IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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I.T.R. No.80 of 1988
Date of Decision:16.01.2007

The Commissioner of Income-tax, (Central) Ludhiana
.....Petitioner

Vs.

M/s Upper India Steel Mfg & Engg. Co. (P) Ltd., Ludhiana
.....Respondent

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. S.K.Mukhi, Advocate for the petitioner.

Mr. S.K.Garg Narwana, Advocate for the respondent.

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Rajesh Bindal, J.

The following question of law, arising out of order passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, `the Tribunal') in I.T.A. No.895 of 1986 dated 13.7.1987 in respect of assessment year 1982-83 has been referred for opinion of this Court:-

> "Whether on the facts and in the circumstances of the case and on a proper interpretation of the provisions of section 216(a), the Appellate Tribunal was right in law in holding that the assessee was not liable to pay interest u/s 216 in respect of the deficient payment of advance tax in first two instalments for the assessment year 1982-83?"

Briefly, the facts, as noticed by the Tribunal in the statement of case, are that during the previous year, relevant to the assessment year in question, the assessee filed an estimate of advance tax payable, determining its liability at Rs. 46,12,500/-. As required, the advance tax was to be paid in three equated instalments on September 15, 1981, December 15, 1981 and March 15, 1982. As per the estimate filed, the first two instalments of Rs.15,37,500/- each were paid by the assessee before the due dates. However, just close to the last date for deposit of the final instalment on March 15, 1982, the assessee revised estimate of advance tax on March 12,

1982 determining the advance tax liability at Rs.68,88,000/-. The balance amount of advance tax was paid by the assessee with the final instalment. This resulted in short payment of first two instalments of advance tax which would have been of Rs. 22,96,000/- each as against Rs. 15,37,500/- paid by the assessee. As assessee deferred payment of first two instalments, the Assessing Officer charged interest under Section 216 of the Income Tax Act, 1961 (for short, `the Act'). The levy of interest was upheld by the Commissioner of Income-tax (Appeals) (for short, `the CIT(A)'). In appeal by the assessee, the Tribunal held that the interest under Section 216 is to be calculated having regard to the aggregate advance tax actually paid during the year and not instalment wise. Since the assessee had paid the entire advance tax upto the last date, the interest was not held to be chargeable.

We have heard learned counsel for the parties and with their assistance have gone through the paper book.

The Assessing Officer charged interest under Section 216 of the Act by making following observations in the order of assessment:-

> "The assessee instead of filing of statement of advance tax filed an estimate on 14.9.81 estimating income at Rs.75 lacs. This was revised on March, 82 and the income was estimated at 1.12 crores. The comparative details of sales with proceeding year show that there was no decline in business activities. The assessee by filing estimate on 14.9.81 deferred the payments of instalments of advance-tax and as such interest is chargeable which comes to Rs.60680/-." (emphasis supplied)

A perusal of the above observations made by the Assessing Officer clearly shows that in the case in hand, the assessee had under-estimated the instalments of advance tax payable as otherwise comparative details of sales with proceeding year showed that there was no decline in business activities. Even at the time of argument it was not disputed by the learned counsel for the assessee that in the immediately previous year the advance tax paid was more than what was initially estimated by the assessee for the year in question. In fact, the CIT(A) upheld the order clearly recording a finding that it was a case of under estimation of advance tax resultantly reducing the first and second instalment considerably. The

consideration of the point in issue by the Tribunal was not in right perspective. A plain reading thereof would result in rewriting of the provisions of Section 216 of the Act itself when it is observed that the interest under Section 216 has to be calculated having regard to the aggregate advance tax paid during the year and not as per the instalments due at the relevant time. Learned counsel for the revenue is right in contending that there being clear finding by the Assessing Officer as well as CIT(A) that it was a case of under estimation of the instalments of advance tax payable by the assessee, there was no material before the Tribunal to have held otherwise.

Learned counsel for the revenue relied upon judgment of Allahabad High Court in **Upper Doab Sugar Mills Ltd. v. Commissioner of Income-tax**, (2003) 263 ITR 97, to submit that though levy of interest on under-estimation of advance tax by itself may not be sufficient to attract the provisions of Section 216 of the Act for levy of interest if there had been a bona fide mistake, however, in case the assessee fails to furnish any satisfactory explanation, the interest was leviable. Though cited by learned counsel for the assessee, a judgment of Gauhati High Court in **Commissioner of Income-Tax v. Namdang Tea Co. India Ltd.,** (1993) 202 ITR 414 is also to the same effect. Similar are the observations made by a Full Bench of Andhra Pradesh High Court in **Commissioner of Income-Tax v. Rayalaseema Mills Limited**, (1997) 228 ITR 477, wherein also it is observed that in case under-estimation of advance tax is due to under-estimation of income by the assessee or due to any other reason, the provisions of Section 216 of the Act would be attracted.

From the factual matrix as narrated above, which is borne out from the record, it is evident that the assessee never submitted any explanation to show the reason for paying lessor advance tax in first two instalments and the reason for revision of estimation of advance tax at the time of payment of third and final instalment. The assessee was clearly liable to pay interest under Section 216 of the Act as there was clear violation of Section 209A of the Act.

Learned counsel for the assessee tried to explain the issue by stating that the revision of advance tax payable by the assessee at the time of payment of third and final instalment itself showed the bona fide of the

assessee as it came to know of its liability finally at that time. Besides this, he could not refer to any other material on record to substantiate his plea that there was certain spurt in activity or the business of the assessee, which resulted in substantial income arising in the last quarter of the year, after payment of first two instalments. He also could not distinguish the fact that the business of the assessee was being carried on on the same lines as was in the immediately proceeding year and also the fact that in the immediately proceeding year, the advance tax paid by the assessee was more than what was initially estimated for the year in question.

Additionally, non-furnishing of the explanation by the assessee is also evident from a perusal of the order passed by the Assessing Officer simultaneously under the Companies (Profits) Sur-tax Act, 1964 wherein it is specifically recorded that on a comparison of purchase or sales monthwise, for the year in question with the immediately proceeding year, it was found that there was neither any decline in the first six months nor there was any abnormal increase in the last months of the financial year which could form a reason for revision of the advance tax payable by the assessee. It is further specifically recorded therein that no explanation for under estimation of deferred instalments for advance tax was furnished by the assessee in spite of opportunity having been granted.

Learned counsel for the assessee has referred to and relied upon a judgment of Gauhati High Court in **Commissioner of Income-Tax, Lankashi Tea and Seed Estate (P) Ltd.,** (1996) 222 ITR 133 to submit that mere under-estimation of advance tax is not sufficient to charge interest as the authorities are required to see whether under-estimation is made deliberately to reduce the tax burden, only then the provisions of Section 216 of the Act can be invoked. There is no quarrel even with the proposition laid down therein. What we find from a perusal of the findings recorded, in the present case as summaried above, is that there was a deliberate attempt on the part of the assessee to under-estimate the advance tax. Accordingly, the judgment is distinguishable on facts.

In view of our above discussions, the question referred is answered in favour of the revenue and against the assessee and it is held that in the facts and circumstances of the case, the provisions of Section 216 of the Act were attracted, there being deliberate under-estimation of first two

instalments of advance tax, the assessee is liable to pay interest on that account.

The reference is disposed of in the manner indicated above.

(RAJESH BINDAL)
JUDGE

January 16, 2007 **(M.M.KUMAR)**
renu **JUDGE**