IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Appeal) No.437 of 2009

The Commissioner of Income-tax,
Coimbatore ... Appellant/Appellant

vs.

M/s.Lakshmi Machine Works Ltd., ... Respondent/Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-Tax Appellate Tribunal, Madras "A" Bench, dated 01.09.2008 in ITA No.663/Mds/2007, for the assessment year 2000-01 against the order dated 3/1/2007 on the file of Commissioner of Income Tax (Appeals-I) Coimbatore made in Appeal No.436/05-06 against the order dated 8/2/2006 made in OAN/GIR No.AAACL5244N on the file of Assistant Commissioner of Income Tax, Company Circle IV (2), Combatore.

For Appellant : Mrs.K.G.Usha Rani for
Mr.T.R.Senthilkumar

For Respondent : Mr.R.Venkatanarayanan for
M/s.Subbaraya Aiyar Padmanabhan

JUDGMENT
[Delivered by T.S.Sivagnanam, J.]

This appeal by the Revenue is directed against the order passed by the Income Tax Appellate Tribunal, Madras "A" Bench (the 'Tribunal' for brevity), in ITA No.663/Mds/2007, for the assessment year 2000-01.

2.The Appeal has been admitted, vide order dated 07.07.2009, on the following Substantial Question of Law:

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the interest under Section 234-D can not be levied for the period prior to 01.06.2003 is valid?"

3.We have heard Mrs.K.G.Usha Rani, the learned counsel for the appellant/Revenue and Mr.R.Venkatanarayanan, the learned Counsel for the respondent/assessee.

4.The learned counsel for the appellant/Revenue pointed out that the Substantial Question of Law has been answered in favour of the Revenue in the case of Commissioner of Income Tax v. Reliance Energy Limited [(2013) 358 ITR 371 (SC)].

5.We had an occasion to consider a similar question in the case of Commissioner of Income Tax-I, Madurai vs. M/s.Brakes India Ltd., (TCA No.1419 of 2008 dated 07.09.2018) and answered the Substantial Questions of Law in favour of the Revenue. The operative portion of the judgement reads as follows:

> "6.So far as the substantial questions of law Nos.3 and 4 are concerned, the same has also been answered by the Hon'ble Supreme Court holding that the provision, namely, Section 234D of the Act, though was inserted by the Finance Act, 2003 with effect from 01.06.2003, by virtue of the Explanation 2, which was inserted by the Finance Act, 2012 with retrospective effect from 01.06.2003. Therefore, the said substantial questions of law are answered in favour of the Revenue. In this regard, reference may be made to the decision of the Hon'ble Supreme Court in CIT V. Reliance Energy Limited (2013) 358 ITR 371 (SC)."

6.The learned counsel for the appellant/Revenue relied on the decision of the Division Bench of the High Court of Gujarat in the case of Commissioner of Income Tax -II vs. Gujarat State Financial Service Ltd., [(2014) 49 taxmann.com 221(Gujarat)], wherein it was held as follows:

> "5.7. It can also be noted that the Bombay High Court has in terms held that the decision of the Tribunal in ITO v. Ekta Promoters (P.) Ltd. (2008) 113 ITD 719 (Delhi) (SB) was not correct, by holding that till such time, the assessment proceedings are completed in respect of relevant assessment year, the Amended Act would be applicable to the pending proceedings. For all the pending proceedings in regard to which the refund has been provided under section 143(1) of the Act, which are not concluded and finalized, the refunds are held to be granted under section 143(1) of the Act as finally determined when final assessment is

passed under section 143(3) of the Act. Explanation 2 to section 234D of the Act applies thus to the pending proceedings, where the assessment in respect of assessment year is not completed on June 01, 2003. The Court held that the provision for charging interest in every case was a part of substantive law and not an arbitrary provision and though in those cases where the refunds have been granted prior to June 01, 2003, section 234D was not applied for not having any retrospective operation, however, in all pending proceedings, where the assessment had not been completed on June 01, 2003, the same has been made applicable. In other words, explanation (2) to section section 234D of the Act has been made applicable to even the assessment year commencing before June 01, 2003. The only requirement in such a case would be that the assessment has to be completed after June 01, 2003. Therefore, after insertion of Explanation 2, the operation of section 234D of charging interest on the excess refund paid to the assessee is not restricted, making operation of such section effective from June 01, 2003. In other words, the refund granted under section 143(1) of the Act in respect of a particular assessment year, is subject to the final determination under sub-section (3) of section 143 of the Act. Addition of Explanation 2 to section 234D of the Act when is being held declaratory amendment, what would be relevant for the purpose of charging interest on the refund granted under section 143(1) of the Act is the date of completion of assessment. If the assessment is framed after June 01, 2003, the said provision shall have applicability.

5.8 The Bombay High Court has extensively dealt with the explanation 2 and has interpreted the provisions keeping in mind the principles of interpretation of statutes. We have respectfully chosen to follow the aforesaid decision of the Bombay High Court and, therefore, the order of the Tribunal in the instant case following the decision the case of Ekta Promoters (P) Ltd. (supra) holding the provision of section 234D of the Act applicable only with effect from 2004-2005 and further holding that the interest under this section is not chargeable for earlier assessment years, even though the assessment has been framed after June 01, 2003, is not held to be a correct law and, accordingly, the Revenue's appeal deserves to be allowed.

6. In view of the discussion held herein

above, the tax appeals are allowed. The order dated January 21, 2011 passed by the Tribunal is quashed and set aside. Answering the substantial question of law in favour of the Revenue that in all those matters where excess refund has been granted by the Revenue, the provision of section 234D of the Act will apply and even in the case of earlier assessment years where the assessments were framed after June 01, 2003, the interest will be chargeable in accordance with law."

7.In the light of the above decisions, the Tax Case Appeal is allowed and the Substantial Question of Law is answered in favour of the Revenue and against the assessee. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

msk

To

1.The Income-Tax Appellate Tribunal, Chennai "A" Bench. Madras.

2. The Commissioner of Income Tax, Company Circle IV (2) Coimbatore.

3. The Assistant Commissioner of Income Tax, Company Circle IV (2), Chennai.

4. The Assistatn Registrar, Income Tax Appellate Tribunal, Besant Nagar, Chennai -90.

5. The Director, Central Branch of Direct Taxer, New Delhi.

Copy To : The Section Officer, VR Section, High Court Madras.

+1cc to Mr.T.R.Senthil Kumar, Advocate SR.No.73765

T.C. (Appeal) No.437 of 2009

VGI(CO)

GMY(14/11/2018)