; that there was no loss to the revenue, because the funds remained with the State Government and no personal benefit whatsoever was derived by the person responsible; that the assessee deposited the tax: by transfer entry order; that no proper opportunity of being heard was accorded to the assessee and the order levying interest was passed stating that none appeared; that the said order nowhere mentions the details of the amount of tax deducted at source and the calculations made on the delayed payment of that TDS; that had proper opportunity of hearing been granted, the assessee would have been able to explain the case properly at the initial stage itself with complete details regarding TDS; that as per the order of the assessing officer, the interest payable under Section 201(1A) comes to Rs. 4,99,830, whereas as per the assessee's calculation, it comes to Rs. 4,05,386.82; that the assessee wrote to the CIT, Jalandhar-II, an application 26-7-2007 (a copy whereof has been filed), giving the names of the contractors and showing the amounts of TDS deducted from them for financial years 2001-02 and 2002-03, and seeking, under the Right to Information Act, 2005, to be supplied information about the amount of income tax refunded to the said contractors and the amount of interest paid by the IT department to the contractors while refunding the said amount; that vide order 23-8-2007 (copy filed), rejected the assessee's aforesaid application, stating that the information requested by the assessee pertained to third parties, as per Section 8(1)(j) of the Right to Information Act, information pertaining to third parties cannot be disclosed unless it is in public interest to do so, the Central Information Commission has held in various cases that the information contained in IT returns of third parties cannot be disclosed under normal circumstances, being prima facie personal information not related to a public interest or activity, and the assessee's application did not show as to how the disclosure of the information sought would serve the public interest; and that in these facts, the case may be remanded for the purpose of calculation of interest by the IT department itself, if any such interest is to be charged.

5. The department, on the other hand, has contended, inter alia, that the liability of interest under Section 201(1A) is not contingent upon existence of good or sufficient reason for the default; that if the deduction of tax is not made, interest cannot be avoided, that interest is payable by way of compensation for depreciation of receipt of tax by the department within the stipulated time; that so, interest payable under Section 201(1A) is mandatory and it can neither be waived, nor reduced; and that the person responsible, after deducting the tax, did not deposit it in the Central Government account for a long time and it was transferred through book adjustment.

6. We have heard the parties and have perused the material on record.

In this case, the issue is of levy of interest under Section 201(1A) of the Income Tax Act, for late deposit of TDS. The default of the assessee is admitted, though the same has been stated to have been committed due to the assessee's bona fide belief that it was only a deducting authority and that tax collection was to be made by the IT department. Details of the calculations made on the delayed payment of the TDS were not made available to the assessee. Even when the assessee sought to be supplied the information about the income-tax refunded to the contractors and the interest paid thereon, such information was not supplied by the department.

7. Still, the settled legal position remains that interest under Section 201(1A) of the Act is mandatorily due to the department as compensation for deprivation of receipt of tax by the department within the stipulated time, as held in M.S. Chahal v. ITO .

Such interest, however requires to be calculated, to be restricted upto the date of completion of assessments of the payees, to whom the TDS certificates have been issued and interest has been paid by the department. For this purpose, the matter requires to be remitted to the assessing officer. Ordered accordingly. The assessee does not have any machinery or wherewithal to obtain the details concerning the amount of income-tax refunded by the department to the deductee contractors and the amount of interest paid by the department to such contractors while making over the refund. Such information is readily available with the assessing officer. For want of such information, the assessee has been rendered incapable of calculating the interest payable by it to the department under Section 201(1A) of the Act. That being so, it is directed that the assessing officer shall make such details available to the assessee for facilitating the said calculation.

8. Facts remaining the same here also, our above observations shall apply, mutatis mutandis, to this appeal also.

9. In the result, the appeals filed by the assessee are for statistical purposes, treated as allowed.