

THE HON'BLE SRI JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT PETITION No.11439 of 2004

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ORDER: (Per Hon'ble Sri Justice A.Ramalingeswara Rao)

Heard the learned Counsel for the petitioner and the learned Standing Counsel for the respondents.

This Writ Petition was filed for quashing the order dated 15.03.2004 passed by the first respondent under Section 264 of the Income Tax Act, 1961 (for short, the Act), for the assessment year 2000-2001 as contrary to Section 199 of the Act and for a consequential direction to the respondents to refund the tax deducted at source (TDS) of Rs.11,39,087/- together with applicable interest thereon.

The facts of the case are that the assessee filed its return of income for the assessment year 2000-2001 on 30.11.2000 declaring net loss of Rs.370,28,17,200/- (including the brought forward losses). The return was processed under Section 143(1) of the Act on 04.03.2002 and while processing the return, the TDS of Rs.11,39,087/- was not given credit on the ground that the TDS related to the assessment year 1997-1998. The assessee filed a letter dated 01.11.2002 to the Commissioner of Income Tax under Section 264 of the Act seeking a direction to the Assessing Officer to give credit for the TDS amount of Rs.11,39,087/- in the assessment year 2000-2001 since the Assessing Officer refused to rectify the assessment and grant refund in his letter dated 05.06.2002. The Commissioner of Income Tax-III, Hyderabad, by his order dated 15.03.2004 in H.Qrs.3/264(29)/2002-03, rejected the said petition on the ground that the action of the Assessing Officer in not giving credit for the TDS amount of Rs.11,39,087/- was perfectly in order, as the said amount related to the assessment year 1997-1998 as per the certificate in Form No.16A issued by Shaw Wallace & Co.Ltd., Calcutta and filed along with the return of income. The Commissioner of Income Tax also noticed that

the assessee was following and supposed to follow mercantile system of accounting and it should have calculated the interest at the rate at which it was lent/deposited and offered the accrued interest for taxation in the assessment year in which it accrued. But, the assessee failed to do so. It was also held that the contention of the assessee that the matter was in the Court was not a valid ground for not offering the accrued interest in the assessment year 1997-1998. Accordingly, he rejected the petition for revision under Section 264 of the Act.

Learned Counsel for the petitioner submits that the assessment for the year 1997-1998 was finalized without giving credit to the said TDS amount of Rs.11,39,087/- and the assessment for the year 2000-2001 was processed without giving credit to the said amount. When it was brought to the notice of the Assessing Officer he refused to rectify the assessment and grant refund vide his letter dated 05.06.2002. Since the amount was received during the year 1999-2000 relevant to the assessment year 2000-2001, the rectification was sought but it was not done and when the revision petition was filed before the Commissioner of Income Tax, he ought to have allowed the revision.

Learned Standing Counsel for the respondents on the other hand submits that the relevant period for giving credit is the assessment year in which it was accrued, but not the accounting year in which it was received. Learned Standing Counsel also submits that against the assessment made for the year 1997-1998 the petitioner preferred an appeal on the above ground under Section 154 of the Act and the same was rejected and it has become final.

We have perused the order passed by the Commissioner of Income Tax-III, Hyderabad. The revision petition of the assessee was rejected by the Commissioner of Income Tax-III, Hyderabad, with the following observations:-

“The revision petition has been posted for hearing on

28.10.2003. In response to this Sri S.Brij Kumar, C.A., learned Authorised Representative of the petition is present and he is heard. The assessee's petition for revision u/s.264 has been given careful consideration. From the records it is noticed that the return for the assessment year 2000-01 was processed u/s.143(1) of the I.T.Act on 04.03.2002 wherein credit for TDS of Rs.11,39,087/- was not given as it related to the asst.year 97-98. The action of the Assessing Officer is perfectly in order as the TDS of Rs.11,39,087/- relates to the asst.year 97-98 as per the certificate in Form No.16A issued by Shaw Wallace & Co.Ltd., Calcutta and filed along with the return of income. The assessee is following and supposed to follow mercantile system of accounting. Where an assessee is following mercantile system the assessee should have calculated the interest at the rate at which it was lent/deposited and offered the accrued interest for taxation in the asst. year in which it accrued. The assessee failed to do so. Further, the assessee is not allowed to change its method of accounting as and when it wishes and suits to its requirements. The assessee's contention that the matter was in the court is not a valid ground for not offering the accrued interest in the asst. year 97-98. Therefore, the action of the Assessing Officer in not allowing credit for the TDS of Rs.11,39,087/- in the asst. year 2000-01 is in accordance with the provisions of the I.T.Act."

Learned Counsel for the petitioner does not dispute that the relevant period for filing the credit is the period of accrual of interest, but not the accounting year in which it was received. The interest accrued during the assessment year 1997-1998 and when TDS was not shown for the year 1997-1998 and assessment was completed, the assessee challenged the same and it was rejected. The assessee cannot ask for rectification of assessment for the year 2000-2001, though the TDS certificate was received by it on 06.01.2000. The Commissioner rightly came to the conclusion that the rectification filed by the assessee and rejected by the Assessing Officer was not relevant for the assessment year 2000-2001 and it related to the assessment year 1997-1998.

Though the learned Counsel for the petitioner relied on a decision of the Gauhati High Court in **Assistant Commissioner of Income Tax v. Om Prakash Gattani**^[1], and submits that though the interest on deposit accrued during the assessment year 1997-1998, since the certificate was issued at a later point of time, the credit ought to have been given for the

assessment year 2000-2001, we find no force in the said contention, since the said decision relates to the deduction of tax at source and the liability of the person in not depositing the amount after deducting the tax at source. In the present case the assessee is supposed to claim deduction during the relevant year of accrual of interest but claimed during the accounting year in which it was received. Thus, the facts of the said case are distinguishable. Accordingly, we find no error in the order passed by the first respondent and consequently the Writ Petition is liable to be dismissed.

The Writ Petition is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(DILIP B. BHOSALE, J)

(A.RAMALINGESWARA RAO, J)

19.01.2015

VS

[\[1\]](#) (2000) 242 ITR 638 (Gauhati)