SUPREME COURT OF INDIA

Income Tax Officer, New Delhi

Vs.

Delhi Development Authority

C.A.No.3544 of 1998

(Y.K. Sabharwal CJI. and Brijesh Kumar JJ.)

27.11.2001

JUDGMENT

Brijesh Kumar, J.

1. This civil appeal arises out of Judgment and order passed by the Delhi High Court dated July 31, 1997 directing the appellant namely the Revenue to dispose of the claim of interest preferred by the respondent viz. D.D.A., on the amount of refund and to release the amount thereof, in their favour. The facts which admit of no dispute are that the Delhi Development Authority (for short `DDA) was to construct and allot flats to the buyers within the time stipulated in their agreements. On failure to do so, the D.D.A. was liable to pay interest to the buyers on the amount paid by them, for the period of delay. The D.D.A., defaulted as a consequence whereof it made payment of interest to the buyers. The concerned ITO (TDS) found that the D.D.A. failed to deduct income-tax at source on the payment of interest made to the buyers as provided under Section 194A of the Income-tax Act. Accordingly, a demand was raised for the Assessment Years 1987-88, 1988-89 and 1989-1990. An appeal to C.I.T. failed and it was found that the Assessing Officer had rightly levied tax under Section 201 (1) of the Act and the interest under sub-section (1A) of Section 201 of the Act. The D.D.A. preferred an appeal before the Income-tax Appellate Tribunal. The appeal was allowed by order dated 24.1.95 passed by the ITAT holding that amounts credited to the accounts of the allottees were not in the nature of interest within the meaning of Section 2(28A) of the Act. The orders passed by the income-tax authorities werequashed. It was further provided that amounts, if recovered from the D.D.A., be refunded immediately.

2. It also transpires that the Department moved ITAT under Section 256(1) of the Income-tax Act for making reference to the High Court and by order dated 13.12.1995 ITAT referred the questions. In the meantime the order of the Appellate Tribunal was given effect to by the concerned authorities refunding the mount with interest calculated under Section 244 (1) of the Act.

3. The D.D.A. filed a writ petition before the Delhi High Court raising a grievance that the interest as calculated by the Income-tax Department was not correct. ccording to the D.D.A.

interest under Section 244 (1A) of the Act should have been paid for the year 1987-88 and under provisions of Section 244A for the year 1988-89 and 1989- 90. The Income-tax Department resisted the claim on the ground that the amount refunded to the D.D.A. was not the amount taxed nor involved any advance tax or the tax paid by the D.D.A. so as to attract Section 244A. The High Court negatived the plea of the Income-tax Department. While allowing the writ petition the High Court gave direction to the Income-tax Department to dispose of the claim of the D.D.A. for interest in the light of Para 12 of the Judgment and to release the amount of interest to the D.D.A. Par graph 12 of the judgment is quoted below:

4. Looking at the provisions of sub-section (3) of Section 244 and sub-section (4) if Section 244A, it is clear that the entitlement of the petitioner to interest for the period covered by the assessment year 1988-89 shall be determined by reference to sub-section (1A) of Section 244 and for the period thereafter shall be determined under Section 244A.

5. As indicated earlier the Revenue had refunded the amount with interest calculating it in accordance with Section 244 (1) of the Act. It is only to be seen as to whether the interest was rightly calculated or it is to be paid under Section 244 (1A) and 244A of the Act. In this connection reference to Section 244 (3) may be made which reads as under:

> "244 (3) The provisions of this Section shall not apply in respect of any assessment for the assessment year commencing on the 1st day of April 1989, or any subsequent assessment years."

6. On the basis of the above provision it has not been disputed before us that up to 1.4.1989 the interest shall be payable in accordance with Section 244 of the Income Tax Act and for the period beyond that, according to Section 244A of the Income Tax Act. So far the period prior to 1.4.1989 is concerned, the appellants case is that interest has been rightly calculated under Section 244(1) of the Act. It is submitted that sub Section (1A) of Section 244 will not be applicable since the payment of tax was not made in pursuance of any order or assessment. This contention in our view has no force. It would not be necessary that in all cases, before payment is made, there must always be an actual order of assessment. Tax is payable in advance as well. It is deducted at source also, as in the present case. On perusal of Section 244 what seems to be important is that the amount becomes refundable to the assessee by virtue of an order passed in appeal or any proceedings under the Act. Section 240 of the Income Tax Act deals with refund as a result of any order passed in appeal orproceedings under the Act. It reads as under:

> "240. Where, as 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:"

7. Provided that where, by the order aforesaid,- an assessment is set aside or ancelled 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. It will also be beneficial to peruse Section 244 of the Income Tax Act. It is as follows:

244 (1) Where a refund is due to the assessee in pursuance of an order referred to in Section 240 and the {Assessing} Officer does not grant the refund within a period of {three months from the end of the month in which such order is passed}, the Central Government shall pay to the assessee simple interest at {fifteen} per cent per annum on the amount of refund due from the date immediately following the expiry of the period of {three} months aforesaid to the date on which the refund is granted.

(1A) Where the whole or any part of the refund referred to in sub-section (1) is due to the assessee, as a result of any amount having been paid by him after the 31st day of March, 1975, in pursuance of any order of assessment or penalty and such amount or any part thereof having been found in appeal or other proceedings under this Act to be in excess of the amount which such assessee is liable to pay as tax or penalty, as the case may be, under this Act, he Central Government shall pay to such assessee simple interest at the rate specified in sub-section (1) on the amount so found to be in excess from the date on which such amount was paid to the date on which the refund is granted: Provided that----------"

8. In the case in hand, as indicated earlier, the direction to refund the amount has been made in appellate proceedings before the Tribunal. The amount is to be refunded to the assessee. It cannot be said that the `refundee will not be an assessee only for the reason that actually no assessment proceeding had taken lace. It would be pertinent to refer to the provision contained under Section 201 of the Income Tax Act which clearly provides that if the principal officer or he company liable to deduct the income-tax at source fails to do so, he shall be deemed to be assessee in default in respect of the tax. The definition of the ord `assessee as contained under sub- s.(7) of Section 2 of the Act reads as under:

"Sec.2 (7) `Assessee means a person by whom [any tax] or any other sum of money is payable under this Act, and includes-

(a) every person in respect of whom anyproceeding under this Act has been taken for the assessment of his income or of the income of any other person in espect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person;

(b) every person who is deemed to be an assessee under any provision of this Act

(c) every person who is deemed to be an assessee in default under any provision of this Act."

9. From the above provision, it is clear that term `assesee includes actual assessees as well as deemed assessees under the provision of the Act. It is therefore not correct to contend that unless there are actual assessment proceedings pertaining to any person, he cannot be considered to be an assessee. In the resent case D.D.A. was considered to be liable to deduct the tax at source. It failed to do so. Hence, order under Section 201(1) and 201(1A) was assed aising the demand and amount of tax was paid. The order of refund was passed in appellate proceedings under the Act attracting Sec.240 of the Act. Certain decisions were cited at the Bar to show the meaning of the words `assessee and `assessment and different stages of the assessment proceedings eed not be dealt with in view of clear definition of the word `assessee under the Act as quoted above.

10. The High Court has rightly provided in para 12 of its judgment quoted earlier for applying sub-section (1A) of Section 244 of the Act for determining nterest for period covered by the assessment year 1988-89. It is so also for the reason that the amount was paid by way of deductions after 31.3.1975, as rovided under Sub-sec.(1A) of Sec.244 of the Act. For the discussion held above, we find no force in the appeal. It is accordingly dismissed. No order as to costs.