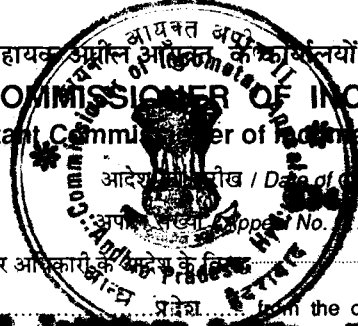


आयकर आयुक्त (अपील)/सहायक अपील आयुक्त के कार्यालयों में
IN THE OFFICE OF THE COMMISSIONER OF INCOME-TAX
(Appeals)/Appellate Assistant Commissioner of Income-tax

Sri S. L. Reddy, IAS
Commissioner of Income-tax
(Appeals-II), Hyderabad.



11-3-1996
आदेश नंबर / Date of order: **136 & 137/ITO-2(2)/CIT(A)**
अपील नंबर / Appeal No.: **11/95-96**

..... में आयकर अधिकारी के आदेश के विरुद्ध को दायर किया गया।
Instituted on the **11-3-1996** from the order of Income-tax officer/Inspecting

(Sri S. Jagannadh Reddy, ITO-2(2), Hyderabad.)

Assistant Commissioner of Income-tax.

- (1) कर निर्धारण वर्ष/Assessment Year
- (2) अपीलार्थी का नाम/Name of Appellate
- (3) आय जिस पर कर निर्धारण किया गया है/Income assessed
- (4) मांगा गया कर $\frac{\text{आयकर}}{\text{अधिकर}}$ शास्ति/जुर्माना
Income-tax Super-tax Penalty/Fine demanded
- (5) धारा जिसके अधीन आदेश जिसके विरुद्ध अपील की गई है पास किया गया था
Section under which order appealed against was passed

1989-91, 91-92 & 92-94

Satishchandra Modi main IAS
S-4-107/3, Subbaraj Nagar,
H.C. Road, Hyderabad.

Rs. 1,25,000/-, Rs. 7,32,350/- & Rs. 19,300/-
Rs. 60,000/-, Rs. 5,91,257/- & Rs. 74,744/-

136

सुनवाई की तारीख
Date of hearing
अपीलार्थी की ओर से उपस्थित
Present for Appellant
विभाग की ओर से उपस्थित
Present for Appellant Department

14-3-1996

Sri A. Jay C. Reddy, C.A.

अपील आदेश और विनिश्चय के आधार
APPELLATE ORDER AND GROUND OF DECISION

136

ITA.No.113/HD-1(1)/CHA-1/77-22

The present appeal pertains to certain order passed under sec.154. Shri Ajay C. Dutta, C.A., attended and heard.

2. It is seen that the appellant was a partner in M/s. Neera Industries. The firm M/s. Neera Industries has filed certain application under sec.343C(1) before the Settlement Commission and Settlement Commission has passed certain order in the case of the said firm vis-a-vis the application so filed for the purpose of settlement. In view of this, the concerned authority was of the view that the appellant was liable to interest under sec.343D(6) of the I.T. Act, 1961, and since while revising the income of the appellant by way of share income vis-a-vis the order of the Settlement Commission in the case of M/s. Neera Industries such an interest was not charged, it was a mistake apparent from record and accordingly a notice under sec.154 for the purpose of rectification was issued. A reference is made in the impugned order to the contents of the notice on the basis of which the rectification was proposed. Appellant objected to the proposed rectification in regard to levy of interest under sec.343D(6) on the ground that the appellant as an assessee has not approached the Settlement Commission under sec.343C and, therefore, the charging of interest vis-a-vis the provisions of sec.343D(6) is unwarranted. It has not objected to it being a partner in the said concern or the concern M/s. Neera Industries having filed a petition under sec.343C(1) before the Settlement Commission or the order having been passed in the case of M/s. Neera Industries by the Settlement Commission and the appellant having accepted enhanced share of income from M/s. Neera Industries as per the order of the Settlement Commission and having paid the taxes on the enhanced income. A reference in this regard is given in the impugned order and the concerned authority was not willing to accept the objection so put forth by the appellant in regard to the proposed rectification on account



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ITA No. 122/1973-74(2)/471(2)-11/73-74

of not charging of interest under sec.245B(6) of the I.T.Act, 1961. It is stated that the appellant has accepted the enhanced share income and also to pay the tax and interest on the income as determined by the Settlement Commission. The application before the Settlement Commission is made by partners of the firm and the additional tax on the enhanced share income has been paid and even if the appellant has not made a separate application before the Settlement Commission, the levy of interest is well warranted in as much as it is the partner of a firm who makes the application before the Settlement Commission after having consented to the income as offered for the purpose of settlement as also for paying the tax on the income to be determined by the Settlement Commission. In view of this and certain other facts referred to in the impugned order, appellant was held liable for interest under sec.245B(6) of the I.T. Act, 1961, and since it was not charged while revising the share income vis-a-vis the order of the Settlement Commission, in the case of the firm M/s.Shree Industries, the mistake was rectified by charging of interest under sec.245B(6A).

3. Appellant feels aggrieved. The grievance of the appellant is more or less the same as set forth in the course of proceedings under sec.154 before the concerned authority and the crux of the appellant's contention is that the provisions of sec.245B(6) are applicable only to the entity which makes an application before the Settlement Commission and it cannot be extended to others by way of any implication in as much as the provisions of law as contained in the said section are crystal clear. It is also stated that the firm and its partners are two separate and independent entities and if the firm has made certain application before the Settlement Commission, the partner cannot step into the shoes of the firm as if having made said application and thereby being liable for interest under the said section. It has also referred to certain other facts as also certain judicial decisions in support of its plea



ITA No. 122/199-2(2)/IT(A)-II/15-94

as per the written submission. It is also stated in the alternative that the provisions of sec.154 could not have been made applicable in as much as non-levy of interest under sec.209(6A) is not a mistake liable to be rectified under sec.154. It has also referred to certain other facts in this regard as per the grounds of appeal, the statement of facts etc. Hence, the charging of interest, being unjust, may be deleted.

4. After due consideration of the different facts involved in the present appeal, it appears that the plea of the appellant is well based and there was no justification at all in subjecting the appellant to levy of interest under sec.209(6A) of the I.T.Act, 1961, for the purpose of rectifying the mistake. As per the provisions of sec.209(6A), if the tax payable in pursuance of an order under sub-sec.4 is not paid by the assessee within 35 days of the receipt of the copy of the order by him, then the assessee becomes ^{liable} liable to pay simple interest at 15% per annum on the amount remaining unpaid from the date of the expiry of the period of 35 days. A bare reading of the provisions so contained in this sub-section would indicate that for the purpose of becoming liable to pay the simple interest as referred to therein, the default comes into picture if the tax payable is not paid by the assessee and the assessee would be an entity which has moved an application for the purpose of settlement before the Settlement Commission. It is the firm M/s.Nara Industries wherein the appellant was a partner which has moved an application before the Settlement Commission and, therefore, it is the firm M/s.Nara Industries which alone could be construed as an assessee and by no stretch of imagination, the partners of the said firm could have been considered as an assessee for the purpose of being liable to pay interest under the said sub-section. The firm and its partners are two separate and independent entities and even if firm is a

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ITA No. 121/199-2(2)/ITA(A)-11/95-96

consolidation of different persons/partners for the purpose of income-tax, the firm and its partners are separate and independent entities and, therefore, there was no locus standi at all in considering the appellant which was a partner in the said firm as being liable for interest under the said sub-section on account of the application before the Settlement Commission having been not filed by the appellant but by the firm M/s. Neera Industries. It may be that the application by a firm is invariably moved by one of the partners but the application so moved by the partner is on behalf of the firm and not on its own behalf. If it is so, the application so moved before the Settlement Commission by the firm M/s. Neera Industries could not have been considered as an application moved by the partner in an independent manner so as to rely in the provisions of sec. 200(2) for the purpose of levy of interest as referred to therein. The provisions contained in sub-section are very specific and clear in terms and since the application before the Settlement Commission was moved by the firm, M/s. Neera Industries, which was a separate and independent entity and not by the appellant in an independent manner, the provisions of the said sub-section could not have been made applicable to the appellant merely on account of its having a share income from the said concern. The appellant being a partner in the said concern was duty bound to pay the tax etc., on the enhanced share income vis-a-vis the order of the Settlement Commission in the case of the firm but merely on account of this, the provisions of the said sub-section could not have been stretched to such an extent by presuming that the appellant in the capacity of a partner was equally liable for the levy of interest. Apart from this, the provisions of sec. 154 appear to be equally inapplicable. The provisions of sec. 154 apply for rectification of a mistake which is patent, obvious and glaring. A mistake to be patent, glaring and obvious should be free from any controversy or debate and a controversial issue or a debatable issue cannot



FR.No.121/20-2(2)/CIT(A)-II/15-94

be considered to be a mistake apparent from record under the provisions of sec.154 as held by the Supreme Court in the case of Walcott Brothers as also by various other judicial decisions. Any issue which can be thrashed out by recourse to a process of logical reasoning would constitute a debatable issue and the issue as to whether the firm and its partners are identical entities or stand on different footings can be thrashed out only by taking a recourse to a process of logical reasoning. Hence, it would constitute a debatable issue and, therefore, it could not have been brought into ambit of section 154 for the purpose of any rectification. In view of all this, the levy of interest under sec.245D(2A) appears to be totally unwarranted and stands deleted.

5. **Appeal is allowed.**



Sd/-
(S.L. Rao)
Commissioner of Income Tax
(Appeals-II), Hyderabad.

Copy of the Order Forwarded to.

1. Appellant with D. N.
2. I. T. O. with records,
3. CIT. A.P. Hyderabad.
4. IAC. of Incometax.

Steens
Commissioner of Incometax,
(Appeals-II), Hyderabad.