



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA Nos. 39, 27, 29, 32, 38, 31, 33, 37, 26,
28, 34, 36 and 30/2009

%

Reserved on : October 06, 2009
Pronounced on : October 30, 2009

1. ITA Nos. 38/2009, 39/2009, 27/2009, 29/2009, 32/2009

The Motor & General Finance Ltd. . . . Appellant

through :

Mr. O.S. Bajpai, Sr. Advocate
with Mr. V.N. Jha and
Mr. B.K. Singh, Advocates

VERSUS

Commissioner of Income Tax-VI, New Delhi . . . Respondent

through :

Ms. Prem Lata Bansal, Advocate

2. ITA Nos. 31/2009, 33/2009, 37/2009

MGF India Ltd. . . . Appellant

through :

Mr. O.S. Bajpai, Sr. Advocate
with Mr. V.N. Jha and
Mr. B.K. Singh, Advocates

VERSUS

Commissioner of Income Tax-VI, New Delhi . . . Respondent

through :

Ms. Prem Lata Bansal, Advocate

3. ITA Nos. 26/2009, 28/2009, 34/2009, 36/2009

Goodwill (India) Ltd. . . . Appellant

through :

Mr. O.S. Bajpai, Sr. Advocate
with Mr. V.N. Jha and
Mr. B.K. Singh, Advocates



4. ITA No. 30/2009

MGM (India) Ltd.

... Appellant

through :

Mr. O.S. Bajpai, Sr. Advocate
with Mr. V.N. Jha and
Mr. B.K. Singh, Advocates

VERSUS

Commissioner of Income Tax-VI, New Delhi

... Respondent

through :

Ms. Prem Lata Bansal, Advocate

CORAM :-


THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

For orders, see ITA No. 35/2009.


(A.K. SIKRI)
JUDGE


(SIDDHARTH MRIDUL)
JUDGE

October 30, 2009

nsk



58

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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28, 34, 36 and 30/2009

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Pronounced on : October 30, 2009

1. ITA Nos. 38/2009, 39/2009, 27/2009, 29/2009, 32/2009, 35/2009

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1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

Yes

A.K. SIKRI, J.

1. These appeals are preferred by few assesseees, including Motor & General Finance Ltd. and Goodwill India Ltd. The appeals also relate to different assessment years, but the question involved in all these appeals is singularly common, namely, whether on the facts and circumstances of the case the Income Tax Appellate Tribunal (hereinafter referred to as the 'Tribunal') was correct in law in holding that the appellant was not entitled to the interest by way of compensation to be calculated for "every month or part of the month" on the amounts of taxes paid from the date of actual



as defined in the judgment of the Supreme Court in the *Sandvik Asia Ltd. v. Commissioner of Income Tax I, Pune & Ors.*, (2006) 2 SCC 508 where the entire or almost entire additions and disallowances made by the Assessing Officer (AO) stand ultimately deleted wiping out the entire or almost entire additional demand so created. In essence the assessee is claiming interest on interest by way of compensation on the premise that the interest amount was wrongfully withheld by the respondent.

2. For the sake of convenience, the synopsis and the facts as they appear in ITA No. 35/2009 are taken note of.
3. This appeal is filed by Motor & General Finance Ltd., which relates to the assessment year 1994-95. The assessee had filed its return of income tax showing a particular income. Tax payable had been paid in the form of TDS and advance tax. On the basis of income tax return filed, tax payable was less than what was already paid in the form of TDS and advance tax and, therefore, refund was claimed. An intimation under Section 143(1)(a) of the Act had been passed and refund, along with interest, under Section 254A of the Act had been issued to the assessee. It was paid within the time prescribed under the Act. Subsequently, the assessment had been completed under Section 143(3) of the Act in which various additions had been made. Demand was raised on the basis of those additions and the tax, as



Income Tax (Appeal). The CIT(A) deleted many additions t
reducing the demand made in the assessment order. Even at that
time, certain demands were still due which were paid by the assessee
in instalments. The assessee filed further appeal before the Tribunal.
In this appeal, the Tribunal granted certain more reliefs. Though
after the orders of CIT(A) the tax demand was reduced, but even as
per that order, some more amounts were still payable as the assessee
was paying the tax demanded in instalments as a result of assessment
order. However, after the orders of the Tribunal, the assessee
became entitled to refunds. These refunds were granted to the
assessee, along with interest, after giving effect to the orders of the
Tribunal. All these payments towards refund, along with interest,
were given within statutory period.

4. Subsequently, the assessee filed an application under Section 154 of the Act submitting that he was to be paid interest on interest as well. This plea was predicated on the submission that when almost entire additions and disallowances made by the AO were ultimately deleted and wiped out by the Tribunal, the amount of tax paid by the assessee on the basis of assessment order was wrongly demanded. The payments, thus, made were retained by the Income Tax department without justification. Therefore, the interest which accrued thereupon was also retained and, in these circumstances, on



5. The aforesaid application of the assessee was dismissed by 1

However, the CIT(A) allowed the application and directed payment of interest upon interest. In appeal preferred by the Revenue, the Tribunal has reversed the decision of the CIT(A) holding that no such interest is payable.

6. Counsel for both the parties concede that the principles laid down in the decision of the Supreme Court in *Sandvik Asia Ltd.* (supra) would govern the outcome. It is the interpretation and effect of that judgment which is to be examined.

7. Before adverting to the principle of law enunciated in the said judgment, it would be necessary to scan through the facts of that case on which the judgment of the Supreme Court is founded.

8. For the assessment years 1977-78, 1978-79, 1981-82 and 1982-83, the appellant company was found to be entitled to refund of advance tax. On the amount consequently refunded, it claimed interest under Sections 214 and 244(1-A) of the Act. Some disputes arose in that regard but ultimately, the Supreme Court by its order dated 30.4.1997 directed the CIT to reconsider the matter in the light of *Modi Industries Ltd. case*, (1995) 6 SCC 396. Pursuant thereto, the assessing officer passed an order on 27.3.1998 paying certain amounts under Sections 214 and 244(1-A) of the Act by way of



the ground that as the monies were refunded on the direction of the Supreme Court, the question of granting interest for the period the matter was sub judice did not arise. The appellant then approached the High Court which also rejected its prayer on the ground that there was no provision in the Act for payment of interest on interest. The appellant thereafter filed the appeals before the Apex Court.

In support of its claim to interest on interest, the appellant assessee contended before the Supreme Court that it was entitled to interest @ 15% p.a. on the total amount of refund included the interest accrued thereon from the day such refund amount became due and payable till the date of actual payment in terms of Section 214(1), 214(1-A) and 244(1-A) read with Sections 240 and 244(1) of the Act. That the appellant was entitled to compensation by way of interest on the delay in the payment of amounts lawfully due to the appellant but withheld wrongly and contrary to law by the Department for an inordinately long period of up to 17 years. During the period of delay, the Department had enjoyed the benefit of these funds while the appellant was deprived of the same. Therefore, even on general principles, the appellant was entitled to be compensated for such deprivation. The appellant added that in *Narendra Doshi case*, (2004) 2 SCC 801 it was held that having accepted the Gujarat High Court decisions, the Department was bound by the same.



- (a) Though the issue that the assessee was entitled to interest covered by the decision of the Gujarat High Court and that decision was accepted by the department, no interest was given to the assessee for 17 years.
- (b) Though the amount was refunded, the interest which became payable on the refunded amount under Sections 214 and 244(1)(a) of the Act, was refunded after a delay of 12 to 17 years. As the amount of interest was not refunded on time, interest upon interest was claimed.

10. In the aforesaid context, the Supreme Court held that the withholding of monies/interest was unjustified and wrongful and interest on interest in case of delayed payment was admissible. The Court was also of the view that the Act recognizes the principle that a person should only be taxed in accordance with law and hence whether excess amounts of tax are collected from the assessee or any amounts are wrongfully withheld from the assessee without the authority of law, the Revenue must compensate the assessee. It noted that the word '*any amount*' appearing in Section 240, in contra-distinction to the words '*tax paid in excess*' appearing in Section 237 of the Act would encompass interest as well. Significantly, the cases relate to the period prior to 1.7.1989 and, therefore, the Supreme Court also held that proviso to Section 240,



11. It would, thus, be seen that in the said case the Court has a the general principle applicable to the income tax refunds also, namely, the assessee has to be compensated for ordinary delay in receiving monies properly due to it. Following observations in this behalf are made :-

"Learned counsel for the appellant says that it cannot be denied that it has been deprived of the use of its monies for periods ranging from 12 to 17 years. It also cannot be denied that such deprivation is solely due to the actions of the Revenue which have been held by this court to be contrary to the provisions of the Act, on general principles it ought to be compensated for such deprivation.

xx xx xx

In the impugned order, the Bombay High Court has held that no compensation is required to be paid since there was a serious dispute between the parties, which was ultimately ordered to be paid pursuant to the order passed by this court on April 30, 1997. Undisputedly, the amount pursuant thereto was paid on March 27, 1998....

xx xx xx

The facts and the law referred to would clearly go to show that the appellant was undisputably entitled to interest under sections 214 and 244 of the Act as held by the various High Courts and also this court. In the instant case, the appellant's money had been unjustifiably withheld by the department for 17 years without any rhyme or reason. The interest was paid only at the instance and the intervention of this Court in Civil Appeal No. 1887 of 1992 dated April 30, 1997. Interest on delayed payment of refund was not paid to the appellant on March 27, 1981 and April 30, 1986, due to the erroneous view that had been taken by the officials of the respondents. Interest on refund was granted to the appellant after a substantial lapse of time and hence it should be entitled to compensation for this period of delay. The High Court has failed to appreciate that while charging interest from the assesseees, the Department first adjusts the amount paid towards interest so that the principal amount of tax payable remains



they take the benefit of the assessee's funds by delaying payment of interest on refunds without incurring any further liability to pay interest. This stand taken by the respondents is discriminatory in nature and thereby causing great prejudice to lakhs and lakhs of assessee's. Very large number of assessee's are adversely affected inasmuch as the Income Tax Department can now simply refuse to pay to the assessee's amounts of interest lawfully and admittedly due to them as has happened in the instant case. It is a case of the appellant as set out above in the instant case for the assessment year 1978-79, it has been deprived of an amount of Rs.40 lakhs for no fault of its own and exclusively because of the admittedly unlawful actions of the Income Tax department for period ranging up to 17 years without any compensation whatsoever from the department. Such actions and consequences, in our opinion, seriously affect the administration of justice and the rule of law."

12. Other principle which is laid down by the Supreme Court is that interest on interest is payable even if there was no specific provision in the Act, as is clear from the following observations :-

"The Gujarat High Court in D.J. Works, (1992) 195 ITR 227 and Chimanlal S. Patel's case (1994) 210 ITR 419 had taken the view that even proceeded on the basis that there was no specific provision for payment of interest on amount of interest which had been wrongfully retained, the Act itself recognized in principle the liability of the Department to pay interest where excess tax was retained and the court held that the same principle should be extended to cases where interest was retained. The court held that once interest becomes due it takes the same colour as excess amounts of tax and they awarded interest thereon at the rates prescribed under the Act.

xx xx xx

The Madhya Pradesh High Court in an income tax reference ITr No. 5 of 1996 followed the Gujarat High Court decisions and answered in the affirmative and in favour of the assessee, a question as to whether the Tribunal was right in holding that interest was payable on delayed payments of interest. The question specifically refers to the Department's claim that the law allegedly does not provide for any such payment.

xx xx xx



have paid to the assessee but has unjustifiably failed to do. The question has, as we find, been rightly answered in affirmative and in favour of the assessee. This is clearly a decision of this court on the merits of the matter, albeit proceeding on the assumption that there was no provision in the Act granting interest on unpaid interest, in favour of the appellant's contentions."

13. When we examine the facts of the present case, we feel that the aforesaid judgment of the Supreme Court would not come to the aid of the assessee and permit the assessee to claim interest on interest in the given situation. As far as the appeals at hands are concerned, it is not in dispute that on filing the return by the assessee and processing the case under Section 143(1)(a), the excess amount of TDS and advance tax paid by the assessee was refunded along with interest under Section 244(a) within the prescribed time period. When the assessment orders were passed under Section 143(3) of the Act and the assessee was called upon to make the payments as per the demand made on the basis of the assessment order, the assessee has started making the payments in instalments. It had not completed the payments till the decision of CIT(A). Though the CIT(A) reduced the demand, but even as per the reduced demands, certain payments were still due. It is only after the orders of the Tribunal that the refunds became payable. The appeal effect, i.e. the effect to the order of the Tribunal, was given by the AO and the amount which was determined, to which the assessee had become entitled as refund



relating to refund of tax are contained in Sections 240, 243 and

which are reproduced below :-

"240. Refund on appeal, etc. – Where, as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due to the assessee, the assessing officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf:

Provided that where, by the order aforesaid, -

- (a) an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund, if any, shall become due only on the making of such fresh assessment;
- (b) the assessment is annulled, the refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee."

xx xx xx

243. Interest on delayed refunds. – (1) If the Income Tax Officer does not grant the refund, -

- (a) in any case where the total income of the assessee does not consist solely of income from interest on securities or dividends, within three months from the end of the month in which the total income is determined under this Act, and
- (b) in any other case, within three months from the end of the month in which the claim for refund is made under this Chapter,

the Central Government shall pay the assessee simple interest at twelve per cent per annum on the amount directed to be refunded from the date immediately following the expiry of the period of three months aforesaid to the date of the order granting the refund.

Explanation – If the delay in granting the refund within the period of three months aforesaid is attributable to the assessee, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable.



244. Interest on refund where no claim is needed. – (1) Where a refund is due to the assessee in pursuance of an order referred to in Section 240 and the Income Tax Officer does not grant the refund within a period of three months from the end of the month in which such order is passed, the Central Government shall pay to the assessee simple interest at twelve per cent per annum on the amount of refund due from the date immediately following the expiry of the period of three months aforesaid to the date on which the refund is granted.

(1-A) Where the whole or any part of the refund referred to in sub-section (1) is due to the assessee, as a result of any amount having been paid by him after the 31st day of March, 1975, in pursuance of any order of assessment or penalty and such amount or any part thereof having been found in appeal or other proceeding under this Act to be in excess of the amount which such assessee is liable to pay as tax or penalty, as the case may be, under this Act, the Central Government shall pay to such assessee simple interest at the rate specified in sub-section (1) on the amount so found to be in excess from the date on which such amount was paid to the date on which the refund is granted:

Provided that where the amount so found to be in excess was paid in instalments, such interest shall be payable on the amount of each such instalment or any part of such instalment, which was in excess, from the date on which such instalment was paid to the date on which the refund is granted:

Provided further that no interest under this sub-section shall be payable for a period of one month from the date of the passing of the order in appeal or other proceeding:

Provided also that where any interest is payable to an assessee under this sub-section, no interest under sub-section (1) shall be payable to him in respect of the amount so found to be in excess.

(2) Where a refund is withheld under the provisions of Section 241, the Central Government shall pay interest at the aforesaid rate on the amount of refund ultimately determined to be due as a result of the appeal or further proceeding for the period commencing after the expiry of three months from the end of the month in which the order referred to in Section 241 is passed to the date the refund is granted.”



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interest on delayed refunds. Such an interest becomes payable if the amount is not refunded within three months from the end of the month in which the total income is determined or within three months from the end of the month in which the claim for the refund is made under that chapter. Interest payable is @ 12% p.a. "from the date immediately following the expiry of the period of three months" aforesaid to the date of the order granting the refund.

15. No doubt, when the tax paid is more than what is due, as a result of certain additions etc. made by the AO and in appeal when those are deleted by the appellate authority, the refund of the excess amount is to be made along with interest, as envisaged under Section 243 of the Act. It is only when this interest is not refunded that the assessee would become entitled to the interest on the said interest as well. That was the factual position in *Sandvik Asia* (supra). In contrast, where the interest is paid along with the amount payable as refund, the question of payment of interest on interest does not arise. Present cases fall under this category.
16. In the present case, the order of the Tribunal would demonstrate that it had taken into consideration various dates on which orders were passed by the successive authorities, including the order of refund. It has also taken into consideration the interest on the basis of those orders. Summary of interest allowed along with refund to the assessee as per the calculations made by the Department is as under :-



Date of appellate order	Date of its receipts by CIT office/AO	Date of appeal effect/ refund	Principle amount of refund	Intt. u/s. 244A	refund
1	2.	3	4	5	6
ITAT's order dt.31.05.2001	Certain issues restored to AO to be decided afresh	26.3.2003	25,62,505	2,88,489	28,50,994
CIT(A)'s order dt. 28.11.2003	28.1.2004	31.3.2004	95,95,156	19,59,445	1,15,54,601
ITAT's order dt.3.3.2006	15.5.2006	3.8.2006	1,37,33,468	1,14,06,380	2,51,39,848
ITAT's order dt.29.9.2006	18.12.2006	9.1.2007	57,99,446	55,50,122	1,13,49,768
			3,16,90,575	1,92,04,436	5,08,95,211

Calculations of these interests are as under :-

Annexure C
M/s. The Motor & General Finance Ltd.
A.Y. 1994-95

Calculation of interest allowed u/s 244A along with refund to the assessee

Date of payment	Amount	Progressive amount	Period	Month	Rate of interest	Interest payable
14.10.96	25,00,000	25,00,000	1.10.96 to 31.10.96	1	1%	25,000
14.11.96	25,00,000	50,00,000	1.11.96 to 30.11.96	1	1%	50,000
9.12.96	25,00,000	75,00,000	1.12.96 to 31.3.97	4	1%	3,00,000
17.3.97	30,00,000	1,30,00,000	1.4.97 to 30.5.97	2	1%	2,60,000
29.3.97	25,00,000	1,40,00,000	1.6.97 to 30.6.97	1	1%	1,40,000
9.5.97	10,00,000	1,50,00,000	1.7.97 to 31.7.97	1	1%	1,50,000
9.7.97	10,00,000	1,60,00,000	1.8.97 to 31.8.97	1	1%	1,60,000
8.8.97	10,00,000	1,70,00,000	1.9.97 to 30.9.97	1	1%	1,70,000
21.8.97	10,00,000	1,90,00,000	1.10.97 to 30.11.97	2	1%	3,80,000
10.10.97	10,00,000	2,00,00,000	1.12.97 to 31.5.01	42	1%	84,00,000
16.10.97	10,00,000	2,00,00,000	1.6.01 to 28.2.02	9	0.75%	13,50,000
26.11.97	10,00,000	3,16,90,575	1.3.02 to 31.5.02	3	0.75%	7,13,037
25.2.02	1,16,90,575	3,16,90,575	1.6.02 to 30.4.03	11	0.66%	23,00,735
Less: Refund already issued on 26.3.03/29.05.03 25,62,505						



Less: Refund already issued On 3.8.06 1,37,33,468						
		97,99,446	1.8.06 to 31.1.07	6	0.5%	3,30,569
			TOTAL			1,92,04,436


It is clear from the above that the assessee had been paid the refund of the amounts collected/paid within the statutorily permissible periods.

17. On the other hand, in *Sandvik Asia Ltd.* (supra), only refund of excess tax had been given, but no interest on refund had been given to the assessee along with that. This interest was retained by the department for a period of 12 to 17 years in respect of various assessment orders. It was under these circumstances, the Court opined that withholding of interest was also unjustified as this had become part of the refund due to the assessee along with tax, interest on this amount was also payable.
18. It is, thus, manifest that at both the stages, namely, while passing intimation under Section 143(1)(a) of the Act, refund along with interest under Section 244(a) was given of the excess TDS and advance tax. Again, after the orders of the Tribunal were passed and the refund became payable as a consequence thereof, the excess amount of tax was refunded along with interest payable thereupon under Section 244(a) of the Act. Thus, the calculations are not



given along with interest, which is to be calculated as per Sect of the Act. If that interest is paid along with the excess tax, no further payment is to be made. It is only when the excess amount of tax is refunded but the interest is not refunded along therewith, the retention of interest amount would become unjustified and interest on interest would also become payable. The reason is simple. It is the tax which was paid in excess by the assessee which became refundable. The assessee would be compensated by paying interest thereupon. It is only when the interest is not refunded along with excess tax that the withholding of the said interest becomes unjustified and it becomes an 'amount due' to the assessee on which the assessee can claim further interest. Such a situation has not happened in the present case as the amount of interest is calculated and refunded along with the refundable tax amount.

20. The Tribunal, in these circumstances, rightly held that the principle laid down in *Sandvik Asia Ltd.* (supra) would not apply to the present fact situation. We, therefore, answer the question of law in favour of the revenue and against the assessee and as a consequence dismiss all these appeals with costs quantified at Rs.5000/- per appeal.


(A.K. SIKRI)
JUDGE