

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 20804 of 2023**

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M/S SAHIL TOTAL INFRATECH PVT. LTD.

Versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 2(1)(2), SURAT &
ORS.

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Appearance:

MR. BHAUMIK DHOLARIYA(7009) for the Petitioner(s) No. 1

KARAN G SANGHANI(7945) for the Respondent(s) No. 1,2,3

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CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE D.N. RAY**Date : 24/02/2025****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. This Court passed the following order on 30/01/2025:

“1. Heard learned advocate Mr. Aditya Ajgaonkar through video conference with learned advocate Mr. Bhaumik Dholariya for the petitioner and learned Senior Standing Counsel Mr. Karan G Sanghani for the respondents.

2. At the outset learned advocate Mr. Aditya Ajgaonkar submitted that pursuant to the notice issued by this Court on 19.12.2023, the petitioner has received refund of Rs.2,20,41,042/- through ECS on 25.01.2024.

3. It was submitted that the petitioner is also entitled to interest for delayed payment of refund which the petitioner was eligible pursuant to Form-5 issued being the order for full and final settlement of tax arrear under section 5(2) read with section 6 of the Direct Tax Vivad Se Vishwas Act, 2020 dated 07.12.2021. It was

submitted that the petitioner received the outstanding refund after almost two years and therefore, the petitioner is entitled to the interest on the delayed payment of refund.

4. *It was submitted that as the petitioner did not receive the refund, grievance was raised by the petitioner on the public grievance platform on the Income Tax Portal on 15.07.2022 after waiting for a reasonable time for getting the refund from the respondents.*

5. *It was submitted that after the petitioner was having the validated bank account with the HDFC bank it was closed on 12.07.2022. It was pointed out that however the petitioner opened the bank account with Union Bank of India and put a request in the month of May 2022 and put a request for validation of the same on the portal.*

6. *Learned advocate Mr. Ajgaonkar referred to page no.43 of the petition to point out that validation request was made on 21.05.2022 and the account was validated on 20.10.2022 as per the screen-shots.*

7. *It was further pointed out that grievance raised by the petitioner on 15.07.2022 was resolved on 02.09.2022 by the portal stating that the Jurisdictional Assessing Officer passed the manual order dated 26.07.2022 with refund of Rs.2,20,41,042/- and the refund could not be deposited for the reason that the bank account was closed.*

8. *The petitioner thereafter again raised the grievance on 28.12.2022 stating that the account has been validated by the petitioner and another grievance was also raised on 29.12.2022 which was resolved directing the petitioner to contact the Jurisdictional Assessing Officer as ITR/Rectification right was transferred.*

9. *The petitioner thereafter raised grievances on 30.12.2022, 05.01.2023 and 06.01.2023 whereby the*



petitioner's grievance was resolved and the grievance was closed on portal without any resolution directing the petitioner to approach the Jurisdictional Assessing Officer.

10. *The petitioner thereafter once again validated the account with the Union Bank of India on portal on 28.02.2023. The petitioner thereafter raised another grievance on 14.03.2023 and the same was also resolved stating that the amount of refund of Rs.2,20,41,042/- was sent to OLTAS for outward transmission to refund banker on 06.04.2023 and would be credited in the bank account of the petitioner.*

11. *Learned advocate Mr. Ajgaonkar for the petitioner further submitted that inspite of resolution of the grievance intimated to the petitioner on 17.04.2023, the petitioner did not receive the refund. The petitioner thereafter preferred an appeal for not getting refund inspite of reply dated 17.04.2023 stating that the petitioner was not getting refund for past one year. However, the appeal was closed on 21.08.2023 intimating that Jurisdictional Assessing Officer has uploaded manual order under section 5(2) on 26.07.2022 determining refund of Rs.2,20,41,042/- and the said refund was paid on 28.04.2023 to tax payer's account number ending with 0088. It was submitted by learned advocate Mr.Ajgaonkar that the petitioner had already closed the said account with the HDFC bank and new account was validated twice in the year 2022 as well as in March, 2023 and inspite thereof, it was wrongly stated in the closing remark at page 51 of the paper book that refund was paid in the account number ending with 0088 on 28.04.2023 which the petitioner could not have received as the said account was closed in the month of July, 2022. It was therefore submitted that the petitioner was constrained to file this petition in the month of November, 2023 and after issuance of notice by this Court on 19.12.2023, amount of refund of Rs.2,20,41,042/- is credited through ECS. It was therefore, submitted that there was no failure on part of the petitioner to validate the bank account at-least from May, 2022 and the petitioner is entitled to the interest*



on the amount retained by the respondents since May, 2022 or at-least from October, 2022 when the bank account of the petitioner is validated on portal.

12. *In support of his submissions, reliance was placed on the following decisions:*

1) *Decision of Hon'ble Apex Court in case of **Union of India v. Tata Chemicals Ltd.** reported in (2014) 43 taxmann.com 240(SC).*

2) *Decision of Hon'ble Delhi High Court in case of **Mrs. Anjul v. Office of Principal Commissioner of Income Tax** reported in (2022) 145 taxmann.com 140 (Delhi).*

3) *Decision of Hon'ble Bombay High Court in case of **UPS Freight Services India (P) Ltd. v. Deputy Commissioner of Income Tax** reported in (2023) 156 taxmann.com 489 (Bombay)*

4) *Decision of Hon'ble Rajasthan High Court in case of **Dwejesh Acharya v. Income tax Officer** reported in (2023) 157 taxmann.com 332 (Rajasthan)*

13. *On the other hand learned Senior Standing Counsel Mr. Karan Sanghani for the respondents submitted that as per Explanation to section 7 of the Direct Tax Vivad Se Vishwas Act, 2020, the petitioner is not entitled to interest on the refund as per provisions of section 244A of the Income Tax Act, 1961. It was therefore, submitted that the petitioner is not entitled to any interest on the refund as claimed by the petitioner.*

14. *However learned Senior Standing Counsel Mr. Sanghani has prayed for time to place on record as to why case of the petitioner was transferred to Jurisdictional Assessing Officer in the year 2022 when there is no dispute with regard to the amount of refund to be payable to the petitioner. It was further submitted that order passed by the Jurisdictional Assessing Officer on 26.07.2022 is also not on record. Learned Senior Standing Counsel Mr. Sanghani also is therefore,*



required to file an affidavit of the jurisdictional Assessing Officer and the concerned officer who has closed the appeal by the closing remarks dated 21.08.2023 to explain in detail as to why the amount of refund was not paid to the petitioner in time and the same was paid only after the notice was issued by this court in the month of December, 2023 so as to determine the question of payment of interest for the delayed payment of refund by the respondents.

Stand over to 24th February, 2025."

2. In compliance of the aforesaid order, learned Senior Standing Counsel Mr. Karan G. Sanghani for the respondents has placed on record the additional affidavit-in-reply on behalf of respondent no.1. The same is ordered to be taken on record.

3. Referring to the additional affidavit-in-reply, it was submitted by learned Senior Standing Counsel Mr. Karan Sanghani that Jurisdictional Assessing Officer passed and uploaded the manual order in the ITBA system on 12/05/2022 which was accounted on CPC 26/07/2022 with refund of Rs.2,20,41,042/- and the refund was issued by the CPC and therefore nothing is pending before the Jurisdictional Assessing Officer.



4. It was further submitted that the petitioner did not validate the bank account with the CPC as such the refund could not be paid to the petitioner. It was therefore submitted that no interest is payable to the petitioner up to the date when the account was validated by the system.

5. Learned Senior Standing Counsel Mr. Karan Sanghani also referred to the averments made in the additional affidavit-in-reply regarding the steps taken by the petitioner for validation of the bank account for depositing the refund. It was submitted that as the petitioner validated the bank account on 03/09/2023 refund was released from CPC on 24/01/2024 and was credited in the bank account of the petitioner on 29/01/2024.

6. It was therefore submitted that the petitioner is not entitled to any interest on the refund amount either under the DTVSV Act, 2020 or under Section 244 of the Income Tax Act, 1961.

7. On the other hand, learned advocate Mr. Aditya Ajgaonkar with Mr. Bhaumik Dholaria for the petitioner



submitted that the petitioner has been vigilant for refund which has arisen under the DTVSV Act, 2020, which is not in dispute as per the order giving effect dated 12/05/2022 passed by the Jurisdictional Assessing Officer.

8. It was therefore submitted that the petitioner is entitled to the interest on the amount of the refund which was sanctioned as per the order giving effect dated 12/05/2022.

9. Learned advocate for the petitioner therefore reiterated the submissions made on 30/01/2025 before this Court and heavily relied upon the decision of the Hon'ble Supreme Court **in case of Union of India vs. Tata Chemicals Limited reported in (2014) 363 ITR 658 SC.**

10. Having heard learned counsel for the respective parties, this Court requested both the sides to give calculation of the interest to be paid, if any, at the rate of 6% per annum to the petitioner by the respondent. Accordingly, learned Senior Standing Counsel Mr. Karan Sanghani has given computation of amount of interest payable at the rate of 6% per annum for twenty months from 01/06/2022 to 31/01/2024 amounting to



Rs.22,04,104/- on total amount of refund of Rs.2,20,41,042/-.

11. Hon'ble Apex Court in case of **Tata Chemicals Limited** (**supra**) while considering the issue of payment of interest has held as under:

"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 unauthorizedly by the Department. When the collection is illegal, there is corresponding obligation on the revenue to refund such amount with interest in as much as they have retained and enjoyed the money deposited. Even the Department has understood the object behind insertion of Section 244A, as that, an assessee is entitled to payment of interest for money remaining with the Government which would be refunded. 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.



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-owed and payable by the Revenue. The Government, therebeing no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. 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."

12. It is true that the petitioner is not entitled to interest under Section 244A of the Income Tax Act, 1961, however, when the petitioner has opted for direct tax for Vivad se Visvas Scheme 2020 and filed the application which was approved by the designated authority and refund order is also passed as per the said scheme on 12/05/2022 by the Jurisdictional Assessing Officer, the petitioner was entitled to the interest on the amount of refund till the same was paid to the petitioner. The respondents are therefore liable to pay the interest on the amount of refund which is withheld in view of



the decision of the Hon'ble Supreme Court as reproduced herein above.

13. In such circumstances, without considering whether it is a fault on part of the petitioner to validate the bank account or whether any negligence on part of the respondents for not releasing the amount of refund, we direct the respondents to pay the amount of interest at the rate of 6% per annum as per the calculation provided to us amounting to Rs.22,04,104/- for twenty months from 01/06/2022 to 31/01/2024 considering the entire month on amount of Rs.2,20,41,042/- within a period of three months from the date of receipt of copy of this order.

14. With the aforesaid observation and direction, the petition is disposed of. Notice is discharged.

(BHARGAV D. KARIA, J)

(D.N.RAY,J)

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