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

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\+ **W.P.(C) 1011/2016**

PREETI N AGGARWALA ..... Petitioner
Through: Mr. Sandeep Sapra with Mr. Manu K. Giri, Advocates.

versus

CHIEF COMMISSIONER OF INCOME TAX
& ANR. ..... Respondents
Through: Mr. Ashok Manchanda, Senior standing counsel and Mr. Raghvendra Singh, Advocate.

WITH

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\+ **W.P.(C) 1012/2016**

NARESH KUMAR AGGARWAL ..... Petitioner
Through: Mr. Sandeep Sapra with Mr. Manu K. Giri, Advocates.

versus

CHIEF COMMISSIONER OF INCOME TAX
& ANR. ..... Respondents
Through: Mr. Ashok Manchanda, Senior standing counsel and Mr. Raghvendra Singh, Advocate.

AND

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\+ **W.P.(C) 1183/2016**

BRISK CAPITAL MARKET SERVICES LTD ..... Petitioner
Through: Mr. Sandeep Sapra with Mr. Manu K. Giri, Advocates.

versus

CHIEF COMMISSIONER OF INCOME TAX
& ANR. ..... Respondents

Through: Mr. Ashok Manchanda, Senior standing counsel and Mr. Raghvendra Singh, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE CHANDER SHEKHAR

O R D E R

% 01.05.2017

Dr. S. Muralidhar, J.

1. The central question involved in these three writ petitions under Article 226 of the Constitution of India is whether the expression 'in any other case' occurring in Section 244A (1) (b) of the Income Tax Act, 1961 ('Act') would include the amount of refund which constitutes the interest that has been waived by the Income Tax Department ('Department') under Section 220 (2A) of the Act?

2. The factual background is that the three Petitioners were notified on 17th June 1997 under Special Courts (Trial of Offences relating to transactions in Securities) Act, 1992 whereby all the assets were attached to be dealt with as per orders of the Special Court.

3. The consequential assessments made under the Act in respect of each of the Petitioners entailed their paying the substantial amounts towards tax and interest. By a communication dated 29th August 2006 the Assistant

Commissioner of Income Tax ('ACIT'), Central, Circle-19, New Delhi requested the Custodian (Special Court) for recovery of the income tax demand.

4. By an order dated 19th March 2008 the Department recovered in the case of Preeti Aggarwala (the Petitioner in W.P. (C) No. 1011 of 2016) a sum of Rs. 3,74,323 towards interest under Section 220(2) of the Act for the AY 1998-99 by adjusting the refund due for AY 1992-93. In respect of Naresh Kumar Aggarwal (the Petitioner in W.P. (C) No. 1012 of 2016) the dues in respect of taxes and interest were recovered by the Respondent from the Custodian under the orders of the Special Court by debiting the attached account of the said Petitioner and also by adjusting refunds due for other AYs 2002-03, 2004-2005 and 2006-07. In respect of Brisk Capital Market Services Ltd. (the Petitioner in W.P. (C) No. 1183 of 2016) the dues in respect of taxes and interest were recovered by the Respondent from the Custodian under the orders of the Special Court by debiting the attached account of the said Petitioner and also by adjusting refunds due for AYs 1993-94 up to 1996-97.

5. On 22nd August 2008 the three Petitioners filed applications for waiver of interest under Section 220 (2A) of the IT Act for the various AYs. After several letters and reminders by the Petitioners for disposal of their waiver applications, the Chief Commissioner of Income Tax ('CCIT'), [Central] by an order dated 30th March 2015 waived all the eligible amounts of interests for late payments as under:

"Name of Assessee	AY	Amount waived
Brisk Capital P Ltd	1993-94	Rs. 8,31,016
Brisk Capital P Ltd	1993-94	Rs. 25,47,001
Brisk Capital P Ltd	1994-95	Rs. 59,678
Brisk Capital P Ltd	1995-96	Rs. 12,54,988
Brisk Capital P Ltd	1996-97	Rs. 15,31,016
TOTAL		Rs. 62,24,677
Naresh Agarwal	2002-03	Rs. 73,62,609
Naresh Agarwal	2004-05	Rs. 4,62,945
Naresh Agarwal	2006-07	Rs. 1,66,097
Naresh Agarwal	2006-07	Rs. 6,787
TOTAL		Rs. 79,78,839
Preeti Aggarwala	1998-99	Rs. 3,74,323."

6. After the Petitioners' petitions for waiver of interest were decided, the Petitioners filed an application dated 18th June 2015 before the Assessing Officer ('AO') for grant of interest on the above amounts under Section 244 A of the Act. These applications were rejected by the AO by an order dated 3rd August 2015 stating *inter alia* as under:

> "3. Charging of interest under Section 220(2) is a statutory obligation and nondiscretionary in nature. Tax refund is a refund of taxes when the tax liability is less than the tax paid whereas in your case tax paid was not in excess of demand due from you. Tax and interest paid in your case was in accordance with the provisions of law and being undisputed was correct. However, refund in your case accrued because the Chief Commissioner of Income Tax exercised his discretionary powers and waived the interest under Section 220(2A) of the Act. Your right of refund of the waived amount arose only the date of order passed under Section 220(2A) of the Act i.e. on 30th March 2015 and the resultant refund was issued to you on 30th April

> 2015. The obligation to refund money received and retained without right implies and carries with it the right of interest also whereas charging of interest under Section 220(2) for non payment of tax within the stipulated period is mandatory and as such department was very much within its right to collect and retain the amount of interest. According to the provisions of Section 244A (1) (b) of the Act, interest is allowable in cases where refund of any amount becomes due to the Assessee under this Act whereas the refund on account of waiver under Section 220 (2A) is not under any statutory provisions of the Act. Further the judicial pronouncements quoted by you have been perused carefully and is found that the facts of your case are not squarely covered with facts of the case laws relied upon by you.
>
> 4. In view of the facts and the provisions of the Act, you are not entitled to the interest under Section 244A and your application under reference is rejected."

7. Thereafter, the present three writ petitions were filed seeking the quashing of the above orders dated 3rd August 2015 and for a direction to the Department to pay the Petitioners simple interest @ 6% from the date of recovery of the interest till the date of refund.

8. Mr. Sandeep Sapra, learned counsel appearing for the Petitioners, submits that the expression 'in any other case' occurring in Section 244A (1) (b) of the Act would include the interest waived by the CCIT pursuant to the applications filed by the Petitioners under Section 220 (2A) of the Act. This was a quantified sum representing interest which ought not to have been charged in first place. According to him, by directing the said sum to be refunded together with interest, the letter and spirit of Section 244A (1) (b) of the Act would in fact be complied with. In other words, this should not be viewed as 'interest on interest' as is sought to be contended by the

Department. Mr. Sapra submitted that with the language of statute being clear and unambiguous there should be no difficulty in the Court directing that the Petitioners should be paid the interest on the said sum under Section 244 A (1) (b) of the Act.

9. Reliance was placed by Mr Sapra on the decision in ***Union of India v. Tata Chemicals Limited (2014) 363 ITR 658*** and Circular No. 11/2016 dated 26th April 2016 issued by the Central Board of Direct Taxes ('CBDT') giving effect to the said decision in the context of TDS amount deducted in excess under Section 195 of the Act. Reliance was also placed on the decisions of this Court in ***India Trade Promotion Organization v. Commissioner of Income Tax (2013) 361 ITR 646*** and ***Commissioner of Income Tax v. Sutlej Industries Limited (2010) 325 ITR 331.*** Reliance was also placed on the decision dated 2nd February 2016 of the High Court at Calcutta in ITA No. 526 of 2004 **[*Commissioner of Income Tax, Kolkata-I v. Birla Corporation Limited***].

10. On the other hand Mr. Ashok Manchanda, learned Senior standing counsel for the Department, submitted that in the first place there was an unexplained delay in Petitioners' filing the present petitions ten months after the order of waiver of interest dated 30th March 2015 and 9 months after 30th April 2015 when the refunds were in fact issued. Mr. Manchanda contended that on a collective reading of sub-clauses (a), (aa) and (b) of sub-section (1) of Section 244 A of the Act together with the Explanation thereunder it would become apparent that the expression 'in any other case' would apply only in the cases of refund of tax and penalty and not any other amount.

11. Mr. Manchanda pointed out that the waiver of interest by CCIT was discretionary. There was no delay in actually issuing the refund orders once the CCIT passed the refund order dated 30th March 2015. Further, since CCIT had waived the interest payable by the Petitioners, the question of their incurring a financial loss did not arise. There was no general mandatory rule that every amount of refund made by the Department to an Assessee must carry interest thereon. Reliance was placed on the decision of this Court in ***Commissioner of Income Tax v. Engineers India Limited (2015) 373 ITR 377 (Del)***.

12. Mr Manchanda submitted that the decision of the Supreme Court in ***Union of India v. Tata Chemicals Limited*** (*supra*) was distinguishable on facts. There the issue was about TDS having been wrongfully deducted whereas in the present case interest under Section 220 (2A) of the Act was charged due to failure on the part of the Petitioners to pay the demand raised under Section 156 of the Act for various AYs within the time limits in terms of Section 220 (1) of the Act. He relied on the decision of the Supreme Court in ***Commissioner of Income Tax, Gujarat v. Gujarat Fluoro Chemicals (2014) 43 Taxman.com 350 (SC)*** where it was held that only that interest provided for under the statute may be claimed by an Assessee and no other interest.

13. First, the Court would like to recapitulate the facts of the present case. The assessments of the Petitioners for several years were held up on account of the proceedings before the Special Court. In the case of Brisk Capital Market Services Limited, the relevant AYs were 1993-94 to 1996-97; in the

case of Preeti Aggarwala, the relevant AY was 1998-99 and in the case of Naresh Aggarwal the relevant AYs were 2002-03 to 2006-07. It is not necessary at this stage for the Court to examine whether it was the Petitioners or the Department who were responsible for the delay in finalising the assessments. Delays were also on account of the proceedings before the Special Court and elsewhere.

14. It is also not necessary to examine if the Petitioners were justified in seeking waiver of interest under Section 220 (2) of the Act. Their applications seeking waiver of interest filed on 22nd August 2008 were finally disposed of by the CCIT only on 30th March 2015, i.e., after almost seven years. Certainly, the Petitioners cannot be held responsible for such delay. Obviously there was a loss suffered by the Assessees as the amounts waived, and therefore refundable, were substantial. In the case of Brisk Capital Market Services. Ltd. the interest amount waived was Rs. 62,24,677 In the case of Naresh Aggarwal it was Rs. 79,78,839 and in the case of Preeti Aggarwala it was Rs. 3,74,323. Given this background, it cannot be said there was any undue delay in the Petitioners approaching this Court for relief.

15. The Court now proceeds to examine Section 244 A of the Act which reads as under:

> "244A (1) Where refund of any amount becomes due to the Assessee under this Act, he shall, subject to the provisions of this Section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely:
>
> (a) Where the refund is out of any tax 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-half per cent for every month or part of a month comprised in the period,–

(i) from the 1st day of April of the assessment year to the date on which the refund is granted, if the return of income has been furnished on or before the due date specified under sub-section (1) of Section 139; or

(ii) from the date of furnishing of return of income to the date on which the refund is granted, in a case not covered under sub-clause (i)

(aa) Where the refund is out of any tax paid under Section 140A, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period, from the date of furnishing of return of income or payment of tax, whichever is later, to the date on which the refund is granted:

Provided that no interest under clause (a) or clause (aa) 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 143 or on regular assessment.

(b) In any other case, such interest shall be calculated at the rate of one half per cent for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted.

Explanation – For the purposes of this clause, "date of payment of tax and 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."

16. It is not in issue that neither sub-clauses (a) (aa) of sub-section (1) of

Section 244 A of the Act applies in the present case. Clause (b) deals with 'any other case' - which has to be a case other than refund of taxes or penalties. Clause (b) stipulates that "in any other case" the interest payable shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period or periods from the date "or, as the case may be" dates of payment of the "tax or penalty" to the date on which the refund is granted.

17. This has to be read with the expression "refund of **any amount** that becomes due" occurring in Section 244 A (1) of the Act. When the entire sub-section (1) of Section 244 A of the Act is read as a whole, the legislative intent does not appear to be to limit the expression "any amount becomes due" occurring in Section 244A (1) or the expression "in any other case" occurring in Section 244A (1) (b) only to tax and penalty as is sought to be contended by the Department. The words "as the case may be" refers to the period for which the interest will become payable and that the period is said to be dates of payment of tax or penalty to the date on which the refund is granted. This does not mean that the amount other than tax or penalty cannot be included in the expression "in any other case". it is only reflective of the periods for which such interest would become payable. In fact the disjunctive "or" between the words "period" and "periods" indicates that 'in any other case' interest would be calculated for every month or part of a month comprised in the period or periods from the date o which the refund is granted. The Court is not prepared to read the expression in the narrow way as suggested by Mr. Manchanda.

18. The Explanation under clause (b) of Section 244 A (1) of the Act serves to clarify the expression "the dates of payment of the tax or penalty." It is not intended to and in fact does not whittle down the ambit of Section 244 A (1) (b) of the Act.

19. In ***Commissioner of Income Tax v. Birla Corporation Limited*** (*supra*) the question that arose was whether the Income Tax Appellate Tribunal (ITAT) was justified in granting interest under Section 244A of the Act on the refund arising due to excess payment on self-assessment of tax. It was held that Section 244A does not mandate that interest cannot be allowed on self-assessment tax paid under Section 140A of the IT Act. Relying on the decisions in ***Commissioner of Income Tax v. Cholamandalam Investment and Finance Company Limited (2007) 294 ITR 438 (Mad), ACIT v. Kerala Transport Company (2014) 222 Taxman 149 (Ker), Commissioner of Income Tax v. Mangalam Arts (2013) 218 Taxman 51 (Raj)***, ***CIT v. Punjab Chemical & Crop Protection Limited (2015) 231 Taxman 312,*** and that of the Calcutta High Court in ***Commissioner of Income Tax v. Birla Corporation Limited*** (*supra*) where it was held that "it cannot be said that interest under Section 244A can be allowed only in cases where excess payments of tax is made consequent to a notice of demand under Section 156. The language of the Act is clear and there is no ambiguity in it. Hence the Assessee is clearly entitled to claim interest under Section 244A on refund of excess self-assessment tax."

20. As correctly noted in ***Commissioner of Income Tax v. Birla Corporation Limited*** (*supra*), there was a divergence of views of the

Division Benches of this Court in ***CIT v. Sutlej Industries (2010) 325 ITR 331 (Del)*** and ***CIT v. Engineers India Limited Ltd. (2015) 373 ITR 377 (Del)***. In the latter decision, the Court purportedly followed the decision of the Supreme Court in ***Commissioner of Income Tax, Gujarat v. Gujarat Fluoro Chemicals*** (*supra*) which did not deal with the issue of refund of excess self-assessment tax. It may be noted at this stage that the question of the conflict between the aforementioned two decisions of this Court in ***CIT v. Sutlej Industries*** (*supra*) and ***CIT v. Engineers India Limited*** (*supra*) has been referred to a larger Bench of this Court. However, the issue in the present case does not involve refund of excess self-assessment tax.

21. Turning to the decision of the Supreme Court in ***Union of India v. Tata Chemicals Limited*** (*supra*) the question that arose was whether the Revenue was liable to pay interest on the refund of tax made to the Resident/Deductor under Section 240 of the Act. Answering the said question in the affirmative, the Supreme Court held as under:

> "22. It is cardinal principle of interpretation of Statutes that the words of a Statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning unless such construction leads to some absurdity or unless there is something in the context or in the object of the Statute to the contrary. The golden rule is that the words of a Statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of a Statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning irrespective of the consequences. It is said that the words themselves best declare the intention of the law giver. The Courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a Statute as being inapposite surpluses, if they can have proper application in circumstances conceivable within the

contemplation of the Statute (See ***Gurudevdatta VKSSS Maryadit v. State of Maharashtra [2001] 4 SCC 534***).

23. It is also well settled principle that the courts must interpret the provisions of the Statute upon ascertaining the object of the legislation through the medium or authoritative forms in which it is expressed. It is well settled that the Court should, while interpreting the provisions of the Statute, assign its ordinary meaning.

24. This Court in ***Shyam Sunder vs. Ram Kumar (2001) 8 SCC 24*** has observed that in relation to beneficent construction, the basic rules of interpretation are not to be applied where (i) the result would be re-legislation of a provision by addition, substitution or alteration of words and violence would be done to the spirit of legislation, (ii) where the words of a Provision are capable of being given only one meaning and (iii) where there is no ambiguity in a provision, however, the Court may apply the rule of beneficent construction in order to advance the object of the Act.

25. Before the insertion of Section 244A as a composite Section by the Direct Tax Laws (Amendment) Act, 1987, the liability to pay interest on refund of pre-paid taxes was contained in Sections 214, 243 read with Section 244 (1A) of the Act. The Parliament has introduced a new Section in the place of Sections 214, 243 and 244 in respect of assessment for the assessment year 1989-90 and onwards.

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

.....

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 the taxing

> statute. **Refund due and payable to the assessee is debt owned and payable by the Revenue**. The Government, there being no express statutory provision for payment of interest on the refund of the excess amount/tax collected by the Revenue, cannot shrug of its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. ....**The obligation to refund money received and retained without right implies and carries with it the right to interest**. **Whenever money has been received by a party which *ex ae quo et bono* ought to be refunded, the right to interest follows, as a matter of course.**"

22. The aforesaid decision in ***Union of India v. Tata Chemicals Limited*** (*supra*) is clear in its enunciation that even if there is no express statutory provision for payment of interest, the government cannot avoid its obligation to reimburse the lawful monies "together with accrued interest" for the period of "undue retention". Once it is clear that Section 244A (1) (b) of the Act which talks of "any other case" does not have to be interpreted restrictively and can include situations like in the present case, then it is evident that there is nothing in the said provision which prohibits the payment of interest on an amount of refund due to the Petitioners as a result of the waiver of interest under Section 220(2A) of the Act. The circular of the CBDT dated 26th April 2016 accepts the above proposition laid down in ***Union of India v. Tata Chemicals Limited*** (*supra*) in its entirety.

23. The sum found refundable to the Petitioners as a result of the waiver of interest order passed by the CCIT is a definite sum that was wrongly deducted from the Petitioners as interest. Payment of interest on that sum by the Revenue cannot be characterised as payment of 'interest on interest'. In ***India Trade Promotion Organization v. CIT*** (*supra*) the question before the Court concerned the denial of interest on refund. It was clarified that "if the

refund does not include interest due and payable on the amount refunded, the Revenue would be liable to pay interest on the shortfall. This does not amount to payment of interest on interest."

24. For all the aforementioned reasons, the Court sets aside the impugned orders dated 3rd August 2015 of the AO denying the Petitioners interest on the amounts refunded to them pursuant to the waiver order dated 30th March 2015 of the CCIT. The interest amount as claimed by the Petitioners on the amount refunded to them will now be paid by the Department to the Petitioners within four weeks from today in terms of Section 244 A (1) (b) of the Act from the date of recovery till the date of payment.

25. The writ petitions are allowed in the above terms with no orders as to costs.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 01, 2017
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