

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE ASHOK MENON

THURSDAY, THE 1ST DAY OF MARCH 2018 / 10TH PHALGUNA, 1939

ITA.No. 1208 of 2009

AGAINST THE ORDER/JUDGMENT IN ITA 1213(COCH)/2004 OF INCOME TAX APPELLATE  
TRIBUNAL, COCHIN BENCH DATED 24-04-2007

APPELLANT(S)/RESPONDENT/REVENUE

THE COMMISSIONER OF INCOME TAX,  
COCHIN.

BY ADVS.SRI.P.K.R.MENON, SR.COUNSEL, GOI (TAXES)  
SRI.JOSE JOSEPH, SC, FOR INCOME TAX

RESPONDENT(S) :/APPELLANT/ASSESSEE

THE FERTILIZERS AND CHEMICALS TRAVANCORE LTD.,  
UDYOGAMANDAL.

BY ADV. SRI.E.K.NANDAKUMAR (Sr.)  
SRI.P.GOPINATH

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 01-03-2018,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

APPELLANT'S EXHIBITS

ANNEXURE-A : COPY OF ORDER UNDER SECTION 154 DATED 3.9.2003 FOR THE ASSESSMENT YEAR 1996-97.

ANNEXURE-B : COPY OF ORDER DATED 20.9.2004 OF THE COMMISSIONER OF INCOME TAX (APPEALS).

ANNEXURE-C : COPY OF ORDER DATED 24.4.2007 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH IN ITA NO.1213/COCH/2004.

ANNEXURE-A1 : COPY OF ASSESSMENT ORDER UNDER SECTION 143(3) READ WITH SECTION 147 DATED 18.03.2002 FOR THE ASSESSMENT YEAR 1996-97.

//TRUE COPY//

PS TO JUDGE.

jg

'C.R.'

K.VINOD CHANDRAN & ASHOK MENON, JJ.

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ITA No.1208 of 2009  
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Dated this the 1<sup>st</sup> day of March, 2018

**J U D G M E N T**

Vinod Chandran, J.

The Revenue has raised the following questions of law:

“1. whether, on the facts and in the circumstances of the case is not the computation of interest under Section 234 for a period from 27.3.1999 to 18.3.2002 at the rate applicable from time to time in accordance with law?

2. whether, on the facts and in the circumstances of the case and on an interpretation of the relevant provision, the Tribunal is right in law:

(i) in holding that the interest liability of the assessee under Section 234B(3) is for the period from 1.4.1997 to 12.6.1997.

(ii) in interfering with the computation of interest under Section 234B of the Income Tax Act confirmed by the Commissioner of Income Tax (Appeals)?”

2. For the assessment year 1996-97, what is impugned before us is levy of interest under Section 234B(3) of the Income Tax Act, 1961 ('Act', for short). Regular assessment of the assessee under Section 143(3) was completed on 26.3.1999. Interest under Section 243B & C was levied and later that under Section 234B

was reduced considerably. A re-assessment was carried out, under Section 143(3) read with Section 147 dated 18.3.2002. The Assessing Officer did not levy any interest under Section 234B(3), despite there being an increase in the tax liability on re-assessment. Later, by Annexure-A order under Section 154 of the Act, the Assessing Officer levied interest on the enhanced tax component. An appeal was filed to the first appellate authority which stood rejected. The assessee was before the Income Tax Appellate Tribunal ('Tribunal', for short), in which the levy was modified to the extent of directing that the levy would be possible only between 1.4.1997 and 12.6.1997. In fact, the date 12.6.1997 is wrongly stated, since the finding of the Tribunal was that the levy is possible only from 1.4.1997 to the date on which Section 140A tax was paid. The said payment was made on 29.6.1996.

3. The Tribunal reasoned that when tax was paid under Section 140A, due benefit should be given to the same when computing interest under Section 234B(1) and (3). The Tribunal looked into Section 234B(2) to find that the allowance insofar as the reduction of interest to the extent of such interest paid under Section 140A,

has to be permitted even in the case of sub-Section (3) of Section 234B. It was also held that the demand even on re-assessment, was less than that paid under Section 140A, and there could be no claim of interest from the date of payment of tax under Section 140A.

4. Considering the assessment and re-assessment and payment of tax under Section 140A as also the consequential refund, we thought it fit to have the Assessing Officer present before us. The Assessing Officer has provided us a working of the assessment and interest levied across the Bar with notice to the assessee's counsel.

5. We are of the opinion that the interpretation of the provisions by the Tribunal is flawless, but however the same cannot be applied in the case of the assessee. We say so because the amounts paid under Section 140A did not include any interest and the same was refunded on 27.3.1998 with interest. In the regular assessment under Section 143, the total tax computed along with surcharge came to Rs.3,31,30,433/-. The regular assessment was made on 26.3.1999 and the payment under Section 140A of Rs.6,20,06,000/- was on 29.6.1996. However, we see from the assessment order

that even before the regular assessment was completed, the refund as claimed by the assessee even as per the revised assessment on which tax under Section 140A was paid, was made to the assessee with interest, on 27.3.1998. The refund was of Rs.7,26,91,413/-. The balance demand as per the regular assessment was Rs.6,26,58,924/-.

6. On re-assessment as per Annexure-A1, on 18.3.2002, there was again an increase in the tax computation. The total tax computed along with surcharge came to Rs.4,73,80,327/-. Interest claimed under Section 234B in the regular assessment came to more than Rs.4 crores, which we find from the order on re-assessment (Annexure-A1) having been reduced to Rs.18,12,000/-. The balance demand after adjusting the tax paid under Section 140A as also the consequential refund was Rs.3,84,93,240/-. If, as the Tribunal found, the tax paid under Section 140A was less than the revised demand, on assessment or reassessment, there could not have been a further demand.

7. Admittedly, there was a demand raised as per the re-assessment. The flaw committed by the Tribunal was insofar as assuming that the tax paid under Section

140A remained with the Department. Even before the regular assessment, the same was returned with interest on 27.3.1998. Hence, the Department did not have any benefit of the amounts and whatever was paid under Section 140A stood refunded with interest to the assessee. The tax paid by the assessee under Section 140A also did not include any interest. Hence, there was no question of applying sub-Section (2) of Section 234B. On re-assessment after the re-computation of the total income, the tax demand was raised after giving credit of tax paid under Section 140A and also adding on the refund with interest. There again was a demand raised after adjustments.

Under Section 234B(3) on re-assessment if the interest leviable, for reason of short fall in payment of advance tax is increased, then from the first day of April next following such financial year, there shall be interest levied at the rate of 2% on the differential tax component, i.e. the increased demand of tax on such re-assessment, from that assessed as per the regular assessment. As we have noticed, there is definite increase of tax liability from the regular assessment at the time of re-assessment. There is no

dispute that the advance tax payable at 90% of the liability to tax, had not been satisfied. The interest payable under sub-Section (1) of Section 234B was levied in the regular assessment. On re-assessment, the liability for advance tax also stood increased and in that circumstances, the differential tax on re-assessment had to be levied interest at the rate provided under sub-Section (3) of Section 234B. We hence set aside the order of the Tribunal and restore that of the Assessing Officer under Section 154 as confirmed in first appeal. We allow the appeal of the Revenue. The questions of law, in the facts of this case, are answered in favour of the Revenue and against the assessee.

Sd/-  
**K.VINOD CHANDRAN**  
JUDGE

Sd/-  
**ASHOK MENON**  
JUDGE

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