

Commissioner of Income-tax, Haryana v. The Atlas Cycle Industries,
Sonepat (G. C. Mital, J.)

force for the time being as to the limitation of suits, has no relevance to the facts and circumstances of the case. As observed earlier, this enhanced rate of interest and solatium was being allowed to the claimants by the High Court in view of the amendments later on made in the Act and, therefore, the claimants cannot be allowed to adjust that amount already received by them towards interest and costs etc. at this stage of the execution as enhanced by the High Court.

(8) As regards the third contention that the claimants are entitled to 15 per cent. interest on the entire amount of compensation including the addition amount of 12 per cent., the same stands concluded by the decision of this court in *Kushal Singh's case* (supra). It was noticed therein that 12 per cent. interest does not form part of the market value. The additional amount of 12 per cent. is a statutory creation. It is not related to the market value. Nor it is a benefit arising out of land.

(9) Consequently, all the revision petitions are disposed of accordingly. The amount payable to the claimants be calculated according to the observations made above.

S.C.K.

Before G. C. Mital & S. S. Sodhi, JJ.

COMMISSIONER OF INCOME-TAX, HARYANA,—Applicant.

versus

THE ATLAS CYCLE INDUSTRIES, SONEPAT,—Respondent.

Income Tax Reference No. 72 & 73 of 1981.

April 24, 1989.

Income Tax Act, 1961 Sections 215, 80-G, 40(c), 148—75 per cent Advance tax deposited before the stipulated date—I.T.O. charging interest on delayed payment—Validity—Reassessment—Grounds for reassessment did not exist—Cancellation of reassessment proceedings—Legality of.

Held, that the word 'or otherwise' in sub-section (2) signifies that in whatever manner tax is paid, it shall be taken note of in calculating the interest. In spite of the default having been committed by the assessee in not paying the due advance tax within time, yet by

virtue of the provisions of Section 215(2) read with clause (i) of the Act, which provides for charging interest with effect from 1st April next following till payment no interest is payable on the amount of Rs. six lacs and odd, as mentioned above, as the payment of that amount was made in March, 1972. (Para 7)

Held, that we hold that the Income Tax Officer did not have the jurisdiction to proceed with the reassessment, the moment he found the two grounds mentioned in the reassessment notice incorrect or non-existent. Accordingly, we answer the referred question in favour of the assessee, in the affirmative, that the Tribunal was right in cancelling the re-assessment. (Para 9)

Reference under Section 256(1) of the Income Tax Act, 1961 by the Income Tax Appellate Tribunal, Delhi Bench 'C' Delhi to the Hon'ble High Court of Punjab and Haryana for opinion of the following questions of law arising out of the Tribunal's order dated 23rd June, 1980 in R.A. Nos. 1015 & 1016 (Del.) 1980 in ITA Nos. 349 & 512 (Chand.)/1979, Assessment year 1972-73.

- “1. *Whether on the facts and in the circumstances of the case, the Tribunal was right in law in cancelling the reassessment made by the Income-tax Officer?*”
2. *Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the interest under section 215 was not chargeable in this case ?*”

Ashok Bhan, Sr. Advocate with Ajay Mittal, Advocate, for the Appellant.

D. K. Monga, Sr. Advocate (of Delhi) with Rajiv Mehra and Rajiv Bhalla, Advocates, for the Respondent.

JUDGMENT

Gokal Chand Mittal, J.

(1) The Atlas Cycle Industries is the assessee, and the matter relates to the assessment year, 1972-73. Since calendar year was the accounting year, it ended on 31st December, 1971. On 21st May, 1971, notice was issued by the Income Tax Officer under Section 210 of the Income Tax Act, 1961 (for short 'the Act'), for payment

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of advance tax of Rs. 31,29,358. The assessee paid the amount as follows :

<i>Date of deposit</i>	<i>Amount deposited.</i>
14.6.1971	Rs. 4,63,340
14.9.1971	Rs. 8,23,330
15.12.1971	Rs. 6,43,330
2.3.1972	Rs. 5,40,000
14.3.1972	Rs. 61,750

Upto 15th December, 1971, Rs. 19,30,000 were paid and Rs. 6,01,750 were paid thereafter in March, 1972. In this manner, till 14th March, 1972, Rs. 25,31,750 were paid as advance tax, against the demand of Rs. 31,29,358. Since accounting year ended on 31st December, 1971, and less than 75 per cent of the advance tax was paid by them on the balance interest was charged by the Income Tax Officer under Section 215 of the Act.

(2) The assessee challenged the imposition of interest but on appeal the Commissioner of Income Tax (Appeals) deleted the levy of interest, and the department failed before the Tribunal. On the aforesaid, facts, at the instance of the department, the Tribunal has referred the following question for opinion of this Court :

“Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the interest under section 215 was not chargeable in this case.”

(3) For the assessment year in question, the original assessment was made on 31.1.1973 at Rs. 51,88,420, which was amended to Rs. 50,59,780. On 29th March, 1977, the Income Tax Officer issued notice for re-assessment under Section 148 of the Act and mentioned therein that the benefits under Section 80-G and 40(c) of the Act were granted in excess. In the re-assessment proceedings, the Income Tax Officer did not find merit in the two grounds mentioned in the notice for re-assessment but made addition of Rs. 16,541 on some other grounds.

(4) The order of re-assessment was challenged by the assessee in appeal and the Tribunal came to the conclusion that the re-assessment could not be sustained as the two items mentioned in

the notice for re-assessment were found to be erroneous and since the very ground for initiating re-assessment proceedings disappeared, no reassessment order could be passed. On this matter, the department has got the following question referred for opinion of this Court :

“Whether on the facts and in the circumstances of the case. the Tribunal was right in law in cancelling the reassessment made by the Income-tax Officer?”

(5) Since the two references related to the same assessee and for the same assessment year, one common statement of case with both the questions mentioned therein has been sent to this Court.

(6) We propose to deal with each question separately. Adverting to the question relating to interest, on a reading of the chart tabulated above, regarding payment of advance tax, we find that till the end of the accounting year, i.e. upto 31st December, 1971, Rs. 19,30,000 were paid against the demand of Rs. 31,29,358, which is less than 75 per cent of the advance tax, and, therefore, it is clear that the assessee committed default in payment of advance tax. If 75 per cent of the advance tax had been paid upto 31st December, 1971, interest would not have been leviable but this is not the case here.

(7) The assessee paid Rs. 6,01,750 more towards advance tax in March, 1972. Payment of interest on the said amount is being disputed. On behalf of the assessee it is not disputed that on the difference between the total amount paid, that is, Rs. 25,31,750, and the demand of advance tax of Rs. 31,29,358, the liability of interest is not the subject matter of dispute in this reference and would be dealt with or has been dealt with separately. Therefore, the only question for our determination is whether on the amount of Rs. 6,01,750, which was paid after the expiry of the accounting year, but in March, 1972, that is, before the end of financial year, the interest is leviable.

For this matter, we have to consider Section 215(1) of the Act, which provides that ‘if default is committed by an assessee in payment of advance tax, on the short deposit simple interest at the rate of 15 per cent is payable with effect from 1st day of April next following the said financial year upto the date of regular assessment. That means the department wants to levy interest

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on the amount of Rs. 6,01,750 with effect from 1st April, 1972, till the date of regular assessment, but once the aforesaid amount is paid before the 1st of April, 1972, how can interest thereon be calculated with effect from 1st April, 1972 till the date of regular assessment. If the amount had not been paid before 1st April, 1972, and had been paid sometime thereafter before the regular assessment, the interest could have been charged with effect from 1st April till the date of payment. See in this behalf Section 215(2)(i). The word 'or otherwise' in sub-section (2) signifies that in whatever manner tax is paid, it shall be taken note of in calculating the interest. In spite of the default having been committed by the assessee in not paying the due advance tax with-in time, yet by virtue of the provisions of Section 215(2) read with clause (i) of the Act, which provides for charging interest with effect from 1st April next following till payment, no interest is payable on the amount of Rs. six lacs and odd, as mentioned above, as the payment of that amount was made in March, 1972.

(8) In view of the above, we answer the question in the negative, in favour of the Revenue, but at the same time say that on the amount of Rs. six lacs and odd paid in March, 1972, no interest is payable but on the balance un-paid amount of advance tax interest would be payable as per Section 215 of the Act.

(9) Adverting to the question referred regarding the reassessment proceedings, we are of the view that the Tribunal was right in cancelling the reassessment as both the grounds on which reassessment notice was issued were not found to exist, and the moment such is the position, the Income Tax Officer does not get the jurisdiction to make reassessment. This view of ours find support from the Supreme Court decisions in *C.I.T. Gujarat v. A. Raman and Co.* (1), and *Bankipur Club Ltd. v. C.I.T. Bihar and Orissa* (2). Similar view has been taken by the Rajasthan High Court in *Addl. C.I.T. v. Ganeshi Lal Lal Chand* (3). On behalf of the Revenue, *C.I.T. Gujarat I v. Ahmedabad Manufacturing and Calico Printing Co. Ltd* (4). a decision of Gujarat High Court was cited. On a consideration of the matter, we are of the view that in

(1) 67 I.T.R. 11

(2) 82 I.T.R. 831.

(3) 154 I.T.R. 274.

(4) 106 I.T.R. 159.

view of the aforesaid Supreme Court decisions, the view taken by the Rajasthan High Court is correct and the view taken by the Gujarat High Court is not correct. Accordingly, we dissent from the view taken by the Gujarat High Court and in view of the decisions of the Supreme Court and Rajasthan High Court, we hold that the Income Tax Officer did not have the jurisdiction to proceed with the reassessment, the moment he found the two grounds mentioned in the reassessment notice incorrect or non-existent. Accordingly, we answer the referred question in favour of the assessee, in the affirmative, that the Tribunal was right in cancelling the re-assessment.

(10) Both the references stand disposed of in the aforesaid terms with no order as to costs.

P.C.G.

Before G. C. Mital & S. S. Sodhi, JJ.

THE ATLAS CYCLE INDUSTRIES LTD., SONEPAT,—Applicant.
versus
 THE COMMISSIONER OF INCOME-TAX, HARYANA,
 ROHTAK,—Respondent.

Income Tax Reference No. 56 of 1982.

May 9th, 1989.

Income Tax Act—1961—Section 32(1)(ii), Section 37(1) 37(2-B)—Expenses incurred by assessee in defending criminal proceedings under the Essential Commodities Act, 1955—Such legal expenses are allowable deductions.

Held, that the view of the Supreme Court in 23 I.T.R. 427 appears to be at variance with that of 91 I.T.R. 544 but what is pertinent to note here are the observations of the Supreme Court in the letter case to the effect that the earlier cases where it had been held that the expenditure incurred by the assessee to defend himself against a criminal charge, did not fall under Section 10(2)(xv) of the Income Tax Act, 1922, were decisions on their own facts. Applying the test laid down therein, it has to be held that the Tribunal was not justified in law in disallowing legal expenses incurred in connection with the criminal litigation pertaining to criminal conspiracy for commission of offence under the Essential Commodities Act, 1955.

(Para 8)

Reference under Section 256(1) of the Income Tax Act, 1961 by the Income Tax Appellate Tribunal, Delhi Bench 'E' New Delhi, to