



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

ITR NO. 64 OF 1990

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Date of Decision: 26th August, 2010

Escorts Tractors Ltd.

. . . Applicant

Through : Mr. R.M. Mehta, Advocate.

VERSUS

The Commissioner of Income Tax

. . . Respondent

Through: Mr. Sanjeev Sabharwal, Sr.
Standing Counsel.

CORAM :-

**THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MS. JUSTICE REVA KHETRAPAL**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (Oral)

Before we reproduce the question which is referred for our opinion by the Tribunal on the application of the assessee preferred under Section 256 (1) of the Income Tax Act, it is necessary to state certain facts.

1. The assessee is a public limited company and its accounting period for the assessment year 1980-81 ended on 31st December, 1979. The assessee had deposited advance tax in three instalments i.e. on 14th June, 1979, 14th September, 1979 and 14th December, 1979. All these three instalments were of ₹ 15,69,375/- each. However, in terms of sub Section (4) of Section 209 A of the Act, the assessee wanted to

revise the estimate of its income. The last date for this purpose was



13.12.1979 to the Commissioner of Income Tax, Delhi-II see extension of time for submitting the estimate of advance tax under sub Section (4) of Section 209 A of the Act. Time was extended upto 31st January, 1980. The assessee filed an estimated tax on 28.1.1980 estimating to pay ₹ 5 lacs more by way of advance tax. This amount was deposited on 29.1.1980. The assessee also filed return of income for this assessment year declaring total income of ₹15,93,969/-. A provisional assessment under Section 141A was made on the basis of the aforesaid return on 30.12.1980. As per this, tax payable including surcharge amount was determined as ₹ 9,40,829/-. As a consequence thereof, an amount of ₹ 42,66,77/- which was deposited in excess as advance tax became refundable. Interest on this was also to be calculated under Section 214 of the Act. The total refund which was worked out on this basis was ₹ 45,68,132/- which means a sum of ₹ 3,01,336/- was component of the interest payable to the assessee.

3. Regular assessment was completed on 26.9.1983 which resulted in further refund of ₹ 9,41,300/-. Interest under Section 214 on the aforesaid amount was not paid to the assessee. It so happened while computing the refund, the quantum of advance tax paid by the assessee was taken by the department @ ₹ 52,08,125/- Which included ₹ 5 lacs paid on 29.1.1980 in terms of the revised estimate. In essence, interest was not calculated on the said amount of ₹ 5 lacs under Section 214 of the Act. In these circumstances, the assessee filed rectification application under Section 154 of the Act. On this application, the Income Tax Officer passed an order dated 14.11.1983 rejecting the request of the assessee to pay interest on the said amount of ₹ 5 lacs as well. Primarily, two reasons were given for refusing the interest



- (i) The payment of Rs. 5 lacs was made after the due date i.e. 15.12.1979 and for this reason it was not treated as advance tax which could earn interest under Section 214 of the Act;
- (ii) The revised estimates filed by the assessee did not exceed 33 and 1/3rd percent of the over more amount. Therefore it could not be treated as estimate under sub Section 4 of Section 209 A of the Act and thus, the amount of Rs. 5 lacs paid thereupon could not be treated as advance tax paid under Section 207 and 213 of the Act. Additionally the Income Tax officer also opined that since there was two views prevalent as to whether this amount should be treated as advance tax or not, therefore interest was payable thereupon or not, application of Section 164 for rectification was not maintainable and the application dismissed on this ground also. This order has been sustained by the CIT (A) as well as Income Tax Appellate Tribunal.

4. As pointed out above, on the application of the assessee under Section 256 of the Act, only one question is referred to this court for opinion. Now we reproduce that question which reads as under;-

“Whether on the facts and in the circumstances of the case the Appellate Tribunal erred in law in not treating the additional instalment of advance tax amounting to Rs. 5 lacs paid on 29.1.1980 with the permission of the Commissioner of Income tax, Delhi-II, New Delhi under Sec. 212 (3A) as eligible to interest under Section 214 for excess payment of advance tax made in accordance with the schedule prescribed under sections 207 to 213 as laid down under sec. 214 of the Income-tax Act, 1961?”

5. Mr. Sabharwal, learned counsel appearing for the revenue has submitted that any endeavour to go into this question on merit would not serve any purpose even if it is answered in favour of the assessee as the assessee cannot take any benefit therefrom. He has made this submission pointing out that the reason given by the Assessing Officer which is upheld by the higher authorities as well to the maintainability



questioned by the assessee and reference of that question has been sought or made. He thus submitted that when application under Section 154 of the Act is held to be not maintainable, no purpose would be served by answering these questions.

6. We are in agreement with the submissions of the learned counsel for the revenue and, therefore, return the question answered, as it is not going to serve any purpose either way.

(A.K. SIKRI)
JUDGE

(REVA KHETRAPAL)
JUDGE

AUGUST 26th, 2010
skb.