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Court : Chennai

Decided On : Jan-18-1967

Reported in : [1968]67ITR45(Mad)

Appeal No. : Writ Petition No. 914 of 1963

Appellant : S.

Respondent : P. N. Sithambara Nadar Sons V. Commissioner of Income-tax, Madras.

Judgement :

VEERASWAMI J. - The facts relevant to this petition sufficiently appear in S. V. P. N. Sithambara Nadar & Sons v. Commissioner of Income-tax, and need not be reiterated in any detail. The petitioner was a firm carrying on business in Virudhunagar, and was assessed to Income-tax and excess profits tax for the periods commencing from September 1, 1939. In computing the profits for the period between September 1, 1939, and March 31, 1946, there was a controversy as to the precise process of computation which was the subject-matter of a reference in S. V. P. N. Sithambara Nadar & Sons v. Commissioner of Income-tax. It was there decided that the petitioner was for purposes of the Excess profits Tax Act, 1940, entitled to carry forward a total deficiency of Rs. 48,389 as at the end of the period, January 31, 1940, to January 30, 1941. The particular reference to this court itself, however, covered only the period January 31, 1941, to January 30, 1942. In view of the reduction in the assessment for that period the petitioner was,

as a result, allowed refund for that period with interest. The petitioner claims that it is entitled to interest on the refund for each of the other accounting periods, both prior and after the accounting period in the reference. Since this has been denied by the respondent, the petitioner prays for a direction to him to allow interest on the refunds for the other periods.

The question turns on a proper construction of the provision to sub-section (7) of section 66 of the Indian Income-tax Act, 1922, read with the relevant provisions of the Excess Profits Tax Act, 1940. Section 2(1) of the latter Act defines an accounting period depending upon the successive periods for which accounts of the business are made up, or on the determination by the Excess Profits Tax Officer as to such period. In the former case each of such successive periods is taken as the accounting period, and this is the alternative that applies to the present case. 'Chargeable accounting period' also is defined by the section as any accounting period, falling wholly within the term, commencing on September 1, 1939, and ending on March 31, 1946. Section 4 is the charging section. The charge is levied on the amount by which the profits during any chargeable accounting period exceed the standard profits, and the scale of tax is also indicated by the charging provision. Standard profits are defined by section 6 which need not detain us. Section 17 gives an aggrieved person a right of appeal from an order of the Excess Profits Tax Officer, and section 19 a further appeal to the Tribunal, by adopting the procedure applicable to an appeal to the Tribunal under the provisions of the Income-tax Act. Section 21 attracts section 66 of the Income-tax Act among its other provisions. Section 66(7) is to the effect that, notwithstanding that a reference has been made under that section, income-tax should be paid in accordance with the assessment made in the case. The proviso to this sub-section reads :

'Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow unless the High Court, on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to the Supreme Court, makes an order authorising the Commissioner to postpone payment of such refund until the

disposal of the appeal to the Supreme Court.'

The contention for the petitioner is that, although reference under the provisions of the Excess Profits Tax Act, 1940, read with section 66 of the Income-tax Act was confined to a particular accounting period, nevertheless, inasmuch as the deficiency found in that reference was liable to be distributed over the other accounting periods before and after the reference period, such distribution or carry-forward was as a result of such reference and, therefore, interest is payable not merely on the refund covered by the period of reference, but also remaining refunds for the other accountable periods.

We are wholly unable to accept this construction of the proviso. As we mentioned, sub-section (7) of section 66 refers to the assessment which is the subject-matter of a reference and enjoins that, in spite of the fact that a reference has been made, the income-tax should be paid in accordance with the assessment made in the case. In view of this main provision, provision has to be made for refund of the overpaid amounts in case the reference results in a reduction of the assessment. This is what is provided for by the proviso. For the first part of the proviso to apply, there must be an assessment, it should be the subject-matter of a reference, the tax payable in accordance with the assessment has been paid, the reference must have resulted in the reduction of the amount of income chargeable to tax and in consequence a refund of the overpaid amount of tax becomes due. When such a refund is made it has to be made with interest, the quantum of which is left to the discretion of the Commissioner. The refund with interest is made applicable by the proviso, unless of course the High court, which answered the reference and to which the Commissioner of Income-tax within the prescribed period intimates his intention to ask for leave to appeal, makes an order authorising him to postpone payment of such refund until the disposal of the appeal by the Supreme Court. It is clear, therefore, that both the substantive provision in sub-section (7) of section 66 and the proviso thereto deal with the same assessment which formed the subject-matter of the reference. That being the case, it will be inappropriate to say that if because of a principle settled by the High Court in the reference, a relief by way of refund is granted for a subsequent accounting period applying that principle, such refund results from the reference itself.

It is, however, contended for the petitioner that the Excess Profits Act applies to an overall period between September 1, 1939, and March 31, 1946, and that once deficiency is found in any particular accounting period it may be carried back or forward for purposes of assessment, which may result in refund. So it is said that for this reason, although the reference related to a particular accounting period, the result of it, namely, the adjustability of the deficiency pervades the entire overall period between September 1, 1939, and March 31, 1946, and that, in this sense, refunds for the accounting periods other than that involved in the reference resulted from the reference. The answer to this contention is simple. Refunds by adjustment of the deficiency are made for the accounting periods other than the one in the reference, but because the principle settled in the reference is followed and adopted in respect of the remaining years. Each accounting period is taken as a unit for purposes of assessment even under the provisions of the Excess Profits Tax Act. The overall periods has significance only in this that the Act itself will be applicable only to that period and not beyond. We think that the analogy of the carry-forward of unabsorbed loss and set-off thereof under section 24 will be opposite. If, for instance, on a reference relating to a particular assessment year this court in a reference settles certain principles by its answers, as a result of which in that assessment year a certain amount is determined as the loss entitled to be carried forward and the loss so carried forward is absorbed by the profits of certain subsequent years, it can hardly be said in a case that the carry-forward and set-off of refunds, if any, is as a result of the reference itself. The reference is confined to a particular assessment year, or years, and the result of the reference cannot go beyond these years assessments. It is one thing to say that a certain refund results from a reduction of the chargeable income on account of a reference, and it is quite another that because of the principle settled in that reference, a similar refund is allowed by following that principle in the subsequent years.

Learned counsel for the petitioner then contended that the proviso to sub-section (7) should be treated as an independent provision standing by itself, and relying on the words 'an assessment', pressed upon us that the proviso is not confined to the assessment which is the subject-matter of a reference under section 66 which extends to any given assessment as indicated by the words 'an assessment'. Here

again we are unable to accept the contention. It is true the word 'an' has been used but it has the effect of 'the' in the context. This is made quite clear by the latter part of the proviso which refers to an appeal to the Supreme Court from the reference and this can only relate to the assessment which is the subject-matters of the reference under section 66(1) or (2) and therefore of sub-section (7).

We are of the view, therefore, that the respondent was correct in his view that the petitioner is entitled to interest only on the amount of refund for the particular accounting period covered by the reference.

The petition is dismissed with costs. Counsels fee, Rs. 150.

Petition dismissed.

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