IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2012 OF 2011

The Commissioner of Income Tax 10,
Aayakar Bhavan, M. K. Road,
Mumbai-400020. ..Appellant.

Versus

M/s. Indian Oil Corporation Ltd.,
G-9,Ali Yavar Jung Marg, Bandra (E),
Mumbai-400051.
Pan AAACL 1681G. ..Respondent.

Mr. Suresh Kumar for the Appellant.
Mr. R. Murlidhar with Mr. Atul K. Jasani for the Respondent.

CORAM : S.J.VAZIFDAR &
M.S. SANKLECHA, JJ.

DATE : 12TH SEPTEMBER, 2012

JUDGMENT (Per M.S. SANKLECHA, J.) :

This appeal by the revenue under section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") challenges an order dated 24/11/2010 of the Income Tax Appellate Tribunal (hereinafter referred to as the "Tribunal") in ITA No.2201/Mum./2006 relating to the assessment year 2002-03.

2) The appeal is admitted on the following question of law :-

"Whether the Tribunal was right in holding that interest under section 234D is chargeable from Assessment year 2004-05 only and it could not be charged for earlier assessment years, even though regular assessments for such earlier assessment years are framed after 1/6/2003 ?"

At the instance of the Advocates for the appellant and the respondent, the appeal itself is taken up for final disposal.

3) The facts leading to this appeal are as under :-

a) On 30/10/2002, the respondent-assessee filed its return of income for the assessment year 2002-03 declaring an income of Rs.2620,22,91,100 Crores. It claimed a refund of Rs.22,88,82,482/- in its return of income.

b) On 28/2/2003, the return of income was processed under section 143(1) of the Act and refund was determined at Rs.40,52,96,970/-. However on 13.03.2003 the Assessing Officer in exercise of powers under section 154 of the Act rectified the refund payable to Rs,22,88,82,482/-. Consequent to the above, on 25/03/2003 a refund cheque for Rs.22,88,82,482/- was issued by the appellant-revenue to the respondent-assessee.

c) Thereafter, on 10/3/2005 the assessment was completed under section 143(3) determining the income at Rs.3031,14,54,900/- and arriving at a demand of Rs.200,39,55,005/-. Consequently a demand for interest under section 234D of the Act for Rs.2,96,63,169/- on the excess refund of Rs.22,88,82,482/- was made on the respondent-assessee.

d) The Commissioner of Income Tax (Appeals) by an order dated 13/01/2006, dismissed the respondent's appeal against the demand for interest under section 234D

of the Act. The Commissioner of Income Tax (Appeals) held that interest is chargeable on the amount of refund granted under Section 143(1) of the Act when the same is found to be paid in excess on regular assessment done under Section 143(3) of the Act. Therefore, the demand for interest under section 234D of the Act was sustained.

e) On further appeal, the Tribunal by its order dated 24.11.2010 allowed the assessee's claim. The Tribunal held that no interest under section 234D of the Act can be charged/demanded in this case as the refund of the excess tax was made prior to 1/06/2003 i. e. the date on which section 234 D of the Act was introduced. The Tribunal allowed the assessee's appeal by following the decision of this Court in *CIT v. Bajaj Hindustan Limited in Income Tax Appeal No.198 of 2009 dated 15/4/2009.*

4(A). Section 234D of the Act when introduced on 1/6/2003 read as under:

> *"234D(1) Subject to the other provisions of this Act, where any refund is granted to the assessee under sub section (1) of section 143, and-*
> *(a) no refund is due on regular assessment; or (b)*

the amount refunded under sub-section (1) of section 143 exceeds the amount refundable on regular assessment.
the assessee shall be liable to pay simple interest at the rate of (two third) percent on the whole or the excess amount so refunded, for every month or part of a month comprised in the period from the date of grant of refund to the date of such regular assessment.
(2) Where, as a result of an order under section 154 or section 155 or section 2590 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 of refund granted under sub-section (1) of section 143 is held to be correctly allowed, either in whole or in part, as the case may be, then, the interest chargeable, if any, under sub-section (1) shall be reduced accordingly.
Explanation [1] – Whether, in relation to an assessment year, an assessment is made for the first time under Section 147 or section 153A, the assessment so made shall be regarded as a regular assessment for the purposes of this section."

(B). Thereafter by the Finance Act, 2012, Explanation 2 was added to section-234D, which reads as under:

"Explanation 2. - For the removal of doubts, it is hereby declared that the provisions of this section shall also apply to an assessment year commencing before the 1st day of June, 2003 if the proceedings in respect of such assessment year is completed after the said date."

5(A). The object of introducing the Explanation 2 to section 234D of the Act has been explained in the memorandum explaining the provisions of the Finance Bill 2012 inter alia as under:

> "Under the existing provisions of section 234D of the Income Tax Act (inserted with effect from 1st June, 2003, vide the Finance Act,2003), where any refund has been granted to the assessee under sub-section(1) of section 143 and subsequently on regular assessment, no refund or lesser amount of refund is found due to the assessee, then,the assessee shall be liable to pay simple interest at the rate of one half per cent, on the excess amount so refunded for the period starting from the date of refund to the date of such regular assessment.
>
> In a recent decision of the court, it has been held that the provisions of section 234D inserted with effect from 1st June, 2003 would be applicable from the assessment year 2004-05 only and accordingly no interest could be charged for earlier assessment years even though the regular assessments for such years were framed after 1st June,2003 or refund was granted for those years after the said date.
>
> This is not in conformity with the legislative intent of the provision.
>
> It is, therefore, proposed to clarify that the provisions of section 234D would be applicable to any proceeding which is completed on or after 1st June,2003, irrespective of the assessment year to which it pertains.
>
> This amendment will take effect retrospectively from the 1st day of June, 2003".

(B). The Notes on clauses in respect of the Finance Bill reads as under :

> "Clause 85 of the Bill seeks to insert a new Explanation to section 234D of the Income -tax Act relating to interest on excess refund.
>
> The existing provisions of sub-section (1) of the aforesaid section 234D provides that where any refund is granted to the assessee under sub-section (1) of section 143 and no refund is due on regular assessment, or the amount refunded under sub-section (1) of section 143 exceeds the amount refundable on regular assessment,then, the assessee shall be liable to pay simple interest at the rate of one half per cent,on the whole or the excess amount so refunded for every month or part of a month comprised in the period from the date of grant of refund to the date of such regular assessment.
>
> The Explanation to the aforesaid section provides that where, in relation to an assessment year, an assessment is made for the first time under section 147 or section 153A, the assessment so made shall be regarded as a regular assessment for the purposes of the said section.
>
> It is proposed to insert a new Explanation so as to clarify that the provisions of this section shall also apply to an assessment year commencing before the 1st day of June, 2003 if the proceedings in respect of such assessment year is completed after the said date.
>
> This amendment will take effect retrospectively from 1st June, 2003." (emphasis provided)

6) Mr. Suresh Kumar, the learned Counsel for the revenue in support of the appeal submits as under:

a) After the introduction of Explanation-2 to section 234D by Finance Act, 2012, there cannot be any doubt that interest is payable by an assessee in respect of any excess refund under section 143(1) of the Act even if it was received prior to 1/6/2003 i. e. the date when section 234D was introduced so long as the proceedings in respect of the concerned assessment year for which the refund was granted is completed after 1/06/2003 ;

b) The issue is not covered by the decision of this court in *Bajaj Hindustan Limited* (supra) as this court had no occasion to consider Explanation 2 to section 234D as the same was introduced only by the Finance Act, 2012 ;

c) The Scheme of the Act provides that interest is payable whenever there is a delay in payment of tax by an assesseee or delay in payment of refund by the revenue. In support of the same he invites attention to sections 234B and 234C of the Act which levy interest for default and deferment of payment of advance tax respectively. The revenue is obliged to pay interest to the assessee under sections 243 and 244 and 244A of the said Act for any delay in grant of refunds. Section 234D of the said Act

was introduced so as to provide for levy of interest on any refund received by an assessee under section 143(1) of the Act which is found not due to the extent claimed while finalizing the assessment under section 143(3) of the Act.

d) In any view of the matter the refund is granted to the respondent-assessee under section 143(1) of the said Act on the basis of the claim made in the return of income. Further in case there is any delay in making the above refund interest is payable by the revenue to the assessee under the Act. In the above circumstances, it is submitted that fairness would demand that an assessee who has enjoyed the benefit of refund granted to it on the basis of the assessee's statement i.e. the return of income must pay back the same with interest from the date of receipt of refund to the date of final assessment;

7) On the other hand, Mr. Murlidhar, learned Counsel for the respondent-assessee advanced the following submissions which are in the alternative and without prejudice to each other :

a) The entire issue is no longer res-integra as it is covered by the decision of this Court in Bajaj Hindustan

Limited(supra) wherein it has been held that section 234D is inapplicable to refunds granted prior to 1/06/2003 when section 234D of the Act was introduced.

b) Section 234D of the Act applies only to cases where refund is granted under section 143(1) of the Act after 1/6/2003. This is evident from the opening words of section 234D of the Act which are couched in future tense viz. refund "is" granted;

c) In the further alternative, it was submitted that in any view of the matter interest under section 234D of the Act would be chargeable on the excess refund under section 143(1) of the Act only with effect from 1/6/2003 and not prior thereto;

8) The first issue which confronts us is whether the issue of payment of interest in respect of refunds made prior to 1/06/2003 consequent to intimation under section 143(1) of the Act is no longer res integra in view of the decision of this court in *Bajaj Hindustan Limited* (supra). In the above case the following question of law was considered by this Court:

> "Whether in the facts and circumstances of the case and in law the Income Tax Appellate Tribunal was right in holding that the interest under section 234D of the Act cannot be charged in respect of refunds granted prior to 1/06/2003?"

This Court answered the above question as under:

> "So far as the last question is concerned, it is seen that the subject provision came on Statute book w.e.f. from 1/06/2003. If that be so, the said provision does not have retrospective effect. In this view of the matter, we do not see the appeal giving rise to any substantial question of law. The appeal is, therefore, dismissed in limini with no order as to costs."

The decision of the Tribunal is based on this judgment.

9) It is important to bear in mind that *Bajaj Hindustan Limited* (supra) was rendered prior to the introduction of Explanation-2 to section 234D by the Finance Act, 2012. The question before the Division Bench indeed was whether interest cannot be charged in respect of refunds granted prior to 1/6/2003. It is however, important to note that the Division Bench did not decide the appeal on the basis that

the refund was made prior to 1/6/2003 but on the basis that "the subject provision (section 234D) came on the Statute book w.e.f. 1/6/2003". The Division Bench went on to hold that "the said provision (section 234D) does not have retrospective effect". The judgment was thus on the basis that section 234D itself did not apply prior to 1/6/2003. The Division Bench decided the question of law on the basis that section 234D itself does not operate in any manner prior to 1/6/2003. The Division Bench did not proceed on the basis that section 234D applied to the assessment year in question but not to refunds made prior to 1/6/2003. This Court had no occasion to interpret Explanation 2 to section 234D of the Act and its impact on refunds granted prior to 1/06/2003. Therefore the decision in *Bajaj Hindustan Sugar* (supra) would not cover the issue and we would be required to interpret Explanation-2 to section 234D of the said Act and its implication, if any, on the refund granted to the assessee prior to 1/06/2003.

10) Explanation 2 to Section 234D of the Act is a declaratory/clarificatory amendment. A declaratory provision declares the law on a particular issue so as to avoid/overcome doubts. A declaratory provision does not effect a change in law but merely

declares/clarifies what the law always was. Therefore, the same would apply with retrospective effect and the impugned decision of the Tribunal will have to be tested accordingly.

11) The respondent contended that section 234D of the Act would not have any retrospective operation qua refunds granted prior to 1/6/2003. In support of the same, he relied upon a decision of the Supreme Court in *J.K. Synthetics Limited Vs. C.T.O. reported in 1994 94 STC page 422* wherein the Apex Court held that the provision for charging interest is a substantive provision and not a machinery or procedural provision. Consequently, a provision introduced for charging interest would not entitle the revenue to recover interest for the earlier periods in the absence of a specific provision in the statue.

12) However, even if, one accepts the submission that the provision for charging interest in every case is a part of substantive law and not a machinery provision, the same is of no consequence in view of the fact that the plain language of section 234D itself envisages that the provision would apply retrospectively. In any case, consequent to the addition of Explanation-2 by Finance Act, 2012 which is declaratory of the law there can be no manner of doubt that section-234D of the

Act is to be applied retrospectively even to the period prior to the assessment year 2004-05.

13) Mr. Murlidharan, places reliance upon the decision of the Calcutta High Court in the matter of CIT v. Ram Kumar Agarwalla & Bros. (P) Ltd. reported in 122 ITR 322 in support of his contention that charging of interest under the said Act not being a matter of procedure cannot have retrospective effect. In the above case the issue was with regard to charging of interest under the said Act for the assessment year 1957-58, 1958-59 and 1959-60 when there was a delay in filing the return of income under the Indian Income Tax, 1922, particularly, when the same were filed when the said Act was in operation. The said Act provided for charging of interest for delayed filing of return of income. There was no provision for charging of interest for delayed filing of return of income under the Indian Income Tax Act, 1922. The Court held that such charging of interest as provided in the said Act not being a matter of procedure cannot apply retrospectively to a breach under the Indian Income Tax Act, 1922. This conclusion was reached as Section 297 of the said Act was made applicable to returns of income filed after the commencement of this Act only with regard to the procedure specified under the said Act.

14) The rule against retrospective operation of a statute unless so provided in the statute either expressly or by necessary implication is well settled. In fact in the matter of Ram Kumar Agarwalla and Bros. (P) Ltd. (supra) the decision of the Apex Court in the matter of Govinddas v. ITO reported in 103 ITR 123 was relied upon and the following extract was reproduced.

> "Now it is well settled rule of interpretation hallowed by time and sanctified by judicial decisions that unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in volume 36 of the Laws of England (third edition) and reiterated in several decisions of this Court as well as English courts is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statue so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the statute."

Therefore, in this case Explanation 2 to Section 234D of the Act is being declaratory would have retrospective operation. (Principle reiterated in CIT v. Gold Coin Hotels Food (P) Ltd. reported in 2008(9) SCC 622). Moreover, it is retrospective in terms. The validity thereof has not been challenged and they have accordingly proceeded

on the basis that it is valid.

15) Further, reliance was placed upon the decision of the Delhi High Court in the matter of *Jacobs Civil Incorporated reported in 330 ITR 578 wherein it has been* held that section 234D of the Act is not applicable retrospectively. In the above case, the Delhi High Court held that the legislature had not made section 234D of the Act retrospective in operation. Consequently, it was held to be prospective in its application and would apply from the assessment year 2004-05 onwards.

In view of the addition of Explanation-2 to section 234D of the Act there can be no manner of doubt that section 234D is retrospective in operation. In fact, Explanation 2 to section 234D of the Act does not restrict its application to assessment year 2003-04 but is applicable to all assessment years prior to 1/6/2003. Consequently, the above decision is inapplicable to the present facts as it did not deal with Explanation 2 to section 234D of the Act. The object of introducing Explanation 2 to section 234D has been explained in the memorandum explaining the provisions of the Finance Bill 2012. It inter alia states that certain decisions of the Court holding that the provisions of section

234D of the Act would be applicable only from Assessment Year 2004-05 were not in conformity with the legislative intent. Therefore, to clarify the position an explanation was sought to be added to the effect that section 234D would be applicable to any proceeding which is completed on/or after 1/6/2003 irrespective of the assessment year to which it pertains. The said memorandum has been extracted above and it makes it clear that the explanation was sought to be added so as to clarify doubts with regard to the correct meaning/intent of the legislature in introducing section 234D of the Act.

16) Explanation 2 according to Mr. Murlidhar does not affect the decision of this court in *Bajaj Hindustan Sugar* (supra). He relied upon the decision of the Apex Court in *S. Sundaraman* Pillai v. V.R. Pattabiraman reported in AIR 1985 (SC) 582 to submit that an Explanation added to a statutory provision is not a substantive provision but meant merely to clarify/explain the statutory provision. Explanation 2 seeks to clarify that it would cover Assessment years prior to 1/06/2003 but does not refer to refunds granted prior to 1/06/2003. Explanation 2 became necessary in view the decision of the Delhi High Court in *Director of Income Tax v. Jacobs Civil Incorporated* (supra) wherein it was held that section 234D of the Act

would be applicable only from Assessment year 2004-2005 onwards. In support of the above reliance is placed upon the Memorandum Explaining the provisions of the Finance Bill 2012 wherein it is stated "In a recent decision of the court, it has been held that the provisions of section 234D inserted with effect from 1st June, 2003 would be applicable from the assessment year 2004-05 only…." Therefore according to him Explanation 2 does not touch refunds granted prior to 1/06/2003.

17) This reliance upon the memorandum explaining the provisions of Finance Bill 2012 cannot control the plain terms of the statute, particularly when there is no ambiguity in the provisions as held by this court in the matter of *CIT Vs. Central Bank of India reported in 185 ITR 6*. The Explanation 2 to Section 234D of the Act while clarifying the main part of Section 234D of the Act does not restrict its clarification only to refunds granted after 1/6/2003.

18) Mr. Murlidharan further contended that the opening words of sub-section (1) of section 234D of the Act states "subject to the other provisions of this Act, where any refund "is" granted to the assessee under sub-section (1) of section 143…". Therefore it is sub-

mitted that as the words used are where any refund "*is"* granted can only apply in the future i.e. after 1/06/2003 and would not cover refunds granted prior thereto as in the present case.

19) The submission is not well founded. In *P. Anand Gajapati Raju v. P.V.G. Raju reported in 2000(4) SCC 539,* the Supreme Court construed similar words in section 8(1) the Arbitration Act 1996 which inter-alia reads as under :-

> "8. *Power to refer parties to arbitration where there is an arbitration agreement.*—(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.
> (2)…."

During an appeal before the Supreme Court all the parties had entered into an arbitration agreement. The argument was that the words "is subject of an arbitration agreement." in section 8(1) postulate an agreement in existence when the parties come before the Court and not one entered into afterwards. The Apex Court construed the words "is the subject of an arbitration agreement" as follows :-

> "In our view, the phrase "which *is* the subject of an arbitration agreement" does not, in the context, necessarily require that the agreement must be already in existence before the action is brought in the court. The phrase also connotes an arbitration agreement being brought into existence while the action is pending. *Black's Law Dictionary* has defined the word "is" as follows:
>
> "This word, although normally referring to the present, often has a future meaning, but is not synonymous with 'shall have been'. It may have, however, a past signification, as in the sense of 'has been'."

20) Mr. Murlidharan submits that the decision in the matter of P. Anand Gajapati Raju (supra) would have no application to the present case. According to him the above decision of the Apex Court should be read in the context of the facts involved therein namely creation of a right as against the present case of creation of a liability. He submits that Black's Dictionary itself states that the word "is" would normally refer to the present and therefore the normal meaning ought to be applied to this case and not the meaning given to it in P. Anand Gajapati Raju (supra). We will restrict our reference to the judgment only to the extent that it deals with the ambit of the word "is".

21) The question therefore is whether the word “is” in section 234D has a past signification. We think it does. Explanation 2 in fact supports this view. In view of the declaratory amendment to Section 234D of the Act by the addition of Explanation 2 thereto any doubt with regard to the word “is” having a past signification has been set at rest. In fact the context in which the word “is” has been used also supports the view that it has a past signification. The Legislature was obviously aware that refunds must have been made in respect of previous assessment years. Despite this, the amendment did not exclude such cases from the operation of the section. A grant of refund under section 143(1) is in the nature of a provisional refund and is subject to the final determination under section 143(3). This grant of refund is pending the conclusion of the final assessment under section 143(3) in respect of the year for which the refund is granted. The classification done in section 234D is on the basis of the date of the completion of assessment proceedings prior to 1/06/2003 on the one hand and post 1/06/2003 on the other. The classification is not on the basis of the date of grant of refund under section 143(1) of the Act. The classification on the basis of the completion of assessment proceedings is not a subject matter of challenge before us. Therefore, the date of grant of refund is immaterial to determine the applicability of section-234D of the Act. In

the circumstances the submission of the respondent that section 234D of the Act only applies to refunds granted prior to 1/06/2003 is not acceptable.

22) It must be borne in mind that refund which is granted under section 143(1) of the Act to an assessee is qua an assessment proceeding for a particular assessment year. The refund granted is qua an assessment year. The refund emanates from assessment proceedings for a particular assessment year. The refund granted cannot be divorced from the assessment year or the assessment proceeding. Consequently to hold that interest on such refund would only run from 1/06/2003 would be to curtail the plain meaning of Explanation 2 to Section 234D.

23) Section 143(4) also supports our view. It reads as under :-

> **"Section 143 – Assessment -**
>
> ….....
>
> (4) Where a regular assessment under sub section (3) of this section or section 144 is made,-
>
> a) any tax or interest paid by the assessee under sub-section (1) shall be deemed to have been paid towards such regular assessment;
>
> b) if no refund is due on regular assessment or

> the amount refunded under sub section (1) exceeds the amount refundable on regular assessment, the whole or the excess amount so refunded shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly".

It is clear therefore, that excess refund determined under section 143(3) of the Act is deemed to be tax payable by the assessee. However, as there was no provision of interest on the grant of refund under Section 143(1) of the Act it became necessary to provide for the same by having a charging provision. This was done by section 234D of the Act in respect of all pending assessments in which refund was given. Thus even if, a refund has already been granted the same would be subject to the provisions of section 234D of the Act. Under section 234D(1) where the refund under section 143(1) is in excess of the amounts refundable on regular assessment, interest on the excess amount would be payable. In any case after the introduction of Explanation 2 there can be no doubt that even where refund is granted prior to 1/06/2003 the same would carry interest provided the proceedings for assessment are completed after 1/06/2003. The respondent has not contended that the Explanation 2 to section 234D of the Act is not retrospective. Their only contention is that it would not apply to refunds granted prior to 1/06/2003 even in respect of

assessments completed after the cut-off date of 1/06/2003. This submission ignores the fact that Explanation 2 which is declaratory in nature clarifies that the section would apply to an assessment year even before 1/06/2003 provided the proceedings in respect of such assessment years are not completed by the cut off date i.e. 1/06/2003.

24) Mr. Murlidhar further submitted that even if section 234D is applicable to all refunds paid prior to 1/06/2003 in respect of assessments completed post 1/06/2003 interest payable on such refund would commence only from 1/06/2003 onwards. He relied upon the decision of Kerala High Court in *CIT v. Kerala Chemicals and Proteins Ltd. reported in 323 ITR 584.*

25) The aforesaid decision was rendered prior to the introduction of Explanation-2 to section 234D of the Act. The Kerala High Court which had no occasion to consider Explanation 2 held that as the provision of interest is not introduced with reference to any assessment year, it must be taken to apply only with effect from 1/06/2003. This submission of the respondent-assessee would require limiting the clear words of a declaratory amendment in an Explanation 2 to section 234D of the Act which specifically provides that it shall also

apply to an assessment year commencing before 1/06/2003. The only qualifying criterion is that proceedings in respect of such assessment is completed after 1/06/2003. Once the Explanation is held to be retrospective in relation to the assessment years commencing before 1/6/2003 it would not be open to restrict the operation of section 234D of the Act only with effect from 1/6/2003.

26) A statute could be retrospective in operation being expressly stated or by necessary implication. The case of the revenue is that section 234D as introduced on 1st June, 2003 was retrospective in operation by necessary implication. However, as doubts were raised about its retrospectivity, the same was clarified by adding an explanation to section 234D by Finance Act, 2012. Under the Act what is brought to tax is not the income of the assessee in the assessment year but the income of the assessee in the previous year. The liability to tax arises on account of the Finance Act which fixes the rate at which the tax is to be paid. The law to be applied is as existing on the 1st day of April of the previous year. In support the Counsel for the respondent relied upon the decision of the Supreme Court in *Karimthuravi Tea Estate ltd. v. State of Kerala 60 ITR 262, Maharajah of Pithapurm v. CIT 13 ITR 221 (PC)* and *CIT v. Scindia Steam*

Navigation Co. Ltd. 42 ITR 539. The aforesaid decisions are not relevant for our purpose particularly, in view of the fact that Explanation 2 to section 234D of the Act as introduced by the Finance Act,2012 being declaratory in nature would be retrospective. This amendment make it cleat that it shall apply assessment years even prior to 1/06/2003.

27) In view of the above, we hold that the decision of the Tribunal in *ITO V. Ekta Promoters Pvt. Ltd. reported in 113 ITD 719* which has been followed in the impugned order by the Tribunal is not correct. One more aspect of the matter which must be borne in mind is that till such time as the assessment proceedings are completed in respect of any assessment year, the amendment made to the Act would be applicable even in case of pending proceedings. It is not the case of the respondent that the proceeding in regard to refund which has been granted under section-143(1) of the Act are concluded and final. The refund which has been granted under section 143(1) of the Act is provisional, to be finally determined when final assessment order is passed under section 143(3) of the Act. Explanation-2 to section 234D of the Act makes it clear that it would be applicable to pending proceedings i. e. where assessments in respect of such

assessment year is not completed on 1/6/2003.

28) Mr. Suresh Kumar submitted that as an assessee is entitled to interest where there is any delay in making the refund, it is only fair that an assessee who has enjoyed the benefit of excess refund granted to it must refund the same along with interest from the date of receipt of refund to the date of final assessment. The Apex Court in *Sandvik Asia Ltd. v. CIT reported in AIR 2006 (S. C.) 1223* granted interest on delayed payment of interest by the revenue to the assessee.

Considering the view we have taken, it is not necessary to decide this question based on equitable grounds.

29) In view of the above, the question of law is answered in the negative i.e. in favour of the appellant-revenue and against the respondent-assessee.

The appeal is disposed of in above terms. No order as to costs.

(M.S. SANKLECHA, J.) ***(S. J. VAZIFDAR, J.)***