



REPORTABLE

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

+ **ITA No.179 of 2009**

% RESERVED ON: MAY 05, 2011
PRONOUNCED On: JULY 11, 2011

INSILCO LIMITED

. . . APPELLANT

through : Mr. C.S. Aggarwal, Sr.
 Advocate with Mr. V.P. Gupta,
 Advocate.

VERSUS

**COMMISSIONER OF INCOME TAX-IV,
 NEW DELHI**

. . . RESPONDENT

through: Mr. Sanjeev Sabharwal, Sr.
 Standing Counsel.

CORAM :-

**HON'BLE MR. JUSTICE A.K. SIKRI
 HON'BLE MR. JUSTICE M.L. MEHTA**

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.

1. This appeal was admitted on the following questions of law:

"1. Whether the Tribunal was correct in law in issuing directions to the AO to recalculate the amount of refund, which refund had been allowed to the assessee on the basis of an order passed under Section 254/143(3) dated 25.02.2004/28.06.2004, which order had become final and was also not the subject matter of appeal before it?

2. Whether the directions given in order in para 20 were necessary and did not amount to setting up a new case, which case was not set up in the order made u/s 154 of the Act and was the subject matter of appeal?"



2. The questions of law as formulated while clearly demonstrate that a very limited issue, in a narrow compass, arises in this appeal preferred by the appellant/assessee. Challenging a portion of the order passed by the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') has impugned certain observations and issued directions to the Assessing Officer (AO) to recalculate the amount of refund allowable after tax deductible at source allowable thereon under Section 244A of the Income Tax Act ('the Tax' in short). The AO included substantial income earned by the assessee while computing the taxable income. The Tribunal was dealing with the appeal preferred by the Revenue and the Revenue questioning the order of the CIT(A) whereby CIT(A) had deleted the interest charged by the AO under Section 220(2) of the Act. To this extent, the Tribunal affirmed the order of the CIT(A) and dismissed the appeal. However, thereafter the Tribunal made certain observations and issued the aforesaid directions. According to the assessee, when the Tribunal had upheld the order of the Commissioner of Income Tax (Appeals), it could not travel beyond the scope of the appeal preferred by the Revenue and issued such directions which are not only beyond the scope of the appeal, but also in excess of jurisdiction and authority of the Tribunal under Section 254(1) of the Act. As per the Tribunal, it was nothing, but a necessary consequence,



on the facts of this case, to give complete effect to the orders passed by the Tribunal in the quantum proceedings. In order to appreciate the controversy, we need to traverse the necessary facts, which are as follows:

The assessee had filed return of income for the Assessment Year 1992-93 declaring 'NIL' income. In response, the assessee received intimation dated 29.06.1993 granting return of ₹10,15,480/- comprising of TDS amount to ₹8,83,022/- and interest of ₹1,32,458/- thereupon calculated under Section 244A of the Act. Within three months thereafter, however, the assessee filed revised return along with further TDS certificate in the sum of ₹60,15,566/-. Pursuant thereto, the assessee received another intimation dated 30.03.1994 granting refund of ₹64,36,655/- (TDS of ₹60,15,566 + interest of ₹4,21,089/-) under Section 244A of the Act. The assessment was thereafter carried out in assessment orders dated 30.03.1994. This was, however, revised to ₹2,83,96,346/- in view of the orders passed by the CIT(A). The assessee paid demand for tax and interest on this assessed income by way of adjustments of refunds/payments. The matter, on merits, was, however, taken in appeal before the Tribunal which appeal was disposed of vide orders dated 17.09.2002.

3. The Tribunal disposed of this appeal on 17.09.2002 directing the AO to assess the interest of ₹2,69,84,301/- in the



Assessment Year 1993-94. We may note here that the present controversy has arisen while giving effect to this order passed by the Tribunal.

4. The AO passed orders dated 25.02.2004 under Section 254/143(3) of the Act giving effect to the aforesaid order of the Tribunal. As per this order, a total income is assessed with ₹9360/- and tax relief was given calculating the amount refundable to the assessee at ₹2,26,40,638/-. Interest on this refundable amount was also calculated and arrived at ₹2,37,76,490/- thereby showing a sum of ₹4,64,09,202/- as a total refundable income. As pointed out above, in the revised return filed by the assessee on 13.09.1993, it had filed TDS certificate of ₹60,15,566/-. This certificate pertains to the aforesaid interest income and when the interest income was found relatable to the Assessment Year 1993-94, the assessee was naturally not entitled to TDS credit of the aforesaid amount in the Assessment Year 1992-93. Finding this error in the orders passed by the AO dated 25.02.2004, the Tribunal gave direction to the AO to rectify its order by withdrawing credit for TDS for the Assessment Year 1992-93 and allowed the same in the Assessment Year 1993-94.
5. The AO, in these circumstances, issued notice under section 154 of the Act proposing to rectify intimations passed under Section 143(1)(a) of the Act earlier to withdraw the credit for



TDS at ₹68,98,588/- in Assessment Year 1992-93 and allow to the same in the Assessment Year 1993-94. This obvious effort was accepted by the assessee as well who gave his no objection dated 26.02.2004 to the aforesaid proposed rectification. The AO issued rectification orders dated 26.08.2004 revising tax computation raising demand of ₹74,52,135/-. The position upto this, is not disputed and the assessee agreed to pay the aforesaid amount. However, it so happened that in the orders dated 28.06.2004, while raising the demand of ₹74,52,135 on re-computation, the AO also charged interest under Section 220(2) of the Act.

6. The interest of ₹1,30,10,582/- was calculated under the aforesaid provision. The assessee felt aggrieved by this part of the order whereby it was called upon to pay the interest under the aforesaid provision. He, thus, preferred appeal before the CIT(A) against the aforesaid portion of the order. Though in the meantime, the demand raised vide order dated 28.06.2004 was recovered by way of adjustments, in appeal before the CIT(A), the assessee succeeded. The CIT(A) held that there was no reason or occasion to charge interest under the aforesaid provision which was not even applicable in the facts of this case. While taking this view, the CIT(A) relied upon the judgments of the Apex Court in the case of **Vikrant Tyres Ltd. Vs. First ITO [247 ITR 821]** holding as under:



“In respect of certain assessment years, assessment orders were served on the assessee and demand notices were issued and the assessee complied with the demands by paying the tax due thereunder within time. The appellate authority allowed the assessee’s appeals against the assessment orders and the taxes paid by the assessee were refunded. The appellant Tribunal dismissed the appeals of the Department; but, on a reference, the High court upheld the assessment orders. Thereafter, the Department made fresh demands and the assessee repaid within time the taxes as assessed and demanded. The Department demanded interest under Section 220(2) of the Income Tax Act, 1961, on the tax assessed for the period commencing from the date of refund of the tax upon the appellate order till the date the taxes were finally paid after disposal of the reference. The assessee filed writ petitions in the High Court challenging the demand of interest, contending that it was not in default because it had paid the taxes in compliance with the original notices of demand and it had not failed to comply with the demand and it had not failed to comply with the demand made under Section 156. The High Court dismissed the writ petitions holding that Section 3(2) of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964, kept alive the earlier demand notices even though payment in full had been made pursuant thereto and treated those earlier notices as having been kept alive till the assessment orders were upheld by the higher forum. On appeals to the Supreme Court:

Held, reversing the decision of the High Court, (i) that the condition precedent under section 220 was that there should be a demand notice and there should be a default in paying the amount so demanded within the time stipulated in the notice. The assessee satisfied the demands under the notices issued under section 156 and nothing was due pursuant to the notices of demand. After the judgment of the High Court on a reference fresh demand notices were issued and in satisfaction of those demands the assessee had paid the amounts as demanded within the time stipulated therein. In such a situation, on a literal meaning of section 220(2), the Department had no right to demand interest for the period commencing from the date of refund of the tax upon the appellate order till the taxes were finally paid after disposal of the reference.”



7. The CIT(A) opined that the interest could be charged under the aforesaid provision only when there was a demand notice and there is a default in paying the amount demanded even after the time stipulated in the notice. In the present case, since the interest was charged from the issue of date of refund to the date of withdrawal of refund in spite of demand notice issued for the first time in June, 2004, the charging of interest from July 1993 to June 1994 was impermissible. He, thus, deleted the interest levied by the AO.
8. Another incidental fact which may be pointed out here is that the assessee had also taken a plea that the AO had withdrawn tax credited of ₹68,98,588/- in this Assessment Year (i.e. Assessment Year 1992-93), but had also given tax credit of only ₹61,58,732/- in the Assessment Year 1993-94. On this basis, it was contended that the tax credited of ₹7,39,856/- should have been allowed by the AO in the Assessment Year 1992-93. That is only the amount of ₹61,58,732 should have been withdrawn in this year for which credit was given in the Assessment Year 1993-94. This contention was also accepted by the CIT(A) directing the AO to rightly bifurcate the credit of TDS in the Assessment Year 1992-93 and Assessment Year 1993-94 in relation to the income assessed in two years. CIT(A) further held that the AO had to give credit TDS deducted either in the Assessment Year 1992-93 or Assessment Year 1993-94. The



- Revenue was not satisfied with the aforesaid outcome and filed appeals challenging the order of the CIT(A) deleting the interest charge charged by the AO under Section 220(2) of the Act.
9. Insofar as this challenge is concerned, the Tribunal has not accepted the contention of the Revenue and has affirmed the order on this ground.
 10. At the same time, the Tribunal also found that once charging of interest under Section 220(2) of the Act is held to be invalid, the issue relating to withdrawal of credit of TDS allowed in the Assessment Year 1992-93 hangs in the air. These observations came to be passed as in the light of discussion by the Tribunal, in the earlier part of the order dealing with the contention of the Revenue that while giving effect to the order of Tribunal, the AO had prepared two ITNS-150, instead of one. If he had prepared one ITNS-150, the demand by way of reversal of refund on account of credit for TDS shifted to Assessment Year 1993-94 would have been first adjusted from the refund of ₹2,26,40,638/- and interest under Section 244A would have been computed on the balance refund payable to the assessee. Therefore, the assessee was eligible for lesser refund on account of interest under Section 244A of the Act. It was pointed out that as a result of deleting interest under Section 220(2) of the Act, the assessee had got more refund than what was legitimately due to it and the Revenue should not be made



to suffer because of mistake committed by the AO in making two separate ITNS-150 for single order passed under Section 154 of the Act. The assessee had countered the aforesaid submission by asking that the AO had passed two separate orders, one under Section 254/143(3) of the Act dated 25.02.2004 to give effect to the order of the Tribunal and another order dated 28.06.2004 under Section 154/143(1)(a) of the Act to rectify intimation earlier issued. The Tribunal dealt with these contentions and accepted the position that the AO committed mistake while giving effect to the orders of the Tribunal. It noted that the AO intended to rectify the mistake by issuing notice under Section 154 of the Act on 17.06.2004 to the assessee. The assessee gave no objection to proposed rectification of order under Section 143(1)(a) subject to the condition that interest was properly charged/allowed. Therefore, the assessee agreed for payment of interest on demand and right to receive interest on refunds as per the provisions of law. The AO vide orders dated 28.06.2004 has specifically stated that in order passed on 25.02.2004 under Section 254/143(3) of the Act, the credit for TDS amounting to ₹68,98,588/- on the interest income was wrongly allowed although the interest income on which afore-mentioned TDS was deducted was reduced from income for Assessment Year 1992-93. The AO after discussing the provisions of Section 199



read with provisions of Section 192 to 194 withdrew the credit for TDS from the Assessment Year 1992-93. Thus, the AO passed order under Section 154 of the Act rectifying order under Section 254/143(3) dated 25.02.2004, which is clear from the language employed in the said order. No order rectifying intimation dated 30.03.1994 was passed. In order to compute the refund payable by the Department, the office of the DCIT prepared two (Income-tax Computation Form) ITNS-150, one for allowing refund consequent upon giving effect to the Tribunal's order and the other for withdrawing the refund already granted. The column No.7 & 8 of the two "Income Computation Forms" were filed up as under:

In first ITNS-150:

7. Order under Section :	254/143(3)
8. Date of Order :	25.2.1995/28.6.1994

In second ITNS-150

7. Order under Section :	154/143(1)(a)
8. Date of Order :	28.6.2004

11. In view of the above facts, these two "income tax computations forms" one for refund due to and other for amount payable by the assessee cannot be seen in isolation of each other. They are complementary to each other and to be read together. For this conclusion, the Tribunal referred to the judgment of the



Supreme Court in the case of ***Kalyankumar Ray Vs. Commissioner of Income Tax [191 ITR 634]*** holding that that the ITNS-150 Form is a part of assessment proceedings and dealt with the mistake of the AO in the following manner:

“From the above discussion and the decision of the Hon’ble Supreme Court in the case of Kalyankumar Ray (supra), it is clear that ITNS-150 forms part of the assessment proceedings. The word ‘assessment’ is used in the Act in a number of provisions in a comprehensive sense and includes all proceedings starting with the filing of the return or issue of notice and ending with determination of tax payable by the assessee as held by Hon’ble Supreme Court in the case of S. Sankapa Vs. ITO [1968] 68 ITR 670(SC). The assessing officer in order to rectify the mistake of non-withdrawal of TDS credit in assessment year 1992-93 in order to rectify the mistake of non-withdrawal of TDS credit in assessment year 1992-93 in the order passed under section 254/143(3) on 25.02.2004, passed order under section 154 on 28th June, 2004 and two different ITNS-150 forms prepared by the office and signed by the assessing officer are complementary to each other and will constitute part and parcel of order passed under section 154 on 28th June, 2004. The order passed under section 154 on 28th June, 2004. The order passed under section 154 on 28.06.2004, thus, will be rectification of order dated 25.02.2004 passed u/s 254/143(3) giving effect to the order of ITAT.”

12. The position which emerges from the foregoing discussion is encapsulated and recapitulated in the following manner:

The assessee was earlier given the TDS credit in the Assessment Year 1992-93 and refunded that amount along with interest calculated under Section 254A of the Act. When the AO was giving effect to the orders of the Tribunal and passed the orders under Section 254/143(3) of the Act shifting the interest income from the Assessment Year 1992-93 to the Assessment Year 1993-94, it again calculated the interest on



the amount which became refundable. However, the AO did not shift the TDS credit as well from the Assessment Year 1992-93 to 1993-94. While correcting this mistake and passed rectification order (to which the assessee had no objection), the mistake committed by the AO was that he did not first adjust the refund of ₹2,26,40,638/- and interest under Section 244A thereupon, instead he charged interest under Section 220(2) of the Act. Though charging of such an interest was wrong, at the same time, the proper calculation would have been to first adjust from the refund of ₹2,26,40,638/-, the credit of TDS and interest under Section 220(2) of the Act. Since this was not done having regard to the aforesaid position in law, as explained by the Tribunal, the Tribunal has only directed to recalculate the same by correcting the arithmetical error. Otherwise, as rightly pointed out by the learned counsel for the Revenue and noted by the Tribunal also, the assessee would be benefitted unreasonably by getting more refund than what is legitimately due to it. It is a mere case of calculation and once this calculation was brought to the notice of the Tribunal and detected by the Tribunal, it is totally misconceived on the part of the assessee to allege that while giving these directions, the Tribunal has exceeded its jurisdiction.



13. This becomes crystal clear from the following analysis of the Tribunal given in para 20 after upholding the deletion of interest charged under Section 220(2) of the Act:

“20. However, a balance has to be maintained in the findings made in the order. We have also held that after regular assessment, intimation drawn u/s 143(1)(a) cannot be rectified as the same does not survive. Once charging of interest u/s 220(2) in the second ITNS-150 is held invalid, the issue relating to withdrawal of credit of TDS allowed in assessment year 1992-93 hangs in air. The assessing officer has followed wrong procedure to withdraw refund allowed to assessee by preparing two separate ITNS-150 instead of drawing one consolidated ITNS-150. In consolidated ITNS-150, from the total tax paid by way of TDS and regular payment he should have deducted the amount of refund already granted and on balance refund payable interest u/s 244A should have been paid. This is a procedural lapse on part of assessing officer who can be rectified as per the law. In our view TDS credit (refund) for assessment year 1992-93 can be withdrawn by drawing one and only consolidated ITNS-150. The assessing officer has not prepared any such consolidated ITNS-150. If it is not done the Revenue will be put to loss as the assessee has received undue interest u/s 244A on the refund of Rs.74,52,135/- already granted which is not permissible in law. It is interesting to note that on one hand assessee is objecting to charging of interest u/s 220(2) which is nothing but an action to set off interest allowed u/s 244A on refunds in first ITNS-150. On the other hand, he is keeping silence on undue interest allowed to him. The assessee can claim what is due to it from the department and nothing else. The TDS credit is to be given in assessment year 1993-94. It will be taken in assessment year 1993-94 from very beginning meaning thereby that refund of TDS amount granted thereon will be withdrawn in assessment year 1992-93. Therefore the amount of Rs.74,52,135/- will be deducted from tax paid by the assessee. The assessing officer should have computed interest u/s 244A on net amount of refund after reducing from amount of the tax paid by refund already granted. Therefore, in our considered opinion it will be fair and proper to set aside the matter to the file of assessing officer with the directions to prepare one consolidated ITNS-150 giving effect to order of ITAT in assessment year 1992-93, withdrawing TDS credit in assessment year 1992-93 and allowing refund of correct amount of tax paid and interest thereon u/s 244A of the Act.”



14. We are, thus, of the opinion that the Tribunal has rightly given the aforesaid directions, which are nothing but pointing out what the AO was required to do under the law. This issue was very much before the Tribunal and the Tribunal has given these directions to give complete effect to the orders passed in quantum proceedings. It is trite law that nobody can be allowed to enrich itself unjustly and in the matter of calculation once an error is found that can always be directed to be corrected. Therefore, we do not agree with the submission of the learned counsel for the appellant that the Tribunal has exceeded its jurisdiction. Various judgments cited by the assessee on the premise that the Tribunal has set up a new case are not applicable, as no such new case has been set up by the Tribunal.
15. Question of law stands decided against the assessee. This appeal is accordingly dismissed with a cost quantified at ₹25,000/-.

(A.K. SIKRI)
JUDGE

(M.L. MEHTA)
JUDGE

JULY 11, 2011
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