IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

WP.No.22862 of 2008
& M.P.No.1 of 2008

AREVA T & D India Limited
Rep.by its Director-Treasury & Taxation
Mr.L.V.Srinivasan

... Petitioner

/Vs/

1. Commissioner of Income Tax, Chennai-I,
VII Floor, New Block,
121, Mahatma Gandhi Road
Chennai 600034.

2. Assistant Commissioner of Income Tax
Company Circle I [1],
121, Mahatma Gandhi Road
Chennai 600034.

.... Respondents

PRAYER: PETITION filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorarified Mandamus, calling for the records on the file of the first respondent in C.No.217(5)/CIT-I/264/2006-07 dated 31.03.2008 and quash the same and further direct the respondents to grant interest under Section 244A on the self assessment tax of Rs.2 crores paid by the petitioner company.

For Petitioner : Mr.Joseph Prabakaran
Assisted by Mr.A.S.Sriraman

For Respondents : Mrs.Hema Muralikrishnan,
Senior Standing Counsel

O R D E R

The petitioner challenges an order passed by the Commissioner of Income Tax/R1 dated 31.03.2008 rejecting the request for grant of interest under Section 244 A of the Income tax Act 1961 ('Act') of an amount of Rs.2 crores paid by the petitioner on 28.06.1996.

2. The sequence of dates and events as submitted by the petitioner are as follows:

(i) Return of income filed by the petitioner for Assessment Year (AY) 1996-97 on 29.11.1996. The return reflected a sum of Rs.13.75 crores inclusive of advance tax of Rs.6.44 crores, TDS of 40.06 lakhs and self-assessment tax under Section 140A of Rs.2 crores, remitted on 28.06.1996.

(ii) Intimation under Section 143(1) dated 27.11.1997 issued charging additional tax under Section 143(1A) and interest under Section 234C and determining the refund at a sum of Rs. 2.28 crores (approx). The intimation was served on the petitioner on 10.12.1997 and the refund adjusted in March 1998 against the 4th instalment of advance tax relating to assessment years 1998-99.

(iii) Order of assessment under Section 143(3) passed on 23.03.1999 raising a demand of Rs. 1.91 crores (approx). The tax demand was collected by way of adjustment of refund due in respect of assessment year 1997-98 by an order dated 26.03.1999.

(iv) First appeal was filed challenging the order of assessment that was partly allowed resulting in a refund that was adjusted in March 2002 against demands relating to various years. As against the order of the Commissioner of Income Tax (Appeals) partly allowing the petitioners' appeal, cross-appeals were filed before the Income Tax Appellate Tribunal ('Tribunal').

(v) The Assessing Officer gave effect to the order of the Tribunal on 03.11.2005 granting refund to the petitioner. It is the petitioners' case that in computing this refund, though the Assessing Officer has taken into account the payment of Rs.2 crores, interest u/s 244 A had not been granted.

(vi) On 13.06.2006 the petitioner filed a petition for rectification under 154 of the Act seeking interest under Section 244 A. This was rejected on 06.07.2006 as follows:

> ....the assessee has made a payment of Rs.2 crores on 28-06-1996 i.e., much later after the close of the relevant previous year and knowing fully well its statutory obligation, as is evident from the return of income filed by the assessee. The above act on the part of the assesee by making a payment of Rs. 2 crores which was not warranted under the given set of facts and circumstances as made out from the details of return of income filed, it is clear that the

assessee has parked its funds for reasons best known to it, as it was not called upon to make the adhoc payment. Under these circumstances, the claim of the assessee that it must be granted interest for the said payment of Rs. 2 crores is not justified and hence rejected...

(vii) Aggrieved with the rejection, a petition for revision under Section 264 was filed before the Commissioner of Income Tax. The petitioner reiterated that the payment of Rs.2 crores was only of the nature of self-assessment tax and was not an adhoc payment, as held by the Assessing Authority. The Commissioner of Income Tax issued a show cause notice on 08.01.2007 to the petitioner putting it to notice of his proposal to reject the petition on the following two grounds:

(a) that the issue does not arise from the order of the Assessing Officer dated 03.11.2005 and subsequent clarification dated 06.07.2006 and

(b) that interest was properly granted from the date on which the tax was collected, that is, from 26.03.1999, as a result of order under Section 143(3) dated 22.03.1999.

(viii) Vide reply dated 29.01.2007, the petitioner clarified that the issue had no doubt, arisen as early as in 1999, but refunds granted subsequent thereto had been adjusted against various payments due from the petitioner. Placing reliance on the judgment of the Supreme Court in the case of Sandvik Asia Ltd. Vs. Commissioner of Income Tax & Others [280 ITR 643] the petitioner reiterated that the amount of Rs.2 crore had been available with the Department since the date of the remittance, that is 28.06.1996, and hence, was eligible for interest from date of such remittance.

3. Notwithstanding the submissions made, the Commissioner of Income Tax passed an order dated 31.03.2008 rejecting the claim for refund as against which the present writ petition is filed. The Commissioner rejects the claim on three grounds-

(a) that the sum of Rs.2 crores constituted an adhoc payment

(b) if at all such claim for interest could have been made, it ought to have been upon receipt of intimation under Section 143(1), and having not raised the same at that juncture it cannot make a claim after eight years when a consequential order was being passed by the Assessing Officer pursuant to an order of the Tribunal.

(c) the provisions of Section 244(A)(3) do not support the petitioners’ case since the original computation as per the Section 143 (1) intimation could not be modified beyond the period of limitation.

4. The admitted position is that the return of income reflected that the remittance of Rs.2 crores had been made on 'adhoc' basis. The petitioners' explanation in affidavit in this regard, is this. In respect of assessment year 1993-94, a provision had been made by the petitioner in respect of a Voluntary Retirement Scheme that was rejected by the Assessing Officer, who had allowed only actual payment. This resulted in a demand of Rs.2.17 crores for assessment year 1993-94. Since the petitioner had made similar claims for the later two years as well i.e. 1994-95 and 1995-96, it was anticipated that the revenue would take a consistent stand in respect of disallowing the provision for the later years also. Thus, it was to avoid shortfall in payment of taxes and consequential levy of interest and penalty that the amount of Rs.2 crores had been remitted, not adhoc but rather, anticipated.

5. The petitioner has relied on the following decisions in support of its claim:

(i) Rajaratna Mills Ltd. Vs. Commissioner of Income Tax [(2015) 64 Taxmann.com 89]

(ii) Ansaldo Energia SPA Vs. Commissioner of Income Tax, (International Taxation), Chennai [(2016) 69 taxmann.com 369]

(iii) Commissioner of Income Tax Vs. Cholamandalam Investment & Finance Co.Ltd. [(2008) 166 taxman 132]

(iv) Commissioner of Income Tax, Bhopal Vs. H.E.G.Ltd. [(2010) 189 Taxman 335]

(v) Stock holding Corporation of India Ltd. Vs. N.C.Tewari, Commissioner of Income-Tax, Mumbai City-III [(2015) 53 taxmann.com 106]

(vi) Commissioner of Income Tax-8 Vs. Melstar Information Technologies Ltd. [(2019) 106 taxmann.com 142]

6. The above decisions are distinguished by the revenue, on the ground that they deal with payment of self-assessment tax and not adhoc remittances and thus, would not be applicable in the present case.

7. A perusal of the order of assessment for AY 1996-97, the year in issue, reveals, at para 11, that the Assessing Authority has discussed the issue of allowance of claim of VRS liability and has disallowed the same in line with the tax treatment of this issue for earlier years. The apprehension of the petitioner to the effect that the provision claimed for the AY 1996-97

would be disallowed is thus, not misconceived and seems justified.

8. I am, in the light of the facts as above, of the considered view that even though the remittance was styled as an ‘adhoc’ remittance, the use of such nomenclature by itself, would not lead to the conclusion that the assessee had merely parked its funds without any justification as, in the present case, the petitioner has effected remittances in anticipation of liabilities of tax, interest and penalty. This apprehension of the petitioner is also not misconceived as the officer has also adopted a stand disallowing its claim, as anticipated by it. This argument of the revenue is thus rejected.

9. Yet another argument advanced by the revenue is that the claim for interest is wholly belated and such claim, if at all, ought to have been made immediately upon receipt of the intimation under section 143(1) on 27.11.1997 and not only on 13.06.2006 by way of rectification petition. The argument of the petitioner is that all refunds computed between the period 1997 and 2005 have been adjusted towards some pending liability or the other and it was, for the first time, only in 2005 that the Assessing Officer computed and issued a refund without adjustment. This position has not been disputed in fact. Thus, it was only at that juncture that the petitioner claimed interest on the amount deposited. This explanation appears reasonable to me. In my view, the eligibility to interest in the present case is in terms of 244A(1)(b), which governs the grant of interest in ‘any other case’, apart from those situations covered under sub-clause (a) being interest on refund of tax paid or collected at source or paid by way of advance tax or in terms of Section 199. I am thus of the considered view that a delay in putting forth a claim for interest, especially in the light of the facts and events as narrated above, certainly cannot be fatal to the claim itself.

10. In CIT V. Gujarat Fluro Chemicals ((2013) 358 ITR 291) a three judge Bench of the Supreme Court rendered in the context of a refund sought under Section 244 A, explained the earlier judgement of the Supreme Court in the case of Sandvik Asia (supra). While laying down clearly that the grant of interest has to be strictly in terms of the applicable statutory provision, the Bench also observes that in a situation where the statue does not provide for a refund, even under general law, an assessee, in appropriate cases, has to be compensated for depreciation of capital.

11. In the present case, the petitioner has, admittedly, remitted the amount in question on 28.06.1996. I am thus of the categoric view that it is entitled to interest in regard to the same, as claimed, in terms of Section 244 A of the Act.

12. This writ petition is allowed. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1. Commissioner of Income Tax, Chennai-I,
   VII Floor, New Block, 121, Mahatma Gandhi Road
   Chennai 600034.

2. Assistant Commissioner of Income Tax
   Company Circle I [1], 121, Mahatma Gandhi Road
   Chennai 600034.

+1cc to Mr.Joseph Prabakar, Advocate, SR.No.83529.
+1cc to Mr.Hema Murali Krishnan, Advocate, SR.No.83481.

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VD(CO)
CSR: 17.03.2020