

Cit Vs. Chinna Ram

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Court : Rajasthan

Decided On : Sep-05-2003

Reported in : [2004]140TAXMAN283(Raj); 2004WLC(Raj)UC168

Appeal No. : D.B. IT Ref. No. 39 of 1995 5 September 2003

Appellant : Cit

Respondent : Chinna Ram

Advocate for Pet/Ap. : Sundeep Bhandawat *for the Appellant* Harish Mathur *for the Respondent*

Judgement :

ORDER

Anil Dev Singh, C.J.

In this reference under section 256(1) of the Income-tax Act (hereinafter referred to as the Act), the following question of law has been referred by the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur for opinion of this court :

'Whether on the facts and in the circumstances of the case the)carried Member of ITAT were justified in confirming the decision of Commissioner (Appeals) holding that in re-assessment, interest under section 139(3) or 215 cannot be charged. Actually there was no fresh taxation of income and income as originally assessed was not charged and similarly the figures of interest originally charged was not

subjected to any change and no re-assessment was made in fact and practically, the proceedings were closed after having satisfied the Income Tax Officer.'

2. The brief facts giving rise to this reference are as follows :

On 7-7-1980, the assessee filed a return in respect of the assessment year 1978-79. Since the assessee defaulted in filing the return in time, the Income Tax Officer directed levy of interest under section 139(8) of the Act. It was found that the assessee had advanced a sum of Rs. 2,00,000 to one Shri Harendra Mirdha as per the following details : (i) Rs. 1,00,000 was advanced on 24-10-1977 and (ii) Rs. 1,00,000 was advanced on 23-12-1977. The amount was returned by Shri Mirdha to the assessee on 30-1-1978 by making payment of Rs. 1,00,000 by cash and by handing over. a cheque for Rs. 1,00,000. The cheque given by Shri Mirdha was encashed by the assessee only on 12-4-1978.

3. It is riot in dispute that 31-3-1978 was the date on which the accounting period of Shri Mirdha ended.

4. Shri Mirdha in the return filed by him in respect of assessment year 1978-79 showed the assessee-respondent as the creditor to whom he owed a sum of Rs. 1,00,000. The assessee however in his personal books of account on the basis of the cheque received by him from Shri Mirdha on 31-3-1978, squared up the account of Shri Mirdha even though, the cheque was encashed only on 12-4-1978. The Income Tax Officer after verifying the facts proceeded to complete the assessment. In the reassessment proceedings the assessee was able to satisfy the Income Tax Officer in regard to the question of advance and the manner in which it was accounted for. The Income Tax Officer completed the re-assessment proceedings, but no change was effected either in computation of the tax amount or in the amount of interest as detailed in the original assessment order. Subsequently, the assessee filed an application under section 154 of the Act for deletion of interest on the ground that the interest under sections 139(8) and 215 of the Act could riot be levied in re-assessment proceedings. The application was rejected by the Income Tax Officer on 15-1-1986.

5. Aggrieved by the order passed by the Income Tax Officer, the assessee preferred an appeal before the Commissioner (Appeals). The Commissioner (Appeals) allowed the appeal and set aside the order of the Income Tax Officer. Thereupon, the revenue filed an application before the Tribunal. The Tribunal was of the view that in case of re-assessment, interest cannot be charged under sections 139(8) and 215 of the Act. The Tribunal accordingly accepted the view of the Commissioner (Appeals).

6. The revenue dissatisfied with the order passed by the Commissioner Income Tax (Appeals) preferred an application before the Tribunal for referring the aforesaid question of law for opinion of this Court. The Tribunal vide its order dated 30-1-1990 referred the aforesaid question of law for opinion of this Court.

7. We have heard learned counsel for the parties.

8. It is not in dispute that the interest was not levied for the first time in the re-assessment order. It was levied in the assessment order itself. Besides, in the re-assessment order, there was no change at all in the computation of tax which was required to be paid by the assessee. The amount of the tax and the interest payable by the assessee as determined in the assessment order and as determined in the re-assessment order remained the same.

9. The Commissioner of Income Tax as also the Tribunal overlooked the fact that the interest was not being charged by the Income Tax Officer for the first time in the re-assessment order and the same had been levied in the original assessment order itself.

10. Since the interest was charged in the original assessment order, the conclusions drawn by the Commissioner of Income Tax and the Tribunal vide orders, dated 29-11-1985 and 24-11-1986 were not correct. The reference is answered accordingly.