Cit Vs. Ramesh Enterprises

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SooperKanoon Citation : sooperkanoon.com/831521

Court : Chennai

Decided On : Dec-15-1998

Reported in : (2001)169CTR(Mad)513

Appeal No. : Tax Case Nos. 624 & 625 of 1994 15 December 1998

Appellant : Cit

Respondent : Ramesh Enterprises

Advocate for Pet/Ap. : C. V. Rajan, for the revenue P.P. S. Janarthana Raja, for the Assessee

Judgement :

R. Jayasimha Babu, J.

The assessee is registered firm which had borrowed monies from two of its sister concerns, viz., Ramesh Enterprises (P) Ltd., and Ramesh Exports (P) Ltd. For the assessment year 1983-84, interest paid to Ramesh Enterprises (P) Ltd., was Rs, 17,18,827. For the assessment year 1984-85, interest paid to Ramesh Exports (P) Ltd., was Rs. 4,88,479. Tax at source was not deducted on these amounts. The penalty was, therefore, levied under section 201(1A) of the Income Tax Act, 1961(hereinafter referred to as the Act) by the Income Tax Officer in the sum of Rs. 1,71,500 for the assessment year 1983-84 and in the sum of Rs. 1,17,406 for the assessment year 1984-85.

2. The assessee unsuccessfully appealed to the Commissioner. On further appeal to the Tribunal, the Tribunal accepted the assessees claim that it had no liability to tax at source as the recipients had filed loss returns or had claimed refund of the tax on the ground that the advance tax paid was in excess of the amount of tax due.

3. Aggrieved by that order, the revenue has secured these references following question of law :

'Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that this was not a fit case for levy of interest under section 201(1A) and in cancelling the same, especially when the provisions under section 201(1A) do not contemplate any discretion in the matter of levy of interest for failure to deduct tax at source?'

4. At the time of hearing of these references, the counsel for the revenue produced a letter from the concerned Income Tax Officer, wherein it was stated that for the assessment year 1983-84, Ramesh Enterprises (P) Ltd., had been assessed to income-tax of Rs. 1,14,22,350 and that Ramesh Exports (P) Ltd., had been assessed for the assessment year 1984-85 in the sum of Rs. 70,66,950. It was submitted by the counsel for the assessee that the Ramesh Enterprises had filed an appeal against the order of assessment for the assessment year 1983-84 and in that appeal, the extent of the taxable income was reduced and, consequently, the assessee was given a refund of a part of payment that had been paid by it as advance tax.

5. The counsel for the assessee submitted that the assessee was not required to deduct tax on the interest payment as the recipients of the interest or at least one of them Ramesh Enterprises (P) Ltd., had secured refund though in appeal. It was submitted that in equity penalty was not leviable on the assessee for its failure to deduct tax on the interest paid by it to the sister concern.

6. The provision requiring deduction of tax on interest payment does not make the duty to effect deduction contingent upon the assessees valuation of the likely liability for tax of the recipients of interest payment. It is only in cases where the

recipients of interest are in a position to file any certificate or declaration to show that a persons total income is below the taxable limit that the tax on the interest payment made to such person is not to be deducted. In all other cases, it must be deducted as required under section 195 (sic-section 194A)of the Act.

7. It is not the convenience of the assessee, and its assessment of the likely extent of the liability for payment of interest of the recipients of the interest, that determines the extent of the assessees obligation to deduct tax at source on the interest paid by it. The provision requiring deduction of tax at source on interest payment is applicable to all persons paying such interest and it is not left to the individual assessee to decide the extent of compliance that it will make with regard to the obligation imposed by the statutory provision.

8. The obligation to deduct tax at source is imposed with a view to ensure that on an interest payment made in respect of which tax is required to be deducted at source, the state promptly receives the amount so required to be deducted. The provision providing for penalty is to ensure that persons who are required to deduct tax at source in fact comply with that provision and remit the amount of tax to the government. The person who pays the interest at the time interest is paid is not in anyway concerned with the extent of the liability of tax of the recipients except in cases where the recipients furnish the requisite declaration or certificate to show that the recipients income is below the taxable limit. No such declaration was filed with the assessee by the either of the two sister concerns.

They could not have filed any such declaration, having regard to the substantial amount received by them as income during the these assessments years on which they have been assessed to tax.

9. The fact that the recipients pay advance tax is not an excuse for not deducting the tax at source. It is for the recipients of the interest payment to claim refund of the amount after such refund is found to be due after the assessment is made.

10. The Tribunal was clearly in error in accepting the case pleaded for the assessee that it had no duty to pay tax at source solely on the ground that one of its sister concerns had filed such return and the other sister concern had claimed

refund. The concern which had filed loss return was at the time of assessment found liable to pay tax and the concern which had claimed refund at the time of original assessment was found not entitled to the refund, though such refund was directed in appeal.

11. The assessee had a duty to deduct tax at source. It apparently did not do so as payments were made to its own sister concerns and it did not wish to part with any part of that interest to the revenue at that point of time. That, however, cannot be an acceptable reasons for its failure to deduct tax at source and remit the same to the government.

12. The Tribunal was, therefore, in error in cancelling penalty that had been levied on the assessee under section 201(1A) of the Act. The question referred to us is, therefore, answered in favour of the revenue and against the assessee. The revenue is entitled to costs in the sum of Rs. 2,000 (Rs. two thousand) only.