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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 1447/2018

PRINCIPAL COMMISSIONER
OF INCOME TAX-7 ..... Appellant

Through : Mr. Kunal Sharma, Senior Standing Counsel for Revenue along with Mr. Shrey Nargotra, Advocate.

versus

PUNJAB & SIND BANK, ... Respondent

Through : Mr. Sumit Lalchandani and Mr.Tarun Chanana, Advocates.

% Date of Decision: 4th August, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMEET PRITAM SINGH ARORA, J (Oral):

1. The present appeal has been filed by Revenue-Appellant impugning the order dated 29th June, 2018, passed by the Income Tax Appellate Tribunal (hereinafter referred to 'ITAT') in ITA No. 5486/Del/2014 for the Assessment Year ('AY') 2001-02.

2. Briefly stated the facts are that initially, the income of assessee i.e. the respondent herein was assessed at Rs.73,17,35,961/- vide an order dated 19th January, 2010. Consequent to the above, a demand for payment of interest

under Section 234D(2) and Section 220(2) of the Income Tax Act, 1961 ('the Act') was raised by Revenue on the respondent herein. However, upon subsequent re-computation of the income *vide* an order dated 3rd February, 2010, passed under Sections 154/250/143(3) of the Act, the income of the assessee was assessed at Rs.40,88,00,550/- after setting-off brought forward losses for AY 1996-1997. Consequently, as a result of the reduction of taxable income, the respondent herein was entitled to refund of sum deposited as interest under Section 234D and Section 220 (2) of the Act. The assessee was held entitled to refund of a sum of Rs.1,66,46,933/- under Section 234D and a sum of Rs.1,99,131/- under Section 220(2) of the Act.

3. The respondent was, however, aggrieved by non-grant of 'interest' on the aforesaid order of refund under Sections 234D and 220(2) of the Act . The Respondent therefore filed an appeal before the Commissioner of Income Tax (Appeals) ['CIT(A)'] against the said order on the ground that the Assessing Officer ('AO') has erred in not granting interest under Section 244A of the Act on the refund granted. The CIT(A) dismissed the appeal of the respondent, relying upon the judgment of the Supreme Court in the case of ***Commissioner of Income Tax, Gujarat vs. Gujarat Fluoro Chemicals*** reported in ***(2014) 1 SCC 126***. The CIT(A) concluded that the claim of 'interest' by the respondent for the refund amounts to 'interest on interest' and held that it is beyond the scope of Section 244A of the Act.

4. The respondent aggrieved by the aforesaid order of the CIT(A) filed an appeal before the ITAT, which allowed the appeal placing reliance on the judgment of the Division Bench of this Court in the case of ***Preeti N Aggarwala v. Chief Commissioner of Income Tax & Anr.*** reported in ***[2017] 394 ITR 557(Del)*** and a judgment of a Coordinate Bench of the

ITAT, Ahmedabad in the case of ***ACIT v. Alembic Glass Industries Ltd.*** reported in ***111 ITD 320 (Ahd)***. The ITAT held that the respondent is entitled to interest under Section 244A(1)(b) of the Act on the sum refunded to the assessee on recomputation, as a result of the reduction of its taxable income.

5. The learned counsel for the Revenue states that the ITAT has erred in awarding interest on the refund as the same amounts to grant of 'interest on interest', which is beyond the scope of Section 244A of the Act. He further states that the ITAT erred in placing reliance on the judgment of ***Preeti N Aggarwala (supra).*** In this regard**,** he placed reliance upon the order passed by the predecessor Division Bench of this Court in the case of ***Sutlej Industries Limited vs. CIT in ITA No. 493/2003*** dated 6th January, 2016, referring the issue of entitlement of an assessee to interest under Section 244A of the Act on the amount of self assessment tax paid, which becomes refundable upon assessment. He contends that the issue of interest on refund granted under Section 234D and Section 220(2) of the Act in the present proceedings is similar to the said issue. The learned counsel contends that since the said reference is still pending before a larger Bench, the ITAT should have awaited the judgment of the larger bench and it erred in awarding interest by relying on the judgment of ***Preeti N. Aggarwala (supra)***.

6. He also placed reliance on the judgment of the Supreme Court in ***Gujarat Fluoro Chemicals Limited (supra)*** to contend that, it is only the interest provided under Section 244A of the Act, which can be claimed by an assessee from the Revenue. No other interest is payable on the refund of the sum found due and payable to the respondent herein. The learned

counsel contended that the since the refund is of the statutory interest deposited by the assessee, the sum directed to be refunded by AO is interest.

7. *Per contra*, the learned counsel for the respondent had relied upon the judgment of this Court in ***Preeti N Aggarwala (supra).*** He also relied upon the order of the Supreme Court dated 12th December, 2019 in ***Civil Appeal No. 3826 of 2012*** in ***M/s Universal Cables Ltd. v. Commissioner of Income-Tax, Jabalpur*** to contend that the Supreme Court has held therein that the Revenue is liable to pay interest on *any amount* recovered or collected during the assessment proceedings and which is subsequently found liable to be refunded to the assessee.

8. He also relied upon the judgment of the Bombay High Court in ***Stock Holding Corporation of India Ltd. v. N.C. Tewari, Commissioner of Income-tax, Mumbai City-III [2015] 53 taxmann.com 106 (Bombay)***, wherein the Court has held that the Revenue is liable under Section 244A(1)(b) of the Act to pay interest upon refund of tax deposited by the assessee on self assessment. The Bombay High Court relied upon the judgment of this Court in ***CIT v. Sutlej Industries Ltd.*** reported in ***[2010] 325 ITR 331 (Delhi),*** wherein it was held that interest is payable from the date of payment of tax on self assessment to the date of repayment of the amount under Section 244A of the Act.

9. We have heard the learned counsel for the parties. The contention of the learned counsel for the Revenue that the issue arising in the present appeal must await the judgment in the reference made to the larger Bench in ***Sutlej Industries Limited vs. CIT in ITA No. 493/2003 (2016) (supra)*** has no merit. The subject matter of the said reference is with respect to entitlement of the assessee to interest on the refund of the amount of self

assessment tax. The Division Bench made the said reference in view of the conflicting decisions of this Court in ***CIT v. Sutlej Industries Ltd. [2010] 325 ITR 331 (Delhi)*** and ***CIT v. Engineers India Limited*** reported in ***2015 373 ITR 377 Delhi***. The question of law framed by the Court while making the said reference makes this plainly evident. The issue arising in the present proceedings admittedly does not pertain to refund of self-assessment tax and interest thereon.

10. In the present case, as noted above, the subject matter of refund is the payment collected by Revenue towards interest under Section 234D and Section 220(2) of the Act. The said payment was made by assessee consequent to a demand raised upon the assessee by the Revenue. The said demand upon re-computation has since been found to be incorrect and the AO has directed refund to the assessee. The subject matter of the proceedings is grant of interest on the refund found due and payable to the assessee. The ITAT has directed payment of interest on the said refund.

11. The contention of the Revenue that since the refunded amount was deposited by the assessee towards 'interest' due to the Revenue, any award of interest on the refund would amount to 'interest on interest' is factually incorrect. The amount which has been directed by AO to be refunded to the assessee under Section 234D and Section 220(2) of the Act is not 'interest' in the hands of the assessee i.e. the recipient. The refund amount does not bear the character of 'interest' either in the hands of the assessee i.e. the payee or in the hands of the Revenue i.e. the payer. In this regard, it would be relevant to refer to the definition of 'interest' under Section 2(28)A of the Act, which reads as under :

"2(28A) "interest" means interest payable in any

manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised;"

12. The payment of refund by Revenue to assessee admittedly does not satisfy either of the twin conditions set out in the definition clause and it is therefore not interest, as sought to be contended by the Revenue.

13. The sum directed to be refunded to the assessee is a debt in the hands of the Revenue and therefore for Revenue to term 'payment of this debt' as 'interest' is fallacious. Infact, it is on the payment of this debt that the assessee is demanding that Revenue should be liable to pay interest for the period that Revenue retained the said money. The assessee is therefore seeking interest on the debt owed to it by the Revenue and not 'interest on interest' as sought to be contended by the Revenue.

14. In this regard, it would also be relevant to refer to definition of 'refund', as it appears in the Oxford English Dictionary, Fifth Edition, Volume 2, N-Z : which reads as under :

*"**refund***
[Old French refonder or Latin refundere, formed as RE- + fundere pour; later based on FUND verb.]
***1** verb trans. **a** Pour back, pour in or out again. Now rare or obsolete. LME. **b** Give back, restore. Now rare. LME. **c** PHILOSOPY. Put back into something antecedent. rare. L17.*
***2 a** verb trans. Return or repay (a sum of money); hand back. M16. **b** verb in trans. Make repayment. M17. **c** verb trans. Reimburse or repay (a person).*

<u>M18</u>.
2a *Smart Set Warranted to cure in thirty days or money refunded.* ***c*** *J.M. LUDLOW A proposal to refund him out of the Treasury.*

[Emphasis Supplied]

15. The said definition explains that the payment of refund made by the Revenue is return of money to the assessee and the same does not bear any character of interest and therefore, the contention that the award of interest granted by ITAT on said refund amounts to 'interest on interest' is untenable.

16. The predecessor Division Bench of this Court in the judgment of ***Preeti N. Aggarwala (supra)*** had deliberated on the issue of grant of interest under Section 244A(1)(b) of the Act on the refund of money collected by the Revenue under the head 'interest' under Section 220(2A) of the Act and has held that the assessee is entitled to interest on the sum found refundable to the assessee, as a result of waiver of interest. The relevant portion of the aforessaid judgment reads as under :

> *22. The aforesaid decision in Union of India v. Tata Chemicals Limited (supra) is clear in its enunciation that even if there is no express statutory provision for payment of interest, the government cannot avoid its obligation to reimburse the lawful monies "together with accrued interest" for the period of "undue retention". Once it is clear that Section 244A(1)(b) of the Act which talks of "any other case" does not have to be interpreted restrictively and can include situations like in the present case, then it is evident that there is nothing in the said provision which prohibits the payment of interest on an amount of refund due to the Petitioners as a result of the waiver*

of interest under Section 220(2A) of the Act. The circular of the CBDT dated 26th April 2016 accepts the above proposition laid down in Union of India v. Tata Chemicals Limited (supra) in its entirety.

23. The sum found refundable to the Petitioners as a result of the waiver of interest order passed by the CCIT is a definite sum that was wrongly deducted from the Petitioners as interest. Payment of interest on that sum by the Revenue cannot be characterised as payment of 'interest on interest'. In India Trade Promotion Organization v. CIT (supra) the question before the Court concerned the denial of interest on refund. It was clarified that "if the refund does not include interest due and payable on the amount refunded, the Revenue would be liable to pay interest on the shortfall. This does not amount to payment of interest on interest."

17. The predecessor Division Bench in coming to the aforesaid conclusion, referred to the expression '*in any other case*' in Section 244A(1)(b) of the Act to hold that Revenue is liable to pay interest on the sum found refundable to an assessee, upon waiver of interest. In the facts of the present case too, a sum has admittedly been found refundable to the assessee as a consequence of reduction in the taxable income. The relevant text of Section 244A(1)(b) of the Act reads as under :

"Interest on refunds.

244A. (1) Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner namely :-

(a) xxx xxx xxx

(aa) xxx xxx xxx

*(b) **in any other case**, such interest shall be calculated at the rate of one-half per cent for every*

month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted."

[Emphasis Supplied]

18. The learned counsel for the Revenue has not disputed that the payment of interest by the respondent under Section 234D and Section 220(2) of the Act was in pursuance of the demand raised by the Revenue, which demand subsequently has been found to be incorrect and the money has become due and payable by the Revenue to the assessee.

19. It would be relevant to note here that in the judgment of ***Preeti N. Aggarwala (supra)***, the predecessor Division Bench took note of the pending reference to the larger Bench in ***Sutlej Industries Limited vs. CIT in ITA No. 493/2003 (supra)*** and observed that the issue involved in the said reference pertains to refund of excess self assessment tax whereas, the issue determined in the judgment in ***Preeti N. Aggarwala (supra)*** was payment of interest on the amount of refund payable to the assessee under Section 220A of the Act. The issue arising in the present appeal is authoritatively answered by the predecessor Division Bench in ***Preeti N. Aggarwala (supra)*** and we do not find any substance in the contention of the learned counsel for the Revenue that present appeal must await the decision of the larger Bench.

20. In this regard, it would be instructive to refer to the judgment of the Supreme Court in the case of ***Union of India v. Tata Chemicals Ltd. reported in (2014) 6 SCC 335*** which reads as under :

"25. Before the insertion of Section 244-A as a

composite section by the Direct Tax Laws (Amendment) Act, 1987, the liability to pay interest on refund of pre-paid taxes was contained in Section 214, 243 read with Section 244 (1-A) of the Act. Parliament has introduced a new section in the place of Sections 214, 243 and 244 in respect of assessment for the Assessment Year 1989-1990 and onwards.

26. The language of the section is precise, clear and unambiguous. Sub-section (1) of Section 244-A speaks of interest on refund of the amounts due to an assessee under the Act. The assessee is entitled for the said amount of refund with interest thereon as calculated in accordance with clause (a) & (b) of sub-section (1) of Section 244-A. In calculating the interest payable, the section provides for different dates from which the interest is to be calculated.

xxx xxx xxx

37. A "tax refund" is a refund of taxes when the tax liability is less than the tax paid. As per the old section an assessee was entitled for payment of interest on the amount of taxes refunded pursuant to an order passed under the Act, including the order passed in an appeal. In the present fact scenario, the deductor/assessee had paid taxes pursuant to a special order passed by the assessing officer/Income Tax Officer. In the appeal filed against the said order the assessee has succeeded and a direction is issued by the appellate authority to refund the tax paid. The amount paid by the resident/deductor was retained by the Government till a direction was issued by the appellate authority to refund the same. When the said amount is refunded it should carry interest in the matter of course. As held by the Courts while awarding interest, it is a kind of compensation of use and retention of the money collected unauthorisedly by the Department. When the

collection is illegal, there is corresponding obligation on the Revenue to refund such amount with interest inasmuch as they have retained and enjoyed the money deposited. Even the Department has understood the object behind insertion of Section 244-A, as that, an assessee is entitled to payment of interest for money remaining with the Government which would be refunded. <u>There is no reason to restrict the same to an assessee only without extending the similar benefit to a resident/deductor who has deducted tax at source and deposited the same before remitting the amount payable to a non-resident/foreign company</u>.

38. Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the aforesaid amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing statute. ***Refund due and payable to the assessee is debt-owned and payable by the Revenue****. The Government, there-being no express statutory provision for payment of interest on the refund of the excess amount/tax collected by the Revenue, cannot shrug of its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. ....****The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party which ex ae quo et bono ought to be refunded, the right to interest follows, as a matter of course****.”*

(Emphasis Supplied)

21. The said judgment was also followed by the Supreme Court in the case of ***Universal Cable (supra)*** to hold that there is reason to deny payment

of interest to the deductor who has deducted the tax at source and deposited the same with the treasury. The Supreme Court rejected the submission of the Revenue that interest can only be granted to an assessee under Section 244A of the Act and not to a deductor of the tax at source.

22. The judgment of the Supreme Court in the case of ***Gujarat Fluoro Chemicals (supra)*** arose on issue as regards payment of interest in the event of the failure of Revenue to refund the interest payable within the statutory period. The Supreme Court held that it is the interest provided under the statute which may be claimed by an assessee from the Revenue and no other interest on statutory interest is payable.

23. In the present case, as noted above, the assessee has been found entitled to refund of money deposited by it upon re-computation by the Revenue and interest thereon is liable to be paid under Section 244A(1)(b) of the Act as held by this Court in ***Preeti N. Aggarwala (supra)***.

24. In view of the aforesaid discussion, we do not find any infirmity in the order passed by the ITAT and we do not find any substantial question of law in the present appeal and the same is accordingly dismissed.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

AUGUST 4, 2022
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