IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A.No.1108 of 2020

1.The Commissioner of Income Tax,
Chennai – 1,
VII Floor, New Block,
121, Mahatma Gandhi Road,
Chennai – 600 034.

2.The Assistant Commissioner of Income Tax
Company Circle – 1(1),
121, Mahatma Gandhi Road,
Chennai – 600 034. ... Appellants / Respondents

Vs.

Areva T & D Limited,
Rep by its Director – Treasury & Taxation
Mr.L.V.Srinivasan
Having its Principal Finance Office at
PSSC Building,
No.19/1, GST Road,
Pallavaram, Chennai – 600 034. ... Respondent / Petitioner

Prayer: Appeal under Clause 15 of the Letters Patent, against the Final Order passed by this Court in W.P.No.22862 of 2008 dated 30.09.2019.

For Appellants : Mr.V.Mahalingam
Senior Standing Counsel
For Respondent : Mr.Joseph Prabakar

JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

The Appellants/Respondents has filed this Appeal against the Order dated 30.09.2019 passed by the Writ Court in W.P.No.22862 of 2008 (hereinafter referred to as the 'Impugned Order'). By the Impugned Order, the Writ Petition filed by the Respondent/Writ Petitioner has been allowed with the following observations:-

> *"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 imemdiately 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 Ansensing tricer 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 IT 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 assesses, in appropriate cases, has to be compensated for depreciation of capital.

*11. In the present case, the petitioner has, admittedly, remitted the smount 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 & of the Act."*

2. In the said Writ Petition, the Respondent/Writ Petitioner had prayed for the following relief:-

"*to call 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."*

3. The facts on record reveal that the Respondent/Writ Petitioner had made an adhoc remittance of Rs.2,00,00,000/- on 28.06.1996, after Self Assessment Tax under Section 140A of the Income Tax Act, 1961.

4. The reason for making the above payment the Respondent/Writ Petitioner has been captured in Paragraph No.4 by the Writ Court in the

Impugned Order. Paragraph No.4 of the Impugned Order of the Writ Court reads as under:

> *"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. There is no dispute that the Petitioner was entitled for refund of the aforesaid amount of Rs.2,00,00,000/- which was paid by the Respondent/ Writ Petitioner in anticipation of the stand of the Department for the **Assessment Year 1993-1994** as mentioned above.

6. It is noticed that the issue as to whether the provision made by the Respondent/ Writ Petitioner for voluntary retirement scheme was to be included in the taxable value or not, ultimately reached the Income Tax Appellate Tribunal (for brevity, "ITAT") in I.T.A.Nos.1747 to 1749/Mds/2000 for the **Assessment Years 1994-1995 to 1996-1997.**

7. The computation of Refund in the Order dated 31.07.2001 in ITA.Nos.3,58 and 62/99-2000 of the Deputy Commissioner of Income Tax is captured below:

Income Tax @ 40%		6,94,36,212
Surcharge @ 15%		1,04,15,432
		7,98,51,644
Less: TDS Advance Tax	39,58,232 6,43,70,000	6,83,28,232
		1,15,23,412
Add: Interest under Section 234B		4,60,936
	Payable	1,19,84,348
Less: Tax paid on 01.06.1996		2,00,00,000
	Refundable	80,15,652
Less: Addl.tax		21,850
	Refundable	79,93,802
Less: Refund issues & adjusted towards advance-tax for asst.year 1998-99 on 30.03.1998		2,27,73,405
	Payable	1,47,79,603
Less: Refund due for the asst.year 1997-98 adjusted on 26.03.1999		1,91,10,544
	Refundable	43,30,941
Less: Refund issued and adjusted towards the demand of asst.year 1994-95 on 28.04.1999		21,62,646
	Refundable	21,68,295
Add: Interest u/s 244(1A)		12,03,351
	Balance refundable	33,71,646
The refund due will be fully adjusted against the demand due for the A.Y.1995-1996		

8. The computation of Refund in the Order dated 03.11.2005 of the Assistant Commissioner of Income Tax for the **Assessment Year 1996-1997** pursuant to the Order dated 31.07.2001 in ITA.Nos.3,58 and 62/99-2000 is captured below:-

ORDER

Giving effect to the order of ITAT cited, the revision order dated 31.07.2001 is revised as under:-

	(Figures in Rs.)
Total income as per revision order dated 31.07.2001 under the head 'Business'	17,12,47,696
Add:	
Excess depreciation @ 40% on Plastic Moulds withdrawn by ITAT	18,48,987

	17,30,96,683
Less: Relief allowed by ITAT	
(I) Rent paid on transit flats	2,09,069
(II) Depreciation on Lucknow property	74,068

Income under the head business	17,28,13,546
Less:	
Unabsorbed depreciation brought forward from A.Y.94-95 available for set off against the income	4,17,06,551

Business Income	13,11,06,995
Income from other Sources	58,00,114

Gross Total Income	13,69,07,109
Less:	
Deduction u/s 80M as per order	

u/s 143(3) r.w.s 147 excluding UTI division	34,57,280

	13,34,49,829 OR
Taxable Income	13,34,49,830
Income Tax @ 40%	5,33,79,932
Add:	
Surcharge @ 15%	80,06,990

	6,13,86,922
Less:	
T.D.S.	39,58,232

	5,74,28,690
Less:	
Advance Tax Paid	6,43,70,000

Refund due	69,41,310
Add:	
Adhoc payment made on 1.6.96	2,00,00,000

Refund due	2,69,41,310
Less:	
Additional tax u/s 143(1A)	21,850

Refund due	2,69,19,640
Less:	
Refund issued and adjusted towards advance tax for Assessment Year 1998-99	2,27,73,405

Refund due	41,46,055
Add:	
Cash collections made on 31.03.99 by adj. R.O	1,91,10,544

Refund due	2,32,56,599
Less:	
Refund issued and adjusted towards	

demand for Assessment Year 94-95 on 28.04.1999	21,62,646

Refund due	2,10,93,953
Less:	
Refund already granted	34,85,477

Refund due	1,76,08,476
Add:	
Interest u/s 244A	1,40,85,786

Refundable	3,16,94,262
	---------------

9. The ITAT eventually passed its order in these appeals for these Assessment Years, pursuant to which, an Order dated 03.11.2005 was passed by the Assistant Commissioner of Income Tax. It admits the adjustment of the aforesaid amount of Rs.2,00,00,000/- paid by the Respondent/ Writ Petitioner on 28.06.1996 towards the advance tax liability of the Respondent/Writ Petitioner for the **Assessment Year 1998-1999.**

10. As per the aforesaid Order dated 03.11.2005, the amount to be refunded to the Respondent/Writ Petitioner/Assessee was **Rs.3,16,94,262/-** out of which **Rs.2,27,73,405/-** was adjusted towards the tax liability for the petitioner for the Assessment Year 1998-1999. The computation on the taxable

income of **Rs.13,34,49,830/-** by an Order dated 03.11.2005 of the Assistant Commissioner of Income Tax giving effect to order of the ITAT in ITA.No.1747 to 1749/Mds/2000 for the Assessment Years 1994-1995 to 1996-1997.

11. It is the case of the Respondent/Writ Petitioner that on the aforesaid sum of Rs.2,00,00,000/- was paid towards Self Assessment Tax, the Respondent/Writ Petitioner was entitled to refund along with interest under Section 244A(b) of the Income Tax Act, 1961. Section 244A(1)(b) of the Income Tax Act, 1961 hereunder:

> ***"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)....*
>
> *(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."*

12. Subsequently, Order dated 06.07.2006 was also passed, whereby, the refund was limited to a sum of Rs.2,51,15,156/- to the Respondent/Writ Petitioner.

13. Since the amount was paid in advance on 28.06.1996 and was not liable to tax which stands affirmed by the Order of the ITAT in the above mentioned Appeals as it evident from the Order dated 03.11.2005 of the Assistant Commissioner of Income Tax and Order dated 06.07.2006 of the Assistant Commissioner of Income Tax, the Respondent/Petitioner was indeed entitled to the benefit of the interest under Section 244A(1)(b) of the Income Tax Act, 1961.

14. We are in agreement with the views of the Writ Court that the Respondent/Writ Petitioner was entitled for refund of interest under the aforesaid provision.

15. We find no merit in the challenge to the Impugned Order of the Writ Court which has incidently followed the views of the Hon'ble Supreme Court in ***Sandvik Asia Ltd. Vs. Commissioner of Income Tax-I, Pune,*** AIR 2006 SC 1223 and a subsequent decision of the Hon'ble Supreme Court in ***CIT Vs. Gujarat Fluro Chemicals (2013) 358 IT 291***. Therefore, this Writ Appeal is liable to be dismissed.

16. This Writ Appeal is accordingly dismissed. No costs.

[R.S.K., J.] **[C.S.N., J.]**

19.11.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

jas/mrr

R.SURESH KUMAR, J.
and
C.SARAVANAN, J.

jas/mrr

W.A.No.1108 of 2020

19.11.2024