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

Reserved on: February 10, 2015
Pronounced on: February 26, 2015

\+ **ITA 300/2012**

CIT ..... Appellant
Through Mr. N P Sahni, sr. standing counsel with Mr. Nitin Gulati and Mr. Judy James, Advs.

Versus

ENGINEERS INDIA LTD ..... Respondent
Through Ms. Sonu Bhatnagar, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE R.K.GAUBA

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1. This appeal under Section 260-A of the Income Tax Act, 1961 assails the order dated 30.09.2011 of Income Tax Appellate Tribunal (hereinafter referred to as "the ITAT") passed in Income Tax Appeal No. 5392/Del/2010 in respect of the respondent (assessee) for assessment year 2006-2007, holding the assessee to be entitled to interest under Section 244A on the excess self-assessment tax paid under Section 140A, thereby upholding the order dated 20.09.2010 to such effect passed by Commissioner of Income Tax (Appeals) (hereinafter referred to as "the CIT (Appeals)" in appeal No. 75/2010-2011 that had been preferred by the assessee against the order dated 31.12.2008 of the Assessing Officer (AO) under Section 143(3).

2. Though the appellant had also raised questions in respect of deletion of the amount of ₹69 Lacs which had been added by the AO by invoking Section 14A read with Rule 8D of the Income Tax Rules, the appeal to that extent was not entertained as the calculation of disallowance under Section 14A was found covered by the ruling in *Maxopp Investment Ltd. v. CIT,* (2011) 203 Taxman 364 (Delhi).

3. By order dated 22.09.2014, the following substantial question of law was formulated:-

> *"Whether on the facts and circumstances of case, the Income Tax Appellate Tribunal was correct in law in confirming the order of the CIT(A) that the assessee shall be entitled to interest under Section 244A of the Income Tax Act, 1961 in respect of excess self assessment tax paid?"*

4. The background facts relevant for purposes of addressing the above-noted question of law only need to be captured here.

5. The assessee is a Government of India undertaking established under the Ministry of Petroleum and Natural Gases, primarily engaged in providing engineering and technical consultancy services and execution of contracts on turn-key basis, predominantly in the oil/gas/hydrocarbon sectors. It had filed a return on 13.11.2006 for assessment year 2006-2007 declaring income of ₹2,40,13,53,030/- followed by revised return on 23.11.2008 declaring income of ₹2,43,29,60,025/-. The AO selected the case of the assessee for scrutiny and issued notice under Section 143(2) read with Section 142(1) of Income Tax Act.

6. During the course of assessment proceedings, the AO noticed that the assessee had claimed dividend income amounting to ₹2 Crores as exempt under Section 10(33) which, according to the AO, was not justified.

Eventually, the AO held that an amount of ₹69,00,000/- required to be disallowed on *pro rata* basis under Section 14A read with Rule 8D of Income Tax Rules.

7. The appeal of the assessee against the above-said assessment order was partly allowed by CIT (Appeals) which restricted the disallowance to ₹25,000/-. It was in the course of hearing before the CIT (Appeals) that the assessee raised the question of the AO not having allowed interest under Section 244A of the Income Tax Act on the amount in excess deposited as self-assessment tax.

8. The contentions of the appellant were noted by CIT (Appeals) as under:-

> *"As per the intimation processed u/s 143(1) of the Act, the appellant was eligible to claim a refund of ₹78,123,227/- and such refund was on account of excess self assessment tax paid by the appellant.*
>
> *As per the provisions of section 244A of the Act, where tax is paid by way of tax collected at source or by way of advance tax or treated as paid u/s 199 of the Act, no interest shall be payable if the amount of refund is less than ten per cent on the regular assessment.*
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> *As per the provisions of section 244A(1)(b) of the Act, the interest shall be payable even if the amount is less than 10 per cent as the proviso only applied to section 244A(1)(a)of the Act.*
>
> *The law is well settled for the refund on account of excess payment of self assessment tax that the assessee is entitled to interest. Reliance is placed on Madras High Court in case of CIT vs. Cholamandalam Investment & Finance Co. Ltd. (166 Taxman 132)."*

9. The plea of the assessee was upheld by CIT (Appeals) with observations to the following effect:-

> *"On perusal of the aforesaid proviso of section 244A(1)(a), it is evident that, in case the amount of refund is less than ten per cent of tax determined in the regular assessment, interest is not payable if the refund is on account of TDS, TCS or advance tax. However, in case refund is due to the excess payment of self assessment tax, such restriction is not applicable. This view is in line with the decision of Madras High Court in case of CIT vs. Cholamandalam Investment & Finance Co. Ltd. (166 Taxman 132), and Delhi High Court. Accordingly, I hold to allow interest u/s 244A of the I.T. Act to the appellant on refund due on account of payment of excess self assessment tax."*

10. The revenue took out appeal before the ITAT, *inter alia*, in the context of aforementioned direction concerning the admissibility of interest on the excess self-assessment tax paid. Noting the submission that, according to the intimation under Section 143(1), the assessee was eligible for refund of ₹7,81,23,227/-, the assessee was held to be entitled to interest as granted by CIT (Appeals) on the excess self-assessment tax paid under Section 140A in terms of Section 244A.

11. The legality of the order of ITAT to above effect is challenged by the Revenue primarily raising the following contentions:

> *"ITAT erred in not examining the fact as to whether the assessee has raised the issue of interest on self assessment tax before the Assessing Officer or not. The order of the AO is silent on this issue. If the assessee has not raised this issue earlier, he should not be allowed to raise the same before the CIT(A) and/or ITAT.*
>
> *ITAT has failed to appreciate that the assessee has paid total tax of ₹81,89,34,346/- during the year under consideration and claimed refund of ₹7,80,48,467/-. After giving credit of TDS*

Advance Tax and Excess Self Assessment Tax, the amount of refund was less than 10% of the total tax. As per provisions of sections 244(A)(1)(a) no interest is payable if the amount of refund is less than 10% of the tax as determined under sub-section (1) of section 115WE or sub-section 143(1) or on regular assessment.

ITAT has filed to appreciate that from a bare perusal of section 244A of the Income Tax Act, it becomes clear that assessee is not entitled for interest on excess self assessment tax. Unlike other sections i.e. 115WJ (fringe benefit tax), 206C (tax collected at source), 199 (advance tax), section 140A (self assessment tax) does not find any mention in section 244A. The assessee is thus not entitled for any interest on self assessment tax."

12. The Revenue relies on decisions of Supreme Court in *Sandvik Asia Limited v. Commissioner of Income Tax & Ors.*, (2006) 2 SCC 508, *Commissioner of Income Tax, Gujarat v. Gujarat Fluoro Chemicals,* 2013 (296) E.L.T. 433 (S.C.) and *Union of India v. Tata Chemicals,* (2014) 6 SCC 335 to contend that interest is payable to the assessee only if it is so provided under the statute.

13. Per contra, the respondent-assessee refers to *Commissioner of Income Tax v. Sutlej Industries Ltd.*, (2010) 325 ITR 331 (Delhi) to argue that the interest on self-assessment tax paid under Section 140A, to the extent it has been found to be excess is admissible since such payment would fall within the expression "refund of any amount". Reliance is also placed on decision of High Court of Bombay in the case of *Stock Holding Corporation of India Ltd. v. N.C. Tewari,* MANU/MH/2146/2014

14. Section 244A of Income Tax Act which is at the core of this dispute, as it stands after amendment by Finance Act, 2005 w.e.f. 01.04.2006, to the

extent relevant, reads as under:

> *"**244A. Interest on refunds.***
> *(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) where the refund is out of any tax paid under section 115WJ or collected at source under section 206C or paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one per cent for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted:*
>
> ***Provided** that no interest shall be payable if the amount of refund is less than ten per cent of the tax as determined under sub-section (1) of section 115 WE or sub- section (1) of section 143 or on regular assessment;*
>
> *(b) in any other case, such interest shall be calculated at the rate of one 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.*
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> *Explanation.- For the purposes of this clause," date of payment of tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.*
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> *(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable, and where any question arises as to the period to be excluded, it shall be*

decided by the Chief Commissioner or Commissioner whose decision thereon shall be final.

XXX"

[emphasis supplied]

15. In *Sandvik Asia Limited* (supra), the issue for consideration and determination by the Supreme Court was as to whether the assessee is entitled to be compensated by the Revenue for delay in payment of the amount due to the assessee. Since there was an inordinate delay in that case on the part of the Revenue in refunding the amount, the court held that the assessee was entitled to be adequately compensated by way of interest for the delay in payment of the amount "lawfully due to the assessee which are withheld wrongly and contrary to the law".

16. The question as to whether assessee is entitled to interest under Section 244A, when the refund is against payment of self-assessment tax, had arisen before the Madras High Court in the case of *CIT v. Cholamandalam Investment and Finance Co. Ltd.* (2007) 294 ITR 438. The argument in that case revolved around the question as to whether interest would be admissible under clause (1)(a) or clause (1)(b) of Section 244A, this in the context of the distinction on account of the additional requirement in the former clause to the effect that the amount refundable must be more than 10% of the tax determined. The Madras High Court decided the issue in favour of grant of interest to the assessee under the latter clause and, thus, free from the aforesaid restriction. Referring to the judgment of Supreme Court in *Sandvik Asia Limited* (supra), it was observed that –

"wherever the assessee is entitled to refund, there is a statutory

liability on the Revenue to pay the interest on such refund on general principles to pay the interest on sums wrongfully retained."

17. In *Commissioner of Income Tax v. Sutlej Industries Ltd.*(supra), the question of law related to interpretation of Section 244(1)(b) read with the explanation appended thereto. The issue was whether the said clause excludes payment of interest on refund of self-assessment tax. Relying upon the afore-quoted observations of Supreme Court in the case of *Sandvik Asia Limited* (supra) and finding support from the view taken by Madras High Court in *CIT v. Cholamandalam Investment and Finance Co. Ltd.* (supra), a Division Bench of this court, *inter alia*, observed that –

"the tax due on the returned income has to be paid by way of tax deducted at source (section 199), advance tax (section 209) or by way of self-assessment tax (section 140A). In addition, where the assessment is completed at an income higher than the returned income, the tax payable by the assessee is specified in the notice of demand issued under section 156 of the Act. Where there is a shortfall in payment of tax vis-à-vis the tax finally due on the assessed income, the assessee is liable to pay interest under section 234B of the Act. Conversely, where the Revenue makes a high-pitched assessment which is subsequently reduced/modified in appeal, any payment of taxes made, which are subsequently refunded as a consequence of relief obtained in appeals etc., are monies legitimately belonging to the taxpayers and wrongly withheld by the Government. This is based on the principle that if the Revenue had, in the first instance, made correct assessment of the tax liability of the assessee, the assessee would not have been deprived by the use of money. In such a situation, where pre-paid taxes are in excess of the assessed tax, the assessee is entitled to refund of such tax along with interest thereon.

Where an assessee out of abundant caution pays self-

assessment whilst staking a claim in the return, which claim is accepted, resulting in refund of self-assessment tax, the assessee should be equally entitled to interest thereon.

Section 244A was inserted in the statute as a measure of rationalization to ensure that the assessee is duly compensated by the Government, by way of payment of interest for monies legitimately belonging to the assessee and wrongfully retained by the Government, without any gaps.

Therefore, in our view where the self-assessment tax paid by the assessee under section 140A is refunded, the assessee should be, on principle entitled to interest thereon since the self-assessment tax falls within the expression "refund of any amount."

18. Noticeably, in the case of *Commissioner of Income Tax v. Sutlej Industries Ltd.*(supra), the assessee had paid self-assessment tax under Section 140A, in addition to TDS (Tax Deducted at Source) and advance tax. The assessment order was framed under Section 250 read with Section 143(3) whereby refund of ₹66,90,474/- was granted as claimed in return from out of the amount earlier paid as self-assessment tax.

19. Doubting the correctness or otherwise the decision in the case of *Sandvik Asia Limited* (supra), a Bench of two Hon'ble Judges of Supreme Court in the case of *Commissioner of Income Tax, Gujarat v. Gujarat Fluoro Chemicals* (supra) had referred the matter for consideration and authoritative pronouncement to a Larger Bench. Clarifying the observations in *Sandvik Asia Limited* (supra) and the legal position, the Larger Bench (three Hon'ble Judges) ruled thus –

"6. In our considered view, the aforesaid judgment has been misquoted and misinterpreted by the assessee and also by the Revenue. They are of the view that in Sandvik case (supra) this

Court had directed the Revenue to pay interest on the statutory interest in case of delay in the payment. In other words, the interpretation placed is that the Revenue is obliged to pay an interest on interest in the event of its failure to refund the interest payable within the statutory period.

7. As we have already noticed, in Sandvik case (supra) this Court was considering the issue whether an assessee who is made to wait for refund of interest for decades be compensated for the great prejudice caused to it due to the delay in its payment after the lapse of statutory period. In the facts of that case, this Court had come to the conclusion that there was an inordinate delay on the part of the Revenue in refunding certain amount which included the statutory interest and therefore, directed the Revenue to pay compensation for the same not an interest on interest.

8. Further it is brought to our notice that the Legislature by the Act No. 4 of 1988 (w.e.f. 1-4-1989) has inserted Section 244A to the Act which provides for interest on refunds under various contingencies. We clarify that it is only that interest provided for under the statute which may be claimed by an assessee from the Revenue and no other interest on such statutory interest."

[emphasis supplied]

20. The question before the Supreme Court in the case of *Union of India v. Tata Chemicals* (supra) mainly was as to whether the deductor of TDS is also entitled to interest on refund of excess deduction or erroneous deduction of tax at source under Section 195 of the Income Tax Act. The observations of the Supreme Court, to the extent relevant here, may be quoted verbatim as under:-

"30. The refund becomes due when tax deducted at source, advance tax paid, self-assessment tax paid and tax paid on regular assessment exceeds tax chargeable for the year as a result of an order passed in appeal or other proceedings under

the Act. ... No interest is payable for the period for which the proceedings resulting in the refund are delayed for the reasons attributable to the assessee (wholly or partly). The rate of interest and entitlement to interest on excess tax are determined by the statutory provisions of the Act. Interest payment is a statutory obligation and non-discretionary in nature to the assessee. ...

31. ... A general right (sic duty) exists in the State to refund any tax collected for its purpose, and a corresponding right exists to refund to individuals any sum paid by them as taxes which are found to have been wrongfully exacted or are believed to be, for any reason, inequitable. The statutory obligation to refund carried with it the right to interest also. This is true in the case of the assessee under the Act.

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. ... 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. ... 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, there-being 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."

[emphasis supplied]

21. A similar issue arose before the High Court of Bombay in the case of *Stock Holding Corporation of India Ltd. v. N.C. Tewari* (supra). The ITAT in that case had held that no interest was payable under Section 244A(1)(b) on refund of excess amount paid as tax on self-assessment under Section 140A. The assessee had filed the return for assessment year 1994-1995 declaring income of ₹13.12 Crores on which tax payable was computed at ₹6.79 Crores. Some amount had been earlier paid as advance tax and TDS credit was also claimed. To make good the shortage, the assessee paid ₹2.60 Crores by way of tax on self-assessment. The AO determined the income at ₹1.27 Crores and, thus, raised a further demand of ₹1.76 Crores by way of notice under Section 156. It appears that refund was due to the assessee for the assessment year 1995-1996 and the demand by notice under Section 156 for the assessment year 1994-1995 was set off against such refund for the subsequent year. The assessee, in the meanwhile, had brought a challenge to the assessment for the period 1994-1995 before CIT (Appeals) where a refund of ₹2 Crores was granted though interest of ₹18.24 Lacs from out of the amount paid as self-assessment was declined. A similar view was taken

by the Tribunal in second layer of appeal.

22. The High Court of Bombay, *inter alia*, held that the amount paid as self-assessment tax would fall under the residuary clause of Section 244A(1)(b) since it is neither payment of tax by way of advance tax nor by way of tax deducted at source. The court rejected the contentions of the Revenue that payment by way of self-assessment was gratuitous and, therefore, "not tax" and consequently, would not attract interest. Noticing, *inter alia*, the afore-quoted observations of the Supreme Court in the case of *Union of India v. Tata Chemicals* (supra), the assessee was held entitled to interest against refund from out of self-assessment tax even when paid voluntarily, and not on account of deduction (as in the case of *Union of India v. Tata Chemicals*) at a higher rate in terms of the order passed by the tax authority, on the reasoning that when an assessee pays tax, either as advance tax or on self-assessment, it is paid "to discharge an obligation under the Act" and there is "no voluntary payment of tax on self-assessment" since non-compliance with the obligations under the Act visits consequences to an assessee just as non-compliance of orders passed by the authorities under the Act would.

23. Noticeably, the Bombay High Court did not take note of the clarification given by Supreme Court in *Commissioner of Income Tax, Gujarat v. Gujarat Fluoro Chemicals* (supra).

24. In terms of the procedure for assessment as contained in Chapter XIV of the Income Tax Act, a person in receipt of income in respect of which he is assessable under the law is required to furnish a return under Section 139 in accordance, amongst others, with the provisions of Section 140. When tax is payable on the basis, *inter alia*, of such return furnished under Section

139, the assessee is liable to pay such tax (together with interest for delay, if any) after taking into account the amount of tax, if any already paid, the tax deducted or collected at source and relief of tax or deduction of tax (Section 199) if any claimed, etc. Thus, at the time of furnishing the return, the assessee is required to engage in an exercise of "self-assessment" under Section 140A and pay the balance liability (if any) on such computation.

25. There are detailed provisions relating to collection and recovery of tax in Chapter XVII of the Income Tax Act which include, in part-C the provisions for "advance payment of tax". Section 207 declares generally the liability of the assessee to pay "in advance" the tax during the financial year in respect of the total income "which would be chargeable to tax for the assessment year immediately following". The computation of advance tax on the "current income" for such purposes is carried out in accordance with Section 209, clause (a) of sub-section (1) whereof only needs to be noted as under:-

> *"where the calculation is made by the assessee for the purposes of payment of advance tax under sub-section (1) or sub-section (2) or sub-section (5) or sub-section (6) of section 210, he shall first estimate his current income and income-tax thereon shall be calculated at the rates in force in the financial year."*
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> [emphasis supplied]

26. It may be added here that clauses (b) and (c) of sub-section (1) of Section 209 pertain to cases where the calculation is made (not by the assessee but) by the AO, while clause (d) pertains to the effect of tax deductible or collectible at source, which are not relevant for present discussion.

27. For proper understanding of the method of computation of advance

tax, it is necessary also to take into account the provision contained in Section 210, since it, *inter alia*, provides guidance to the assessee to calculate and pay the advance tax "of his own accord"

> *"**210. Payment of advance tax by the assessee of his own accord or in pursuance of order of Assessing Officer.***
>
> *(1) Every person who is liable to pay advance tax under section 208 (whether or not he has been previously assessed by way of regular assessment) shall, of his own accord, pay, on or before each of the due dates specified in section 211, the appropriate percentage, specified in that section, of the advance tax on his current income, calculated in the manner laid down in section 209.*
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> *(2) A person who pays any installment or installments of advance tax under sub- section (1), may increase or reduce the amount of advance tax payable in the remaining installment or installments to accord with his estimate of his current income and the advance tax payable thereon, and make payment of the said amount in the remaining installment or installments accordingly.*
>
> *(3) In the case of a person who has been already assessed by way of regular assessment in respect of the total income of any previous year, the Assessing Officer, if he is of opinion that such person is liable to pay advance tax, may, at any time during the financial year but not later than the last day of February, by order in writing, require such person to pay advance tax calculated in the manner laid down in section 209, and issue to such person a notice of demand under section 156 specifying the installment or installments in which such tax is to be paid.*
>
> *(4) If, after the making of an order by the Assessing Officer under sub- section (3) and at any time before the 1st day of March, a return of income is furnished by the assessee under section 139 or in response to a notice under sub- section (1) of*

section 142, or a regular assessment of the assessee is made in respect of a previous year later than that referred to in sub-section (3), the Assessing Officer may make an amended order and issue to such assessee a notice of demand under section 156 requiring the assessee to pay, on or before the due date or each of the due dates specified in section 211 falling after the date of the amended order, the appropriate percentage, specified in section 211, of the advance tax computed on the basis of the total income declared in such return or in respect of which the regular assessment aforesaid has been made.

(5) A person who is served with an order of the Assessing Officer under sub- section (3) or an amended order under sub-section (4) may, if in his estimation the advance tax payable on his current income would be less than the amount of the advance tax specified in such order or amended order, send an intimation in the prescribed form to the Assessing Officer to that effect and pay such advance tax as accords with his estimate, calculated in the manner laid down in section 209, at the appropriate percentage thereof specified in section 211, on or before the due date or each of the due dates specified in section 211 falling after the date of such intimation.

(6) A person who is served with an order of the Assessing Officer under sub- section (3) or amended order under sub-section (4) shall, if in his estimation the advance tax payable on his current income would exceed the amount of advance tax specified in such order or amended order or intimated by him under sub- section (5), pay on or before the due date of the last installment specified in section 211, the appropriate part or, as the case may be, the whole of such higher amount of advance tax as accords with his estimate, calculated in the manner laid down in section 209."

[emphasis supplied]

28. It is clear from the bare reading of the above provisions that whether for purposes of computing the advance tax liability or for that matter the

calculation of self-assessment tax, the assessee is given the liberty to make the estimation "of his own accord". The Revenue expects proper declaration on the basis of which the liability would be eventually determined. After all, the necessary information or data is available first to the assessee. Since the advance tax is paid on quarterly basis, the assessee is in a position to revise the calculations as the financial year progresses. He may increase or decrease the amount to be paid as the quarterly installment of advance tax corresponding to the increase or reduction of the income generated. A person who has already been assessed to income tax in the previous year(s) has the advantage of the benchmark of such earlier periods. The AO , on the other hand, is also given the authority by the law, by virtue of Section 210(3) or (4), to keep a tab on the payment(s) of advance tax having regard, *inter alia*, of the income reported in the preceding years and require deposit of the advance tax to the optimum extent. Notwithstanding this authority of the AO, for purposes of advance tax, the assessee retains his discretion to compute his taxable income and tax liability of his own estimation and, thus, may deposit the advance tax only to the extent he concedes, thereby ignoring the order of the AO as communicated in terms of Section 210(3 or (4).

29. Unlike the liability towards advance tax (Section 207), there is no specific provision in the Income Tax Act for guiding the assessee in computing his liability towards "self-assessment" (in terms of Section 140A). But since, in the scheme of things, the liability towards "advance tax" would come up ahead of the stage when the assessee is required to compute the tax payable finally with the return, described as self-assessment, it is clear that having paid the quarterly installment of advance tax and reviewed the estimate of current income at each such stage, the

assessee would be equipped with better information and data required to be taken into account for calculating "current income" and, thus, in a better position to arrive at a more accurate estimate and compute the tax liability when time comes for submitting the return under Section 139 and calculating the self-assessment tax under Section 140A.

30. The declaration of the taxable income or tax liability in the return is subject to order of assessment required to be passed by the AO, amongst others, under Section 143. There is no finality given to the order of assessment at the hands of the AO. There are provisions for rectification, appeal, etc. There are also provisions for dealing with income that escapes assessment. When the liability is determined, whether in terms of the assessment order or in accordance with the order passed by the appellate authorities, or superior forums, if any tax, interest, penalty, fine etc. remain due to the Revenue, the AO is authorized by Section 156 to require the assessee to pay such sum by serving a notice (or revised notice) of demand. The notice of demand under Section 156, if issued before the assessment becomes final and binding, is subject to upward revision (or refund) in due course, in accordance with the assessment that comes to be finally made. The stage for refund comes when the assessment attains finality.

31. The liability of the Revenue to pay interest on refund of excess amount paid towards Income Tax Act by the assessee, in terms of Section 244A requires to be examined in above light. Concededly, the provisions contained in Section 115WJ (Advance tax in respect of fringe benefits), Section 199 (Credit for tax deducted), Section 206C (Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.) or Section 207 (Liability for payment of advance tax) have no connection with

the liability to pay self-assessment tax. Therefore, clause (a) of sub-section (1) of Section 244A would not apply to refund out of the amount paid as self-assessment tax. Clause (b), on the other hand, is residuary provision. It opens with the expression "in any other case". Naturally, therefore, the liability of Revenue towards interest on refund from out of amount paid as self-assessment tax would fall under this clause.

32. Noticeably, for purposes of calculating the liability of the Revenue towards interest on the amount being refunded under Section 244A(1)(b), the beginning point is prescribed as the "date of payment of tax (or penalty)". This expression is defined in the explanation appended to the clause to be indicative of the date of payment of the amount "specified" in the demand notice under Section 156. Thus, the legislation makes it clear that for the residuary clause, the amount paid by the assessee (from which refund is to be made) must have been deposited pursuant to demand notice issued by the assessing authority. To put it conversely, the clause would not apply, by virtue of the explanation, in case the excess amount (being refunded) has been paid by the assessee otherwise than in compliance with demand notice or voluntarily. This is the import and effect of the explanation if the language employed thereof is read, understood and construed in its natural and ordinary sense. Since the words used are clear, plain and unambiguous, there is no scope for beneficent construction since it would lead to re-legislation, which is impermissible.

33. The observations of the Supreme Court in *Sandvik Asia Limited* (supra) must be understood in the light of clarification given in the case of *Commissioner of Income Tax, Gujarat v. Gujarat Fluoro Chemicals* (supra). There is no liability of the Revenue to pay tax on refund beyond the liability

created by the statutory provisions. In the case of *Union of India v. Tata Chemicals* (supra), the collection of the tax (through deductor) was found to be illegal, thus giving rise to the liability to pay interest on the refunded amount.

34. We, thus, conclude that there cannot be a general rule that whenever a refund of income tax paid in excess is to be made, the Revenue must necessarily pay interest on the refunded amount. The letter and spirit of the law on the subject is that the party which committed the error in proper calculation (or delay in proper assessment) must bear the burden. If the excess amount is paid due to erroneous assessment by the Revenue, having exacted such burden wrongfully and inequitably on the assessee and having retained the excess amount thus received, the reimbursement must be accompanied by payment of interest at the statutorily prescribed rate. Conversely, if the assessee is to blamed for the miscalculation (or for delay or, for that matter, want of claim of refund), the Revenue does not owe any interest even if the excess payment of tax is liable to be refunded.

35. Having found the position of law as indicated above, we express, with respect, our inability to subscribe to, or follow, the view taken by the other Division Bench of this court in the case of *Commissioner of Income Tax v. Sutlej Industries Ltd.* (supra).

36. Even otherwise, noticeably, in the case of *Commissioner of Income Tax v. Sutlej Industries Ltd.* (supra), the question had been examined in the facts and circumstances indicative of "high-pitched assessment" made by the Revenue and the refund of the self-assessment tax resulting from a claim to such effect being made by the assessee in the return. In the case at hand, the Revenue had not made the excessive assessment so as to impel the deposit

of self-assessment tax in excess. The assessee did not make a claim for refund in the return. Such claim appears to have come later.

37. For the very same reasons as set out above, we are not inclined to endorse the view taken by Madras High Court in the case of *CIT vs. Cholamandalam Investment & Finance Co. Ltd.* (supra) wherein in our view, the proposition of law on the subject was expounded in too broad terms. As clarified by the Supreme Court in the case of *Commissioner of Income Tax, Gujarat v. Gujarat Fluoro Chemicals* (supra), there is no general principle obliging the Revenue to pay interest on all sums wrongfully retained. It is trite that a fiscal statute is to be construed strictly. The claim of interest on refund of income tax has to be pegged on the statutory clauses only.

38. For the foregoing reasons, we answer the substantial question of law mentioned in para 3 above accordingly in favour of the Revenue.

39. In absence of explanation as to how the assessee erred in calculation of self-assessment tax, there being no allegation that such excess deposit was pursuant to demand by the Revenue, the claim for interest on excess payment voluntarily made cannot be sustained. In the result, the appeal is allowed and the impugned order passed by ITAT directing the AO to pay interest to the assessee on the refunded amount is set aside.

R.K.GAUBA
(JUDGE)

S. RAVINDRA BHAT
(JUDGE)

FEBRUARY 26, 2015/ik