

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.100 OF 2002

Bennett Coleman & Co. Ltd.]
a Company incorporated under the Companies]
Act, 1956, having its registered office at]
Times of India Building, Dr. D. N. Road, Mumbai]
Mumbai – 400 001.] ... Appellant

Versus

1. The Deputy Commissioner of Income Tax,]
Special Range 18, Mumbai.]
2. The Commissioner of Income Tax,]
City III, having his office at Aayakar Bhavan]
M. k. Marg, Mumbai - 400 020.] ... Respondents

Mr. J. D. Mistri, Senior Advocate a/w Mr. Jas Sanghavi, Advocate i/b PDS
Legal for Appellant.

Mr. P. C. Chhotaray, Advocate, for Respondents.

CORAM :- K. R. SHRIRAM &

AMIT B. BORKAR, JJ.

RESERVED ON :- 03 DECEMBER, 2021

PRONOUNCED ON :- 20 DECEMBER, 2021

ORAL JUDGMENT : (PER : AMIT B. BORKAR. J.) :-

1. In this appeal under Section 260-A of the Income Tax Act, 1961, three questions of law have been formulated, these being as follows:

- (i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that a fresh assessment which has been made by the Assessing Officer to give effect to the directions of the Commissioner of Income Tax under Section 263 of the Act setting aside the original

assessment, would constitute a 'regular assessment' for purposes of section 215 of the Act ?

- (ii) Whether on the facts and in the circumstances of the case and in law, the Assessing Officer is entitled to charge interest under Section 215 of the Act despite the fact that the assessment order does not contain any direction that such interest would be charged ?

- (iii) Whether on the facts and in the circumstances of the case and in law, the Tribunal ought to have held that in the light of the Judgment of this Hon'ble Court in the case of CIT Vs. Bennett Coleman & Co. Ltd. [217 ITR 216] and in the light of the finding in the order dated 20th March, 1989 passed under Rule 40(1) of the Rules that the delay in finalisation of the assessment was not attributable to the Appellant, the Assessing Officer was not justified in waiving only the interest chargeable for a period exceeding one year and he ought to have waived the entire interest ?

2. The Appeal, in this case, arises out of an order dated 30th August 2001 passed by the Income Tax Appellate Tribunal for Assessment Year 1985-86.

3. In respect of the assessment year 1985-86, on 4th September 1985 the Appellant filed return of income, disclosing a total income of

Rs.1,53,41,650/-. The Assessing Officer passed an assessment order dated 28th March 1988 under Section 143(3) of the Act and, after making various additions and disallowances to the income returned by the Appellant, assessed a total income of Rs.2,74,47,780/-. In the assessment order, the Assessing Officer, *inter alia*, directed interest under Section 215 of the Act to be charged. The Assessing Officer levied interest of Rs.13,67,999/- under Section 215 of the Act vide the computation sheet.

4. Being aggrieved by the action of the Assessing Officer in charging interest under Section 215 of the Act, the Appellant filed an application dated 8th July 1988 for waiver of interest under Section 215(4) of the Act read with Rule 40 of the Income-tax Rules, 1962 (the Rules). The Deputy Commissioner of Income Tax passed an order dated 20th March 1989 under Rule 40(1) of the Rules holding that the delay in finalisation of the assessment was not attributable to the Appellant and waived the interest under Section 215 of the Act beyond one year of the filing of the return of income. The Deputy Commissioner of Income Tax accordingly re-calculated the interest chargeable under Section 215 at Rs.4,13,630/- and waived the balance of Rs.4,40,020/-.

5. The Appellant received a show cause notice dated 6th March 1990 under Section 263 of the Act from the Commissioner of Income-tax.

The Appellant filed its objections by letter dated 26th March 1990, objecting to the proposed action. The Commissioner of Income-tax passed an order dated 30th March 1990 under Section 263 of the Act setting aside the assessment in its entirety with directions to the Assessing Officer to reframe the assessment after proper verification and application of mind.

6. In compliance with the order under Section 263 of the Act, the Assessing Officer passed a fresh assessment order dated 9th March 1992 under Section 143(3) of the Act read with Section 263 of the Act. The Assessing Officer gave effect to order dated 30th March 1990 by making certain additions and disallowances and computed the income of the Appellant at Rs.4,04,37,692/-. There was no direction in the said order regarding the charging of interest under Section 215 of the Act. However, in the computation sheet annexed to the said order, an interest of Rs.23,91,413/- under Section 215 had been charged. The Assessing Officer had also charged interest under Section 139(8) of the Act.

7. Being aggrieved by the various additions and disallowances made and the interest under Sections 215 and 139(8) levied by the Assessing Officer, the Appellant filed an appeal before the Commissioner of Income Tax (Appeals). The said appeal was disposed of by the Commissioner of Income Tax (Appeals) vide an order dated 28th

September 1992 holding that interest could not be charged under Sections 215 or 139(8) unless it has been charged earlier or it falls within the meaning of Sections 215(3) or 139(8)(b) of the Act.

8. Being aggrieved by order of the Commissioner (Appeals) with regard to the issue of levy of interest under Section 215, the Assessing Officer filed an appeal before the Tribunal. While challenging said order, the Assessing Officer accepted that part of the order of the Commissioner (Appeals), which deleted the levy of interest under Section 139(8) of the Act and confined the Appeal to the deletion of interest under Section 215(6) of the Act. The Tribunal by impugned order restored interest levied by assessing officer by way of computation sheet annexed to the said order.

9. We have heard Mr. J. D. Mistri, Senior Advocate for Appellant. He submits that Question of Law No.(i) is covered by the Judgment of Supreme Court in the case of ***Modi Industries Ltd. And Others Vs. Commissioner of Income-Tax And Another***¹ wherein it has been held that the phrase “regular assessment’ in the Income Tax Act has been used in no other sense than the first order of assessment passed under Section 143 of 144 and any consequential order passed by the Income Tax

1 [1995] 216 ITR 759

Officer giving effect to subsequent order passed by higher authority, cannot be treated as regular assessment. He further submitted that in the regular assessment, there was no direction to charge interest under Section 215, and therefore in the re-assessment order, interest cannot be charged. By inviting our attention to the order dated 28/03/1989 passed by Deputy Commissioner of Income Tax, Bombay (Exh. C), he submitted that the said authority had waived interest beyond the period of one year of the filing of return in a proceeding challenging direction to pay interest as per Section 215 of the Act. He placed reliance on the Judgment of this Court in the case of *CIT Vs. Bennett Coleman & Co. Ltd.* (*supra*) in support his submission that under Rule 40(1) of the Income Tax Rules, 1962, interest levied under Section 215 cannot be partially waived but needs to be entirely waived.

10. *Per contra*, Mr. Chhotaray, learned Counsel for Revenue, fairly accepted as an officer of the Court that the word “regular assessment” needs to be interpreted as the original assessment. He submitted that if the Appellant is seeking waiver of interest, the Appellant was required to file a new application for waiver after the order of re-assessment and in the absence of such application, the Tribunal was justified in restoring the order of Assessing Officer directing Appellant to pay interest as per Section 215 of the Act.

11. We have heard the parties and perused the material on record. Section 215 of the Act makes it clear that the Assessee is required to pay interest where he has paid advance tax less than 75% of the assessed tax, the Assessee is required to pay simple interest @ 15% p.a. from the first day of April following the financial year up to the date of regular assessment.

12. The Supreme Court has summed up in the case of *Modi Industries Ltd. (Supra)* by saying that the expression “regular assessment” has been used in the Income Tax Act in no other sense than the first order of assessment under Section 143 or 144. Any consequential order passed by the Income Tax Officer to give effect to an order passed by the higher authority cannot be treated as a regular assessment.

13. For assessment year 1985-86, returned total income of Appellant was Rs.1,63,41,650/-. In the regular assessment proceeding completed on 28/03/1988, the total income was determined at Rs.2,74,47,780/- and interest under Section 215 of the said Act amounting to Rs.13,67,999/- was charged. In the Appeal filed by the Assessee, the amount of interest was reduced to Rs.8,53,650/-. In the facts of the case, since the interest under Section 215 was charged in the regular assessment order, the Assessing Officer had the power to charge interest under Section 215 of the Act, while carrying out reassessment.

14. Section 215(4) empowers the Assessing Officer to waive or reduce the amount of interest chargeable under section 215 under circumstances prescribed in rule 40 of the Income Tax Rules, 1962. One of such prescribed circumstance is :-

- (1) *When without any laches or delay on the part of assessee, the assessment is completed more than one year after the submission of the return; or*
- (2)
- (3)
- (4)

15. In the light of facts of the case, Deputy Commissioner of Income Tax, Bombay, by order dated 20/03/1989 in the exercise of power under Rule 40 of Income Tax Rules, held that delay in finalization of assessment is not attributable to Assessee and therefore the Assessee is not liable to pay interest under Section 215 of the Act beyond the period of one year from the date of filing of return. Accordingly, the Appellant was held to be liable to pay an amount of Rs.4,40,020/-. The order of Dy.CIT, Bombay, dated 20/03/1989, has not been challenged by Revenue or Appellant, with the result said order attained finality. In the absence of challenge to the order under Rule 40(1) of IT Rules, the Appellant is not entitled to the benefit of Judgment of Division Bench of this Court in the case of *CIT Vs. Bennett Coleman & Co. Ltd. (supra)*. Therefore Appellant is not entitled to waiver of interest for a period of one year. Appellant is

entitled to the benefit of order dated 20/03/1989 passed under Rule 40(1) only to the extent stated therein.

16. We are, therefore, of the view that the Appellant was liable to pay an amount of Rs.4,13,630/-as per order dated 20/03/1989 annexed to this Appeal at Exh.C. The questions are answered accordingly.

17. Appeal stands disposed accordingly.

(AMIT B. BORKAR, J.)

(K. R. SHRIRAM, J.)