



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

+ **ITA 1204/2005**

Reserved on: 11th December, 2009

% Date of Decision: 15th March, 2010

COMMISSIONER OF INCOME TAX-III

..... Appellant

Through: Mr Sanjeev Sabharwal, Advocate.

versus

SUTLEJ INDUSTRIES LTD

..... Respondent

Through: Mr Ajay Vohra with Ms Kavita Jha,
Advocates.

CORAM:

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

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| 1. | Whether reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. | To be referred to the Reporter or not? | Yes. |
| 3. | Whether the judgment should be reported in the Digest? | Yes. |

J U D G M E N T

SIDDHARTH MRIDUL, J.

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

“Whether section 244(1)(b) read with explanation thereto excludes payment of interest on refund of self Assessment Tax?”

2. Since it is a pure question of law, the learned counsel for the parties advanced arguments finally. They wanted some time to file the



written synopsis of their submissions as well, for which one week time was granted.

3. For answering the aforesaid question following brief facts are adumbrated:

- (a) The respondent-assessee had for the assessment year 1998-99, in addition to TDS and advance tax, also paid self assessment tax under Section 140A of the Income Tax Act, 1961 (in short 'the Act').
- (b) On 24th April, 2002 an order was framed under Section 250/143(3) of the Act whereby a refund of Rs 66,90,474/-, earlier paid as self assessment tax by the assessee, was made. The respondent-assessee claimed interest on the amount refunded which was not allowed by the Assessing Officer.
- (c) The respondent-assessee carried the matter in appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] claiming interest on the entire amount of refund including the amount paid on self assessment. The CIT(A) vide order dated 9th July, 2003 found that the plea of the respondent-assessee was not tenable and consequently confirmed the order of the Assessing Officer.
- (d) Vide the impugned order dated 29th October, 2004 the Income Tax Appellate Tribunal (in short 'the Tribunal') allowed the appeal of the assessee and set aside the order of the CIT(A) relying upon the decision of the Supreme Court in the case of *Commissioner of Income Tax v.*



Modi Industries Ltd, 216 ITR 759. The Tribunal, consequently, held that the respondent-assessee would be entitled to interest on refund relating to payment under Section 140A also from the date of payment till the date of granting the refund.

- (e) Aggrieved by the impugned order dated 29th October, 2004 rendered by the Tribunal, the Revenue has preferred the present appeal.

4. 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 Section 214 read with Section 244(1A) of the Act, which read as follows:-

“Section 214(1): The Central Government shall pay simple interest at fifteen per cent per annum on the amount by which the aggregate sum of any instalments of advance tax paid during any financial year in which they are payable under sections 207 to 213 exceeds the amount of the assessed tax from the 1st day of April next following the said financial year to the date of the regular assessment for the assessment year immediately following the said financial year, and where any such instalment is paid after the expiry of the financial year, during which it is payable by reason of the provisions of section 213, interest as aforesaid shall also be payable on that instalment from the date of its payment to the date of regular assessment:

Provided that in respect of any amount refunded on a provisional assessment under section 141A, no interest shall be paid for any period after the date of such provisional assessment.

(1A) Where as a result of an order under section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and in a case where the interest is reduced, the Assessing Officer shall serve on the assessee, a notice of demand in the prescribed



form specifying the amount of the excess interest payable and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly.

(2) On any portion of such amount which is refunded under this Chapter, interest shall be payable only upto the date on which the refund was made.

.....

Section 244(1): Where a refund is due to the assessee in pursuance of an order referred to in section 240 and the Assessing 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 fifteen 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.

(1A) 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:

.....

.....”

5. The Supreme Court had occasion to interpret the provisions of the Sections aforementioned in the case of ***Modi Industries Ltd (supra)***. The Supreme Court in that case held that the assessee was entitled to interest under the aforesaid Sections on refund of pre-paid taxes (advance tax, TDS etc.) from the first day of the assessment year and in the case of self-assessment tax from the date of payment of self-assessment tax till the date of grant of refund. The Supreme Court concluded as under:-



“(i) Up to March 31, 1975, interest under Section 214 is payable from the first day of April of the relevant assessment year to the date of the first assessment order. The amount on which the interest is to be paid is the amount of advance tax paid in excess of the tax payable by the assessee as calculated in the regular assessment (the first assessment order). The amount on which interest was payable did not vary due to the reduction or enhancement of tax as a result of any subsequent proceeding. But with effect from April 1, 1985 while the period for which interest was payable remained constant, the amount on which the interest was payable, varied with the variation in the quantum of refund as a result of any subsequent orders.

(ii) If any tax is paid pursuant to an assessment order after March 31, 1975 (which will include tax deducted at source and advance tax to the extent the same has been retained and treated by the Income Tax Officer as payment of tax in discharge of the assessee's tax liability in the assessment order), becomes refundable wholly or in part as a result of any appellate or other order passed, the Central Government will have to pay the assessee interest on the refundable amount under Section 244(1 A). For the purpose of this section, the amount of advance payment of tax and the amount of tax deducted at source must be treated as payment of income tax pursuant to an order of assessment on and from the date when these amounts were set off against the tax demand raised in the assessment order, in other words the date of the assessment order.

(iii) With effect from April 1, 1985, interest payable under Section 214 will increase or decrease in accordance with the variation in the quantum of the excess payment of tax brought about by orders passed subsequent to the regular assessment as mentioned in sub-section (1A).”

6. The provisions of Section 244A read as follows:

“(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-half 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 115WE 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-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 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....."

7. Vide Circular No. 549 dated 31st October, 1989 the Central Board of Direct Taxes (CBDT) explained the rationale of Section 214, 243 and 244. The said Circular No.549 reads as follows:-

"11.2. Insertion of a new section 244A in lieu of sections 214, 243 and 244.-- Under the provisions of section 214, interest was payable to the assessee on any excess advance tax paid by him in a financial year from the 1st day of April next following the said financial year to the date of regular assessment. In case the refund was not granted within three months from the end of the month in which the regular assessment was completed, section 243 provided for further payment of interest. Under section 244, interest was payable to the assessee for delay in payment of refund as a result of an order passed in appeal, etc., from the date following after the expiry of three months from the end of the month in which such order was passed to the date on which refund was granted. The rate of interest under all the three sections was 15 per cent per annum.

11.3 These provisions, apart from being complicated, left certain gaps for which interest was not paid by the Department to the assessee for money remaining with the Government. To remove this inequity, as also to simplify the provisions in this regard, the Amending Act, 1987, has inserted a new section 244A in the Income-tax Act, applicable from the assessment year 1989-90 and onwards which contains all the provisions for payment of interest by the Department for delay in the grant of refunds. The rate of interest has been increased from the



earlier 15 per cent per annum to 1.5% per month or part of a month comprised in the period of delay in the grant of refund. The Amending Act, 1987, has also amended sections 214, 243 and 244 to provide that the provisions of these sections shall not apply to the assessment year 1989-90 or any subsequent assessment years.”

8. In the case of *Sandvik Asia Ltd v. Commissioner of Income Tax, 280 ITR 643 (SC)*, the Supreme Court held as under:-

“In view of the expressed provisions of the Income Tax Act, 1961, an assessee is entitled to compensation by way of interest for the delay in the payment of amounts lawfully due to the assessee which are withheld wrongly and contrary to law.

The Government is liable to pay interest, at the rate applicable to the excess amount refunded to the assessee,

9. In the case of *Commissioner of Income Tax v. Cholamandalam Investment and Finance Co. Ltd, 294 ITR 438*, the Madras High Court dealt with the question of whether the assessee is entitled to interest under Section 244A as per Clause (1)(b) of that Section, when the refund arises on account of payment of self-assessment tax. The Madras High Court observed as under:

“6. Even though the short title to section 140A reads as self-assessment, the charging phrase employed in section 140A namely “Where any tax is payable on the basis of any return required to be furnished under section 115WD or section 115WH or section 139 or section 142 or section 148 or section 153A, as the case may be; the assessee shall be liable to pay such tax together with interest payable under any provision of this Act for any delay in furnishing the return”, makes it clear that there is no difference between:

- (i) the tax paid under section 115WJ, which deals with advance tax in respect of fringe benefits; or
- (ii) the tax collected at source under section 206C; or
- (iii) any tax paid by way of advance tax or any tax treated as paid under section 199, which deals with



credit for tax deducted, which are provided under section 244A(1)(a)

7. The proviso to section 244A(1)(a) makes it clear that no interest shall be payable if the amount of refund is less than 10 per cent on regular assessment with regard to the refund of advance tax paid under section 115WJ in respect of fringe benefits; (ii) tax collected at source under section 206C; and (iii) advance tax or any tax treated as paid under section 199. But, with respect to other tax as per section 244A(1)(b), the interest shall be payable even if the amount is less than 10 per cent of the tax as determined under section 143(1) or on the regular assessment, because there is no proviso to section 244A(1)(b) as provided under section 244A(1)(a)."

The Madras High Court further observed:-

"It is also trite law 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 (*reference Sandvik Asia Ltd*)."

10. The Supreme Court dismissed the Special Leave Petition (SLP) No. 16877/2008 filed by the Revenue against the decision in ***Cholamandalam Investment and Finance Co. Ltd (supra)***, vide order dated 3rd December, 2009. The Supreme Court has also, recently, in the case of ***Commissioner of Income Tax, Bhopal v. H.E.G. Limited***, vide its order dated 3rd December, 2009, held that the expression "refund of any amount" would include interest under Section 244A (on refund of tax deducted at source) to which the assessee was lawfully entitled but had been wrongly withheld by the Department.

11. On an analysis of Section 244A of the Act it is seen that where "refund of any amount" becomes due to the assessee, the assessee is entitled to simple interest thereon. The mode and manner of calculating such interest is laid down in Clause (a) and (b) of Sub-



section (1) of the said Section. Where the refund is out of pre-paid taxes, interest is calculated in terms of Section 244A(1)(a) of the Act. Where the refund is of taxes paid other than pre-paid taxes covered in Clause (a), the computation of interest is for the period prescribed in Clause (b), Sub-section (1) of the said Section. In ***Cholamandalam Investment and Finance Co. Ltd (supra)***, it was held that even though the short title to Section 140A reads as self-assessment, the charging phrase employed in Section 140A, namely, “where any tax is payable on the basis of any return required to be furnished under Section 115WD or 115WH or Section 139 or Section 142 or Section 148 or Section 153A, as the case may be, the assessee shall be liable to pay such tax together with interest payable under any provision of this Act for any delay in furnishing the return”, makes it clear that there is no difference between: (i) the tax paid under Section 115WJ, which deals with advance tax in respect of fringe benefits; or (ii) the tax collected at source under Section 206C; or (iii) any tax paid by way of advance tax or any tax treated as paid under Section 199, which deals with credit for tax deducted, which are provided under Section 244A(1)(a).

12. 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 on 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 tax payers 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.

13. 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.

14. 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.

15. 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". The computation



of interest on self-assessment tax has to be in terms of Section 244A(1)(b), i.e., from the date of payment of such amount up to the date on which refund is actually granted. We find support for this conclusion from the decision of the Madras High Court in ***Cholamandalam Investment and Finance Co. Ltd (supra)***, the SLP against which order was dismissed by the Supreme Court. Even otherwise, it is trite law that wherever the assessee is entitled to refund, there is statutory liability on the Revenue to pay the interest on such refund on general principles to pay the interest on sums wrongfully retained (*Sandvik Asia Ltd, supra*).

16. In view of the discussion above, we answer the question of law in favour of the assessee and against the Revenue. The present appeal is accordingly dismissed.

SIDDHARTH MRIDUL, J.

A.K. SIKRI, J.

MARCH 15, 2010

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