

Allahabad High Court

Commissioner Of Income-Tax vs Amrit Banaspati Co. on 10 May, 2005

Equivalent citations: 2006 284 ITR 484 All

Bench: R Agrawal, R Kumar

JUDGMENT

1. The Income-tax Appellate Tribunal has referred the following question of law under Section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for the assessment year 1986-87 for opinion to this Court:

Whether, on the facts and in the circumstances of the case, learned Income-tax Appellate Tribunal was legally correct in holding that the interest under Section 7B of the Companies (Profits) Surtax Act, 1964 was admissible to the assessee, even though, the advance tax of Rs. 18,00,000 due on December 15, 1985, was paid on February 8, 1986, and there is no provision under the said Act entitling the assessee to claim interest where interest (sic) is paid after the statutory date, i.e., December 15, of the relevant previous year though before the March 31, of the relevant previous year?

2. The brief facts of the case are that the assessee-company was not previously assessed by way of regular assessment under the Companies (Profits) Surtax Act, 1964 (hereinafter referred to as "the Act") and as such it was liable to submit its estimate in respect of correct chargeable amount to surtax in accordance with the provisions of Section 7A(5)(b) and to pay the advance tax by December 15, 1985 in accordance with the provisions of Section 7A(4)(a). The assessee had filed its estimate in time on December 16, 1985 but consequential due tax of Rs. 18 lakhs was not paid up to 15th December, 1985, within the financial year. According to the Assessing Officer as well as the Commissioner of Income-tax (Appeals) it has not been paid its liability within the stipulated period under the provisions of Section 7A(4)(a), accordingly interest was held not payable under Section 7B of the Act.

3. When the matter came up before the Tribunal, the Tribunal allowed interest under Section 7B of the Act.

4. We have heard learned standing counsel on behalf of the Revenue and Sri S.D. Singh, learned Counsel appearing on behalf of the assessee respondent.

5. Learned standing counsel submitted that since a sum of Rs. 18 lakhs which was due to be payable by December 15, 1985 was not paid within the time stipulated under Section 7A(4)(a), interest under Section 7B of the Act was not payable and the Tribunal has erred in granting the interest under Section 7B of the Act. Learned Counsel for the assessee submitted that any amount paid during the financial year, was in the nature of an advance tax and interest under Section 7B of the Act was payable. In respect of his contention, he relied upon various decisions of the Hon'ble High Court and the apex court.

6. We have given our anxious consideration to the submissions made by learned Counsel for the parties and perused the order of the Tribunal and the authorities below. Section 7A(4)(a) and Section 7B read as follows:

Section 7A. Advance payment of surtax.(1) In this Section, (4) Subject to the provisions of this section, advance surtax shall be payable in three equal instalments on the following dates during the financial year, namely:

(a) the 15th day of June, the 15th day of September and the 15th day of December, in the case of an assessee whose chargeable amount to the extent of 75 per cent, thereof or more is derived from a source or sources for which the previous year (relevant to the assessment year next following the financial year aforesaid) ends on or before the 31st day of December;

(b) the 15th day of September, the 15th day of December and the 15th day of March, in any other case:

Section 7B. Interest payable by Government.The Central Government shall pay simple interest at fifteen per cent, per annum on the amount by which the aggregate sum of any instalments of advance tax paid during any financial year in which they are payable under Section 7A exceeds the amount of the tax determined on regular assessment, from the 1st day of April next following the said financial year to the date of the regular assessment for the assessment year immediately following the said financial year.

7. Thus, under Section 7B, interest is payable on the aggregate sum of any 7 instalments of advance tax paid during any financial year. The provision of Section 7B of the Companies (Profits) Surtax Act, 1964 is similar to Section 214 of the Income-tax Act.

8. We find that the Andhra Pradesh High Court in the cases of J. and J. Dechane v. CIT [1990] 182 ITR 345; Bakelite Hylam Ltd. v. CIT [1993] 202 ITR 145 [FB], the Bombay High Court in the case of Harinagar Sugar Mills Ltd. v. First ITO [1991] 188 ITR 135; the Calcutta High Court in the cases of CIT v. Ajoy Paper Mills Ltd. [1990] 181 ITR 454; CIT v. Graphite India Ltd. [1994] 209 ITR 88, 96; the Gujarat High Court in the cases of Chimanlal S. Patel v. CIT [1994] 210 ITR 419, 421; Chandrakant Damodardas v. ITO [1980] 123 ITR 748; Anup Engineering Ltd. v. ITO [1984] 145 ITR 105, the Gauhati High Court in the case of Moheema Ltd. (No. 1) v. CIT [1990] 182 ITR 187; the Karnataka High Court in the cases of CIT v. Karnataka State Warehousing Corporation Ltd. [1990] 185 ITR 25; CIT v. Woodlands Hotel P. Ltd. [1998] 233 ITR 224, 227; the Kerala High Court in the cases of Santha S. Shenoy v. Union of India [1982] 135 ITR 39; CIT v. Travancore Cements Ltd. [1995] 212 ITR 218; the Patna High Court in the case of CIT v. Kharsawan Mineral Concern P. Ltd. [1995] 213 ITR 270, 272; the Punjab and Haryana High Court in the cases of CIT v. Roadmaster Industries of India P. Ltd. [1992] 193 ITR 639; CIT v. Agrawal Metal Works P. Ltd. [1998] 230 ITR 958, 960; the Rajasthan High Court in the case of Jai Drinks P. Ltd. v. CIT [1996] 217 ITR 404, 413; the Madras High Court in the cases of CIT v. T.T. Investments and Trades P. Ltd. [1984] 148 ITR 347; CIT v. Southern Sea Foods Ltd. [1995] 215 ITR 176; CIT v. Coimbatore District Central Co-operative Supply and Marketing Society Ltd. [1995] Tax LR 1308; R.V.S. and Sons v. CIT [1999]

239 ITR 192; the Madhya Pradesh High Court in the cases of CIT v. Jagannath Narayan Kutumbik Trust [1983] 144 ITR 526; Nasiruddin v. CIT [1996] 131 Taxation 421 (MP); and the Delhi High Court in the case of CIT v. Eskay Electronics (India) Ltd. [2001] 248 ITR 536, have taken a view that under Section 214(1) of the Act the assessee becomes entitled to interest in respect of excess payment of advance tax paid during any financial year even if the date is subsequent to the dates stipulated under Section 211 for payment of such instalments.

9. The Gujarat High Court in the case of CIT v. Kohinoor Flour Mills [1975] 99 ITR 54 has held that in computing the penalty under Section 273(b) of the Act, the amount of tax paid by the assessee subsequent to the date prescribed for payment of advance tax should be treated as valid advance tax and should be deducted from 75 per cent, of the tax determined. The aforesaid decision has been affirmed by the apex court in CIT v. Kohinoor Floor Mills P. Ltd. [1991] 187 ITR 585. Thus, the amount of advance tax which is paid after the prescribed date, is to be treated as advance tax.

10. The view taken by various High Courts referred to hereinabove has been followed by this Court in I.T.R. No. 102 of 1987 CIT v. Praveen Kapoor [2005] 278 ITR 71 decided on November 22, 2004.

11. Respectfully following the aforesaid decisions of various High Courts and our High Court, we hold that the amount of tax paid by way of an advance tax after December 15, 1985 but paid on February 8, 1986, during the financial year has been rightly treated as advance tax and has been taken into consideration for the purposes of granting interest under Section 7B of the Act.

12. In view of the reasons stated above, we answer the question referred to 12 us in the affirmative, i.e., in favour of the assessee and against the Revenue. There shall be no order as to costs.