

***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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+ I.T.T.A.No.86 of 2004
-

%Date: 10.12.2014

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#Fenoplast Limited, Secunderabad.

...appellant.

and

\$Deputy Commissioner of Income Tax, Hyderabad.

...Respondent.

! Counsel for appellant: Sri C.V.Narasimham

^ Counsel for Respondent : Sri J.V.Prasad

< GIST:

> HEAD NOTE:

? Cases referred

[1] 243 ITR 519 (Kar.)

2 [2011] 330 ITR 0470

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AND

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I.T.T.A.No.86 of 2004

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JUDGMENT: (Per the Hon'ble Sri Justice L.Narasimha Reddy)

The appellant is a Company and it used to file returns under the Income Tax Act, 1961 (for short 'the Act') year after year. For the assessment year, 2001-2002, it filed returns showing 'Nil' income. Being a Company, it is governed by the provisions of Section 115JB of the Act, in case the income determined in accordance with the provisions of the Act for assessment year is below 18.5% of the book profit reflected in the books of account maintained under the Companies Act, the assessable income of the appellant shall be 18.5% of the book profits.

Being under the impression that the liability to pay tax would arise only at the end of the financial year on finalisation of the books of account, the advance tax need not be paid; the appellant did not make such payment for the concerned assessment year. On scrutinising the returns, the Assessing Officer gave an intimation under Section 143(1) of the Act. While all other facts and figures were accepted, it was mentioned that the appellant is liable to pay interest under Section 234B of the Act, being a sum of Rs.2,52,107/- and under Section 234C of the Act, at Rs.70,076/-. The appellant filed an application under Section 154 of the Act for rectification of those figures. It was pleaded that an intimation under Section 143(1) of the Act can be only on acceptance of facts and figures furnished in the returns and there was no basis for making demand of the interest under those two provisions. The application was rejected. Thereupon, the appellant approached the Commissioner of Income Tax (Appeals), by way of appeal, and on dismissal of the same, it filed I.T.A.No.121/Hyd/2004, before the Hyderabad Bench 'B' of the Income Appellate Tribunal (for short 'the Tribunal'). The appeal was

dismissed through order, dated 26.04.2004. Hence, this appeal.

In the memorandum of grounds, only the following question was framed:

“Whether the appellate Tribunal is correct in law in upholding the levy of interest U/s. 234 B and 234 C when assessee did not have any taxable income under regular provisions of the I.T.Act and tax was levied only upon invoking deemed income created by the legal fiction as per provisions of Sec.115 JB of I.T. Act?”

The appellant filed a memorandum with a prayer to permit it to raise additional ground as under:

“Whether the Tribunal was correct in law in upholding the levy of interest under Sec.234B and 234 C in an intimation under Section 143(1), when the issue of such levy of interest in an assessment under Section 115JB was a highly debatable issue?”

We have heard Sri C.V.Narasimham, learned counsel for the appellant, and Sri J.V.Prasad, learned Standing Counsel for the respondent, at length, both on the permissibility of raising additional ground and on merits.

It is, no doubt, true that in a given case, a party to an appeal, can be permitted to raise additional grounds. However, the facts and circumstances must support it. Various aspects that arise out of a return, are dealt with by the Assessing Officer, with reference to the facts and figures mentioned therein as well as relevant provisions of law. In the appeals that are filed against the orders of assessment, or the further appeals, the parties are required to ventilate their grievance in a pointed manner in the form of grounds. The occasion to raise additional ground would arise, only when any development in the form of interpretation of a provision of law or discovery of a fact, which was not in the knowledge at earlier stages, take place.

An additional ground, which did not constitute any basis for the discussion in the appeals filed in the hierarchy, cannot be permitted to be raised at a later stage.

In the instant case, we find that no circumstance whatever that justifies the raising of additional ground is pleaded. Further, the appellant was very much in a position to raise the said ground in the earlier two departmental appeals, and its failure to raise the grounds at that stage, would disentitle it to raise it before us. Hence, we are not inclined to accede to the request.

On merits, the only controversy is as to the entitlement of the department to claim interest under Sections 234B and 234C of the Act. Those two provisions empower the Revenue, to levy interest on the delayed or non-payment of the advance tax. In the instant case, there is no dispute that the appellant did not pay the advance tax. The justification pleaded by the appellant is that being an assessee covered by the provisions of Section 115JB of the Act, it could not have arrived at a conclusion as to the quantum of tax, till the books of account to be maintained under the Companies Act has finalised, on 31st March of the concerned year, and when the very occasion to pay the tax did not arise, there was no question of the appellant being exposed to the liability to pay interest under Sections 234B and 234C of the Act. A contention on these lines was very much accepted by the Karnataka High Court in **Quality Biscuits Co., v. Commissioner of Income Tax**^[1] and the S.L.P. filed against it was dismissed by the Hon'ble Supreme Court.

However, the Supreme Court in **Joint Commissioner of Income Tax v. Rolta India Ltd.**^[2], took the view that even an assessee covered by the provisions of Sections 115JA and 115 JB of the Act is under obligation to pay advance tax and delay or failure

to pay that, would entail in levy of interest. The view taken by the Tribunal totally accords with this. Hence, we do not find any basis to interfere with the order under appeal.

Accordingly the appeal is dismissed. There shall be no order as to costs.

The miscellaneous petitions filed in this appeal shall also stand disposed of.

L.NARASIMHA REDDY, J.

CHALLA KODANDA RAM, J.

Date:10.12.2014
L.R. copy to be marked.
GJ

[\[1\]](#) 243 ITR 519 (Kar.)

[\[2\]](#) [2011] 330 ITR 0470