IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 193

WA.No. 1932 of 2005 (D) IN OP.11259/1996
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AGAINST THE JUDGMENT IN OP 11259/1996 of HIGH COURT OF KERALA
DATED 10.06.2005

APPELLANT(S)/PETITIONER IN OP::
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* MRS.NALINI BAI V.SARAF
ACCOUNTABLE PERSON FOR LATE V.G. SARAF,
SARAF HOUSE, WILLINGDON ISLAND,
COCHIN-682 003. (deceased)

2. LEGAL HEIR OF THE DECEASED APPELLANT
ASHA V SARAF, SARAF APARTMENT, 2ND FLOOR,
SAHODHARAN AYYAPPAN ROAD, VYTTILA,
KOCHI 682 019.

(A2 IS IMPLEADED AS THE LEGAL HEIR OF THE DECEASED APPELLANT
AS PER ORDER DATED 16.02.15 IN IA.224/15)

BY ADVS.SRI.ANIL D. NAIR
SMT.NIVEDITA A.KAMATH

RESPONDENT(S)/RESPONDENT IN OP::
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THE ASST.CONTROLLER OF ESTATE DUTY
ERNAKULAM.

R, BY ADV. SRI.GEORGE K. GEORGE, SC FOR IT
R, BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 06-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WA.1932/05

APPELLANTS EXHIBITS:

EXT.P1: TRUE COPY OF THE ASSMT. ORDER ISSUED BY THE RESPONDENT TO THE PETITIONER.

EXT.P2: TRUE COPY OF THE ORDER ISSUED BY THE RESPONDENT TO THE PETITIONER.

EXT.P3: TRUE COPY OF THE ORDER ISSUED BY THE COMMR. OF INCOME TAX (APPEALS), TRIVANDRUM.

EXT.P4: TRUE COPY OF THE PROCEEDINGS OF THE RESPONDENT TO THE PETITIONER.

EXT.P5: TRUE COPY OF THE ORDER ISSUED BY THE COMMR. OF INCOME TAX (APPEALS), TRIVANDRUM.

EXT.P6: TRUE COPY OF THE ORDER ISSUED BY THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH.

EXT.P7: TRUE COPY OF THE RODER OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH.

EXT.P8: TRUE COPY OF THE LETTER SENT BY THE PETITIONER TO THE RESPONDENT.

EXT.P9: TRUE COPY OF THE PROCEEDINGS OF THE RESPONDENT SENT TO THE PETITIONER.

/TRUE COPY/

PS TO JUDGE

ANTONY DOMINIC & SHAJI P. CHALY, JJ.
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W.A.No.1932 of 2005
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Dated this the 6th day of July, 2015

JUDGMENT

Antony Dominic, J.

1. This appeal is filed against the judgment in O.P.11259/96. In the original petition, challenge was against Ext.P9, to the extent interest on the amount refunded was not allowed. By the judgment under appeal, following the Apex Court judgment in Modi Industries Ltd. v. Commissioner of Income Tax [216 ITR 759] laying down the principle that "there is no right to get interest on refund except as provided by the statute", learned single Judge dismissed the OP. It is this judgment, which is challenged before us.

2. We heard learned counsel for the appellant and learned senior standing counsel appearing for the respondent.

3. The issue in this writ appeal arises under the Estate Duty Act, 1953, hereinafter referred to as the 'Act', for short. The deceased first appellant was the "accountable person" of late Vithal Govinda Rao Saraf

who expired in 1984. Soon thereafter, within the period as provided under section 53 (3) of the Act, the deceased appellant filed a return admitting the principal value of his estate to be -₹6,45,345/-. However, by Ext.P1 order, assessment under the Act was completed and estate duty and interest were levied. According to the deceased appellant, entire duty amount demanded was remitted on 28.3.1989. Subsequently, by Ext.P2 order issued under section 61 of the Act, the Assessing Officer revised Ext.P1 order of assessment. That amount was also paid by the deceased appellant. Ext.P1 order was challenged by the deceased appellant and the appeal was partly allowed by Ext.P3 order dated 22.3.1990. Still later, by Ext.P4 order dated 25.3.1992, the assessment was once again re-opened and the liability was enhanced. By Ext.P5 order dated 30.9.1992, the appeal filed by the deceased appellant against Ext.P4 order was allowed. Subsequently, by Ext.P6 order dated 23.8.1994, her appeal against Ext.P3 order was also allowed and the departmental appeal filed against Ext.P5 was dismissed by Ext.P7 order dated 24.8.1994.

4. In the above circumstances, the deceased appellant submitted Ext.P8 letter dated 30.9.1994, claiming refund of an amount of ₹42,80,167/- together with interest. Thereafter, Ext.P9 order dated 12.12.1995 was issued by the respondent giving effect to Exts.P6 and P7 orders of the Tribunal and modifying the assessments in the manner as mentioned therein. By this order, estate duty payable was found to be 'nil' and it was ordered that ₹42,80,167/- shall be refunded. This order did not provide for any interest as claimed by the deceased appellant in Ext.P8. It was in such circumstances that she filed the original petition which came to be dismissed.

5. Contention raised by the counsel for the appellant is that by Ext.P5 order dated 30.9.1992, the amount claimed by the deceased appellant in Ext.P8 had become due for refund. Despite that, refund was ordered only by Ext.P9 order dated 12.12.1995. It is stated that on account of the delay in refunding the amount, heavy loss was caused to the deceased and therefore, she was entitled to be compensated by payment of interest. In support of this contention,

counsel placed reliance on the judgments of the Apex Court in Sandvik Asia Ltd. v. Commissioner of Income Tax [(2006) 280 ITR 643], Commissioner of income Tax v. Gujarat Fluoro Chemicals [358 ITR 291] and the judgment of the Gujarat High Court in State of Gujarat v. Indian Petro Chemicals Ltd. (Tax Appeal No.351/15).

6. On the other hand, learned senior standing counsel appearing for the respondent contended that as held by the Apex Court in Modi Industries Ltd. (supra) and India Carbon Ltd. v. State of Assam [(1997) 106 STC 460], unless there is a substantive provision in the statute under which the claim for interest is made, the assessee cannot sustain a claim for interest.

7. We have considered the rival submissions made. The Act contemplates payment of interest only in two contingencies. First is under the proviso to section 53(3). Section 53(3) provides that every person accountable for estate duty shall, within six months of the death of the deceased, deliver to the Controller an account in the prescribed form and

verified in the prescribed manner of all the properties in respect of which estate duty is payable. As per the proviso to this section, the Controller may extend the period of six months provided in section 53(3) on such terms which may include payment of interest as may be prescribed.

8. Section 64 provides for reference to High Court and as per sub section 7 thereof, where the amount of any assessment is reduced as a result of any reference to the High Court, the amount, if any, over-paid as estate duty, shall be refunded with such interest as the Controller may allow unless the High Court, on intimation being given by the controller within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to the Supreme Court, makes an order authorizing him to postpone payment of such refund until the disposal of appeal in the Supreme Court. The above two sections alone being the statutory provisions in the Act providing for payment of interest, it has to be accepted that there is no

substantive provision in the Act to sustain the claim for interest on amounts refunded.

9. In so far as the judgments relied on by both sides are concerned, though it is true that in the judgments in Modi Industries Ltd. (supra) and India Carbon Ltd. (supra), the Apex Court has held that there is no right to get interest on refund except as provided in the statute, the entitlement of an assessee for compensation on delayed payment of statutory interest was considered again by the Apex Court in the judgment in Sandvik Asia Ltd. (supra). In that judgment, after surveying the relevant precedents on the subject, the Apex Court laid down the principle that the assessee was entitled to interest on the amount of interest paid under section 243 and/or section 244 and that the department was bound to grant interest which had accrued for those periods. The correctness of this judgment was doubted by another Bench of the Apex Court in its order in Commissioner of income Tax v. Gujarat Fluoro Chemicals [348 ITR 319].

10.Accordingly, in the judgment in Commissioner of income Tax v. Gujarat Fluoro Chemicals [358 ITR 291], the Apex Court again considered the issue and held that the interpretation placed in Sandvik Asia Ltd. (supra) is that the Revenue is obliged to pay interest on interest in the event of its failure to refund the interest payable within the statutory period. The Apex Court clarified the position thus:

> "7. As we have already noticed, in Sandvik case (supra) this Court was considering the issue whether an assessee who is made to wait for refund of interest for decades be compensated for the great prejudice caused to it due to the delay in its payment after the lapse of statutory period. In the facts of that case, this Court had come to the conclusion that there was an inordinate delay on the part of the Revenue in refunding certain amount which included the statutory interest and therefore, directed the Revenue to pay compensation for the same not an interest on interest.
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> 8. Further it is brought to our notice that the Legislature by the Act No.4 of 1988 (w.e.f. 01.04.1989) has inserted Section 244A to the Act which provides for interest on refunds under various contingencies. We clarify that it is only

> that interest provided for under the statute which may be claimed by an assessee from the Revenue and no other interest on such statutory interest."

11.Reading of the above paragraphs show that the principles laid down by the Apex Court is that assessee is entitled to claim interest only if it is provided for under the statute concerned and no other interest on such statutory interest can be claimed. It is also clarified that where there is inordinate delay on the part of the Revenue in refunding the statutory interest, the Revenue can be directed to pay compensation for the same which is not an interest on interest.

12.After the judgment was rendered by the Apex Court in Gujarat Fluoro Chemicals (supra), the principles laid down by the Apex Court were considered by the Division Bench of the Gujarat High Court in its judgment in State of Gujarat v. Indian Petro Chemicals Ltd. (Tax Appeal No.251/15). In this judgment, though the issue was considered in the context of the provisions of the Sales Tax law prevailing in that State, the Gujarat High Court has also understood the judgment of the Apex Court as laying down that interest is payable only when the statute makes provision for it and if there is inordinate delay on the part of the revenue in refunding the amount due, courts can, in appropriate cases, award compensation.

13.Having thus seen the statutory provisions and the principles laid down by the Apex Court in the matter of grant of interest and award of compensation, let us now see whether the appellant is entitled to interest as claimed in this appeal. As we have already seen, since the law is settled that interest is payable only if it is provided in the statute and since the Estate Duty Act provides for payment of interest only in circumstances to which sections 53 (3) and 64 (7) are attracted, the appellant is not entitled to claim any interest. However, if the appellant succeeds in showing us that there was inordinate delay in the refund of amount due and if that delay is not satisfactorily explained by the Revenue, in view of the principles laid down by the

Apex Court, a claim for compensation can be sustained.

14. With this in view if the facts of the case are examined, it can be seen that though it is the claim of the deceased appellant that her entitlement for refund commences from 25.3.1992, when Ext.P4 appellate order was rendered, the proceedings under the Act pursuant to the statutory appeal filed by the Revenue before the Tribunal terminated only on 24.8.1994, when by Ext.P7 order, the appeal was dismissed. Thereafter, the claim for refund with interest was lodged by Ext.P8 dated 30.9.1994 and the consequential order, giving effect to the appellate order, was issued only on 12.12.1995. This, therefore, means that even counting from 30.9.1994 when Ext.P8 claim was made by the deceased appellant, it took 15 months for the Revenue to issue Ext.P9 consequential order recognising her entitlement for refund of ₹42,80,167/-. There is absolutely no explanation whatsoever why it took more than 15 months to issue the consequential order. This means that even if a reasonable time of three months is

conceded to the Revenue, there was an inordinate further delay of 12 months in issuing Ext.P9 and for that period, the deceased appellant was entitled to be compensated. Therefore, we direct the respondent to pay interest at the rate of 9%, the rate of interest allowed by the Apex Court in Sandvik Asia Ltd. (supra), on ₹42,80,167/-, the amount refunded, from 1.1.1995 till the date of refund pursuant to Ext.P9. This amount will be paid at any rate within three months from the date of receipt of a copy of this judgment.

Appeal is disposed of as above.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P. CHALY, Judge.

kkb.