

HIGH COURT OF KERALA

A. Sethumadhavan

v.

Commissioner of Income-tax

T. KOCHU THOMMEN, J.

PETITION NO. 3799 OF 1977-B

JANUARY 11, 1980

Section 214 of the income-tax act, 1961—Interest—Payable by government on excess payment of advance tax—On his own estimate under section 212(3a), advance tax paid exceeded demand in regular assessment—One instalment of advance tax paid one day later than due date mentioned in section 211—Whether assessee entitled to interest under section 214—Held, no

Facts

For the assessment year 1976-77, the assessee was required to pay advance tax, in terms of section 210, in three equal instalments of Rs. 6,600 each on 15-9-1975, 15-12-1975 and 15-3-1976 mentioned under section 211(1)(ii). The assessee paid the first two instalments on the due dates and sent on 13-3-1976 an estimate under section 212(3A) together with a demand draft of Rs. 55,760 being the balance advance tax payable as per the estimate. This demand draft was received by the department on 16-3-1976 and encashed on 19-3-1976. As the advance tax thus paid exceeded the regular demand, the assessee claimed under section 214 interest on excess payment. The ITO rejected the same because the last instalment having been paid after the due date, no interest was payable. The assessee's revision petition under section 264 before the Commissioner was also unsuccessful.

On petition before the High Court, the assessee contended that (i) interest under section 214 was payable by the Government on the excess advance tax paid even if such payment was after the due date; and (ii) the liability under section 212(3A) was limited to sending an estimate only without ensuring its receipt by the department before due date and the tax on the basis of such estimate could be remitted on or before 1st April and that it was not necessary to send the remittance along with the estimate.

Held

1. *The estimate under section 212(3A) had to be sent before the due date for last instalment. As the estimate in this case was sent on 13-3-1976, this part of section 212(3A) was satisfied. However, this section further required the assessee to pay the advance tax on the due date as mentioned in section 211 which, in this case, was 15-3-1976. Since the demand draft was received by the department on 16-3-1976, this part of the said section was not in terms satisfied. The assessee, not paying instalments on the due dates mentioned in section 211, would be deemed to be defaulter in terms of section 218(2). As in this case the demand draft for the last instalment was received after the expiry of the due date, the assessee was a defaulter.*

2. *The liability of the Government to pay interest under section 214 arose only when the advance tax itself was paid on the due dates as required by section 211. In the present case, such payment was not made.*

3. *The assessee was, therefore, not entitled to interest. The Commissioner's order under section 264 was, accordingly, upheld.*

Editor's note

The Court did not consider it necessary to deal with the question whether the date of payment was the date of receipt of the demand draft or only the date of its encashment.

Case review

Kangundi Industrial Works (P.) Ltd. v. ITO 1979 Tax LR 1123 (AP) followed. Addl. *CIT v. Bharat Fritz Werner (P.) Ltd.* [1979] [118 ITR 25](#) (Kar.) distinguished.

Cases referred to

Kangundi Industrial Works (P.) Ltd. v. ITO [1980] 121 ITR 339 (AP) and *CIT v. Traub (India) (P.) Ltd.* [1979] [118 ITR 525](#) (Bom.).

S. Vijayan Nair for the petitioner.

P.K. Ravindranatha Menon for the Respondent.

JUDGMENT

Kochu Thommen, J.— Exhibit P-4 dated August 5, 1977, passed by the Commissioner of Income-tax under section 264 of the Income-tax Act, 1961, is impugned by the petitioner. The Commissioner rejected the petitioner's claim for interest under section 214 of the Act in respect of the third instalment of advance tax paid by the petitioner on the ground that the instalment was paid subsequent to the due date.

In respect of the assessment year 1976-77, the petitioner was required to pay advance tax in terms of section 210 in three equal instalments at the rate of Rs. 6,600 on the due dates mentioned under section 211(1)(ii), viz., 15th September, 15th December and 15th March. The first two instalments were paid by the petitioner on the due dates. On March 13, 1976, which was two days prior to the due date for the payment of the third instalment, the petitioner forwarded an estimate of his income together with a demand draft for Rs. 55,760 being the balance advance tax payable by him on the basis of such estimate. The demand draft was admittedly received by the department on March 16, 1976, which was a day later than the date on which the third instalment became due. For the reason that the third instalment was paid too late, the petitioner's claim for interest in respect of the amount paid towards the advance tax in excess of what was due as per the regular assessment was rejected by the ITO. His decision was confirmed by the Commissioner by the impugned order Ex. P-4.

Petitioner's counsel, Shri Vijayan Nair, contends that interest in terms of section 214 of the Act is payable by the Government in respect of the excess amount paid by way of advance tax, even if such payment was made subsequent to the dates mentioned under section 211. Counsel states that where advance tax becomes payable on the basis of the estimate as mentioned under section 212(3A) the liability of the assessee is limited to sending the estimate before the due date provided the amount payable as per the estimate is remitted on or before 1st April. It is, however, not imperative, according to counsel, that the remittance should accompany the estimate on the due date. Counsel further submits that sub-section (3A) of section 212 requires the assessee to send the estimate before the due date but it does not require him to assure himself that the estimate sent is received by the department before the due date. Counsel, therefore, contends that so long as it is established that the estimate was sent by the assessee before the due date sub-section (3A) of section 212 was in terms satisfied. I shall first read section 211:

"(1) Subject to the provisions of this section and of section 212, advance tax shall be payable in three equal instalments on the following, dates during the financial year, namely:—...

(ii) the 15th day of September, the 15th day of December and the 15th day of March, in any other case:"

The instalment in question is the one that was due and payable on the 15th day of March. Section 212(3A) reads:

" (3A) In the case of any assessee who is required to pay advance tax by an order under section 210, if, by reason of the current income being likely to be greater than the income on which the advance tax payable by him under section 210 has been computed or for any other reason, the amount of advance tax computed in the manner laid down in section 209 on the current income (which shall be estimated by the assessee) exceeds the amount of advance tax demanded from him under section 210 by more than 33-1/3 per cent, of the latter amount, he shall, at any time before the date on which the last instalment of advance tax is due from him, send to the Income-tax Officer an estimate of—

(i) the current income, and

(ii) the advance-tax payable by him on the current income calculated in the manner laid down in section 209,

and shall pay such amount of advance tax as accords with his estimate on such of the dates applicable in his case under section 211 as have not expired, by instalments which may be revised according to sub section (2):..... "

It is clear that the estimate has to be sent by the assessee before the date on which the last instalment of advance tax was due for payment. This part of the section was in terms satisfied by the assessee in so far as the estimate was admittedly sent on March 13, 1976, although it was received by the department only on the 16th. But the sub-section further stipulates that the assessee shall pay the advance tax on the due date mentioned under section 211 which in the instant case was 15th March. Since the demand draft was not received by the department until the 16th, although it was despatched by post on the 13th, this part of the section was in terms not satisfied by the assessee. The demand draft was not cashed until the 19th. Whether the date of payment is the date of receipt of the demand draft or only the date of encashment of the same is a question which it is unnecessary for me to consider, although it is stated in the impugned order that the date of payment was the 19th which was the date of encashment. Whatever that be, the demand draft itself had been received by the department only a day later than the due date for payment.

The question, therefore, is whether interest is payable by the Government in respect of the amount that was paid in excess of what was ultimately determined to be due from the assessee as per the final order of assessment. Before I read section 214, I shall refer to section 218(2), which says:

"(2) If any assessee has sent under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) of section 212 an estimate or a revised estimate of the advance tax payable by him, but does not pay any instalment in accordance therewith on the date or dates specified in section 211, he shall be deemed to be an assessee in default in respect of such instalment or instalments :....."

He, who does not pay the instalments on the dates specified in section 211 is deemed to be a defaulter. The petitioner is thus a defaulter in terms of section 218(2). Being a defaulter the question is, can he claim interest from the Government. Section 214 reads:

"(1) The Central Government shall pay simple interest at twelve per cent, per annum on the amount by which the aggregate sum of any instalments of advance tax paid during any financial year in which they are payable under sections 207 to 213 exceeds the, amount of the tax determined on regular assessment, from the 1st day of April next following the said financial year to the date of the regular assessment for the assessment year immediately following the said financial year,....."

The liability of the Central Govt. to pay interest under section 214 arises only when the advance tax itself was paid as required by the Act; that is to say, paid on the date on which it was payable as per section 211. In the present case such payment was not

made.

This is the view that was taken by the Andhra Pradesh High Court in *Kangundi Industrial Works (P.) Ltd. v. ITO* [1980] 121 ITR 339, and with respect, I am in full agreement with the same.

The decision of the Bombay High Court in *CIT v. Traub (India) P. Ltd.* [1979] 118 ITR 525, relied on by the petitioner's counsel, is of no guidance on this point as that case turned on the basis of an admission on the part of the department.

In the circumstances, the challenge against Ex. P-4 fails. The O.P. is dismissed. No costs.

High Courts Vol. – Sec.IITAXMANJuly, 1980