

Landmark Judgements of Supreme Court on Section 245 [Set off of refunds against tax remaining payable]

SLP dismissed against High Court ruling that where demand was raised against assessee and intimation was sent, mandate of section 245 was satisfied by revenue before making adjustment of tax due for subsequent years against refund payable to assessee for an earlier year

Setting off against tax due (Condition precedent) - Huge amount was refundable to assessee for earlier assessment year. As there was tax demand for subsequent assessment year, notice for adjustment under section 245 was issued to set off amount of refund. High Court by impugned order held that where demand was raised against assessee and intimation was sent, mandate of section 245 was satisfied by revenue before making adjustment of tax due for subsequent years against refund payable to assessee for an earlier year. SLP against said impugned order was to be dismissed. [In favour of revenue] (Related Assessment years : 2012-13 and 2013-14) - [*Northern Coal Fields Ltd. v. ACIT (2017) 250 Taxman 155 : 85 taxmann.com 78 (SC)*]

Assessee company which was wound up was assessed to tax for year 1948-49 and claim of ITO in respect of tax due was adjudged as ordinary claim - Official liquidator paid a sum against claim made by ITO as ordinary creditor but balance still remained payable - Assessee paid advance-tax for relevant year on demand but assessment was made at a lower figure - ITO instead of refunding excess tax paid sought to set it off under section 49E of 1922 Act against tax unpaid for year 1948-49 - High Court held that demand in respect of assessment year 1948-49, being adjudged and certified, came to have all incidents and character of an unsecured debt payable by official liquidator to department and therefore, provision of section 49E of 1922 Act, was not available to department for setting off amount of excess towards balance of its claim - Once claim of department has to be proved and is proved in liquidation proceedings, department cannot by exercising right under section 49E of 1922 Act get priority over other unsecured creditors - High Court was right in holding that ITO was in error in applying section 49E of 1922 Act and setting off refund due

Sections 245 of the Income-tax Act, 1961 [Corresponding to section 49E of the Indian Income-tax Act, 1922] read with section 228 and 229 of the Indian Companies Act, 1913 - Set off of refunds against tax remaining payable - The respondent was a private limited company and was directed to be wound up by an order dated 11.10.1950, and a court liquidator was appointed as the official liquidator thereof. For the assessment year 1948-49, the respondent was assessed on 08.12.1950, the ITO lodged a claim in respect of the tax with the official liquidator. That claim was adjudged and allowed as an ordinary claim. Later the official liquidator declared a dividend of 9½ annas in a rupee and paid to the income-tax department a sum against the claim made by the ITO as an ordinary creditor and a balance still remained payable to the income-tax department from the assets of the respondent.

For the year 1955-56, the department made a demand from the respondent for a sum of Rs. 2,56,560 as advance tax. That was paid by the official liquidator. On a regular assessment being made for the said year, only Rs. 1,12,612 was assessed as payable by the respondent. After adjusting that sum against the advance payment a sum became refundable to the respondent, inclusive of interest. Instead of refunding the said balance to the respondent, the ITO set off the said amount against the balance which was still outstanding in respect of the income-tax demand for the year 1948-49. The Commissioner rejected the revision petition

field by the respondent holding that the action of the ITO was perfectly justified under the provision of section 49E of the 1922 Act.

On write, the High Court held that the demand in respect of the assessment year 1948-49, being adjudged and certified, came to have all the incidents and character of an unsecured debt payable by the official liquidator to the department. The claim was no longer the amount of tax remaining payable by a person to whom the refund was due within the meaning of section 49E of the 1922 Act and, therefore, the provision of section 49E of the 1922 Act, was not available to the department for setting off the amount of the refund towards the tax remaining payable. On appeal :

The effect of statutory provisions of sections 228 and 229 of the Companies Act, 1913, is inter alia, that an unsecured creditor must prove his debts and all unsecured debts are to be pari passu. Therefore, once the claim of the department has to be proved and is proved in the liquidation proceedings, the department cannot by exercising the right under section 49E, of the 1922 Act get priority over the other unsecured creditors. If there is an apparent conflict between two independent provisions of law, the special provision must prevail. Section 49E of the 1922 Act, is a general provision applicable to all assesseees and in all circumstances; sections 228 and 229 of the 1913 Act, deal with the proof of debts and their payment in liquidation. Section 49E of the 1922 Act, can be reconciled with sections 228 and 229 of the 1913 Act, by holding that section 49E of the 1922 Act, applies when insolvency rules do not apply. Accordingly, agreeing with the High Court, it was held that the ITO was in error in applying section 49E of the 1922 Act, and setting off the refund due. The Commissioner was equally in error in affirming that order. [In favour of the assessee] (Related Assessment year : 1955-56) – [*Union of India v. India Fisheries (P) Ltd. (1965) 57 ITR 331 (SC)*]