

Commissioner Of Income Tax vs M/S Hindustan Bulk Carriers, M/S Damani ... on 17 December, 2002

Equivalent citations: AIR 2003 SUPREME COURT 3942, 2003 (3) SCC 57, 2003 AIR SCW 2868, 2003 TAX. L. R. 687, 2003 (1) LRI 231, 2003 (3) SRJ 166, 2002 (9) SCALE 551, 2003 (1) SLT 290, (2003) 126 TAXMAN 321, (2003) 173 TAXATION 16, (2002) 9 SCALE 551, (2003) 259 ITR 449, (2003) 2 MAD LJ 65, (2003) 2 SUPREME 358, (2003) 179 CURTAXREP 362

Author: M.B. Shah

Bench: M.B. Shah

CASE NO.:

Appeal (crl.) 7966-67 of 1996

Appeal (civil) 7248 of 1999

PETITIONER:

Commissioner of Income Tax

RESPONDENT:

M/s Hindustan Bulk Carriers, M/s Damani Brothers

DATE OF JUDGMENT: 17/12/2002

BENCH:

M.B. SHAH

JUDGMENT:

J U D G M E N T Shah, J.

I have gone through the Judgments rendered by brother Pasayat, J. and brother Dharmadhikari, J. I agree with the views expressed in those Judgments. However, for clarifying the position with regard to payment of interest I would like to add as under:

As provided under Section 245B of the Income-Tax Act, 1961, (hereinafter referred to as 'the Act') the Central Government has constituted the Income Tax Settlement Commission for the settlement of cases. The word "case" has been defined under Section 245A(b) of the Act to mean any proceeding under the Income Tax Act for the assessment or reassessment of any person in respect of any year or years and includes appeal or revision in connection with such assessment or reassessment, which may be pending before an Income Tax Authority on the date on which an application under sub-section (1) of Section 245C is made. Section 245C(1) provides for an application by an assessee in a prescribed form containing a full and true

disclosure of his income which has not been disclosed before the assessing officer and such other prescribed particulars for settlement of his case by the Settlement Commission.

Other requirements are that no such application could be made unless-

- (a) the assessee has furnished the return of income which he is or was required to furnish under any of the provisions of this Act; and
- (b) the additional amount of income-tax payable on the income disclosed in the application exceeds (at present) one hundred thousand rupees.

The other relevant requirement which has a bearing on the question involved in these appeals is sub-section (1A) of Section 245C, which provides that the additional amount of income tax payable in respect of the income disclosed in an application should be the amount calculated in accordance with the provisions of sub- sections (1B) to (1D).

The next stage is Section 245D which empowers the Settlement Commission to reject the application or to allow the application to proceed with within a period of one year from the end of the month in which such application was made. Rejection of such application could be only after giving an opportunity of hearing to the applicant as well as after considering the report of the Commissioner of Income Tax. If the application is not rejected and the Settlement Commission decides to proceed with the application, then the assessee is required to pay the additional amount of income tax payable on the income disclosed in the application within 35 days of the receipt of the copy of the order passed by the Settlement Commission.

The subsequent stage provided under sub-sections (2B) and (2C) to Section 245D is that if the assessee is not in a position to pay the said amount within a period of 35 days it may extend the time for payment of the amount which remains unpaid but the assessee would be liable to pay simple interest at the rate of 15% per annum on the amount remaining unpaid from the date of the expiry of the period of 35 days referred to in sub-section (2A).

The question which arises is whether the assessee is required to pay any interest on the amount of tax on the income disclosed before the Settlement Commission as contemplated under Sections 234A, 234B and 234C? That question is concluded by a decision rendered by the Constitution Bench of this Court in Commissioner of Income Tax, Mumbai v. Anjum Ghaswala [(2002) 1 SCC 633] where it was held that the interest contemplated under Sections 234A, 234B and 234C is mandatory in nature and the power of waiver or reduction having not been expressly conferred on the Commission, waiver or reduction in payment of statutory interest is outside the purview of the settlement contemplated in Chapter XIX-A of the Act. Therefore, the assessee is required to pay interest at the prescribed rate from the date when the amount became due and payable on the undisclosed income which is disclosed before the Settlement Commission, till the date of the order of entertaining such application, passed by the Settlement Commission under Section 245C. He is given 35 days' time for making such payment under sub-section (2A) of Section 245D.

Under Section 245H, Settlement Commission has jurisdiction to grant immunity from prosecution and penalty if the Settlement Commission is satisfied that the assessee has co-operated with it in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived. The immunity from prosecution is for any offence under the Income Tax Act or under the Indian Penal Code or under any Central Act. However, no such immunity can be granted if the prosecution is already instituted before the date of the receipt of the application under Section 245C. It also empowers the Commission to reduce the penalty as provided under the Act wholly or partly with respect to the case covered by the settlement. From this Section it can be easily inferred that the Commission has no power (a) to waive tax statutorily payable under the Act, or (b) to reduce the interest on the tax payable on the income disclosed.

Therefore, it cannot be contended that the assessee would be required to pay interest on the tax payable on the income disclosed by him only from the date when he files an application under Section 245C. He has to pay the tax amount on the disclosed income and also the interest payable on the said tax. Further, when once the order under Section 245D is passed by the Settlement Commission to proceed with the application, he is required to pay the said amount i.e. the tax on the income subsequently disclosed and the interest payable thereon, within a period of 35 days. If that amount is not paid the Commission may extend the period of payment with a specific condition that he shall pay the same interest thereon. It is true that to that extent he would be required to pay interest on interest but the scheme of Section 245D contemplates that he has to pay tax on the disclosed income and as the Commission has no power to waive interest on the said tax, he is also required to pay the tax with interest. That means under sub-section (2A) to Section 245D the assessee would be required to pay the income tax payable on the disclosed income plus the interest payable thereon as contemplated under Sections 234A, 234B or 234C.

The next step is if the Commission gives further time to pay the said amount whether assessee is required to pay interest as contemplated under sub-section (2C) of Section 245D? For simplification it can be stated that once the amount is crystallized i.e. X is the tax payable on the disclosed income and Y is the interest payable thereon, on aggregate of this amount (i.e. X+Y), if the time for payment is extended by the Settlement Commission, the assessee is also required to pay the interest on the amount of 'X+Y'. That is the scheme of sub-section (2C) of Section 245D. It specifically provides that where the additional amount of income tax is not paid within the time specified under sub-section (2A) then on the amount which remains unpaid "the assessee shall be liable to pay simple interest at the rate of 15% per annum on the amount remaining unpaid from the date of expiry of the period of 35 days referred to in sub-section (2A)". It is also to be noted that under sub-section (2D) where the additional amount of income tax referred to in sub-section (2A) is not paid by the assessee within the time specified under that sub-section or the time to pay is extended under sub-section (2B) the Settlement Commission is empowered to direct recovery of the said amount with interest payable thereon under sub-section (2C) and penalty for default in making payment of such additional amount in accordance with the provisions of Chapter XVII, by the assessing officer having jurisdiction over the assessee. The aforesaid scheme of Section 245D leaves no doubt that the assessee would be required to pay the amount with interest thereon. The amount at that stage would be the tax plus interest. In such cases, there is no question of paying interest on interest because the interest which the assessee is required to pay under Sections 234A, 234B or 234C merges with the

amount as provided under sub-section (2A).