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

Decided on 3rd March, 2015

+ ITA 542/2012

COMMISSIONER OF INCOME TAX-VIII Appellant
Through Mr. Kamal Sawhney, sr. standing
counsel

versus

INDIAN FARMER FERTILIZER CO-OPERATIVE..... Respondent
Through Ms. Kavita Jha and Mr. Vaibhav
Kulkarni, Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. Admit.

2. The following question of law has been urged:

“Whether in the facts and circumstances of the case, the assessee was entitled to any amount for the delayed payment of interest under Section 244A on the principal refund amount claimed by it.”

3. The assessee's returns for the year 1997-98 and 1998-99 were processed under Section 143(1). It is the admitted case of the parties that the requisite advance tax payments were completed within the time specified i.e. 1.4.1997 and 1.7.1998. The assessments were thereafter framed under Section 143(1) and adjustment of the tax was made – for the year 1997-98 on 30.6.1998 and for the year 1998-99, on 19.3.1999. The assessee was aggrieved and claimed

that apart from the refund of that there was a delay in payment of interest which worked out to ₹2,55,19,914/-, for the two assessment years in terms of Section 244A, at rates prescribed during that period. The AO had denied the amount but the assessee's appeal was partly allowed and the refunds claimed were partly adjusted for future years. The assessee's appeal to the ITAT succeeded. The Tribunal in ITA No.3398 and 3399/Del/2011 by its impugned order dated 20.1.2012 held that the amounts were payable towards delayed payment of interest. The ITAT discussed the facts in the following terms :

"5. In this case refund of Rs.10,38,32,977/- has been determined by the Assessing Officer. No interest has been granted u/s. 244A, though the tax and interest payable on the returned income was computed at Rs.26,87,16,819/- as against the pre-paid taxes of Rs.37,25,49,796/- including advance tax of Rs. 24,64,00,000/-. Moreover, the refund of Rs.10,38,32,977/- has been fully adjusted against the demand for A.Y. 1996-97, vide voucher dated 19.3.1999. Assessee filed an application u/s 154 dated 18.7.2001, seeking grant of interest u/s. 244A for the period 1.4.1997 to 31.3.1999, that is, upto the month in which the refund was adjusted. However, the application u/s. 154 has been rejected, on account of being barred by limitation. It was held that no order u/s. 154 could be passed after the expiry of 4 years from the end of the year in which the order sought to be amended was passed.

6. Upon assessee's appeal in this regard Ld. Commissioner of Income Tax (Appeals) held that he agreed with the assessee that interest u/s 244A should have been granted by the Assessing Officer, for which there was no requirement in law for the assessee to claim the interest. Ld. Commissioner of Income Tax (Appeals) further observed that assessee has also sought that it be granted interest on the delayed payment of interest, relying on the Apex Court judgement in the case of Sandvik Asia Ltd. vs. C.I.T. & Others (280 ITR 643). The Ld. Commissioner of Income Tax (Appeals) found that the said

decision ITA NOS. 3398-3399/DEL/2011 is distinguishable from the facts of the present case. Ultimately, Ld. Commissioner of Income Tax (Appeals) held that interest of justice would be met by granting the interest u/s. 244A upto the date of adjustment of the refund, and declined to order granting of interest on interest."

4. The ITAT relied upon the decision of the Supreme Court in *Sandvik Asia Ltd. V. CIT & Ors.* (2006) 280 ITR 643 and held that in its opinion the assessee was entitled to interest on delayed payment of interest and upheld the assessee's contentions as follows :

"10. We find that Hon'ble Apex Court in the case of Sandvik Asia Ltd. vs. C.I.T. & Ors. 280 ITR 643 had held that "assessee was entitled to compensation by way of interest under section 214 and section 244 for the delay in payment interest u/s 214 and 244 lawfully due to the assessee which were withheld wrongly and contrary to law by the department for inordinate long period." In our considered opinion, the ratio from this case law is rightly applicable on the facts of the case. The above said CBDT instruction No. 2-2007, dated 28.3.2007 is also germane in this regard. Hence, in our considered opinion, the assessee is entitled to interest on the delayed payment of interest and accordingly the assessee's appeal is allowed."

5. The revenue contends that the reliance placed upon *Sandvik Asia Ltd.* (supra) is erroneous. It is submitted on its behalf that *Sandvik Asia Ltd.* (supra) was delivered in respect of facts prior to the insertion of Section 244A and that Courts are duty bound to correctly interpret that provision. It was emphasized that the plain text of Section 244A does not provide for a construction which entitles the assessee aggrieved by delayed payment of principal to any amount over and above the interest directed by Section 244A(1) itself. Learned counsel placed reliance upon the decision of the Supreme Court in *Commissioner of Income Tax V.*

Gujarat Fluoro Chemicals 358 ITR 291. In that judgment, the Court noticed *Sandvik Asia Ltd.* (supra) and held pertinently as follows :

“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.

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.”

6. Learned counsel for the assessee contends that the impugned order of the ITAT ought not to be disturbed. It is firstly argued that the refund sought was only in respect of the interest payable and not any amount over and above it. It was next contended that the decision of the Supreme Court in *Commissioner of Income Tax V. HEG Ltd.* (2010) 324 ITR 331 supports the view adopted by the ITAT. Learned counsel also stated that a Division Bench of this Court had followed *HEG Ltd.* (supra), in *India Trade Promotion Organisation V. CIT* (2014) 361 ITR 646. In *India Trade Promotion Organisation* (supra) it was held – after consideration of *HEG Ltd.* (supra) that

“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.”

7. Section 244A(1) of the Income Tax Act reads as follows :

“244A. Interest on refunds.- (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.”

8. In *Sandvik Asia Ltd.* (supra), the Court admittedly was dealing with facts prior to the insertion of Section 244A. Therefore, it would be inappropriate for this Court to consider that judgment now as binding authority. More importantly, *Sandvik Asia Ltd.* (supra) was explained by the larger Bench i.e. three Judge Bench decision in *Gujarat Fluoro Chemicals* (supra) where the Supreme Court categorically held that the only amount which an assessee aggrieved by delayed payment can legitimately claim under the statute is interest and that “no other interest on such statutory interest” is payable. This ruling, in the opinion of this Court, rendered by a larger

Bench, would have to be followed as opposed to the ratio in *HEG Ltd.* (supra) where the Supreme Court had expressed a contrary opinion by indicating that the interest component towards the delayed payment of the tax refund would partake of the character of the 'amount of due' under Section 244 A. In other words, *HEG Ltd.* seems to suggest that there would be dues on bar, refund and delayed interest. Clearly, that view has not been approved in *Gujarat Fluoro Chemicals* (supra). It was urged during the hearing that *India Trade Promotion Organisation* (supra) has become final since the revenue's appeal was withdrawn. This Court is of the opinion that such detail notwithstanding, the law declared in *Gujarat Fluoro Chemicals* (supra) is binding and permits no deviation.

9. In the light of the above decision, it is held that the impugned order to the extent it directs payment of any sum over and above interest payable under Section 244A(1) to the assessee, cannot be upheld. Accordingly, the matter is remitted to the AO for orders. In the circumstances of the case, the question of law framed is answered in favour of the revenue and against the assessee in the above terms. The appeal is partly allowed.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

MARCH 03, 2015/vld