

**IN THE HIGH COURT OF KARNATAKA
AT BANGALORE**

ITA No.79/2006

**(1) COMMISSIONER OF INCOME TAX
C R BUILDING, QUEENS ROAD, BANGALORE**

**2) JOINT DIRECTOR OF INCOME TAX
SPECIAL RANGE-4, C R BUILDING
QUEENS ROAD, BANGALORE**

Vs

**M/s SHETRON LIMITED
26/3A, SANKEY ROAD, BANGALORE**

Manjula Chellur and L Narayana Swamy, JJ.

Dated: November 22, 2010

Appellant Rep by: Sri K V Aravind, Adv.

Respondents Rep by: Sri A Shankar & M Lava, Advs.

JUDGEMENT

Heard the learned counsel for the revenue and so also the learned counsel for the respondent/assessee.

2. We are concerned with the assessment year 1992-93. For this assessment year, the respondent/assessee had filed returns as early as on 28.12.1992 showing his net income as Rs.21,25,981/- and the tax payable Rs.12,11,809/-. Subsequently, by order dated 27.3.1995 assessment came to be made under section 143(3). By that time, section 34-A(4) came into effect w.e.f. 1.4.1992. This section 34-A(4) is an exception to section 234 (B) & (c) of the Act which requires payment of interest on the delayed payment of tax and also interest on the shortfall of advance tax. In the present case, by virtue of order dated 27.3.1995 no deficits whatsoever came to be found so far as quantum of brought forward loss of the tax already paid by the assessee. Subsequently, by virtue of an order dated 26.3.1999 there seems to be some change in the quantum of total set off for the assessment year 1991-92. Consequently, quantum of amount under section 34-A(1) came to be altered. Therefore, the Department made a rectification of the earlier assessment order dated 27.3.1995 and held that the respondent/assessee has to pay interest under section 234B amounting to Rs.17,94,060/- and another sum of Rs.38,123/- under section 234C. Aggrieved by the said order, an appeal came to be preferred by the respondent/assessee before the appellate authority. The said appeal came to be dismissed by order dated 30.3.2001. Aggrieved by the said order, the assessee approached the Tribunal in ITA No.647/Bang/2001 and cross-objections No.70/Bang/2001. The Tribunal accepted the contention of the appellant and held that at the time of filing of the returns on 29.12.1992, the assessee would not have anticipated the alteration of the amounts so far as set off pertaining to assessment

year 1991-92. Therefore, the tax payable by him on the return income as on 29.12.1992 was paid on time. Therefore, question of levy of interest would not arise in view of compliance of sub-section (4) of section 34-A. Aggrieved by this order of setting aside the levy of interest, the revenue is before us.

3. The following substantial questions of law were raised in the above appeal:

1. Whether the Tribunal was correct in holding that no interest under section 234B and 234C was leviable in the case of the assessee as the provisions of section 34A (4) of the Act override the provisions of section 234B and 234C of the Act, since the assessed taxes had been paid before the due date for filing the return?

2. Whether the Tribunal is correct in holding that no interest under section 234B and 234C can be computed only up to the date of regular assessment i.e, upto 27.03.1995 and not up to 30.9.1999 i.e., the date on which rectification order under section 154 of the Act came to be passed.

4. From the perusal of the original order of assessment dated 27.3.1995 under section 143(3) and the rectification order dated 30.3.1999 we note that but for the order dated 26.3.1999 there would not have been difference in the net taxable income declared by the assessee in the original returns filed in 1992. Even at the time of orders under section 143 (3), no interest either under section 234B or section 234C was imposed. This would only go to show that on the returned income shown in the returns, the was paid in time and there was no shortfall or delay on payment of tax so far as the respondent/assessee for assessment year 1992-93 is concerned.

5. In the present case, the total income assessed was Rs.21,25,981/-. This income became taxable because of denial of unabsorbed investment allowance and unabsorbed depreciation allowance to the extent of 1/3rd of such amount. When such amounts came to be restricted to an extent of 2/3rd of such amount, automatically Rs.21,25,981/- would be enhanced by virtue of provision of Section 34-A. In other words but for Section 34A so far as the assessment year 1992-1993 is concerned, the assessee was not required to pay any tax on the original return income. By virtue of the order dated 26.03.1999 the set off pertaining to the previous years came to be altered. Consequently the unabsorbed allowances that were required to be shown for the year 1992-1993 became altered. This happened only in the year 1999, obviously the assessee was not expected to guess, imagine or presume such an alteration in the years to come which is almost seven years later than the return of income filed by the assessee. Therefore the Tribunal was justified in saying that as on the date of return of income filed on 29.12.1992, there was neither delayed payment of tax nor short fall of tax payable as income tax. In that view of the matter, we are of the opinion the substantial questions of law have to be answered against the revenue.

Accordingly the appeal is dismissed.