IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.7 of 1997 (O&M)
DATE OF DECISION: 30.06.2015

The Commissioner of Income-tax (Central), Ludhiana
…..Appellant

versus

M/s Mahesh Munjal HUF, Ludhiana
.....Respondents

CORAM:- HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Ms. Savita Saxena, Advocate for the appellant

Mr. Alok Mittal, Advocate for the respondent

..

S.J.VAZIFDAR, ACTING CHIEF JUSTICE (Oral):

This is a reference by the Income Tax Appellate Tribunal under Section 256(1) of the Income-tax Act, 1961, of the following question of law to this court for its opinion:-

> "Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that interest u/s 215 of the Income-tax Act was chargeable on the basis of assessed income but excluding enhanced share of the assessee determined in the case of the firm where he is a partner?"

2. All the papers pertaining to the matter are not available. From the statement of the case, it appears that by an order dated 24.05.1996, this Court issued directions in Income-tax Case No.143 of 1994 directing the Tribunal to refer the question of law. It is pursuant to the said order that the present reference has been made. The statement of the case states as follows.

3. The assessee filed a return of income for the assessment year 1984-85 in the status of HUF declaring an income of

Rs.42,810/-. The income was stated to be the assessee's share from a firm, dividend and interest. The Assessing Officer held the income to be that of the assessee in his individual capacity and not in the status of the HUF. The Assessing Officer accordingly made an order and directed the issue of penalty notice.

4. The assessee filed an appeal before the DCIT(A), Ludhiana, who held that there was no wilful attempt on the part of the assessee to declare the incorrect income. The DCIT(A) directed the Assessing Officer to see whether any interest under Section 215 of the Act was nevertheless chargeable even after excluding the addition made in respect of the assessee's share in the firm. The Revenue's appeal before the Tribunal was dismissed. The Revenue filed an application under Section 256(1) of the Act for reference of two questions of law. The aforesaid questions were not referred initially, but were referred in the circumstances already set out.

5. The issue as to whether the share from the partnership firm came to the assessee in his capacity as a member of the HUF or in his individual capacity stands concluded in favour of the assessee. The only question that remains is the one referred to us.

The assessment proceedings in respect of the firm from which the assessee derived income were completed. The income of the firm was enhanced. Accordingly, the share of the assessee also stood enhanced. The only question is whether the assessee was liable to pay interest on account thereof under Section 215 in respect of the enhanced share.

6. Section 215 of the said Act and Rule 40(5) of the Income Tax Rules, 1962 in so far as they are relevant read as under:-

> "**Section 215**. Where, in any financial year, an assessee has paid [advance tax under section 209A or section 212 on the basis of his own estimate(including revised estimate)], and the advance tax so paid is less than seventy-five per cent of the assessed tax, simple interest at the rate of [fifteen] per cent per annum from the 1st day of April next following the said financial year up to the date of the regular assessment shall be payable by the assessee upon the amount by which the advance tax so paid falls short of the assessed tax:]
>
> (4) In such cases and under such circumstances as may be prescribed, the [Assessing] Officer may reduce or waive the interest payable by the assessee under this section.
>
> [(5) In this section and sections 217 and 273, "assessed tax" means the tax determined on the basis of the regular assessment (reduced by the amount of tax deductible in accordance with the provisions of sections 192 to 194, section 194A [section 194C] [section 194D] [section 195 and section 196A] so far as such tax relates to income subject to advance tax and so far as it is not due to variations in the rates of tax made by the Finance Act enacted for the year for which the regular assessment is made.]
>
> **Rule 40**. The Assessing Officer may reduce or waive the interest payable under section 215 or section 217 in the cases and under the circumstances mentioned below, namely: -
>
> (5) Any case in which the Deputy Commissioner considers that the circumstances are such that a reduction or waiver of the interest payable under section 215 or section 217 is justified."
>
> *(emphasis supplied)*

7. The DCIT(A) by an order dated 30.03.1990 held that there was no wilful attempt on the part of the assessee to file a lower estimate of income as the assessee had declared the share income on the basis of the return of income filed by the firm. He held that the appellant cannot be said to have anticipated that the method of

accounting being followed by the firm, in which appellant was a partner, will not be accepted by the ITO. The DCIT(A) directed the ITO to see whether interest under Section 215 was still chargeable even after excluding the addition made in the share income and that if no such interest becomes chargeable then nothing should be charged from the appellant. He further directed that if interest under Section 215 is still chargeable, the explanation given by the appellant ought not to be accepted and directed the ITO, in that event, to charge interest under Section 215 on the basis of the assessed income.

The Tribunal confirmed the finding of the DCIT(A). The Tribunal held that there was a reasonable and sufficient cause for the assessee's filing the estimate and that the estimate could not be said to be untrue much less false to the knowledge of the assessee.

8. There is nothing on record that indicates that the assessee paid advance tax on the basis of an estimate which he knew or had any reason to believe to be false. There is nothing on record that indicates that the assessee being a partner of the firm was aware of or had reason to believe that the return filed by the firm was false or unsustainable. Merely because a person or an entity is a partner of a firm it does not necessarily follow that he was aware of every detail of the income tax returns filed by the firm. In any event, the finding of the DCIT(A) and of the Tribunal can hardly be said to be perverse.

9. We therefore proceed, for the purpose of this reference, on the basis that there were no *mala fides* on the part of the

assessee in estimating its income and paying the advance tax on the basis thereof.

10. The question, therefore, is whether in such circumstances the authorities under the Act had the power to reduce or waive interest payable under Section 215. The question must be answered in the affirmative, in favour of the assessee. Sub-section (4) of Section 215 expressly confers the power on the Assessing Officer to reduce or waive interest payable by the assessee under the section in such cases and in such circumstances as may be prescribed. The cases and circumstances are prescribed under rule 40 of the Income Tax Rules, 1962. Sub-rule (5) of rule 40 empowers the Assessing Officer to reduce or waive interest payable under Section 215 in any case in which the Deputy Commissioner considers that the circumstances are such that a reduction or waiver of interest payable under Section 215 or Section 217 is justified. The Deputy Commissioner, in the present case, considered the circumstances to justify a reduction or waiver. Sub-rule (5) of rule 40 is wide enough to cover cases where the assessee estimates his income *bona fide* and pays advance tax on the basis thereof. It is neither necessary nor proper to enumerate cases which fall within the ambit of Rule 40(5). It is sufficient to hold that the ambit of sub-rule(5) is wide and that the discretion thereunder must be exercised in a judicious manner. The *bona-fides* of the assessee in estimating his income and paying the advance tax accordingly are relevant factors and if established fall within the ambit of Section 215(4) read with Rule 40(5). The authorities, therefore, had the jurisdiction to reduce or even to waive the interest in the present case. We see no reason to interfere with the exercise of that discretion.

11. The reference is accordingly answered in the affirmative in favour of the assessee.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

30.06.2015 **(G.S. SANDHAWALIA)**
parkash* **JUDGE**

Note: **Whether reportable: YES**