

BOMBAY HIGH COURT

Sarangpur Cotton Manufacturing Co. Ltd

Vs.

Commissioner of Income Tax

I.T. Ref. No. 50 of 1956

(Chagla, C.J. and Tendolkar, J.)

08.02.1957

JUDGMENT

Chagla, C.J.

1. The assessee paid advance tax under Section 18-A and its assessment under Section 23 was completed on 30th of March 1948. The assessee appealed against the order of assessment and that order was set aside by the Appellate Assistant Commissioner on 15th November 1951 and he directed the I. T. O. to make a fresh assessment. This fresh assessment was made on 25th of January 1954. The Income-tax Officer allowed the assessee interest on the advance payment from the date of payment till 30th of March 1948. The contention of the assessee was that he was entitled to interest up to the 25th of January 1954. This contention was rejected by the Tribunal and hence the reference.

2. Now under Section 18-A interest is allowable to the assessee from the date of payment to the date of the assessment made under Section 23; and the discussion before us has revolved round the proper meaning to be given to the expression "the date of the assessment." Prima facie it may appear that the date of the assessment must mean the date of a valid and effective assessment, and what was urged by Mr. Palkhivala was that the only valid and effective assessment for the purpose of this section was the assessment order made on 25th of January 1954. It is said that although there was an assessment on 30th of March 1948 it was not a valid or effective assessment; that once it was set aside by the A. A. C. that assessment could not be looked upon as an assessment for the purpose of this section; and that it was only when a proper assessment was made pursuant to the direction of the A. A. C. on 25th of January 1954 that there was an assessment and it is this assessment which must be looked at for the purpose of determining what interest is permissible to the assessee. When one looks at the matter a little more closely, it becomes clear that, when the Income-tax Officer made the order on 30th of March 1948 under the provisions of this section, interest ceased to run. At that date the order made by the I. T. O.

was the only effective and valid assessment. Can it be said that, if interest had ceased to run, the running of interest was revived when that order of assessment was set aside and a different terminus was fixed for the calculation of interest? It seems to us that what the Legislature contemplated in using the expression "the date of the assessment" was the factual date of the assessment and it was not considering the legality or the validity of the assessment made. It wanted to fix two termini for the calculation of interest. With regard to one terminus there was no difficulty that was the date of payment of advance tax by the assessee. The other terminus had to be fixed and the other terminus was the date when the regular assessment was made. That terminus having been fixed, it could not be altered by any subsequent event or by the vicissitudes through which the assessment order might pass. If there had been no appeal and if the assessment order had not been set aside, obviously this would have been the only terminus. The Legislature did not contemplate that the terminus should be altered because the assessee chose to appeal and because the A. A. C. set aside the order.

3. Let us look at this order from another point of view. When the order of assessment was made, it was competent to the Taxing Authorities to recover the tax, and the liability to refund would only arise when the assessment order was set aside. But the Taxing Department would have the use of the assessee's money from the date when the amount was paid till the Taxing Authorities chose to refund the money. Could it be suggested that the position would be different with regard to advance payment of tax? The liability to pay the tax arose as soon as the assessment order was made; and that liability would cover not only the advance tax already paid, but also any additional amount that might have to be paid by the assessee. In this very case the assessee paid an additional amount of Rs. 6-lakhs. Although it put forward a claim for interest on this amount also, that claim was ultimately abandoned. Therefore, if we were to give the construction to Section 18-A as suggested by Mr. Palkhivala, then the advance tax would stand on a different footing from the payment of Rs. 6-lakhs which was paid by the assessee under the order of assessment. The scheme of the section seems to be that interest is payable for the period during which there is no liability to pay upon the assessee. But once the order of assessment is made, the liability to pay arises, and even though the order may be subsequently set aside, there is no obligation upon the Department to pay any interest in respect of the amounts which they recovered as tax under the original assessment order.

4. If we are right in this view, then the further question that arises need not be decided. The question is whether an appeal from the order of the I. T. O. refusing to give to the assessee interest for the longer period was appealable to the A. A. C, and the Department's contention is that the appeal does not fall within the terms of Section 30 of the Income-tax Act, What has been urged by Mr. Joshi is that an assessee can only object to the amount of tax determined under Section 23 and the determination of the interest payable is not the determination of tax. It is said that after the tax is determined credit is given to the assessee in respect of the interest to which he is entitled and the giving of credit does not constitute determination of the tax and therefore no appeal lies in respect of the quantum of credit for interest given to the assessee. In our opinion it is unnecessary to decide this question as on the merits we have taken the view that the

Department is right.

5. The result is that we must answer the first question referred to us "Up to 30th of March 1948."

6. Question No. (2) does not arise.

7. Assessee to pay the costs.

Answered accordingly.