

Income Tax Appellate Tribunal - Pune

Trinity Forge vs Asstt. Cit on 20 February, 2001

Equivalent citations: (2001) 73 TTJ Pune 582

ORDER B.L. Chhibber, A.M.

The only grievance projected in this appeal by the assessee is that the learned Commissioner (Appeals) is not justified in confirming the levy of interest under section 234B of Rs. 47,232 and interest under section 234C of Rs. 892 rejecting the legal contentions raised by the assessee and further holding that no appeal under section 246 of the Act lies against levy of interest under section 234B and 234C of the Act.

2. The assessee-firm filed its return of income for the assessment year 1989-90 disclosing total income at Rs. 90,870 on which the assessee paid the advance tax and TDS as under :

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Rs.

10-9-1988 13,000 12-12-1988 21,000 14-3-1989 26,900 TDS on contract 3,150 64,050 Thus, the advance tax paid and the TDS deducted was more than the tax payable on the returned income. However, the Finance Act, 1990, inserted clause (iiib) in section 28 and clause (vb) in section 2(24) by virtue of which the receipts on account of export incentives in the nature of cash assistance was made retrospectively taxable as business income with effect from 1-4-1967. Because of this amendment, the assessing officer made an addition of Rs. 4,91,604 on account of cash compensatory support in the hands of the assessee, Prior to the amendment, there were a few case laws which held that the above receipt was not taxable. Because of this addition, the tax liability went up and the assessment resulted into levy of interests under sections 234B and 234C of Rs. 47,232 and Rs. 892, respectively.

3. On appeal, the Commissioner (Appeals) confirmed the levy of interest, observing as under :

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"I have given due consideration to the submissions of the appellant I do not agree with the appellant that an appeal under section 246 lies against the levy of interest under section 234B and 234C of the Act. The charging of interest is mandatory as and when the default is occurred. The interest under section 234B is payable when the default is in respect of payment of advance tax and interest under section 234C is payable when default is for deferment of advance tax. The levy of interest is automatic as and when the default exist irrespective of the reason of default. Section 246 also does not provide any appeal against the charging of such interest. The judgment of the Central Provinces Manganese Ore Co. Ltd. v. CIT (1986) 58 CTR (SC) 112 : (1986) 160 ITR 961 (SC) Would not apply

in this case as the provisions of section 234A, 234B and 234C were not there when the judgment was rendered, Having regard to these facts, the appeal of the appellant is rejected and the levy of interest is confirmed."

4. Dr. Sunil. Pathak, the learned counsel for the assessee, submitted that the interest had been levied only because of the amendment to the Act with retrospective effect; otherwise such interest was not chargeable at all. The assessee at the time of paying the advance tax could not anticipate such an amendment and, therefore, the advance tax fell short of the assessed tax. The learned counsel further submitted that the Commissioner (Appeals) erred in holding that there is no appeal which lies against charging of interest under the present sections and in this context, the learned Commissioner (Appeals) did not follow the decision of the Honble Supreme Court in the case of Central Provinces Manganese Ore Co. Ltd. v. CIT (1986) 58 CTR (SC) 112 : (1986) 160 ITR 961 (SC) on the reasoning that the decision is covering interest under section 215, 217, etc, but it was not in the context of levy of interest under section 234A, 234B and 234C of the Act. Finally, the learned counsel drew our attention to the decision of the Honble Supreme Court in the case of CIT v. Ranchi Club Ltd. (2000) 164 CTR (SC) 212 according to which interests under section 234A and 234B are leviable on the tax on returned income and not on the basis of tax as per assessment. The learned counsel accordingly prayed that the order of the Commissioner (Appeals) should be reversed and the assessing officer may be directed not to charge interest under section 234B and 234C for the assessment year 1989-90.

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5. Shri A.P. Srivastava, the learned senior Departmental Representative, strongly supported the orders of the authorities below and submitted that the Commissioner (Appeals) rightly held that the decision of the Honble Supreme Court in the case of Central Provinces Manganese Ore Co. Ltd. (supra) was distinguishable and accordingly, no appeal lies under section 246 of the Act against the levy of interest under section 234B and 234C of the Act, charging of interest being mandatory as and when the default is occurred.

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6. We have considered the rival submissions. and perused the facts on record. We find that the interests have been levied only because of the amendment to the Act with retrospective effect and but for such amendment with retrospective effect, such interests were not chargeable at all. The assessee accordingly at the time of paying advance tax could not anticipate such an amendment and, therefore, advance tax fell short of the assessed tax. In our view, the Commissioner (Appeals) is not justified in holding that there is no appeal which lies against charging of interest under the present sections because it is to be noted that exactly same issue was before the Honble Supreme Court in the case of Central Provinces Manganese Ore Co. Ltd. (supra). In that case, the question was relating to interest under section 139(8) and 215 but the position of law was same as it is obtained today because section 246 did not provide any appeal specifically against the orders under section 139(8), 215, etc. In view of that position in law, the Honble apex court while upholding that there is a right of appeal provided the assessee challenges the basic levy has held as under on p. 966 of 160 ITR :

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"Now, the question is whether orders levying interest under sub-section (8) of section 139 and under section 214 are appealable under section 246 of the Income Tax Act. Clause (c) of section 246 provides an appeal against an order where the assessee denies his liability to be assessed under the Act or against any assessment order under sub-section (3) of section 143 or section 144, where the assessee objects to the amount of income assessed or to the amount of tax determined or to the amount of loss computed or to the status under which he is assessed. Inasmuch as the levy of interest is a part of the process of assessment, it is open to an assessee to dispute the levy in appeal provided he limits himself to the ground that he is not liable to the levy at all. "

7. From the above, it is to be noted that the Honble Supreme Court has clearly held that appeal lies against levy of interest. In this context, there is no merit in the contention of the Commissioner

(Appeals) that in the case before the Honble Supreme Court the issue was regarding the levy of interest under sections 215, 139(8) while in the present case, it is about the levy of interest under section 234A, 234B and 234C. These interests are also a part of the process of assessment and thus, the reasoning given by the Honble Supreme Court as stated above would be clearly applicable in this context as well. We accordingly hold that the Commissioner (Appeals) is not justified in holding that there is no appeal provided against the levy of interest under section 234B or 234C.

7. From the above, it is to be noted that the Honble Supreme Court has clearly held that appeal lies against levy of interest. In this context, there is no merit in the contention of the Commissioner (Appeals) that in the case before the Honble Supreme Court the issue was regarding the levy of interest under sections 215, 139(8) while in the present case, it is about the levy of interest under section 234A, 234B and 234C. These interests are also a part of the process of assessment and thus, the reasoning given by the Honble Supreme Court as stated above would be clearly applicable in this context as well. We accordingly hold that the Commissioner (Appeals) is not justified in holding that there is no appeal provided against the levy of interest under section 234B or 234C.

8. The assessee has a case on merits also. As the assessee in any case could not have anticipated such retrospective amendment while paying advance tax, it was guided by various decisions obtained at that time that cash compensatory support was not taxable. For example, the Special Bench in the case of *Gedore Tools Ltd. v. Inspecting Asstt. CIT (1988) 25 ITD 193 (Del) (SB)* had held that cash compensatory support was not taxable. Again the Honble Supreme Court in the case of *CIT v. Hindustan Electro Graphites Ltd. (2000) 160 CTR (SC) 8 : (2000) 243 ITR 48 (SC)* dealt with the levy of additional tax exactly on same facts, i.e., after addition of cash assistance because of the retrospective amendment. In that context, the Honble Supreme Court held that the department is not justified in levying additional tax because the assessee, while filing the return, could not anticipate such retrospective amendment. It may be noted that additional tax is equally mandatory as interest under section 234B and 234C, etc, and, therefore, the above decision squarely applies to the facts of the present case. Finally, the Honble Supreme Court has set the controversy at rest in *CIT v. Ranchi Club Ltd. (supra)* which has been followed by the Patna High Court in *Smt. Tej Kumari v. CIT (2000) 164 CTR (Pat) (FB) 201* and it has been held that interests under section 234A and 234B are leviable on the tax on the returned income and not on the basis of tax as per assessment. Following the aforesaid judgment of the Honble apex Court, we hold that the assessing officer erred in levying interest on the assessed tax.

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as interest under section 234B and 234C, etc, and, therefore, the above decision squarely applies to the facts of the present case. Finally, the Honble Supreme Court has set the controversy at rest in CIT v. Ranchi Club Ltd. (supra) which has been followed by the Patna High Court in Smt. Tej Kumari v. CIT (2000) 164 CTR (Pat) (FB) 201 and it has been held that interests under section 234A and 234B are leviable on the tax on the returned income and not on the basis of tax as per assessment. Following the aforesaid judgment of the Honble apex Court, we hold that the assessing officer erred in levying interest on the assessed tax.

9. In the light of above discussion, we reverse the orders of the authorities below and delete the interest of Rs. 47,232 under section 234B and of Rs. 892 under section 234C.

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