

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 31 of 2003

Date of Decision: 30.3.2016

The Commissioner of Income Tax, Patiala

....Appellant.

Versus

M/s Punjab State Electricity Board, The Mall, Patiala

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.**

PRESENT: Mr. Z.S. Klar, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. The revenue has claimed the following substantial question of law in this appeal filed under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 28.8.2002 (Annexure A-2) passed by the Income Tax Appellate Tribunal, Chandigarh Bench “B”, Chandigarh (hereinafter referred to as “the Tribunal”) in ITA Nos. 1276, 1277 and 1278/Chandi/1995 for the assessment years 1988-89, 1989-90 and 1990-91:-

- (i) Whether on the facts and in the circumstances of the case, the ITAT was right in law in directing the AO to charge interest u/s 201(1A) of the Income Tax Act, 1961 from the due date

to the date of actual payment of tax/surcharge either by the person responsible to deduct tax or by the recipient of income, whichever is earlier?

- (ii) Whether on the facts and in the circumstances of the case, the ITAT is right in law in directing the AO that the tax paid by the recipient during the previous year, if any, on such income be treated as payment of tax/surcharge under Section 193 of the Income Tax Act, 1961 for calculating interest under Section 201(1A) of the Act.
- (iii) Whether on the facts and in the circumstances of the case, the ITAT is right in law in issuing directions as per question No.2 which are contrary to the provisions of Section 209(1)(d) of the Income Tax, 1961, the amount of tax/surcharge deductible u/s 193 of the Income Tax Act, is required to be excluded from the amount of advance tax calculated under Section 209 and the same is not payable as Advance Tax?

2. Briefly stated, the facts necessary for disposal of the present appeal are that the assessee issued 'securities' as interest bearing bonds on which the interest was to be paid half yearly and was liable to deduct the tax at source on interest payable under Section 193 of the Act. The said bonds were subscribed by the Financial Institutions, Government Corporations and Public Sector Banks etc. The assessee

deducted the tax at source on the amount of interest paid under Section 193 of the Act but failed to deduct surcharge on the amount of income tax. The Assessing Officer vide order dated 30.11.1994 (Annexure A) created demand of surcharge and also charged interest under Section 201(1A) of the Act as under:-

<u>Financial Year</u>	<u>Demand of surcharge created vide order dated 9.11.1994</u>	<u>Amount of interest charged u/s 201(1A)</u>
1987-88	₹ 48,15,678/-	₹ 48,15,678/-
1988-89	₹ 55,06,661/-	₹ 46,80,662/-
1989-90	₹ 84,57,749/-	₹ 59,20,424/-

3. Feeling aggrieved by the order, Annexure A, the assessee filed three appeals before the Commissioner of Income Tax (Appeals) [for brevity, "the CIT(A)"]. The CIT(A) vide a common order dated 3.8.1995 (Annexure A-1) following its order for the assessment years 1990-91 to 1992-93 in appeal Nos. 180 to 182/IT/93-94 allowed the appeals and directed the Assessing Officer to recalculate the interest charged under Section 201(1A) of the Act upto the end of the respective financial years after necessary verification from the payees regarding payment of tax due on such interest, i.e., interest on bonds issued by the assessee. Being dissatisfied with the order, Annexure A-1, the revenue filed appeals before the Tribunal who vide order dated 28.8.2002 (Annexure A-2) modified the order of the CIT(A) on the question of interest payable under Section 201(1A) of the Act holding that the Assessing Officer should allow benefit of payment on proportionate/rational basis having regard to the fact that the entire liability was cleared in the financial year. The Assessing Officer was directed to revise his orders accordingly. Hence, the present appeal by

the revenue.

4. After hearing learned counsel for the revenue, we do not find any merit in the appeal. The Tribunal while deciding the appeals of the revenue had followed its earlier order dated 25.10.2001 and the directions given therein were made applicable in these assessment years also which are as under:-

“25. As regards the levy of interest u/s 201(1A) of the Income Tax Act, we are of the view that statutory provisions in this regard are very clear. We refer to the provisions of sub-section (1A) of Section 201 providing for payment of interest. The interest is to be paid by the defaulter on the amount of tax not deducted from the date on which such tax was deductible to the date on which such tax is actually paid. Therefore, the period is prescribed by the statute and the provision is mandatory. It can neither be extended nor shrunk at the discretion of the revenue authorities. Mandate of sub-section (1A) is to be given effect to. The interest is to be charged strictly in accordance with the statutory provisions till tax is “actually paid”.

26. The revenue with reference to the words “such tax is actually paid” in the provision referred to above contended that words “such tax is actually paid” to mean that it is paid by the persons who are liable to deduct tax (surcharge) i.e. the assessee. The section deals with consequences of failure to deduct or to pay

tax. The learned Department Representative in support of the above contention, placed great reliance on the decision of the Hon'ble Rajasthan High Court in the case of CIT Vs. Rathi Gum Inds. 231 ITR 98. But as pointed out by ITAT in 116 Taxman 128, tax in that case was paid by the recipients after due date and, therefore, interest was directed to be charged. Shri Jain has also rightly distinguished the aforesaid case and his arguments have been noted above in detail. In this connection, we again invite attention to the provisions of section 191 of the Income Tax Act. The said section casts an obligation to the assessee to directly make payment of tax on income in the following two situations:-

- i) in case of income in respect of which provision is not made under this Chapter for deducting tax at source; and
- ii) in any case where tax has not been deducted in accordance with this Chapter.

27. It is, therefore, more than clear that where tax at source is not deducted, in spite of the provisions to deduct under Chapter XVI, the assessee (recipient of income) has an obligation to make payment of tax directly. Therefore, the moment there is a failure on the part of the person liable to deduct tax at source, liability of the person receiving income to pay tax on such income directly arises. The recipient has to

discharge the said liability. Once payment of tax (or surcharge) is actually made, the liability is fully discharged. It is, therefore, not possible to accept that for purposes of sub section (1A) of section 201, payment directly made by the recipient is not covered by the words "such tax is actually paid." This scheme of the statutory provisions is more than clear when all the relevant provisions are read together and in an harmonious manner. Thus, for easy, early and convenient recovery of tax, provisions under Chapter XVI for the tax deduction at source have been made. But in case no deduction is made, the holder of the income is obliged to pay the tax directly and in that case, interest u/s 201(1A) can be charged only till the date of amount is "actually paid".

28. The Assessing Officer in the assessment order has recorded that on verification, the contention of the assessee that recipients paid surcharge on interest received by them was correct. The Commissioner of Income Tax (Appeals) on the basis of material available has held that surcharge must have been paid before 31st of March of the financial years 1991-92 and 1992-93 and, therefore, directed that interest could be charged only upto 31st of the respective financial year. Similar recommendation was made in the period relevant to the assessment year 1990-91. The aforesaid inference from the facts collected by

the Assessing Officer is possible. But the parties are aggrieved from the aforesaid finding. In principle, it has to be accepted that interest could be charged only upto the date the surcharge due was actually paid to the credit of the Government. Now what is the actual date of payment, is a question of fact. Each payment will have to be examined in case the interest is to be correctly computed. We see no reason why correct amount should not be determined. After all, interest payable is compensatory in nature and has to be recovered for the period for which the State was deprived of the amount due to it. None of the parties has furnished calculation or details of date of actual payment. But then as per mandate of sub-section (1A) of section 201 read with Article 265 of the Constitution of India, interest can be recovered only till the amount was actually paid. The date of actual payment has to be determined and interest computed from the date of default to the aforesaid date as envisaged under sub-section (1A) of section 201 of the Income Tax Act. The Assessing Officer has collected material from various recipients regarding surcharge paid by them. Therefore, he should have taken date of actual payment into account. It is possible that the recipients paid tax and surcharge on this income (Interest on Bonds) along with other income and bifurcated figures are not available. In

that case, the Assessing Officer should allow benefit of payment on proportionate/rational basis having regard to the fact that the entire liability was cleared in the financial year. We direct accordingly and modify the directions of the Commissioner of Income-Tax (Appeals) on the question of interest payable u/s 201 (1A) of the Income Tax Act.”

5. The Tribunal had recorded that the Assessing Officer had collected material from various recipients regarding surcharge paid by them and, therefore, he should have taken date of actual payment into account. It was possible that the recipients paid tax and surcharge on the income from interest on bonds along with other income and since the bifurcated figures were not available, the Assessing Officer should have allowed benefit of payment on proportionate/rational basis having regard to the fact that the entire liability was cleared in the financial year. The approach of the Tribunal is in conformity with the law enunciated by the Apex Court in **Hindustan Coca-Cola Beverages (P) Ltd. v. Commissioner of Income Tax (2007) 293 ITR 226 (SC)**, Karnataka High Court in **Children's Education Society v. Deputy Commissioner of Income Tax (TDS) (2009) 319 ITR 409 (Kar)**, Uttarakhand High Court in **Director of Income Tax and another v. Maersk Company Ltd. (2011) 334 ITR 79 (UKHC)** and this Court in **Commissioner of Income Tax v. The Chief Electoral Officer, Chandigarh, ITR No. 183 of 1999** decided on 23.11.2010. For ready reference, relevant observations of the Supreme Court in **Hindustan Coca-Cola Beverages (P) Ltd's case (supra)** are quoted as under:-

“Be that as it may, the circular No. 275/201/95-IT(B) dated 29.1.1997 issued by the Central Board of Direct Taxes, in our considered opinion, should put an end to the controversy. The circular declares “no demand visualized under Section 201(1) of the Income-tax Act should be enforced after the tax deductor has satisfied the officer-in-charge of TDS, that taxes due have been paid by the deductee-assessee. However, this will not alter the liability to charge interest under Section 201(1A) of the Act till the date of payment of taxes by the deductee-assessee or the liability for penalty under Section 271C of the Income-tax Act.”

6. In view of the above, there is no error in the approach of the Tribunal which may warrant interference by this Court. The questions of law as claimed are answered accordingly. Consequently, finding no merit in this appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

March 30, 2016
gbs

(RAJ RAHUL GARG)
JUDGE