

Before Bhopinder Singh Dhillon and G. C. Mittal, JJ.

COMMISSIONER OF INCOME-TAX, PATIALA-II, PATIALA,—
Appellant.

versus

SHRI P. B. NANDA, ROHTAK,—Respondent.

Income Tax Reference No. 93 of 1975.

April 15, 1980.

Income-tax Act (XLIII of 1961)—Sections 140-A, 215(5) and 273 (a)—Tax paid on self-assessment under section 140-A—Credit of such payment—Whether to be given to an assessee in determining the amount of penalty leviable under section 273 (a).

Held, that the reading of the definition of “assessed tax” given in section 215(5) of the Income Tax Act, 1961 shows that for the purpose of calculation of penalty on default committed under section 273(a) assessed tax means such determined tax on the basis of regular assessment reduced by the deductions permissible in accordance with the provisions of sections 192 to 194, section 194-A, section 194-C, section 194-D and section 195. The definition holds good not only for the purposes of section 215(5) but also for purposes of sections 217 and 173 which means the tax determined on the basis of regular assessment in accordance with the provisions mentioned above. If the Legislature wanted to include the amount paid on self-assessment under section 140-A, then it would have so stated in section 215(5) of the Act. The omission to include section 140-A bears out that nothing paid beyond the last date fixed for the payment of advance tax is to be excluded in computing the assessed tax on which penalty is payable. In this view of the matter penalty under section 273(a) of the Act should be levied by reference to the net tax payable on completion of the assessment after giving credit only for the advance tax paid and the tax deducted at source but not for the tax paid on self assessment under section 140-A of the Act. (Paras 4, 5 and 7).

Reference under Section 256(1) of the Income-tax Act, 1961 made by the Income-tax Appellate Tribunal (Delhi Bench) to this Hon'ble Court for its opinion on the following question of law arising out of its order, dated 28th December, 1973 in I.T.A. No. 946 of 1972-73, Assessment Year, 1968-69.

“Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that the penalty u/s.

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273(a) of the I. T. Act, 1961 should be levied by reference to the net tax payable on completion of the assessment after giving credit not only for the advance tax paid and the tax deducted at source but also for the tax paid on self assessment under section 140-A of the I. T. Act, 1961 ?”

D. N. Awasthy, Advocate, for the Petitioner.

S. C. Kapoor, Advocate, for the Respondent.

JUDGMENT

Gokal Chand Mital, J.

1. The Income Tax Appellate Tribunal, Delhi Bench 'B', has referred the following question of law for our opinion :—

“Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the penalty under section 273(a) of the Income Tax Act, 1961, should be levied by reference to the net tax payable on completion of the assessment after giving credit not only for the advance tax paid and the tax deducted at source but also for the tax paid on self assessment under section 140A of the Income Tax Act, 1961 ?”

2. The Appellate Assistant Commissioner of Income Tax, 'A' Range, Rohtak, levied penalty on the assessee under section 273(a) of the Income Tax Act, 1961, (hereinafter referred to as the Act), for the assessment year 1968-69. Against that order, the assessee filed an appeal before the Income Tax Appellant Tribunal (hereinafter called the Tribunal), and the Tribunal by order, dated 28th December, 1973, allowed the appeal partly and ordered that in computing the net tax payable, besides giving credit for the advance tax paid and for tax deducted at source, the tax paid on self-assessment under section 140A of the Act should be excluded for purposes of levying the penalty. The Commissioner of Income Tax sought a reference on the question of law which has been enumerated above.

3. The Tribunal, while dealing with the point in issue before us has stated as follows in its order, dated 28th December, 1973 :—

“The penalty, however, should be levied by reference to the net tax payable on the completion of the assessment

after giving credit not only for the advance tax paid and tax deducted at source but also for the tax paid on self-assessment under section 140A. The penalty should be restricted to 10% of the statutory amount prescribed in section 273 as it was in force on 1st April, 1968 on the lines indicated earlier."

4. Shri D. N. Awasthy, appearing for the Revenue, has urged that the Tribunal gravely erred in law in ordering the exclusion of tax paid on self-assessment under section 140A of the Act in computing the net tax payable for purposes of imposition of penalty under section 273(a) of the Act. While highlighting the argument, he has urged that "assessed tax" has been defined in section 215(5) of the Act and a reading of section 215(5) shows that the definition of "assessed tax" holds good not only for the purposes of section 215(5) but also for purposes of sections 217 and 273, which means the tax determined on the basis of regular assessment (reduced by the amount of tax deductible in accordance with the provisions of sections 192 to 194, section 194-A, section 194C, section 194D and section 195 so far as such tax relates to income subject to advance tax. Therefore, according to him, the assessed tax has to be reduced by the advance tax paid and the deductions permissible under the aforesaid sections, which are mostly deductions at source and the payment of tax by way of self-assessment has not been excluded. A reading of section 273 of the Act shows that it has reference to the definition of "assessed tax", as contained in section 215(5) of the Act and, therefore, for purposes of section 273, the said definition would be fully applicable. Mr. Awasthy has further urged that from a reading of sections 273 and 215(5), no other view is possible and the Tribunal has given no reason why the tax paid under self-assessment has to be excluded.

5. From the scheme of the Act, it is clear that there is deduction of income tax either at source, or it is paid in advance, known as advance tax, the last date for which is by the end of the month of March of the accounting year, and the next is payment of tax on self-assessment, i.e., along with the return, for which the due date may vary from the end of June to the end of July, which would be subsequent to the accounting year, i.e., after the close of the accounting year and at least within the first three months of the assessment year. For all these stages, different considerations prevail and a reading of section 273 along with section 215(5) shows

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that for purposes of calculation of penalty on default committed under section 273(a), assessed tax means such determined tax on the basis of regular assessment reduced by the deductions permissible in accordance with the provisions of sections 192 to 194, section 194A, section 194C, section 194D and section 195 and further subject to advance tax. If the Legislature wanted to include the amount paid on self-assessment under section 140A, then it would have been so stated in section 215(5) of the Act. The omission to include section 140A clearly bears out that nothing paid beyond the last date fixed for the payment of advance tax is to be excluded in computing the assessed tax on which penalty is payable.

6. Section 140A of the Act has no bearing on this aspect of the matter and it only provides for self-assessment. If the tax due is not paid along with the return, then under sub-section (3) the assessee becomes liable to pay penalty. But, this penalty has nothing to do with the imposition of penalty for the default committed under section 273(a) of the Act.

7. Counsel for the assessee could not raise any reasonable argument to take a different view and, therefore, we find that the Tribunal was in error in directing that the tax paid on self-assessment under section 140A should be excluded or credit thereof be given to the assessee in computing the assessed tax for purposes of levying the penalty.

(8) Accordingly, we answer the question in the negative, i.e., in favour of the Revenue and against the assessee and hold that the penalty under section 273(a) of the Act should be levied by reference to the net tax payable on completion of the assessment after giving credit only for the advance tax paid and the tax deducted at source but not for the tax paid on self-assessment under section 140A of the Act. There will be no order as to costs.

Bhopinder Singh Dhillon, J.—I agree.

H. S. B.