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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **INCOME TAX APPEAL NOS. 167/2012 & 168/2012**

Date of decision: 6th September, 2013

INDIA TRADE PROMOTION ORGANISATION

..... Appellant

Through Mr. Ajay Vohra, Ms. Kavita Jha &
Ms. Bhoomika Choudhury, Advocates.

versus

COMMISSIONER OF INCOME TAX

..... Respondent

Through Mr. Abishek Maratha, Sr. Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL):

These appeals by India Trade Promotion Organisation under Section 260A of the Income Tax Act, 1961 (Act, for short) relate to Assessment Years 1989-90 and 1990-91. By order dated 22nd August, 2013, the following substantial questions of law were framed in these two appeals:

“Whether the Income Tax Appellate Tribunal was right in denying interest of Rs.1,60,30,495/-, which it is claimed was payable alongwith the refund?

Whether the Income Tax Appellate Tribunal was right in denying interest of Rs.41,11,644/-, which it is claimed was payable alongwith the refund?”

2. Facts relevant for adjudication of the present appeals may be noticed in brief.

ASSESSMENT YEAR 1989-90

(a) At the outset, we record that there was an earlier round of litigation resulting in order of the Income Tax Appellate Tribunal (tribunal, for short) dated 22nd June, 2007 wherein it was held that the appellant was entitled to interest under Section 244A of the Act, it being a substantive right and the same cannot be denied on the basis of a letter written to Government of India, Central Board of Direct Taxes. We observe and record that the said order dated 22nd June, 2007 has attained finality and has not been challenged by the Revenue. Thus, we are required to proceed on the basis that the appellant is entitled to interest under Section 244A of the Act and the issue raised in the question of law framed above relates to quantification of interest payable under Section 244A of the Act. We further clarify that we have not examined the effect of the letter written by the appellant to the Government of India, Central Board of Direct Taxes and whether in view of the said letter no interest was payable.

- (b) After the order of the tribunal dated 22nd June, 2007, an amount of Rs.1,60,30,495/- was paid by the respondent vide order dated 11th June, 2008. The contention of the appellant is that they are entitled to interest on this amount of Rs.1,60,30,495/- from the date it was due and payable. In order to appreciate the contention, we would like to refer to the following:
- (i) Pursuant to the assessment order/appellate order, the appellant became entitled to refund of taxes paid of Rs.2,06,52,845/-.
 - (ii) On 28th March, 1995, Rs.1,70,01,266/- was refunded.
 - (iii) Rs.36,51,579/- was refunded on 1st June, 1999.
 - (iv) Rs.1,42,04,705/- had accrued as interest under Section 244A on Rs.2,06,52,845/- upto 28th March, 1995 when part payment of Rs.1,70,01,266/- was made.
 - (v) Interest of Rs.18,25,790/- had accrued on balance amount of Rs.36,51,579/- from 29th March, 1995 till 1st June, 1999.
 - (vi) Thus in all, interest of Rs.1,60,30,495/- had accrued and payable but was not paid when the two refunds were issued. (Rs.1,42,04,705/- had accrued and should have been paid on 28th March, 1995 and Rs.18,25,790/- had accrued and should have been paid on 31st May, 1999).
 - (vii) The interest of Rs.1,60,30,495/- was paid on 11th June, 2008.
- (c) The appellant claims that they are entitled to interest on this amount, i.e., on Rs.1,42,04,705/- with effect from 1st April, 1995 to 31st May,

2008 upto the date of refund of Rs.1,42,04,705/- and interest on Rs.18,25,790/- from 1st June, 1999 upto the date of refund. Interest on the said amounts is payable under Section 244A of the Act.

(d) The contention of the Revenue is that this would amount to payment of interest on interest and this is forbidden and should not be paid.

ASSESSMENT YEAR 1990-91

(a) In this year also the question whether the appellant was entitled to interest under Section 244A of the Act was decided in the first round by the tribunal vide order dated 22nd June, 2007. We need not, therefore, decide the question whether the appellant was entitled to interest because a letter was written by them to the Central Board of Direct Taxes. The said order has become final and, therefore, we are not required to go into the said issue and examine on merits whether or not this order dated 22nd June, 2007 passed by the tribunal was justified. The question raised in the present appeal relates to quantification of interest payable under Section 244A and not whether the interest was justified or should be denied on account of the said letter.

(b) On the basis of assessment proceedings, the appellant became entitled to refund of Rs.53,01,570/-.

(i) On 28th March, 1995, Rs.38,12,810/- was refunded.

- (ii) On 31st March, 1997, Rs.10,87,686/- was refunded.
- (iii) On 19th March, 1999, Rs.4,01,074/- was refunded.
- (iv) The appellant became entitled to interest under Section 244A of Rs.36,58,084/- upto 28th March, 1995. This interest is calculated on Rs.53,01,570/-.
- (v) Interest of Rs.3,57,302/- upto 31st March, 1997 on amount of Rs.14,88,760/- (Rs.53,01,570/- minus Rs.38,12,810/-).
- (vi) Interest of Rs.96,258/- on Rs.4,01,074/- from 19th March, 1999 upto date of refund on balance amount of Rs.4,01,074/-.

3. The appellant claims that it is entitled to interest on Rs.36,58,084/- from 1st April, 1995 upto the date of refund/payment. Rs.3,57,302/- from 1st April, 1997 upto the date of refund/payment and Rs.96,258/- from 1st June, 1999 upto the date of refund/payment. Interest, it is claimed, is payable under Section 244A of the Act.

4. The contention of the Revenue is that this would amount to paying interest on interest and this would be contrary to Section 244A of the Act.

DECISION

5. At the outset, we note that there is no dispute and debate on the initial interest, which is payable and should have been paid by the Revenue when they made the refund of the taxes. The dispute has arisen as the Revenue did not pay along with the refund of taxes, the

interest which had accrued and had become due and payable on the tax amount refundable. The Revenue, therefore, had made part payment of the refund by not including the interest element.

6. Secondly, it should be clarified that the interest payable on the refund stands quantified on the date when the refund was issued/granted by the respondent. The quantum or the calculation of interest does not and has not undergone a change or modification. Interest has not accrued or is not payable by the Revenue after they have made payment of the refund as interest payable under Section 244A stopped running on the said day and became quantified and an amount due and payable. In other words, it became a part of the capital or principal amount due and payable.

7. The question really is in case the Revenue does not make payment of interest element, which had accrued and had become payable on the date when the tax amount is refunded, whether they would be liable to pay interest under Section 244A on the said amount. One can casually or loosely call it as interest on interest but in reality payment of interest on the said amount occurs because of non-payment of the total amount refundable, which is due and payable to the assessee, inter alia, consisting of the tax, which had to be refunded and the interest accrued on the delayed refund of the tax. It is not uncommon and in the

commercial world and even in civil suits while computing interest under Section 34 of the Code of Civil Procedure, 1908 the principal amount and the interest due are added and treated as the primary amount in the decree drawn. Interest becomes due and payable on this primary amount. In other words, interest stands capitalised. We further note that it is not a case of compounding of interest as understood except once, i.e., on the date when it is quantified, i.e., when part refund payment is made by the Revenue. Therefore, it will be wrong to call it and treat it as compounding of interest.

8. It will be now relevant to refer to the provisions of the Act relating to refund and examine whether under the Act, interest is payable. Section 244A with effect from 1st April, 1989 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 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.

(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable, and where any question arises as to the period to be excluded, it shall be decided by the Chief Commissioner or Commissioner whose decision thereon shall be final.

(3) Where, as a result of an order under sub-section (3) of section 115WE or section 115WF or section 115WG or sub-section (3) of section 143 or section 144 or 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 paid 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.

(4) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years:

Provided that in respect of assessment of fringe benefits, the provisions of this sub-section shall have effect as if for the figures “1989”, the figures “2006” had been substituted.”

9. The words used in the Section 244A are “where refund of any amount becomes due and payable to the assessee under the Act”, the assessee shall be entitled to receive in addition to the said amount simple interest calculated in the manner stipulated. The Legislature has not used the words “tax paid” or “the principal amount of tax paid”. The words used by the Legislature are “any amount” and “said amount”. The words are, therefore, much wider and broader than the tax amount, which is to be refunded. The words “any amount” would include within its scope and ambit the interest element, which has accrued and is payable on the date of the refund. Thus, when the Revenue does not

pay full amount of refund but part amount is paid, they will be liable to pay interest on the balance outstanding amount. The balance outstanding amount may consist of the tax paid or the interest, which is payable till the payment of the part amount and interest payable on the principal amount, which remained outstanding thereafter.

10. The Delhi High Court in the case of ***Commissioner of Income Tax versus Goodyear India Limited***, 2001 (249) ITR 527 (Delhi) had occasion to examine the earlier provisions of refund under Sections 240 and 244 of the Act and had observed as under:-

“ Section 244 deals with interest on refund where no claim is needed. Sub-section (2), inter alia, provides that 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 the stipulated time, the Central Government is required to pay simple interest at the stipulated rate. Section 240 deals with refund on appeal, etc. This provision clearly lays down that where as a result of any order passed in appeal or other proceedings under this Act, refund of any amount becomes due to the assessee, the Assessing Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf. The crucial expressions in Section 240 are "any amount which becomes due to the assessee as a result of any order passed in any appeal or other proceedings under the Act" and the "amount becomes due to the assessee". Section 244 refers to the liability fastened on the Central Government in case of failure to grant refund within the stipulated time

in a case where refund is due to the assessee in pursuance of an order referred to in Section 240. A combined reading of both the provisions makes the position crystal clear that it is any amount which becomes due to the assessee and not necessarily the tax component. Undisputedly, a sum of Rs. 1,90,499 which qualifies for interest became payable to the assessee on the basis of an order passed under Section 240 of the Act. Merely because this was inclusive of an amount which was payable under Section 214 of the Act, that would not make the position any different. It is an amount which became due to the assessee on the basis of the appellate order. Therefore, the assessee was entitled to interest in terms of Section 244 of the Act. A similar view has been taken by the Gujarat High Court in *D. J. Works v. Deputy CIT* [1992]195 ITR 227 and *Chiman Lal S. Patel v. CIT* [1994]210 ITR 419 though with different conclusions. Above being the position, we answer the question in the affirmative, in favor of the assessee and against the Revenue.”

11. In *R.K. Jain and Sons versus Commissioner of Income Tax*, 2005 (142) Taxman 445 (Delhi) reference was made to several judgments passed by Gujarat High Court and decision of the Supreme Court in *CIT versus Narender Doshi*, (2002) 245 ITR 606 and it was held that interest should be awarded on the interest component of the unpaid refund. Recently in *Motor and General Finance Limited versus Commissioner of Income Tax and other cases* reported in [2010] 320 ITR 88 (Delhi) reference was made to the decision of the Supreme Court in *Sandvik Asia Limited versus CIT*, [2006] 280 ITR 643 (SC) and *Narendra Doshi* (supra) and it was observed as under:-

“20. It is, thus, manifest that at both the stages, namely, while passing intimation under Section 143(1)(a) of the Act, refund along with interest under Section 244A was given of the excess TDS and advance tax. Again, after the orders of the Tribunal were passed and the refund became payable as a consequence thereof, the excess amount of tax was refunded along with interest payable thereupon under Section 244A of the Act. Thus, the calculations are not disputed, as observed by the Tribunal also.

21. When the refund of tax becomes payable as a result of orders passed in appeal or other proceedings under the Act, this refund is to be given along with interest, which is to be calculated as per Section 244 of the Act. If that interest is paid along with the excess tax, no further payment is to be made. It is only when the excess amount of tax is refunded but the interest is not refunded along therewith, the retention of interest amount would become unjustified and interest on interest would also become payable. The reason is simple. It is the tax which was paid in excess by the assessee which became refundable. The assessee would be compensated by paying interest thereupon. It is only when the interest is not refunded along with excess tax that the withholding of the said interest becomes unjustified and it becomes an amount due to the assessee on which the assessee can claim further interest. Such a situation has not happened in the present case as the amount of interest is calculated and refunded along with the refundable tax amount.”

12. Same view has been taken by Punjab and Haryana High Court in ***Roadmaster Industries of India Private Limited versus Commissioner of Income Tax and Another***, [2010] 329 ITR 69 (P&H) and Gujarat

High Court in *Commissioner of Income Tax versus Hynoup Food and Oil Industries Limited*, [2010] 320 ITR 365 (Guj.) and *Gujarat Flourochemicals Limited versus Commissioner of Income Tax and Others*, [2008] 300 ITR 328 (Guj.). The said cases refer to the principle of compensation when money, which is due and payable and refundable, is not paid.

13. Madhya Pradesh High Court had the occasion to deal with the similar issue in their decision in *Commissioner of Income Tax versus HEG Limited*, [2009] 310 ITR 341 (MP). The facts of the said case may be noticed. The assessee became entitled to refund along with interest under Section 244A. Referring to Section 240 of the Act, the High Court observed that the term used was “refund of any amount becomes due to the assessee”. The same words were also used in Section 244A. Reference was made to the decision of the Delhi High Court in *Goodyear India Limited* (supra) and decisions of the Supreme Court in *Narender Doshi* (supra) and *Sandvik Asia Limited* (supra). Decision of the Madras High Court in *CIT versus Needle Industries Private Limited*, [1998] 233 ITR 370 (Mad) reflected upon and it was held that the words or the phrase “any amount” would include the amount refundable plus the interest due and payable on the tax amount refunded. Thus, in view of the express provisions of Section 244A, interest was directed to be paid by the Revenue.

14. Matter was taken by the Revenue before the Supreme Court in the case of *HEG Limited* and the SLP was granted and civil appeal was registered. The Supreme Court thereupon answered the question against the Revenue in the following words:-

“ Therefore, this is not a case where the assessee is claiming compound interest or interest on interest as is sought to be made out in the civil appeals filed by the Department.

The next question which we are required to answer is – what is the meaning of the words “refund of any amount becomes due to the assessee” in Section 244A? In the present case, as stated above, there are two components of the tax paid by the assessee for which the assessee was granted refund, namely TDS of Rs.45,73,528 and tax paid after original assessment of Rs.1,71,00,320. The Department contends that the words “any amount” will not include the interest which accrued to the respondent for not refunding Rs.45,73,528 for 57 months. We see no merit in this argument. The interest component will partake of the character of the “amount due” under Section 244A. It becomes an integral part of Rs.45,73,528 which is not paid for 57 months after the said amount became due and payable. As can be seen from the facts narrated above, this is the case of short payment by the Department and it is in this way that the assessee claims interest under Section 244A of the Income-Tax Act. Therefore, on both the afore-stated grounds, we are of the view that the assessee was entitled to interest for 57 months on Rs.45,73,528/-. The principal amount of Rs.45,73,528 has been paid on December 31, 1997 but net of interest which, as stated above, partook of the character of “amount due” under Section 244A.”

15. A reading of the aforesaid passage from the decision of the Supreme Court in ***HEG Limited*** (supra) indicates that it would be incorrect and improper to regard payment of interest when part payment is made as interest on interest. What has been elucidated and clarified by the Supreme Court is that when refund order is issued, the same should include the interest payable on the amount, which is refunded. 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. An example will clarify the situation and help us to understand what is due and payable under Section 244A of the Act. Suppose Revenue is liable to refund Rs.1 lac to an assessee with effect from 1st April, 2010, the said amount is refunded along with interest due and payable under Section 244A on 31st March, 2013, then no further interest is payable. However, if only Rs.1 lac is refunded by the Revenue on 31st March, 2013 and the interest accrued on Rs.1 lac under Section 244A is not refunded, the Revenue would be liable to pay interest on the amount due and payable but not refunded. Interest will not be due and payable on the amount refunded but only on the amount which remains unpaid, i.e, the interest element, which should have been refunded but is not paid. In another situation where part payment is made, Section 244A

would be still applicable in the same manner. For example, if Rs.60,000/- was paid on 31st March, 2013, Revenue would be liable to pay interest on Rs.1 lac from 1st April, 2010 till 31st March, 2013 and thereafter on Rs.40,000/-. Further, interest payable on Rs.60,000/-, which stands paid, will be quantified on 31st March, 2013 and on this amount, i.e., interest amount quantified, Revenue would be liable to pay interest under Section 244A till payment is made.

16. The aforesaid manner of computation is not only applicable to cases where Revenue has to pay interest on refund, but is equally applied when an assessee is in default and interest is payable under Section 220(2) of the Act. Interest payable under Section 234B and 234C become part of the demand notice issued under Section 156 and it is on this amount, i.e., the tax payable plus interest payable under Sections 234B and 234C that interest under Section 220(2) is calculated from the date mentioned in the notice of demand till the date of actual payment. Under Explanation to Section 140A(1), it is stipulated where the amount paid by an assessee under self-assessment falls short of the aggregate amount of tax and interest aforesaid, the amount paid shall first be adjusted towards the interest payable and the balance, if any, shall be adjusted towards the tax payable. The interpretation given by us follows the same principle, when Revenue defaults and makes part payment of the amount refundable. The

aforesaid interpretation also ensures that the Assessing Officer/Revenue refund the entire amount, which is due and payable, including interest payable under Section 244A. It discourages part payment. There is no other provision under the Act under which an Assessing Officer/Revenue can be made liable to pay interest when part payment is made and the entire amount, which is refundable is not paid to the assessee. Otherwise the Assessing Officer/Revenue can refund the principal amount and not pay the interest component under Section 244A for an unlimited period with impunity and without any sanction, which would amount to granting premium to a non-compliance of law. In the present case, the interest component was withheld for the period ranging between 9 to 13 years.

17. In view of the aforesaid discussion, we answer the questions of law in favour of the appellant and against the Revenue. The appeals are disposed of. No costs.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

SEPTEMBER 06, 2013
VKR