



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7344 OF 2023

Babasheb Changdeo Mate
age 50 years, occ. Agri.
PAN : AUYPM6522J
r/o Gavthan, Nighoj, Tq. Rahata
Dist. Ahmednagar.

.. Petitioner

Versus

1. The Union of India
Through Secretary
Ministry of Finance
New Delhi
2. The Principal Commissioner
Income Tax – 1, 3rd Floor, A-Wing
Shankar Seth Road, Swargate
Pune.
3. The Income Tax Officer
Ward -1, Behind Natraj Hotel,
Ahmednagar
Tq. & Dist. Ahmednagar

.. Respondents

Mr. R. R. Chandak, Advocate for the Petitioner.
Mrs. Kalpalata Patil Bharaswadkar, Advocate for Respondent Nos.
2 and 3.

**CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.**

DATE : 23rd FEBRUARY, 2024.

JUDGMENT : (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner has put forth prayer clauses 'C' and 'D' as under :-

C) That, the Hon'ble Court may kindly quash and set aside the order passed by the ITO Ward-1 Ahmednagar dt. 23.3.2023.

D) That, the Hon'ble Court may direct the respondents to grant the interest @ 9% on the delayed refund amount.

3. The Union of India has enacted the **“Direct Tax Vivad Se Vishwas Scheme 2020”** (hereinafter referred to as the “VSV Scheme”). The aim and object behind introduction of the said scheme was to provide a resolution to pending tax disputes which would not only benefit the Government by generating timely revenue, but also the tax payers. It is in this backdrop that the Petitioner opted for the said scheme. The PCIT-1, Pune issued an order in Form no. 5 for the full and final settlement of the arrears. A certificate was issued for the Assessment year 2010-2011. The refund amount to which the Petitioner was entitled to, was also mentioned in the said order.

4. The grievance of the Petitioner is that despite Form No. 5 having been issued, the department did not issue the refund order. The Petitioner was constrained to request for the refund, to the Respondent No. 3 Income Tax Officer, Ward-1, Ahmednagar, repeatedly.

5. It is further submitted that under the VSV Scheme, the penalty proceeding under Section 271(1)(c) of the Income Tax Act, was dropped by the department. Yet, the Petitioner did not receive the refund amount. Surprisingly, the Petitioner received a letter on 9th November, 2021 calling upon the Petitioner to explain as to why Form Nos. 3 and 5 should not be revoked. The petitioner replied to the same. Despite the above, no interest was paid on the refund amount. Ultimately, the amount was refunded on 3rd March, 2022. The chart elaborating the delay in issuing the refund is reproduced as under :-

Name	AY	Refund amount as per form No. 5	Form No. 5 of DSVS issued on	Date of receipt refund	No. of days delay
Babasaheb Mate	10.11	1994805	29.12.2020	3.3.2022	428
Bhamabai Mate	10.11	2007580	29.12.2020	2.3.2022	427
Babasaheb Mate	12.13	1902842	29.12.2020	10.5.2022	496

Bhamabai Mate	12.13	1905340	29.12.2020	22.3.2022	447
Bhimabai mate	12.13	3538047	29.12.2020	13.10.2022	652

6. The department has vehemently opposed this Petition. An affidavit-in-reply dated 20th February, 2024 has been filed for setting forth reasons to oppose the Petition. It is informed that though the department conceded that the amount ought to be refunded and has eventually refunded the amount, interest should not be levied on account of the technical reasons due to which the payment of refund got delayed.

7. We find that this Court, at the Principal Seat, has dealt with identical facts vide it's order dated 28th August, 2023 delivered in Writ Petition No. 10314/2023 (**UPS Freight Services India Private Limited vs. Deputy Commissioner of Income Tax Central Circle 3-2**). This Court has recorded in Paragraph No. 4 that “*Except a bald statement in the affidavit that delay in issuing refund has been attributable to some technical issues, there is nothing substantial in the affidavit.*” It was further recorded in Paragraph Nos. 7 and 8 as under :-

7. *It will be useful to reproduce paragraph 2 of the circular 11/2016 (F.No. 279/MISC/M-140/2015-ITJ) dated 26.4.2016 that Mr. Gandhi tendered. It reads as under :-*

“2. The issue of eligibility for interest on refund of excess TDS to a tax deductor has been a subject matter of controversy and litigation. The Hon’ble Supreme Court of India in the case of Tata Chemicals Limited, Civil Appeal No. 6301 of 2011 vide order dated 26.2.2014, held that “Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest.”

(emphasis supplied)

8. *It will be apposite to re-produce paragraphs 37 and 38 of Tata Chemicals Ltd. (supra) and the same reads as under :-*

“37. A “tax refund” is a refund of taxes when the tax liability is less than the tax paid. As per the old section an assessee was entitled to payment of interest on the amount of taxes refunded pursuant to an order passed under the Act, including the order passed in an appeal. In the present fact scenario, the deductor/assessee had paid taxes pursuant to a special order passed by the assessing officer/Income Tax Officer. In the appeal filed against the said order the assessee has succeeded and a direction is issued by the appellate authority to refund the tax paid. The amount paid by the resident/deductor was retained by the Government till a direction was issued by the appellate authority to refund the same. When the said amount is refunded it should carry interest in the matter of course. As held by the Courts while awarding interest, it is a kind of compensation of use and retention of the money collected unauthorisedly by the Department. When the collection is illegal, there is corresponding obligation on the revenue to refund such amount with interest in as much as they have retained and enjoyed the money deposited. Even the Department has understood the object behind insertion of Section 244A, as that, an assessee is entitled to payment of interest for money remaining with the Government which would be refunded. There is no reason to restrict the same to an assessee only without extending the similar benefit to a resident/deductor who has deducted tax at source and deposited the same before remitting the amount payable to a non-resident/foreign company.

38. *Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the aforesaid amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing Statute. Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party which ex ae quo et bono ought to be refunded, the right to interest follows, as a matter of course."*

(emphasis supplied)

8. It was finally concluded in Paragraph Nos. 9, 10 and 11 that the Petitioner shall be entitled to the interest on the amount from the date the refund became due till the date it was actually

paid, at the rate of 6% per annum which is the rate prescribed under Section 244(A) of the Income Tax Act.

9. In view of the above, **this Writ Petition is partly allowed.** We direct the department to calculate the interest at the rate of 6% per annum to be paid within 30 days.

10. Rule is made absolute in above terms.

11. No order as to costs.

(R. M. JOSHI)
JUDGE

dyb

(RAVINDRA V. GHUGE)
JUDGE