IN THE ANDHRA PRADESH HIGH COURT

HON'BLE SRI JUSTICE G. CHANDRAIAH AND HON'BLE SRI JUSTICE CHALLA KODANDA RAM

R.C. No.127 OF 1997

19-12-2013

Shri M. Jaffer Saheb (Decd.), Guntakal (L/R M.Nurul Huda)... Applicant

Commissioner of Income-Tax, Vijayawada ...Respondent

Counsel for the petitioner : Sri Y. Ratnakar

Counsel for the respondent : Sri J.V.Prasad, Learned Sr.Standing Counsel for Income Tax

HON'BLE SRI JUSTICE G. CHANDRAIAH
AND
HON'BLE SRI JUSTICE CHALLA KODANDA RAM

R.C. No.127 OF 1997

ORDER:- (per Hon'ble Sri Justice Challa Kodanda Ram)

At the instance of the Assessee, the Income Tax Appellate Tribunal, Hyderabad Bench "A", had referred two questions of law as arising from the order of the Income Tax Appellate Tribunal in I.T.A. No.751/Hyd/94 for the assessment year 1990-1991. The questions are as follows:

1) "Whether on the facts and in the circumstances of the case, is the Appellate Tribunal correct in law in holding that interest U/s.244(1A) of the Income-Tax Act on the refund due accrues on the date when the Appellate Tribunal passed order and did not accrue on any day anterior to the date of the Tribunal order?"

2) "Whether on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law; in refusing to accept the contention of the applicant that interest on the refund accrued from the previous year relevant to the assessment year 1982-1983 and interest is chargeable to tax in the respective years for which interest is paid?"

2) The undisputed questions as recorded by the Tribunal are that for the assessment year 1982-1983, assessment was completed with substantial additions raising a huge demand. The assessee paid the demanded tax and thereafter availed the appellate remedies and in that process the Appellate Tribunal had finally passed an order granting substantial relief to the assessee on 16.06.1989. Thereafter, Assessing Officer gave effect to the order of

the Tribunal by Orders dated 18.09.1989, thereby refunding the excess amount paid along with interest worked out upto 31.10.1995. In that process, the assessee received interest of Rs.79,950/- for the period 30.10.1985 to 31.08.1989. The Assessing Officer brought to the tax the amount in the assessment year 1990-1991 ignoring the claim of the assessee to spread over the said amount for the assessment years starting with assessment orders 1985-1986 to 1988-1989. The Appellate Commissioner had allowed the claim of the assessee and had directed the balance of interest be brought to tax for the earlier periods. The Tribunal, on further appeal by the Revenue, reversed the order of the Appellate Commissioner and restored the assessment order passed by the I.T.O.

3) The learned counsel Sri Y. Ratnakar, for the assessee would submit that the assessee is entitled to the refund from the date of payment of the tax till the date of granting of the refund. Further, interest would accrue on day to day basis on the excess amount paid on account of the order of the assessment which was ultimately corrected, which had resulted in excess demand and which order was ultimately corrected by the Appellate Tribunal. Inasmuch as, the entitlement of the interest is a right conferred by the statute and it does not depend on the order for the refund being made. An order for the refund is only consequential order which in law is required to be made more in the nature of complying with the procedural requirement, but the right to claim interest of the assessee is statutory right conferred by the Act. In that view of the matter, he would submit that the order of the appellate commissioner is unexceptionable and he would further submit that it is but fair to spread the interest amount in the respective years in issue. He would rely on the judgment of the Calcutta High Court reported in CIT Vs. Hindustan Motors Ltd.,1 for the proposition that "Accrual of interest takes place normally on day to day basis.Where there is no due date fixed for payment of interest, interest accrues on the last day of the previous year. Accrual of interest does not depend upon making up of the accounts." He would also further rely on the judgment of Kerala High Court reported in Peter John Vs. CIT2, for the proposition that "Interest is separate from refund. Interest whether statutory or contractual represents profit the creditor might have made if he had used on money or loss he suffered because he had not that use. It is something in addition to the refund (capital amount) though it arises out of it." He would also rely on the judgment of the Supreme Court reported in Ramabai Vs. CIT3.

4) On the other hand Sri J.V. Prasad, learned Senior Standing Counsel for Income Tax would submit that the right to claim interest by the assess is dependent on an order being passed under Section 240 and 244 of the Income Tax and in that view of the matter, the right to claim interest would accrue to the assessee only on the date of consequential order passed pursuant to the order of the Appellate Authority. In that view of the matter, the interest income assessable was received by the assessee for the accounting year 1989-1990 in the assessment year 1990-1991. He would rely on the judgments of the three judgments by placing reliance on the judgments of Orissa, Kerala and Allahabad High Courts reported in Commissioner of Income-Tax Vs. Sri Popsingh Rice Mill4, Smt. K. Devayani Amma Vs. Deputy Commissioner of Income-Tax and Another5 and J.K. Spinning and Weaving Mills Co., Vs. Additional Commissioner of Income-Tax, Kanpur6.

5) For the purpose of answering the questions referred, it is necessary for us to notice the statutory provisions with respect to refund of taxes paid in excess and the interest that is required to be paid. Section 237 Chapter XIX of the Income Tax Act, deals with refund.

6) Section 237 of the Act reads as under:

"If any person satisfies the Assessing Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess."

7) Likewise, Section 240 of the Act reads as under:

"Whereas a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due to the assessee, the Assessing Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf:

Provided that where, by the order aforesaid-

(a) an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund, if any, shall become due only on the making of such fresh assessment;

(b) the assessment is annulled, the refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee."

8) Section 244A (1) and 244A (1)(a) are intentionally omitted as not relevant for the purpose of this case.

9) Section 244A (1) (b) of the Act reads as under:

"In any other case, such interest shall be calculated at the rate of one half per cent for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted.

Explanation- for the purposes of this clause, "date of payment of tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand."

10) Section 244(A) (2) of the Act reads as under:

"If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable and where any question arises as

to the period to be excluded, it shall be decided by the Chief Commissioner of Commissioner whose decision thereon shall be final."

11) Section 244(A) (3) of the Act is omitted as not relevant for the purpose of this case.

12) Section 244(A) (4) of the Act, reads as under:

"The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years.

Provided that in respect of assessment of fringe benefits, the provisions of this sub-section shall have effect as if for the figures "1989", the figures "2006" had been substituted."

13) A close scrutiny of the Sections 237 and 240 of the Act would reveal that the statutory right is conferred on the assessee to get refund of the excess tax paid and such refund shall be made to the asssessee even without his having to make any claim in that behalf. Section 244(A) of the Act entitles the assessee to get interest on the refund amount and such interest is payable from the date of payment of tax or payment of penalty from the date till refund is granted.

It is clear from the statutory provisions as applicable to the relevant assessment years there is no requirement of assessee making a claim either for refund or for interest. As a matter of fact, we may notice Section 243 and section 244, which were made inapplicable in respect of any assessment for the assessment year commencing on the first day of April, 1989 or any subsequent assessment years.

14) At this juncture a reference may be made to the judgment of the Supreme Court reported in the case of Rama Bai (3rd Supra). In the said case, the issue is with regard to taxability of interest received on account of enhanced compensation, the assesses lands were acquired and not being satisfied with the compensation awarded by the Land Acquisition Officer, Assessee appealed to the higher courts and finally they received enhanced compensation along with interest payable under Sections 28 and 34 of the Land Acquisition Act. The said amounts were received in the year 1967 and were sought to be assessed in the year 1968-1969. Assessee's claim was interest allocable and assessable in different assessment years as it accrued from year to year and only that portion of the interest relating to the period April, 1967 to March, 1968 were assessable for the assessment year 1968-1969. The Tribunal dismissed the appeal of the assessee by following the judgments in Commissioner of Income Tax Vs. Sankari Manickyamma7. The Tribunal was conflicted with the judgment of the High Court in the case of Mrs. Khorshed Shapoor Chennai Vs. Assistant Controller of Estate Duty8. On account of the conflict of decisions, the Tribunal in exercise of its power under Section 257 of the Act, referred the question to the opinion of the Supreme Court. The question referred to the Hon'ble Supreme Court is as follows:

"Whether, on the facts and in the circumstances of the case, the interest received by the assesses as per the City Civil Court's award for the period commencing from the date of possession till March 31, 1968, was entirely assessable for the assessment year 1968-1969?"

15) The Hon'ble Supreme Court had answered the question in the affirmative in favour of assessee and against the revenue by following its earlier judgment in the case of Commissioner of Income-tax Vs. Govindarajulu Chetty (T.N.K.)9. When we peruse the judgment of T.N.K. Govindarajulu Chetty (9th supra), the same is a short judgment, which simply approved the judgment of the Madras High Court reported in T.N.K. Govindarajulu Chetty Vs. Commissioner of Income-tax10. In the Madras Judgment after thoroughly analyzing the various legal principles with regard to system of accounting and also the concepts of accrual the Court held.-

"11. In this case the liability to pay interest would arise when the compensation amount due to the assessee had not been paid, in each of the relevant years. Therefore, the accrual of interest has to be spread over the years between the date of acquisition till it was actually paid. We are not in a position to accept the contention of the revenue that even if the accrual has taken place earlier, the Income-tax Officer can proceed to assess the income on the basis of receipt notwithstanding the earlier accrual as he has an option to assess the income by way of interest either on the basis of accrual or on the basis of receipt, and that the decision of the Mysore High Court in Commissioner of Income-tax v. Sampangiramaiah, in so far as it proceeds that the accrual alone should be taken as the basis for assessment, cannot be taken as laying down the correct law. The statute, in our view, does not give such an option to the revenue, as is contended, to choose either the accrual basis or the receipt basis for assessing the income. When a statute brings to charge certain income, its intention is to enforce the charge at the earliest point of time. If the income has accrued earlier and the assessee treats it as taxable during the year of accrual, it is not open to the revenue to treat it as an income in the year of receipt in a case where the assessee follows the mercantile basis of accounts, If such an option is given, the same income becomes taxable twice, once on the basis of accrual and another on the basis of receipt. The Supreme Court has pointed out in Laxmipat Singhania Vs. Commissioner of Income-tax, that:

"It is a fundamental rule of the law of taxation that, unless otherwise expressly provided, income cannot be taxed twice. Again, it is not open to the Income-tax Officer, if income has accrued to the assessee, and is liable to be included in the total income of a particular year, to ignore the accrual and thereafter to tax it as income of another year on the basis of receipt."

16) Similar view was taken by the Panjab & Haryana High Court in the Judgment reported in Commissioner of Income Tax Vs. Dr. Sham Lal Narula11. We may also notice in the judgment of the Madras High Court reported in T.N.K. Govindarajulu Chetty's case (9th supra) followed the judgment of Karnataka High Court reported in Commissioner of Income Tax, Mysore Vs. V.Sampangiramaiah12 in part, where under the question which was considered was "Whether, on the facts and in the circumstance of

the case, the Appellate Tribunal was right in law in holding that the entire interest amount of Rs.87,265/- was not assessable in the assessment year 1962-63 and that only the proportionate interest referable to the assessment year 1962-63 was assessable in that year?" The Karnataka High Court also answered the question in the affirmative and in favour of the assessee and against the revenue. In the light of the judgment of Ramabai case (3rd Supra), wherein T.N.K.Gonvidarajulu Chetty's case (Madras) (9th supra) has been approved. The law laid down by our High Court in Sankar Manikyam's case (7th Supra) is no longer good law. In all the above cases, the principle which can be culled out is that once the income has legally accrued to the assessee, i.e. the assessee has acquired a right to receive the same, though its valuation may be postponed to future date, the determination or quantification of the amount does not postpone the accrual. In other words, if the right has legally accrued to the assessee, the right should be deemed to have accrued in the relevant year even though the dispute as to right is settled in the later year, by the one or the other of the authorities in the hierarchy.

17) Now, coming to the judgments referred to above, the learned counsel for the department may be looked into. Firstly, the case referred is the judgment of the Kerala High Court reported in Smt. K. Devayani Amma Vs. Deputy Commissioner of Income Tax And Another13. In the said judgment, though the Kerala High Court referred the case of Rama Bai (3rd Supra), there was no discussion about the principles as approved in the judgment of the Supreme Court. Further, though the provisions of 240 and 244(1A) of the Act were mentioned, the Court had observed that interest on refund arises only when interest is ordered in favour of the assessee and the eligibility of interest under Section 244(1A) of the Act arises, when the result of the revision of assessment pursuant to order in appeal, leads to grant to refund of excess tax paid by the assessee. The reading of Sections 237, 240 and 244(1A) casts a duty on the Assessing Officer to charge that much of tax which the assessee is liable to pay and mandates the refund of the excess amount along with interest. The hierarchy of appeals provided are only to ensure that the tax authorities adhere to strict rules of taxation and the statutory provisions. Even the final order that may be passed by the higher authority in the hierarchy of authorities provided under statue is also an order of assessment only for the simple reason this is the final order that is passed by the appellate authorities is nothing but correction of the original assessment order, which was erroneous. In that view of the matter, the opinion expressed by the Kerala High Court that interest under Section 244(1A) of the Act accrues to the assessee only when it is granted to the assessee along with refund order issued under Section 240 of the Act is not correct, especially, in view of the law laid down by the Supreme Court as quoted in the Judgment of the Madras High Court in T.N.K.Govindarajulu Chetty's case (9^{th} Supra). In view of the same we are unable to accept the judgment of Kerala High Court reported in K. Devayani Amma's case (13th supra) on the issue.

18) Likewise, the judgment of the Allahabad High Court reported in J.K. Spinning and Weaving Mills Co., Vs. Additional Commissioner of Income-Tax, Kanpur14, the questions which were considered were as follows:

"(1) Whether, on the facts and in the circumstances of the case, the Income-tax Officer rightly assumed jurisdiction under section 147 (a) of the Income-tax Act, 1961, for the assessment year 1957-58?

(2) Whether, on the facts and in the circumstances of the case, the payments of the amount of Rs.9,696 for 1951-52 on March 20, 1956, and of Rs.5,083 for 1952-53 on March 29, 1956, representing interest under section 18A(5) of the Indian Income tax Act, 1922, could be treated as income of the assessment year 1957-58 only?"

19) Firstly, the statutory provisions which were discussed therein were with respect to the provisions contained in Indian Income Tax Act, 1922, and there is a difference in the statutory scheme with the Indian Income Tax Act, 1961. Further, in the process of interpreting the provisions in 1922 Act, the Court had taken into consideration that interest became payable to the assessee only when the assessments for the years in dispute were made which were in fact made in 1956, though the assessments were 1951-1952 and 1952-1953. As a matter of fact, the Court while agreeing with the law laid down in Sapangai Ramayya's case (12th supra) had recorded "it is the date of accrual and not the receipt which is material in cases where mercantile system of accounting is followed. The date of accrual in the Mysore case was the date of possession while the date of accrual in the present case is the date of assessment. In another judgment of the Orissa High Court reported in Sri Popsingh Rice Mill case (4th Supra), the question considered by the Orissa High Court is "Whether, on the facts and in the circumstances of the case, the income received by the assessee by way of interest under Section 244 of the Income-tax Act, 1961, on refund determined and quantified under Section 240 of the said Act was not assessable in the year of receipt?"

20) We may notice that the question which fell for consideration is in relation to Section 244 of the Act and not in relation to Section 244(A) of the Act. Though the Orissa High Court had answered the question in favour of the assessee, the Orissa High Court failed to notice the judgments of the Supreme Court. Orissa High Court relied on three judgments which were not dealing with interest. There is no quarrel with the legal proposition laid down in the case of CIT vs. A. Gajapathy Naidu15. As a matter of fact, Gajapathy case (15^{th} supra) was referred and considered by the Karnataka High Court in Sampangi Ramayya's case (12th Supra), which had stated as under:

"18. The principal on which the finding of the Tribunal rested, was that which emerges from the decision of the Supreme Court in E.D. Sassoon Company Ltd. v. Commission of Income Tax, in which it was observed:

"The computation of the profits whenever it may take place cannot possibly be allowed to suspend their accrual....'

What has however got to be determined is whether the income, profits or gains accrued to the assesses and in order that the same may accrued to him it is necessary that he must have acquired a right to receive the same or that a right to the income, profits or gains has become vested in him though its valuation may be postponed or though its material

station may depend on the contingency that the making up of the accounts would show income, profits or gains."

19. This enunciation continues to be the law and stands in no way impaired by the subsequent decision in Commissioner of Income Tax v. A. Gajapathy Naidu, on which Mr. Rajasekhara Murthy depends."

Likewise, the other two judgments referred to in the Orissa High Court Judgment also are not relevant for the purpose of deciding the issue.

21) In the light of the discussion above we are unable to agree with the reasoning of the judgment of the Orissa High Court while holding the judgment of Allahabad High Court is distinguishable and not applicable in view of the variance in the very statutory scheme.

22) In view of the above discussion, we are inclined to answer the questions referred in favour of the assessee and against the revenue.

23) Accordingly, the Referred Case is disposed of. No order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed.

_____
G. CHANDRAIAH, J

_____
CHALLA KODANDA RAM, J
Date: 19.12.2013

Cases referred:
1. 202 ITR P. 839 @ page 845
2. 157 ITR Page 711 @ 715(Ker) full bench
3. (1990) 181 ITR 401 (SC)
4. (1995) 212 ITR 385 (Orissa)
5. (2010) 328 ITR 10 (Ker)
6. (1976) 104 ITR 695 (Allahabad)
7. (1976) 105 ITR 172 (AP)
8. (1973) 90 ITR 47 (AP)
9. (1987) 1651 ITR 231 (SC)
10. (1973) 87 ITR 22 (Mad.)
11. (1972) 84 ITR 625 (P&H)
12. (1968) 69 ITR 159 (Kar)
13. (2010) 328 ITR 10 (Ker)
14. (1976) 104 ITR 695