

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2014

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND
THE HON'BLE MR.JUSTICE R.KARUPPIAH

T.C.(A).No.601 of 2014

Commissioner of Income Tax
Chennai.

.. Appellant

Vs.

REPCO Home Finance Ltd.
33, North Usman Road
T.Nagar, Chennai – 600 017.

.. Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'D' Bench, Chennai, dated 2.4.2013 made in I.T.A.No.158/Mds/2013 for the assessment year 2009-2010.

For Appellant : Mr.T.R.Senthil Kumar
Standing Counsel

J U D G M E N T
(Delivered by R.SUDHAKAR, J.)

The Revenue has filed this appeal challenging the order of the Income Tax Appellate Tribunal 'D' Bench, Chennai, dated 2.4.2013 made in I.T.A.No.158/Mds/2013 for the assessment year 2009-2010, by raising the following substantial question of law:

(2)

Whether under the facts and circumstances of the case, the Tribunal was right in holding that the date of presentation of cheque in the bank is to be reckoned as the date of payment of advance tax and not the date on which the cheque is cleared and entered in the receipt roll as required under Rule 20 of the Central Government Account (Receipts and Payments) Rules 1983, for the purpose of calculating interest under Section 234C of the Income Tax Act?

2.1. The brief facts of the case are as under: The respondent/assessee is a company engaged in the business of home finance. The assessee filed return of income for the assessment year 2009-2010 admitting Rs.29,44,58,482/- as its total income. The Assessing Officer completed the assessment under Section 143(3) of the Income Tax Act and disallowed a sum of Rs.13,85,199/- applying the provisions of Section 14A of the Act read with Rule 8D of the Income Tax Rules. The Assessing Officer also charged a sum of Rs.28,80,680/- as interest under Section 234C of the Act.

2.2. Aggrieved by the said order, the assessee preferred an appeal to the Commissioner of Income Tax (Appeals), who partly allowed the appeal. With regard to the plea of the assessee regarding charging of interest under Section 234C of the Act, the Commissioner of Income Tax (Appeals) held that the date of presentation of cheque should be treated as date of payment of tax and held no interest under Section 234C of the Act is to be charged. The other plea raised by the assessee were rejected.

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2.3. Assailing the said order, the assessee and the Department preferred appeals before the Tribunal. The Tribunal confirmed the order passed by the Commissioner of Income Tax (Appeals) and dismissed the appeals.

2.4. Calling in question the said order passed by the Tribunal, the Revenue has filed this appeal on the substantial question of law, referred supra.

3. We have heard Mr.T.R.Senthil Kumar, learned Standing Counsel for the Revenue and perused the orders passed by the Tribunal and the authorities below.

4. The core issue to be considered in this case is whether interest under Section 234C of the Act is to be calculated based on date of clearing of the cheque or date of presentation of the cheque.

5. The issue raised in this appeal is no longer *res integra* in view of the decision of the Supreme Court in *Commissioner of Income Tax v. Ogale Glass Works Ltd.*, [1954] 25 ITR 529, wherein it is held as under:

“11. When it is said that a payment by negotiable instrument is a conditional payment what is meant is that such payment is subject to a condition subsequent that if the negotiable instrument is dishonoured on

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presentation the creditor may consider it as waste paper and resort to his original demand: (*Stedman v. Gooch*, ((1791) 1 Esp 5). It is said in *Benjamin on Sale*, 8th Edn. p. 788:

'The payment takes effect from the delivery of the bill, but is defeated by the happening of the condition i.e. non-payment at maturity.'

In *Byles on Bills*, 20th Edn., p. 23 the position is summarised pithily as follows:

'A cheque, unless dishonoured, is payment.'

To the same effect are the passages to be found in *Hart on Banking*, 4th Edn. Vol. I, p. 342. In *Felix Hadley & Co. v. Hadley*, (1898) 2 Ch D 680 Byrne, J. expressed the same idea in the following passage in his judgment at p. 682:

'In this case I think what took place amounted to a conditional payment of the debt; the condition being that the cheque or bill should be duly met or honoured at the proper date. If that be the true view, then I think the position is exactly as if an agreement had been expressly made that the bill or cheque should operate as payment unless defeated by dishonour or by not being met; and I think that that agreement is implied from giving and taking the cheques and bills in question.'

(5)

The following observations of Lord Maugham in *Rhokana Corporation v. Inland Revenue Commissioners, 1938 AC 380* are also opposite:

'Apart from the express terms of Section 33 sub-section 1, a similar conclusion might be founded on the well-known common law rules as to the effect of the sending of a cheque in payment of a debt, and in the fact that though the payment is subject to the condition subsequent that the cheque must be met on presentation, the date of payment, if the cheque is duly met, is the date when the cheque was posted.'

In the case before us none of the cheques has been dishonoured on presentation and payment cannot, therefore, be said to have been defeated by the happening of the condition subsequent, namely, dishonour by non-payment and that being so there can be no question, therefore, that the assessee did not receive payment by the receipt of the cheques. The position, therefore, is that in one view of the matter there was, in the circumstances of this case, an implied agreement under which the cheques were accepted unconditionally as payment and on another view, even if the cheques were taken conditionally, the cheques not having been dishonoured but having been cashed, the payment related back to the dates of the receipt of the cheques and in law the dates of payments were the

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dates of the delivery of the cheques."

(emphasis supplied)

6. The above said view of the Supreme Court was reiterated by a recent decision of the Supreme Court in *Director of Income Tax v. Raunaq Education Foundation*, (2013) 2 SCC 62.

7. It is not the case of the department that the cheque issued by the assessee was dishonoured. Once the cheque issued by the assessee is encashed, in the light of the decisions referred supra, the payment relates back to the date of receipt of the cheque.

For the foregoing reasons, we find no question of law, much less substantial question of law, for consideration in this appeal. Accordingly, this appeal is dismissed.

(R.S.J.) (R.K.J.)
11.11.2014

Index : Yes
Internet : Yes

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To:

1. The Assistant Registrar,
Income Tax Appellate Tribunal
Chennai Bench "D", Chennai.
2. The Secretary, Central Board
of Direct Taxes, New Delhi.
3. The Commissioner of Income Tax
(Appeals)-IV, Chennai.
4. The Joint Commissioner of Income Tax
Company Range V (i/c), Chennai.

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R.SUDHAKAR,J.
and
R.KARUPPIAH,J.

(sasi)

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