



IN THE HIGH COURT OF DELHI

ITR No.211/80

Date of Decision: 6th December, 2000

The Commissioner of Income-tax
Delhi-I

.....Petitioner

through: Mr.R.C.Pandey with
Ms.Prem Lata Bansal and
Mr.Ajay Jha, Advocates

Versus

M/s.Eskay Electronics (India) Ltd.Respondent

through: None

CORAM:

THE HON'BLE MR.JUSTICE ARIJIT PASAYAT, CHIEF JUSTICE

THE HON'BLE MR.JUSTICE D.K.JAIN

1. Whether reporters of local papers may be allowed to see the judgment ? *Yes*
2. To be referred to the Reporter or not ? *Yes*

ARIJIT PASAYAT, C.J. (Oral)

At the instance of Revenue, the following question has been referred by Income-tax Appellate Tribunal Delhi Bench-B (in short 'Tribunal'), under Section 2561(1) of the Income-tax Act 1961 (in short 'the Act') for opinion of this Court:

"Whether on facts and in the circumstances of the case, the Tribunal is correct in law in holding that interest is payable under Section 214 on the payment of Rs.1.36 lakhs made on 14-1-1975?"

2. Factual position is almost undisputable and is as follows:

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Assessee, a private limited company, filed its return for assessment year 1975-76 for which the previous year ended on 30th April, 1974. Assessee claimed interest under Section 214 of the Act on the ground that advance tax paid by it was in excess of tax payable. Same was disallowed by the Income-tax officer on the ground that last instalment of advance tax of Rs.1,36,000/- was paid late by the assessee. This was due on 15th December, 1973 but, in reality, was paid on 14th January, 1975. Assessee preferred appeal before the Appellate Assistant Commissioner (AAC in short). Being of the view that Income-tax officer was erroneous in his conclusions, AAC allowed the claim. Matter was carried in further appeal by Revenue before the Tribunal. Tribunal affirmed AAC's order and dismissed Revenue's appeal. Though Tribunal accepted Revenue's stand that circulars of the Board dated 1st June, 1965 and 23 July, 1974, relied upon by the AAC, were not very relevant, yet held that a plain reading of Section 214 of the Act shows that assessee's claim was in order. On being moved for reference, the question as stated above has been referred for our opinion.

3. We have heard learned counsel for Revenue. There is no appearance on behalf of assessee in spite of service of notice.

Learned counsel for Revenue submitted that when time stipulation has been fixed by the statute, any payment made beyond the stipulated date does not qualify

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for grant of interest under Section 214 of the Act.

4. Sub-section (1) of Section 214 at the relevant time read as follows:

"214.(1) The Central Government shall pay simple interest at nine 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, and where any such instalment is paid after the expiry of the financial year, during which it is payable by reason of the provisions of section 213, interest as aforesaid shall also be payable on that instalment from the date of its payment to the date of regular assessment:

Provided that in respect of any amount refunded on a provisional assessment under Section 141A, no interest shall be paid for any period after the date of such provisional assessment."

The pivotal expression appearing in the said provision is "the aggregate sum of any instalments of advance tax paid during any financial year in which they are payable under Section 201 to 213". It would, therefore, be clear that reference is made not only to Section 211 of the Act but also to the cluster of provisions referred in sub-section (1) of Section 214. Sections 207 to 213 appearing in Part-C (Advance payment of tax) of Chapter XVII of the Act deal with "Collection and recovery of tax". As was observed by the Full Bench of Andhra Pradesh High Court in *Bakelite Hylam Limited v. CIT* (1993) 202 ITR 145, Sections 207 to 213 provide for advance payment of tax during the financial year, in

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all its facets, for the computation of the tax so payable, for the instalments in which such tax is payable, for the dates on which such instalments are to be paid and in certain cases for the deferment of payment even beyond the financial year. Tax payable in advance is compendiously referred to as 'advance tax'. Therefore, when sub-section (1) of Section 214 refers to Section 207 to 213, there is no justification for looking only at Section 211 as learned counsel for Revenue want us to do and conclude that unless the instalments are paid strictly as per Section 211, interest is not payable under Section 214 on the excess amount of advance tax paid during the financial year. It is to be noted that Section 208 provides that advance tax shall be payable during the financial year. Section 211 deals with instalments of advance tax and due dates. Section 208 deals with conditions of liability to pay advance tax and at the relevant time referred to payment during the financial year, as noted above. We are in agreement with the view expressed by the Full Bench of Andhra Pradesh High Court in Bakelite Hylam's case (supra). Therefore, our answer to the question referred is in the affirmative, in favour of assessee and against Revenue.

The reference stands disposed of accordingly.


CHIEF JUSTICE
D.K. JAIN, J.

6th December, 2000

"v"