IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-35-2014
Date of decision:- 06.07.2015

The Commissioner of Income Tax-II, Jalandhar
...Appellant

Versus

Ravinder Singhania
...Respondent

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

Present: Mr. Vivek Sethi, Advocate,
for the appellant.

Mr. Pankaj Jain, Senior Advocate,
with Mr. Divya Suri, Advocate,
and Mr. Deepanshu Jain, Advocate,
for the respondent.

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S.J. VAZIFDAR, A.C.J. (ORAL)

This is an appeal under Section 260-A of the Income Tax Act, 1961 (in short the Act) against the order of the Tribunal in respect of the assessment year 1997-1998.

2. The appeal is admitted on the following substantial question of law:-

> *"8(i) Whether on the facts and in the circumstances of the case, the ITAT is right in law in holding that interest u/s 234A and 234B is to be levied on returned income instead of assessed income in view of the retrospective amendment made by the Finance Act, 2001 w.e.f. 01.04.1989?"*

3. It is not necessary to consider the other questions of law raised in this appeal in favour of the appellant/revenue. On 14.02.2000, the Assessing Officer made an assessment order under Section 143(3) of the Act. He charged interest under Section 234-B not on the returned income, but on the assessed income. The Supreme Court in *CIT Vs Ranchi Club Ltd., (2001) 247 ITR 209 (SC)* had held that interest was chargeable on the returned income and not on the

assessed income. The respondent filed an appeal before the CIT (Appeals). The CIT (Appeals) directed interest to be charged on the returned income presumably in view of the judgement of the Supreme Court.

4. By the Finance Act, 2001 Section 234-B was amended with retrospective effect from 01.04.1989. By this amendment, interest was chargeable on the assessed income. The constitutional validity of this amendment has been upheld by a Division Bench of this Court in *Raj Kumar Singal Vs Union of India [2002] 255 ITR 561 (P&H)*. A Division Bench of this Court in *Parkash Agro Industries Vs Dy. Commissioner of Income Tax, (2009) 316 ITR 149 (P&H)* has answered the question in favour of the department. It was held that in view of the amendment by the Finance Act of 2001, interest is chargeable on the assessed income and not on the returned income. The question on which the appeal has been admitted must, therefore, be answered in favour of the appellant.

5. It is not necessary to go into the question as to whether the CIT (Appeals) had the power to rectify the order dated 23.02.2001 in exercise of powers under Section 154 of the Act in view of the subsequent proceedings. In view of the subsequent proceedings, that issue has become academic. The facts in this regard are as follows:-

On 02.05.2001, the Assessing Officer applied for/recommended the rectification of the order dated 23.02.2001 in view of the Finance Act, 2001. On 04.05.2001, the department filed an ITA-194-2001 against the order of the CIT (Appeals) dated 23.02.2001. On 06.12.2001, the CIT (Appeals) rectified the order dated 23.02.2001 by levying interest on the assessed income and not on the returned income. The respondent/assessee had also filed an appeal against the order dated 06.12.2001.

The Tribunal by an order dated 25.08.2006 disposed of the appeals filed by both the parties, inter alia, by remanding the same to the CIT (Appeals). The CIT (Appeals) ultimately by an order dated 22.03.2010 held that interest would be chargeable on the assessed income and not on the returned income. This was a common order in both the proceedings, namely, in the appeal that had been filed by the assessee before the CIT (Appeals) in which the original order dated 23.02.2001 was passed and in the rectification proceedings initiated under Section 154 of the Act.

6. In view of the judgements of this Court, we have referred to, the question of law must be answered in favour of the department. It is not necessary to consider whether the proceedings under Section 154 of the Act were maintainable or not for the simple reason that the main issue, namely, whether interest was chargeable on the returned income or on the assessed income had to be decided by the CIT (Appeals) in the subsequent proceedings which included the appeal filed by the appellant. It cannot be disputed that the CIT (Appeals) had not only the jurisdiction, but the obligation to decide this issue in the assessee's appeal.

7. The Tribunal, however, set aside the order of the CIT (Appeals) by the impugned order dated 19.08.2013. We are bound by the decision of this Court in Parkash Agro Industries Vs Dy. Commissioner of Income Tax (supra) which has answered this question in favour of the appellant.

8. Mr. Jain, learned senior counsel appearing on behalf of the respondent submitted that the judgement in Parkash Agro Industries Vs Dy. Commissioner of Income Tax (supra) is not applicable to the present case. We are unable to agree. Questions (1) and (4) raised in that case read as under:-

> *"1. Whether the appellant having paid the tax payable as per return, to visit him with a liability of interest which he could not have imagined and as held in J.K. Synthetics Ltd. Vs. CTO [1994] 94*

> *STC 422 (SC), would be asking him to do the rare impossible?*
>
> *4. Whether in view of the fact that the return of the appellant had been accepted under Section 143(1) of the Act, interest could be charged even on the basis of the amended Explanation when it specifically defines assessed tax as the tax on total income determined under sub-section (1) of Section 143 of the Act?"*

In paragraph 5, the Division Bench of this Court had in Raj Kumar Singal Vs Union of India (supra) upheld the vires of the Finance Act, 2001. The Division Bench set out the amendment introduced by the Finance Act, 2001. The Division Bench reproduced the observations of this Court in Raj Kumar Singal's case (supra) to the effect that by the amended provision the interest was leviable on the income as determined by the assessing authority minus the income on which the tax had been paid or deducted and that the amendment was only calculated to clarify the ambiguity that was felt in the original provision and was neither arbitrary nor unreasonable.

The above questions were, therefore, answered by the Division Bench in favour of the department and against the assessee. The judgement is applicable to the present case.

9. The appeal is, therefore, allowed. The impugned order of the Tribunal is set aside. The question of law is answered in favour of the appellant.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

06.07.2015
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