

The Commissioner of Income Tax, Jalandhar v. M/s Leader Engg. Works, Jalandhar (G. C. Mital, J.)

let out to the tenant-appellant in 1968. Thus, the respondent was not a landlord *qua* the premises and the tenant on the date of his discharge from service entitling him to avail of the benefit of the provisions of section 13-A of the East Punjab Act."

In view of the same the conflict stands already resolved. The earlier view of this Court has been upheld.

(2) The above said Supreme Court decision is on all fours applicable to the facts of this case and in the light thereof as well as the two earlier decisions of this Court referred to above, this revision petition is allowed, Order of ejection of the revision petitioner is set aside and application of the respondent landlord for ejection is dismissed. In the facts and circumstances of the case, there will be no order as to costs.

P.C.G.

Before Gokal Chand Mital and S. S. Sodhi, JJ.

THE COMMISSIONER OF INCOME TAX, JALANDHAR,—
Applicant.

versus

M/S LEADER ENGG. WORKS, JALANDHAR,—*Respondent.*

Income Tax Reference No. 45 of 1982

Dated 23rd February, 1989.

Income Tax Act (XLIII of 1961)—Sections 154, 214, 244(1), 244(1A)—Deposit of Advance Tax by the assessee—Excess amount refunded to assessee after adjustment—Whether—The assessee entitled to interest.

Held, we are of the opinion that the advance tax loses its identity the moment it is adjusted towards the tax liability created under the regular assessment and takes the shape of payment of tax in pursuance of order of assessment. Section 214 provides for payment of interest to an assessee on excess amount of advance tax with effect from the first day of April next following the said financial year to

the date of regular assessment for the assessment year immediately following the said financial year. This further shows that after adjustment of advance tax at the time of regular assessment of some balance remains to the credit of the assessee, that balance is treated as advance tax and the adjusted amount therefrom is treated as payment of tax. The amount adjusted towards tax, if found refundable in pursuance of appellate order or other proceedings under section 244(1A) of the Act, the assessee is entitled to interest thereon at the rate specified in section 244(1) of the Act. Hence, the Tribunal was right in allowing payment of the interest to the assessee under section 244(1A) of the Act on the amount which was found refundable on the basis of appellate order. (Para 4)

Reference under section 256(1) of the Income Tax Act, 1961, by the Income Tax Appellate Tribunal (Amritsar Bench), Amritsar, refer to the Hon'ble High Court of Punjab and Haryana at Chandigarh, for its opinion the following questions of law arising out of the Tribunal's order dated 14th August, 1981, in R.A. No. 171 (ASR)/1981, in I.T.A. No. 481(ASR)/1980, relating to Assessment Year 1973-74:—

- “1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the provision of section 144 of the Income-tax Act, 1961 were applicable to this case ?
2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the adjustment of advance tax towards the demand assessed was a payment for the purpose of allowing interest under Section 244 (IA) of the Income Tax Act ,”

L. K. Sood, Advocate, for the Applicant.

N. K. Sood, Advocate (of Jalandhar), for the Respondent.

JUDGMENT

Gokal Chand Mital, J.—

(1) For the assessment year 1973-74, the Income-Tax Officer completed the assessment on 27th January, 1977. The assessee had paid advance tax before 31st March, 1975 and the advance tax was adjusted against the liability created by the aforesaid assessment order. On assessee's appeal, the taxable liability was reduced and the excess amount was refunded. The assessee claimed that the Income Tax Officer should have allowed interest on the refunded amount under section 244(1A) of the Income Tax Act, 1961 (hereinafter called the Act) from the date of the Advance tax was adjusted pursuant to the assessment order till the date of refund. The Income Tax Officer declined the request but on appeal the Commissioner of

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Income Tax (Appeals) granted the prayer which was affirmed by the Income Tax Appellate Tribunal, Amritsar, and at the instance of the revenue, the following two questions have been referred for the opinion of this Court:—

- “1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the provisions of section 154 of the Income Tax Act, 1961, were applicable to this case ?
- (2) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the adjustment of advance tax towards the demand assessed was a payment for the purpose of allowing interest under section 244 (1A) of the Income Tax Act ?”

(2) For the decision of question No. 2, which is the main question, section 219 and 244(1A) deserve consideration. Section 219 provides for credit for advance tax and the payment of advance tax has to be treated as payment of tax in respect of income of the period which would be the previous year for assessment for the assessment year next following the financial year in which it was payable and credit thereof has to be given to the assessee in the regular assessment. The moment credit is given, it ceases to be advance tax and takes the place of payment of tax in pursuance of the regular assessment.

(3) Section 244 (1A) provides that if an assessee is entitled to refund of an amount as a result of the appellate order or other proceedings under the Act, the assessee is entitled to interest at the specified rate on the amount so found to be in excess from the date on which such amount was paid to the date on which the refund is granted. This provision further notices that the provision will relate to the amounts having been paid after the 31st day of March, 1975. Since the advance tax was paid before 31st March, 1975, the claim of the revenue was that section 244 (1A) was not applicable; whereas the case of the assessee was that the payment of tax would be deemed to have been made on 27th January, 1977, when regular assessment was made by adjustment of the advance tax towards the tax liability created by the regular assessment order dated 27th January, 1977, and, therefore, it should be taken that the tax was paid on 27th January, 1977, pursuant to the regular assessment order and, therefore, the provision was applicable.

(4) On a consideration of the matter, we are of the opinion that the advance tax loses its identity the moment it is adjusted towards the tax liability created under the regular assessment and takes the shape of payment of tax in pursuance of order of assessment and in this case this happened on 27th January, 1977, when the regular assessment order was made and this happened after 31st day of March, 1975, and, therefore, section 244 (1A) was clearly applicable. Section 214 provides for payment of interest to an assessee on excess amount of advance tax with effect from the first day of April next following the said financial year to the date of regular assessment for the assessment year immediately following the said financial year. This further shows that after adjustment of advance tax at the time of regular assessment if some balance remains to the credit of the assessee, that balance is treated as payment of tax. The amount adjusted towards tax, if found refundable in pursuance of appellate order or other proceedings under section 244 (1A) of the Act, the assessee is entitled to interest thereon at a rate specified in section 244 (1) of the Act. Hence, the Tribunal was right in allowing payment of the interest to the assessee under section 244 (1A) of the Act on the amount which was found refundable on the basis of the appellate order.

(5) For reasons recorded above, we answer the second question in favour of the assessee in the affirmative. Question No. 1 does not arise in view of answer to question No. 2 and is returned unanswered. No costs.

P.C.G.

Before Gokal Chand Mital and S. S. Sodhi, JJ.

THE COMMISSIONER OF INCOME TAX, AMRITSAR,—
Petitioner/Applicant.

versus

M/S S. WARRIAM SINGH COLD STORES, AMRITSAR,—
Respondent.

Income Tax Reference No. 70 of 1983

23rd February, 1989.

Income Tax Act (XLIII of 1961)—Section 32A (1) and 32A (2)
(ii)—*Installation of Plant and Machinery in a Cold Storage—‘Production’ and ‘Manufacture’—Concept of Marketability not included by the words ‘article’ or ‘thing’—Production of Cool Air—Whether can be covered under ‘Production’ or ‘Manufacture’ of ‘article’ or thing.—Whether—assessee entitled to deduction by way of Investment Allowance.*