M/S. Vikrant Tyres Ltd vs The First Income Tax Officer, Mysore on 9 February, 2001

Equivalent citations: AIR 2001 SUPREME COURT 800, 2001 (3) SCC 76, 2001 AIR SCW 624, 2002 AIR - KANT. H. C. R. 645, 2001 TAX. L. R. 323, (2001) 115 TAXMAN 202, 2001 (1) SCALE 720, (2001) 2 JT 455 (SC), 2001 (3) SRJ 229, 2001 (2) JT 455, (2001) ILR (KANT) (1) 2017, (2001) 163 TAXATION 387, (2001) 247 ITR 821, (2002) 127 STC 5, (2001) 2 KANTLJ(TRIB) 442, (2001) 1 SUPREME 633, (2001) 1 SCALE 720, (2001) 166 CURTAXREP 1

Bench: S.P. Bharucha, N. Santosh Hegde

CASE NO.:
Appeal (civil) 10202-04 of 1995

PETITIONER:
M/S. VIKRANT TYRES LTD.

Vs.

RESPONDENT:
THE FIRST INCOME TAX OFFICER, MYSORE

DATE OF JUDGMENT: 09/02/2001

BENCH:
S.P. Bharucha, N. Santosh Hegde & Y.K. Sabharwal.

JUDGMENT:

L...I...T.....T.....T.....T.....T.....T.....T..J SANTOSH HEGDE, J.

Being aggrieved by an order made by the Division Bench of the High Court of Karnataka in Writ Petition Nos.17068-70 of 1988, the appellant is before us in these appeals.

In respect of assessment years 1977-78, 1978-79 and 1980-81, assessment orders were served on the assessee- appellant and demand notices were issued. The appellant complied with the demands by paying the tax due. The appellate authority on an appeal preferred by the appellant, allowed the same and the taxes paid were refunded to the appellant. The appellate tribunal dismissed the appeal filed by the Revenue and on a Reference made to the High Court, the same came to be allowed thereby upholding all the assessment orders. Thereafter, the Revenue made fresh demands and the

assessee re-paid the taxes as assessed and demanded. However, the Revenue invoked Section 220(2) of the Income Tax Act, 1961 (the Act) and demanded interest in respect of the tax assessed for the period commencing with refund of the tax consequent upon the first appellate order till the taxes were finally paid after disposal of References.

The appellant challenged the said demand of interest in the above-mentioned writ petitions before the High Court, inter alia, contending that it was not at all in default because it had paid the taxes in compliance with the demands, hence, the original demands did not survive so this was not a case where it had failed to comply with the demand made under Section 156 of the Act. The Revenue contended that the order of assessment, the appellate orders and the order made on reference resulting in consequential order are only different steps in the same proceeding and the ultimate order relates back to the original order itself and that also in view of Section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 (for short the Validation Act) the original demand notices got revived by operation of law and due effect had to be given to such revival. The High Court, however, held that sub-section (2) of Section 3 of the Validation Act kept alive the earlier demand notice even though payment in full was made pursuant to that demand and treated the same as due notice having been kept alive all along till the assessment order was upheld by the higher forum. On the above foundation, the writ petitions came to be dismissed.

In these appeals, it is contended on behalf of the appellant that Section 220(2) does not apply to the facts of the case in view of the admitted fact that when the original notice of demand was issued, the same was complied with without delay and, subsequently, when the appellant lost its case before the High Court, a fresh demand notice was issued which was also satisfied by the appellant. According to the appellant, once the payment as demanded, has been made, the notice ceases to have any statutory force and does not survive thereafter. It is also contended that Section 3(2) of the Validation Act does not revive or bring back into existence a notice of demand which has ceased to have any statutory force by virtue of payment of tax demanded within the time stipulated in the notice. It is also argued that Section 3(2) of the Validation Act only stipulates that no fresh demand notice is required to be issued as a result of there being a variation in the orders of the different appellate forums with a view to see that the recovery of revenue due to the State is not hampered.

On behalf of the Revenue, it is contended that under Section 220(2) of the Act, the Revenue is entitled to collect interest on that part of tax which is due to it and retained by the assessee, and the High Court was justified in coming to the conclusion that since on the facts and the circumstances of this case, the Revenue was a creditor and the tax-payer a debtor, the debtor should compensate the creditor by paying interest on the amount due.

Based on the above pleadings, the point emerging for our consideration is: does the Act under Section 220(2) contemplate payment of interest on any sum of money due under a demand notice even after the said demand is satisfied ?

For the sake of convenience, it is necessary for us to extract the relevant part of that Section which is in terms following :

220 (2) If the amount specified in any notice of demand under section 156 is not paid within the period limited under sub- section (1), the assessee shall be liable to pay simple interest at one and one-half per cent for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-section (1) and ending with the day on which the amount is paid :

Provided that, where as a result of an order under Section 154, or section 155, or section 250, or section 254, or section 260, or section 262, or section 264 or an order of the Settlement Commission under sub- section (4) of Section 245D, the amount on which interest was payable under this section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded.

A bare reading of this Section clearly indicates that if the assessee does not pay the amount demanded under a notice issued under Section 156 of the Act within the time stipulated under sub-section (1), the said assessee is liable to pay simple interest at one and one-half per cent for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub- section (1) and ending with the day on which the amount is paid, and therefore the condition precedent under this Section is that there should be a demand notice and there should be a default to pay the amount so demanded within the time stipulated in the said notice. Applying this Section to the facts of the case, it is seen that immediately after the assessment was made for the relevant years, demand notices were issued under Section 156(1) of the Act and admittedly the appellant satisfied the said demands and nothing was due pursuant to the said demand notices. However, after the judgment of the appellate authority which went in favour of the assessee, the Revenue refunded the amount due as per the said order of the authority. Thereafter, when the matter was taken up ultimately in Reference to the High Court and the assessee lost the case, fresh demand notices were issued and it is also an admitted fact that in satisfaction of the said demand notices the appellant had paid the amount as demanded within the time stipulated therein. The question, therefore, is: whether the Revenue is entitled to demand interest in regard to the amount which was refunded to the assessee by virtue of the judgment of the appellate authority and which was re-paid to the Revenue after decision in the Reference by the High Court on fresh demand notices being issued to the assessee ? Admittedly, on a literal meaning of the provisions of Section 220(2) of the Act, such a demand for interest cannot be made. The High Court by a liberal interpretation of the said Section and relying upon Section 3 of the Validation Act has held that the Revenue is entitled to invoke Section 220(2) of the Act for the purpose of demanding interest on such retention of money.

We are not in agreement with the High Court on the interpretation placed by it on Section 220(2) of the Act in regard to the right of the Revenue to demand interest in a situation where the assessee has promptly satisfied the demand made by the Revenue

in regard to the tax originally assessed.

> It is a settled principle in law that the courts while construing Revenue Acts have to give a fair and reasonable construction to the language of a Statute without leaning to one side or the other, meaning thereby that no tax or levy can be imposed on a subject by an Act of Parliament without the words of the Statute clearly showing an intention to lay the burden on the subject. In this process, the courts must adhere to the words of the Statute and the so-called equitable construction of those words of the Statute is not permissible. The task of the court is to construe the provisions of the taxing enactments according to the ordinary and natural meaning of the language used and then to apply that meaning to the facts of the case and in that process if the tax-payer is brought within the net he is caught, otherwise he has to go free. This principle in law is settled by this Court in India Carbon Ltd. & Ors. v. State of Assam [1997 (6) SCC 479] wherein this Court held Interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf. A Constitution Bench of this Court speaking through one of us (Hon. Bharucha, J.) in the case of V.V.S. Sugars v. Government of A.P. & Ors. [1999 (4) SCC 192] reiterated the proposition laid down in the India Carbon Ltd.s case (supra) in the following words : The Act in question is a taxing statute and, therefore, must be interpreted as it reads, with no additions and no substractions, on the ground of legislative intendment or otherwise. If we apply this principle in interpreting Section 220 of the Act, we find that the condition precedent for invoking the said Section is only if there is a default in payment of amount demanded under a notice by the Revenue within the time stipulated therein and if such a demand is not satisfied then Section 220(2) can be invoked.

The High Court also fell in error in relying on Section 3 of the Validation Act to construe Section 220(2) in the manner in which it has done in the impugned judgment. Section 3 of the Validation Act, in our opinion, cannot be relied upon to construe the authority of the Revenue to demand interest under Section 220 of the Act. The said Section was enacted to cope up with a different fact-situation. That Section only revives the old demand notice which had never been satisfied by the assessee and which notice got quashed during some stage of the challenge and finally the said quashed notice gets restored by an order of a higher forum. In such situation, Section 3 of the Validation Act restores the original demand notice which was never satisfied by the assessee and the said Section does away with the need to issue a fresh notice. Beyond that, that Section cannot be resorted to for reviving a demand notice which is already fully satisfied.

In a similar fact-situation, a Division Bench of the Kerala High Court in I.T.O. v. A.V. Thomas & Company (1986) 160 ITR 818 had held that the condition precedent for invoking Section 220(2) is that even after the notice of demand under section 156 and after a further period of 35 days as provided under section 220(1), the assessee should continue as a defaulter in the matter of payment of tax demanded. It further held that only in case the assessee defaults in payment of tax assessed, 35 days after the notice of demand under section 156, the liability to pay interest accrues. In that case also, admittedly, the assessee had paid the tax when he received the demand notice under

section 156, hence, the High Court held that the requirements under section 220(2) for attracting the liability to pay interest did not exist.

We are in agreement with the said view of the Kerala High Court. Though this judgment was brought to the notice of the Karnataka High Court in the impugned judgment, the said High Court thought it fit not to place reliance on the same which, in our opinion, is erroneous.

In the light of the above, we are of the opinion that Section 220(2) of the Act cannot be invoked to demand any interest from the appellant for the assessment years in question. These appeals, therefore, stand allowed, the impugned judgment is set aside and the demands made by the Revenue under Section 220(2) of the Act for payment of interest on the tax due for assessment years 1977-78, 1978-79 and 1980-81 stand quashed.