

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2021

CORAM

THE HON'BLE MR.JUSTICE M. DURAISWAMY

AND

THE HON'BLE MRS.JUSTICE R.HEMALATHA

Tax Case Appeal No.1018 of 2014

The Commissioner of Income Tax,
Chennai. ... Appellant

Vs.

M/s.Upasana Finance Ltd.,
98A, Dr.Radhakrishnan Salai,
Chennai - 600 004. Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "D" Bench, dated 18.11.2011 passed in I.T.A.No.78/Mds/2010 for the assessment year 1997-98, and against the order of the Commissioner of Income Tax (Appeals)-III, Chennai-34 dated 23.10.2009 made in ITA No.31/2007-2008/A-III, and against the order of the Assistant Commissioner of Income Tax Company Circle III(3), Chennai dated 27/03/2002, made in P.A.No.AAACU0852D.

For Appellant : Mr.M.Swaminathan,
Senior Standing Counsel
assisted by Ms.V.Pushpa,
Standing Counsel

For Respondents : No appearance

J U D G M E N T

(Delivered by M.DURAISWAMY, J.)

Challenging the order passed in I.T.A.No.78/Mds/2010 in respect of the assessment year 1997-98 on the file of the Income Tax Appellate Tribunal, Madras "D" Bench, Chennai, the Revenue has filed the above appeal.

2.While giving effect to the order of the Tribunal, the ITO allowed the refund but denied the interest under Section 244A with interest on interest and the assessee sought for a relief

of Rs.27,73,543/-. Aggrieved over the said order, an appeal was filed before the Commissioner of Income Tax (Appeals), who followed the judgment of Sandvik Asia Limited reported in 280 ITR 643 (SC) and allowed the appeal of the assessee. Challenging the same, the Revenue filed an appeal before the Income Tax Appellate Tribunal and the Tribunal, relying upon the judgment reported in 320 ITR 88, dismissed the appeal, against which the Revenue has filed the above appeal.

3.The above appeal was admitted on the following substantial questions of law:

"1)Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in upholding the order of CIT(A) in granting interest on interest under Section 244A?

2)Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in its conclusion that the department should pay interest on interest especially when there was no inordinate delay in the payment of refund?"

4.Though notice has been duly served on the respondent and their name has been printed in the cause list, none appeared for them.

5.When the appeal is taken up for hearing, Mr.M.Swaminathan, learned senior standing counsel appearing for the appellant - Revenue submitted that after the judgment of the Hon'ble Supreme Court in the case of M/s.Sandvik Asia Limited Vs. CIT reported in [2006] 280 ITR 643 (SC), a three Judge Bench of the Hon'ble Supreme Court in the case of CIT Vs. Gujarat Fluoro Chemicals reported in [2013] 358 ITR 291 (SC) and in the case of CIT Vs. H.E.G. Ltd. reported in [2010] 324 ITR 331 (SC) 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. The learned senior standing counsel further submitted that following the judgments of the Hon'ble Supreme Court reported in [2013] 358 ITR 291 (SC) and [2010] 324 ITR 331 (SC), the Hon'ble Division Bench of Delhi High Court in CIT Vs. Indian Farmer Fertilizer Co-operative reported in [2015] 374 ITR 56 (Delhi), held that to the extent it directs payment of any sum over and above interest payable under Section 244A(1) to the assessee cannot be upheld.

6.The relevant portion of the judgment of the Hon'ble Division Bench of Delhi High Court in CIT Vs. Indian Farmer Fertilizer Co-operative reported in [2015] 374 ITR 56 (Delhi), reads as follows:

"...

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 H.E.G. 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, H.E.G. Ltd. (supra) 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."

7.The learned senior standing counsel further submitted that the ratio laid down by the Hon'ble Supreme Court of India and the Division Bench of the Delhi High Court squarely covers the substantial question of law that are raised in the present appeal.

8.On a reading of the judgments of the Hon'ble Supreme Court as well as the Division Bench of the Delhi High Court, we are satisfied that the questions of law that are raised in the present appeal are covered by the said decisions. Following the ratio laid down by the Apex Court and the Delhi High Court, the substantial questions of law are decided in favour of the appellant - Revenue and the order passed by the Income Tax Appellate Tribunal is set aside and the matter is remitted back to the Assessing Officer for fresh consideration. The Assessing Officer is directed to decide the matter afresh, following the ratio laid down by the Hon'ble Supreme Court of India in the judgments reported in [2013] 358 ITR 291 (SC) [CIT Vs. Gujarat Fluoro Chemicals] and [2010] 324 ITR 331 (SC) [CIT Vs. H.E.G. Ltd.] and pass orders after giving notice to the assessee.

9.With these observations, the Tax Case Appeal stands allowed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal, Madras "D" Bench,
Chennai.

2.The Commissioner of Income Tax (Appeals) III,
Chennai-34.

3.The Assistant Commissioner of Income
Tax Company Circle III(3),
Chennai.

+1cc to Mr.M.Swaminathan, Advocate Sr.22929

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srg 21/06/2021



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