SUPREME COURT OF INDIA

R.R. Holding Private Limited

Vs

CIT, Delhi and Anr

Civil Appeal No. 3088 of 2006 (Arising Out of Slp (C) No. 15613 of 2004)

(Arijit Pasayat and L. S. Panta, JJ)

21.07.2006

JUDGMENT

ARIJIT PASAYAT, J.

Leave granted.

Appellant, calls in question legality of the order passed by a Division Bench of the Delhi High Court dismissing the appeal filed under Section 260(A) of the Income Tax Act, 1961 (in short the 'Act'), holding that no reference was necessary. The High Court held that the Income Tax Appellate Tribunal (in short the 'Tribunal') examined the matter in detail and came to hold as to what was the date of assessment. This was a question of fact which was not required to be examined in an appeal under Section 260(A) of the Act. The High Court also noticed that the decision of this Court in Modi Industries Limited and Ors. v. CIT and Anr. Was clearly applicable to the facts of the case.

According to learned Counsel for the appellant, High Court failed to notice that the decision in Modi Industries' case (supra) has no application to the facts of the present case. The true ambit of Section 244(1A) of the Act has not been kept in view by the High Court. It is pointed out that in the assessee Appellant's own case for immediately succeeding assessment order i.e. 1987-88 Tribunal held that Modi Industries' case (supra) was not applicable to almost identical factual scenario. The department has questioned correctness of the judgment and the High Court has admitted the appeal

in ITA 88 of 2004.

In response, Mr. Mohan Prasaran, learned Additional Solicitor General submitted that the issue is clearly covered by the decision of this Court in Modi Industries' case (supra) and the High Court was, therefore, justified in its view.

We consider it unnecessary to examine whether in the factual background, Section 244(1A) of the Act has any application. It may be noted that the had filed its return for the assessment year in question on 20.6.1986 declaring a loss of Rs. 4151/-. It was mentioned in the return that there was a brought forward loss of Rs. 11, 175/- from the Assessment year 1985-86 and a total loss of Rs. 15, 326/-was claimed to be carried forward. Subsequently, on 23.6.1987, the assessee filed a revised return showing the same figure of loss of Rs. 4, 151/- and the carried forward loss of Rs. 11, 175/-. But it claimed tax refund of Rs. 10, 100/-, because of the tax deduction at source on a sum of Rs. 10, 00, 000/- advanced to M/s. Blitz Publication Pvt. Ltd. The order in terms of Section 143(1) on the facts passed on 29.7.1987 accepted the returned loss. While the assessment proceedings were in progress it came to the notice of the Department that for the relevant assessment year a Japanese Company is paying a sum of Rs. 1, 61, 52, 472/- plus Rs. 21, 71, 121/- by way of commission in respect of purchases made by the Department of Electronics, Government of India, from M/s Sumitomo Corporation, the aforesaid Japanese Company. The amount was paid at London in the account of M/s Allied Petro Agencies. The information was passed on by the Government of India to the Income Tax Department.

In the meantime i.e. on 17.8.1987 a letter was written by the assessee to the Commissioner of Income Tax, Delhi-III wherein it admitted the commission income of Rs. 1.61 crores and odd and offered to pay tax thereon. The assessing officer, however, had already completed the assessment and since commission income had not been included in the returned income, notice under Section 148 of the Act was issued on 31.8.1987. On that very day the assessee filed an application with reference to the order made in terms of Section 143(1), submitting that total income assessed on the basis of profit and loss account, Balance Sheet and return filed was not correct as it did not take note of income disclosed subsequently to the Commissioner wherein it offered an amount of Rs. 1.61 crorea for taxation. It was also submitted in the said communication that taxes on the amount of Rs. 1 crore and odd have been deposited on 19.8.1987 and a further sum of Rs. 17, 144/- on 27.8.1987.

The question that arises for consideration is what is the date which is to be reckoned for the purpose of grant of interest in terms of Section 244(1A) of the Act. We need not examine this question because undisputedly for the subsequent assessment order the Tribunal took a different view and an appeal filed by Revenue against the Tribunal's order is under consideration of the High Court. The basic issue is whether Modi Industries' case (supra) has any application to the facts of the case.

Section 244(1A) of the Act reads as follows:

Interest on refund where no claim is needed.

244. xxx xxx xxx

(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 proceeding 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, the 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 where the amount so found to be in excess was paid in instalments, such interest shall be payable on the amount of each such instalment or any part of such instalment, which was in excess, from the date on which such instalment was paid to the date on which the refund is granted;

Provided further that no interest under this sub-section shall be payable for a period of one month from the date of the passing of the order in appeal or other proceeding:

Provided also that where any interest is payable to an assessee under this sub-section, no interest under Sub-section (1) shall be payable to him in respect of the amount so found to be in excess.

The baste requirements are that: (a) there is a refund due, (b) The whole or part of the refund referred to in Section 244(1) is due as a result of any amount having been made after 31st March, 1975, (c) The payment must be paid pursuance to any order of assessment or penalty, (d) Such amount or any part thereof as paid is found in appeal or other proceedings under the Act to be in excess of amount which such assessee is liable to pay as tax or penalty. The assessee has to establish that he fulfils all the above conditions.

In view of the aforesaid position it is but appropriate that the High Court should hear the matter afresh. Undisputedly a question of law is involved which is required to be adjudicated more, particularly when for the subsequent year an appeal has been admitted and the basic question to be considered has been formulated. In the instant case, appropriate question relevant to the assessment year in question shall be formulated.

Above being the position the impugned order of the High Court is set aside and the matter is remitted to it for a fresh consideration alongwith ITA No. 188 of 2004.

The appeal is disposed of. No costs.

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