

In the High Court of Judicature at Madras

Dated : 13.12.2018

Coram :

The Honourable Mr. Justice T.S.SIVAGNANAM
and

The Honourable Mr. Justice N.SATHISH KUMAR

Tax Case Appeal No.154 of 2011

M/s.Sundaram Finance Ltd.,
Chennai-2

...Appellant

Vs.

The Deputy Commissioner of
Income Tax, Large Tax Payer Unit,
Chennai-101.

...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 25.6.2010 made in ITA.No.1935/Mds/2009 on the file of the Income Tax Appellate Tribunal, Madras 'B' Bench for the assessment year 1998-99 against the order dated 30/09/2009 made in ITA No.18/2008-09/LTU(A) on the file of the Commissioner of Income Tax (Appeals), Larger Tax payer Unit, II Floor, 1775, Jawaharlal Nehru Inner Ring Road, Anna Nagar, Western Extension, Chennai - 101 against the order dated 27/12/2007 in PAN/GIR No.AAACS4944A/SU-48 on the file of the Assistant Commissioner of Income Tax, Company Circle VI(4), Mahatma Gandhi Road, Chennai - 34 for the Assessment year 1998-99.

For Assessee : Mr.Vijayaraghavan for
M/s.Subbaraya Iyer Padmanabhan
For Revenue : Mrs.R.Hemalatha, SSC

JUDGEMENT

Judgment was delivered by T.S.SIVAGNANAM, J

This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act) against the order dated 25.6.2010 made in ITA.No.1935/Mds/2009 on the file of the Income Tax Appellate Tribunal, Madras 'B' Bench (for brevity, the Tribunal) for the assessment year 1998-99.

2. The appeal was admitted on 04.7.2011 on the following substantial questions of law :

"i. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming the levy of interest under Section 234D?

ii. Whether, on the facts and in the circumstances of the case, the provisions of Section 234D introduced with effect from 01.6.2003 is applicable for the assessment years prior to assessment year 2004-05? and

iii. Whether interest under Section 234D can be charged for the first time in a revision passed under Section 143(3) read with Section 254 giving effect to the Tribunal's order?"

3. The brief facts leading to the filing of this appeal are as follows :

The assessee is engaged in the business of hire purchase financing, equipment leasing and allied activities. For the assessment year under consideration namely 1998-99, the assessee filed a return of income on 30.11.1998 declaring a total income of Rs.50,38,16,950/-. This return was accepted vide intimation under Section 143(1)(a) of the Act. The case was selected for scrutiny and a notice under Section 143(2) of the Act was issued on 08.6.1999. The scrutiny assessment was completed under Section 143(3) of the Act on 30.3.2001 determining the total income at Rs.79,16,75,880/-. While completing the assessment, the Assessing Officer made various additions and disallowances.

4. Aggrieved by that, the assessee preferred an appeal to the Commissioner of Income Tax (Appeals) [for short, the CIT (A)], who, by order dated 24.10.2001, partly allowed the appeal by following the order passed in the assessee's own case for the assessment year 1995-96. As against the same, the assessee as well as the Revenue preferred appeals before the Tribunal in ITA.Nos.1434/Mds/2001 and 54/Mds/2002. The Tribunal, by a common order dated 31.7.2006, partly allowed those appeals and the order dated 31.7.2006 has also attained finality.

5. Subsequently, the Assessing Officer passed a revision order under Section 143(3) read with Section 254 of the Act giving effect to the order of the Tribunal dated 27.12.2007 determining the total income at Rs.49,76,93,255/-. Thereafter, by another order dated 20.6.2008, a rectification order was passed under Section 154 of the Act with regard to the disallowance of provision of NPA and contingency deposit, which, according to the Assessing Officer, were inadvertently omitted.

Thus, the total income was determined at Rs.54,13,12,386/- apart from levying interest under Section 234D of the Act, which provision was introduced with effect from 01.6.2003 amounting to Rs.67,87,554/- from 01.6.2003 to 30.6.2008.

6. Aggrieved by that, the assessee preferred an appeal to the CIT(A), who, by an order dated 30.9.2009, followed the decision of the Special Bench of the Delhi Tribunal in the case of ITO Vs. Ekta Promoters Private Limited [reported in (2008) 113 ITD 719] and held that the interest under Section 234D could not be charged prior to the assessment year 2004-05. Aggrieved by that, the Department preferred an appeal to the Tribunal. The Tribunal, by following the decision of the Kerala High Court in the case of CIT Vs. Kerala Chemicals and Proteins Limited [(2010) 323 ITR 584], allowed the appeal by order dated 25.6.2010. As against that, the assessee is before us by way of this appeal.

7. Mr.Vijayaraghavan, learned counsel appearing for the appellant/ assessee contends that the Tribunal failed to note that Section 234D of the Act, which deals with levy of interest on excess refund, was introduced only with effect from 01.6.2003 and that the same is not applicable for the assessment falling prior to the assessment year 2004-05. It is further contended that the decision in the case of Kerala Chemicals and Proteins Limited is not applicable to the facts of the present case, which the Tribunal failed to note.

8. The learned counsel for the assessee has pointed out that in the decision in the case of Kerala Chemicals and Proteins Limited, the Kerala High Court observed that the Revenue had no answer to the query made by the Court as to whether interest under Section 234D of the Act could be levied in cases of regular assessment completed under Section 143(3) of the Act prior to 01.6.2003 leading to demand of refunded amount as tax determined on regular assessment. By relying upon this observation, it is submitted that no interest could have been levied as done by the Assessing Officer for the first time by way of a rectification order.

9. It is also submitted that the regular assessment in the assessee's case under Section 143(3) of the Act was completed on 30.3.2001 i.e. prior to 01.6.2003 and therefore, interest under Section 234D of the Act could not be charged. In support of this contention, the learned counsel has placed reliance on the decision of the Hon'ble Supreme Court in the case of CIT-I Vs. Reliance Energy Limited [reported in (2013) 358 ITR 0371]. The learned counsel for the assessee has also invited our attention to the Memorandum Explaining the Provisions in the Finance Bill, 2012 and in particular Clause 85, with regard to charging of

interest on recovery of refund granted earlier. On the above grounds, the learned counsel submits that the order passed by the Tribunal calls for interference and that the questions of law may be answered in favour of the assessee.

10. Per contra, Mrs.R.Hemalatha, learned Senior Standing Counsel for the Revenue has sought to sustain the order passed by the Tribunal on different grounds. It is her submission that Sub-Section (2) clearly states that where, as a result of an order under Section 154 or Section 155 or Section 250 or Section 254 or Section 260 or Section 262 or Section 263 or Section 264 or an order under Section 245D(4) passed by the Settlement Commission, the amount of refund granted under Sub-Section (1) of Section 143 of the Act is held to be correctly allowed, either in whole or in part, as the case may be, then, the interest chargeable, if any, under Sub-Section (1) of Section 234D of the Act shall be reduced accordingly.

11. It is her further submission that the order passed under Section 154 of the Act dated 20.6.2008 levying interest under Section 234D for the amount of refund, which was reduced, is valid and accordingly, the Department is entitled to demand interest as mentioned in the order dated 20.6.2008. To support such a contention, the learned Senior Standing Counsel relies upon Explanation (2) to Section 234D of the Act and submits that the provisions of this Section will apply also to any assessment year commencing before the first day of June 2003 if the proceedings in respect of such assessment year is completed on the said date.

12. She has placed reliance on the decision of the Full Bench of this Court in the case of State of Tamil Nadu Vs. Arulmurugan & Co. [reported in (1982) 81 STC 381] to support her contention that an appeal is a continuation of the process of assessment and an assessment is but another name for adjustment of the tax liability to accord with taxable event in the particular tax payer's case. Thus, it is her submission that an order under Section 154 of the Act should be construed as a continuation of the assessment proceedings and by applying Explanation (2) to Section 234D of the Act, the levy of interest is just and proper.

13. We have elaborately heard the learned counsel for the parties and perused the materials placed on record.

14. Section 234D of the Act was inserted by the Finance Act, 2003 with effect from 01.6.2003. Sub-Section (1) of Section 234D reads as follows:

"In terms of Sub-Section (2) of Section 234D, where any refund is granted to the assessee under Sub-Section (1) of Section 143,

(a) no refund is due on regular assessment; or

(b) the amount refunded under Sub-section (1) of Section 143 exceeds the amount refundable on regular assessment, the assessee shall be liable to pay simple interest on the whole or the excess amount so refunded at the rate of one-half per cent, for every month or part of."

15. Sub-Section (2) of Section 234D of the Act deals with contingencies where, as a result of an order under Section 154 or other provisions mentioned therein, the amount of refund granted under Sub-Section (1) of Section 143 is held to be correctly allowed, either in whole or in part, as the case may be, then, the interest chargeable, if any, under Sub-Section (1) of Section 234D shall be reduced accordingly. Explanation (2) was inserted by the Finance Act, 2012 with retrospective effect from 01.6.2003, which declared that the provisions of Section 234D shall also apply to an assessment year commencing before 01.6.2003, if the proceedings in respect of such assessment year is completed after the said date.

16. The argument of the Revenue before us largely hinges upon the expression "if the proceedings in respect of such assessment year" occurring in Explanation (2) and by referring to the same and reading Sub-Section (2) of Section 234D of the Act, it is the submission of Mrs.R.Hemalatha, learned Senior Standing Counsel for the Revenue that interest is chargeable.

17. To get clarity on the issue, when Explanation (2) was inserted by the Finance Act, 2012 with retrospective effect from 01.6.2003, we will have to look into the Memorandum Explaining the Provisions in the Finance Bill, 2012. The issue relating to charging of interest on recovery of refund granted earlier is dealt in Clause 85 of the Memorandum, which reads as follows :

"Charging of interest on recovery of
refund granted earlier

Under the existing provisions of Section 234D of the Income-tax Act (inserted with effect from 1.6.2003, vide Finance Act, 2003), where any refund has been granted to the assessee under Sub-Section (1) of Section 143 and subsequently on regular

assessment, no refund or lesser amount of refund is found due to the assessee, then, the assessee shall be liable to pay simple interest at the rate of one-half per cent on the excess amount so refunded for the period starting from the date of refund to the date of such regular assessment.

In a recent decision of the Court, it has been held that the provisions of Section 234D inserted with effect from 1.6.2003 would be applicable from the assessment year 2004-05 only and accordingly no interest could be charged for earlier assessment years even though the regular assessments for such years were framed after 1st June, 2003 or refund was granted for those years after the said date.

This is not in conformity with the legislative intent of the provision.

It is, therefore, proposed to clarify that the provisions of Section 234D would be applicable to any proceeding which is completed on or after 1st June, 2003, irrespective of the assessment year to which it pertains.

This amendment will take effect retrospectively from the 1st day of June, 2003.

[Clause 85]."

18. A reading of the above Memorandum shows that insertion of Explanation (2) was necessitated on account of a decision of the Court, which held that the provisions of Section 234D inserted with effect from 1.6.2003 would be applicable from the assessment year 2004-05 only and accordingly no interest could be charged for the earlier assessment years even though the regular assessments for such years were framed after 01.6.2003 or refund was granted for those years after the said date. The Memorandum would state that the said decision is not in conformity with the legislative intent of the said provision namely Section 234D of the Act and accordingly clarified that the provisions of Section 234D of the Act would be applicable to any proceeding, which is completed on or after 01.6.2003 irrespective of the assessment year to which it pertains.

19. Thus, what is important to note is that the provision namely Section 234D of the Act was made applicable to any proceedings, which have completed on or after 01.6.2003

irrespective of the assessment year, to which, it pertains. In our considered view, Explanation (2) cannot be read in isolation from Sub-Section (2) of Section 234D of the Act and the entire Section should be read as a whole. If we adopt such a procedure, the correct legal position emanates because the charging provision is Sub-Section (1) of Section 234D of the Act. In the said Sub-Section namely Sub-Section (1), in three places, the expression 'regular assessment' occurs namely in Section 234D(1) (a), Section 234D(1)(b) and the remaining portion of Section 234D of the Act.

20. The question would be as to whether the order passed by the Assessing Officer dated 20.6.2008 could be taken as a regular assessment.

21. In our considered view, the same cannot be done so because an order passed under Section 154 cannot be taken to be framing of a regular assessment for such a year. Further, in our opinion, the regular assessment in the assessee's case is the assessment order passed under Section 143(3) of the Act on 30.3.2001. Admittedly, in the said order dated 30.3.2001, there was no levy of interest on the assessee. Furthermore, it is clear that Sub-Section (2) of Section 234D of the Act would be attracted only if reduction occurs and it cannot be made applicable when there is an increase.

22. The Hon'ble Supreme Court, in the case of Reliance Energy Limited, has clarified the legal position and has spelt out the legislative intent and as to how the provisions of Section 234D of the Act should be applied. In the said case, it was held that Explanation (2), which has been inserted by the Finance Act, 2012, in Section 234D of the Act, declared that the provisions of the said Section shall also apply to an assessment year commencing from 01.6.2003 if the proceedings in respect of such assessment year is completed after the said date. The High Court, in the said case, was dealing with an assessment of the year 1998-99. It was an admitted case that the assessment of that year was completed prior to 01.6.2003 taking note of the fact that the Supreme Court held that having regard to the legal position, which has been clarified by the Parliament, by insertion of Explanation (2) to Section 234D of the Act, in the said case, where the assessment was completed prior to 01.6.2003, it was held that retrospectivity of Section 234D of the Act does not arise. The above decision would be squarely applicable to the case of the assessee, as, admittedly, the regular assessment was completed under Section 143(3) of the Act much prior to 01.6.2003 i.e. On 30.3.2001. For the above reasons, we are of the view that no interest can be charged under Section 234D of the Act for the assessment year in question.

23. In the result, the appeal filed by the assessee is allowed, the order passed by the Tribunal is set aside and the substantial questions of law are answered in favour of the assessee. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

To

1. The Income Tax Appellate Tribunal,
Chennai 'B' Bench.
 2. The Deputy Commissioner of Income Tax, Large Tax Payer Unit,
Chennai-101.
 3. The Commissioner of Income Tax (Appeals),
Larger Tax payer Unit, II Floor,
1775, Jawarharlal Nehru Inner Ring Road,
Anna Nagar, Western Extension, Chennai - 101
 4. The Assistant Commissioner of Income Tax,
Company Circle VI(4), 7th Floor, New Block,
Room No.705, 121, Mahatma Gandhi Road,
Chennai - 34
- +1 cc to M/s.Subbaraya Iyer Padmanabhan,
Advocate, S.R.No.87070
- +1 cc to Mr.T.Ravikumar, Advocate, S.R.No.87075

TCA.No.154 of 2011

SPD(CO)
SSM(21/01/2019)

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