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

WRIT PETITION NO.823 OF 2000

The Stock Holding Corporation of India Ltd. … Petitioner.
Vs.
N.C. Tewari, the Commissioner of Income Tax,
Mumbai City III & Ors. … Respondents.

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Mr. Jitendra Jain a/w Ms. Sanidha VedPathak, i/b. M/s. Maneksha & Sethna, for the Petitioner.

Mr. Arvind Pinto, for the Respondents.

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CORAM : M.S. SANKLECHA AND
S.C. GUPTE, JJ.
DATE : 17 NOVEMBER 2014

Oral Judgment (M.S. Sanklecha, J.) :

. The challenge in this petition is to the order dated 28 September 1999 passed by the Commissioner of Income Tax under Section 264 of the Income Tax Act, 1961 ("the Act"). The impugned order holds that no interest is payable under Section 244A(1)(b) of the Act on the refund of excess amount paid as tax on self assessment under Section 140A of the Act.

2. The Assessment Year involved in Assessment Year 1994-95.

3. Briefly, the facts leading to this petition, are as under :-

(a) On 23 November 1994, the petitioner filed its return of

Income for Assessment Year 1994-95 declaring a total income of Rs.13.12 crores. The tax payable on the declared income was Rs.6.79 crores. The petitioner paid the tax by way of advance tax and credit for tax deducted at source. However as there was still a shortage of tax payable, the petitioner paid Rs.2.60 crores on 31 August 1994 as and by way of tax on self assessment. The challan evidencing the payment of the tax on self assessment was annexed along with the Return of Income.

(b) On 31 December 1996 the Assessing Officer completed the assessment for Assessment Year 1994-95 under Section 143(3) of the Act. The above order dated 31 December 1996 determined the petitioner's income at Rs.15.27 crores. Consequent to the above, a notice of demand under Section 156 of the Act was issued to the petitioner raising a demand of Rs.1.76 crores. It appears that the demand of Rs.1.76 crores was set off against the refund due to the petitioner for Assessment Year 1995-96.

(c) Being aggrieved, the petitioner carried the matter in appeal to Commissioner of Income-Tax (Appeals) (CIT)(A). On 11 September 1997, the CIT(A) substantially allowed the petitioner's appeal.

(d) Consequent to the above, by an order dated 20 October 1998, the Assessing Officer gave effect to the order dated 11 September 1997 of the CIT(A). As a result of giving effect to the order of the CIT(A), the petitioner was granted a refund of Rs 2 crores (tax of Rs.1.71 crores and interest of Rs.29 lacs). However, no interest inter alia was granted on Rs.18.24 lacs from the date of payment of tax on self

assessment, i.e. 31 August 1994 till the date of refund i.e. 24 October 1998.

(e) Thus the petitioner preferred a Revision Application to the Commissioner of Income Tax under Section 264 of the Act. In its Revision Application the petitioner sought total interest of Rs.42.87 lacs. This comprised of interest of Rs.33.75 lacs payable on refund of Rs.1.53 crores (adjustment of Refund for A.Y. 1995-96 to meet demand for A.Y. 1994-95) and interest of Rs.9.12 lacs payable on refund on tax of Rs.18.24 lacs (being the tax paid on self assessment for A.Y. 1994-95).

(f) On 28 September 1999, the Commissioner of Income Tax partly allowed the petitioner's Revision Application to the extent it directed payment of interest on Rs.1.53 crores adjusted out of refund for A.Y. 1995-96 to meet the tax demand for A.Y. 1994-95. However it rejected the petitioner's claim for interest of Rs.9.12 lacs being the interest on refund of tax paid on self-assessment of Rs.18.24 lacs.

4. For better appreciation of the rival contentions, it is necessary to reproduce Section 244A of the Act, which reads as under :-

> "Interest on refunds
>
> 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 percent 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 143 or] on regular assessment;

(b) in any other case, such interest shall be calculated at the rate of one percent 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.

(2) .....

(3) .....

(4) ....."

5. Mr. Jitendra Jain, learned counsel appearing for the petitioner in support submits as under :-

(a) The issue of grant of interest is no longer res-integra in view of the decision of the Supreme Court in **Union of India v/s Tata Chemicals [2014] 363 ITR page 658**. Thus, the revenue should be directed to grant interest on the excess amount paid as tax on self assessment under Section 140A of the Act;

(b) Section 244A (1) of the Act provides that refund of any

amount due under the Act to the assessee would entitle the assessee to receive the same along with interest. This would govern refund granted both under clauses (a) & (b) of sub-section (1) of Section 244A of the Act. Section 244A(1)(a) would govern refunds out of Advance tax and tax deducted at source while Section 244A(1)(b) of the Act would govern all other refunds including tax paid on self assessment. This view is also supported by CBDT Circular No.549 dated 30 October 1989;
and

(c) The explanation to Section 244A(1)(b) would have no application to the present facts. This is particularly so as no amount has been paid in excess of the demand specified under Section 156 of the Act.

For all the above reasons, it is submitted that the petition be allowed.

6. As against the above, Mr. Arvind Pinto, appearing for the revenue in support of the impugned order, submits as under :-

(a) The amount paid by the petitioner on self assessment was even according to the petitioner not tax payable. This, he submits, is evident from the computation of income filed by the petitioner where they claim a refund of Rs.47.15 lacs. Consequently, the amount paid in excess, not being tax, would entitle the petitioner only to the refund of the principal amount paid and not any interest thereon;

(b) The Apex Court decision in **Tata Chemicals** (supra), would have no application to the present facts as the petitioners therein had

deducted a larger quantum of tax then liable to be deducted in view of an order passed by the authorities under the Act. In this case, the petitioner has made the payment voluntarily and not consequent to any order passed under the Act; and

(c) In the alternative and without prejudice to the aforesaid, it is submitted that, if any interest is at all to be allowed to the petitioner, the same can only be from the date on which the notice under Section 156 of the Act is issued to the petitioner. In this case, according to him, it was issued on the date of the assessment order.

7. We have considered the rival submissions. On a bare analysis of Section 244A(1) of the Act it is clear that amount paid by the petitioner as tax on self assessment would not stand covered by Section 244A(1)(a) of the Act. This is so as it is neither the payment of tax by way of advance tax or by way of tax deducted at source. Thus tax paid on self assessment would fall under Section 244A(1)(b) of the Act, i.e. a residuary clause covering refunds of amount not falling under Section 244A(1) of the Act. The revenue contends that in the absence of tax on self assessment finding mention in Section 244A(1)(a) of the Act, no interest is payable under Section 244A(1) of the Act and Section 244A(1)(b) of the Act would have no application. This contention is opposed to the meaning of the provision disclosed even on a bare reading. If the tax paid is not covered by clause (a) of Section 244A(1), it falls within clause (b), which is a residuary clause. Besides, this contention stands negatived by the CBDT Circular bearing No.549 dated 31 October 1989 wherein reference is made to Section 244A and para

11.4 thereof reads as under :-

> 11.4 The provisions of the new section 244A are as under:-
>
> (i) Sub-section (1) provides that where in pursuance of any order passed under this Act, refund of any amount becomes due to the assessee then-
>
> (a) if the refund is out of any advance tax paid or tax deducted at source during the financial year immediately preceding the assessment year, interest shall be payable for the period starting from the 1st April of the assessment year and on the date of grant of the refund. No interest shall, however, be payable, if the amount of refund is less than 10 per cent of the tax determined on regular assessment;
>
> (b) if the refund is out of any tax, other than advance tax or tax deducted at source or penalty, interest shall be payable for the period starting from the date of payment of such tax or penalty and ending on the date of the grant of the refund. (Refer to example III in para 11.8)."
>
> (Emphasis supplied)

The inferences to be drawn from the Board's circular is clear that if refund is out of any tax other than out of advance-tax or tax deducted at source, interest shall be payable from the date of payment of tax and ending on the date of the grant of refund. It is to be noted that nowhere does the CBDT even remotely suggest that interest is not payable by the Department on self-assessment tax. Moreover, the amount paid under Section 140A of the Act on self assessment is an amount payable as and by way of the tax after noticing that there is likely to be shortfall in the taxes already paid. Thus this payment is considered to be a tax under the aforesaid provision.

8. The contention of revenue is that no interest at all is payable to the petitioner under Section 244A(1)(a) and (b) of the Act unless the amounts have been paid as tax. It would not cover cases where the payment is gratuitous as is evident from the fact that the petitioner in its computation after paying tax on self assessment of Rs.2.60 crores seeks a refund of Rs.47 lacs. According to him it has to be refund of amounts paid as tax. We find that Section 244A(1) of the Act commences with the word "when refund of any amount becomes due to the assessee under this Act...". Sub-clause (b) thereof commences with the words "in any other case....". The words used in Section 244A(1) of the Act are clear inasmuch as it provides that refund of any amount that become due to any assessee under the Act will entitle the assessee to interest. In any case in the present facts, the amount on which the refund is being claimed was originally paid as tax on self-assessment under Section 140A of the Act and evidence of the same in the form of challan was enclosed to the Return of Income. In fact when the Assessing Officer passed the Assessment Order on 31 December 1996, he accepted the entire amount paid as tax on self assessment as a payment of tax. One more feature to be noticed is that when any refund becomes due to an assessee out of tax paid, it becomes so only after holding that it is not the tax payable. Thus we find no substance in the first objection of the revenue that the amount paid as tax on self assessment is not tax and therefore no interest can be granted on refund of such amounts which are not tax.

9. The next objection of the Revenue is that the decision of the Apex Court in **Tata Chemicals** (supra) is inapplicable to the present

facts. The case before the Apex Court in **Tata Chemicals** (supra) arose as the quantum of tax deducted by it consequent to the order passed by the Assessing Officer directing it to deduct tax on amounts being remitted abroad, it was found in appeal that the payments made were in the nature of reimbursement and therefore not a part of income of the party to whom it is being remitted for the purposes of deduction of tax at source. Therefore Tata Chemicals sought refund of the amount paid in excess along with interest thereof. This the Supreme Court granted while making the following observations with regard to the liability to pay interest :

> "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. In the present fact scenario, the deductor/assessee had paid taxes pursuant to a special order passed by the assessing officer/Income Tax Officer. In the appeal filed against the said order the assessee has succeeded and a direction is issued by the appellate authority to refund the tax paid. The amount paid by the resident/ deductor was retained by the Government till a direction was issued by the appellate authority to refund the same. When the said amount is refunded it should carry interest in the matter of course. As held by the Courts while awarding interest, it is a kind of compensation of use and retention of the money collected unauthorizedly by the Department. When the collection is illegal, there is corresponding obligation on the revenue to refund such amount with interest in as much as they have retained and enjoyed the money deposited. Even the Department has understood the object behind insertion of Section 244A, as that, an assessee is entitled to payment of interest for money remaining with the Government which would be refunded. 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.

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 aequo et bono ought to be refunded, the right to interest follows, as a matter of course.

In the present case, it is not in doubt that the payment of tax made by resident/ depositor is in excess and the department chooses to refund the excess payment of tax to the depositor. We have held the interest requires to be paid on such refunds. The catechize is from what date interest is payable, since the present case does not fall either under clause (a) or (b) of Section 244A of the Act. In the absence of an express provision as contained in clause (a), it cannot be said that the interest is payable from the 1st of April of the assessment year. Simultaneously, since the said payment is not made pursuant to a notice issued under Section 156 of the Act, Explanation to clause (b) has no application. In such cases, as the opening words of clause (b) specifically referred to “as in any other case”, the interest is payable from the date of payment of tax. The sequel of our discussion is the resident/deductor is entitled not only the refund of tax deposited under Section 195(2)

> of the Act, but has to be refunded with interest from the date of payment of such tax."
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> Emphasis supplied.

From the aforesaid observations of the Apex Court in Tata Chemicals, it would be clear that the requirement to pay interest arises whenever an amount is refunded to an assessee as it is a kind of compensation for use and retention of money collected by the revenue.

10. The only distinction being made in the present facts and those of Apex Court decision in Tata Chemicals is that the amount paid as tax on self assessment was paid voluntarily in the present case while in the case of **Tata Chemicals Ltd.** (supra) the tax was deducted at a higher rate in view of the order passed by the authority under the Act. We are unable to appreciate this distinction. This is for the reason that when an assessee pays tax either as Advance tax or on self assessment, it is paid to discharge an obligation under the Act. Not complying with the obligation under the Act visits consequences to an assessee just as non compliance of orders passed by authorities under the Act would. Thus there is no voluntary payment of tax on self assessment as contended by the revenue.

11. The further submission of Mr. Pinto that in view of the Explanation to Section 244A(1)(b)of the Act the same would apply only when the amounts are paid consequent to a notice issued under Section 156 of the Act. Not otherwise. This very submission was advanced by the revenue before the Apex Court in the case of **Tata Chemicals** (supra). In fact, the first Appellate Authority in the case of **Tata**

Chemicals (supra) had rejected the petitioner's claim for interest on the ground that in view of the Explanation appended to Section 244A(b) of the Act, refund of any amount under the aforesaid provision could only be in respect of refund of excess payment made under Section 156 of the Act. The aforesaid interpretation was negatived in the second appeal by the Tribunal as well as by the High Court and the Apex Court.

12. Similarly, the next contention urged on behalf of the revenue that the payment of interest should only be made from the date of notice under Section 156 of the Act is issued to the petitioner in terms of Explanation to Section 244A(1)(b) of the Act cannot be accepted for two reasons. Firstly, as held by the Supreme Court in **Tata Chemicals** (supra), the Explanation would have effect only where payments of tax have been made pursuant to notice under Section 156 of the Act. In this case, the payment has not been made pursuant to any notice of demand but prior to the filing of the return of income in accordance with Section 140A of the Act. Secondly, the provisions of Section 244A(1) (b) very clearly mandate that the revenue would pay interest on the amount refunded for the period commencing from the date the payment of tax is made to the revenue upto the date when refund is granted to the revenue. Thus, the submission of Mr. Pinto that the interest is payable not from the date of payment but from the date of demand notice under Section 156 of the Act cannot be accepted as otherwise the legislation would have so provided in Section 244A 1(b) of the Act, rather then having provided from the date of payment of the tax.

13. We find support for our view from the decisions rendered by

Karnataka High Court in **Commissioner of Income-Tax v/s Vijaya Bank [2011] 338 ITR page 489** and Delhi High Court in **Commissioner of Income-Tax v/s Sutlej Industries Ltd. [2010] 325 ITR page 331.** In both cases in identical circumstances it was held that interest is payable from the date of payment of the tax on self assessment to the date of refund of the amounts under Section 244A of the Act.

14. Accordingly, for all the aforesaid reasons, we set aside the impugned order dated 28 September 1999. We direct the Assessing Officer to compute the interest payable from the date of payment on self-assessment tax i.e. 31 August 1994 till the date of refund i.e. 24 October 1998. The revenue is directed to compute the interest due to the petitioner and pay the same within six weeks from today.

15. Petition allowed. No order as to costs.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**