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

+ **W.P.(C) 15296/2022**

GENPACT INDIA PRIVATE LIMITED Petitioner

Through: Mr. Sachit Jolly, Ms. Soumya Singh, Ms. Disha Jham, Mr. Devansh Jain & Mr. Rishabh Malhotra, Advs.

versus

**DEPUTY COMMISSIONER OF INCOME TAX,
CIRCLE 10(1), NEW DELHI AND ORS** Respondents

Through: Mr. Gaurav Gupta, SSC.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR

KAURAV

ORDER

27.02.2024

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PER: PURUSHAINDRA KUMAR KAURAV J.

1. The present petition, at the instance of the assessee, assails the impugned order dated 18 November 2022, whereby, additional interest under Section 244A(1A) of the Income Tax Act, 1961 [“**Act**”] has been denied by the Revenue.

2. The facts relevant to decide the controversy in hand are that the assessee had furnished its income tax return [“**TTR**”] on 04 October 2010, declaring income to the tune of INR 505,89,69,298/-, which was further revised on 27 December 2011 to an amount of INR 493,87,67,156/-.

3. Thereafter, the assessee’s case was picked up for scrutiny and the Assessing Officer [“**AO**”], on 22 May 2014 and led to the passing of an assessment order under Section 143(3) read with Section 144C



of the Act. Aggrieved by the said order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) [“**CIT(A)**”] and the CIT(A) passed an order on 24 May 2019, partly allowing the said appeal, giving rise to a refund of certain amounts alongwith statutory interest in favour of the assessee.

4. Thereafter, on 23 December 2020, the AO passed an appeal effect order, whereby, refund with admissible interest under Section 244A(1) of the Act was granted to the assessee. Additionally, an intimation under Section 245 of the Act was also issued by the Revenue, wherein, the amounts of determined refunds were proposed to be adjusted against the demands pending against the assessee for the subsequent AYs.

5. Aggrieved by the said intimation, the assessee sent a letter dated 15 January 2021 to the Revenue highlighting the correct computation of the refund amount due, including the interest under Sections 244A(1) and 244A(1A) of the Act. It is further stated that the assessee, *vide* its letter dated 06 April 2021, approached the Central Board of Direct Taxes [“**CBDT**”] apprising the inherent infirmity in the appeal effect order and again pointing out that the refund aggregating to the tune of INR 211.96 crores for Assessment Year [“**AY**”] AY 2010-11 remained outstanding for the past two years, thereby, requesting the CBDT to intervene in the matter.

6. Thereafter, on 02 July 2021, the Revenue issued another intimation under Section 245 of the Act proposing adjustment of the refund against the demands outstanding which was duly objected by the assessee.

7. It is further stated that the assessee *vide* its letter dated 06 August 2021 acknowledged that part of refund granted to it on 30 July



2021 amounting to INR 187,68,28,630/- had been received and requested the Revenue to issue the remaining refund alongwith statutory interest. Subsequently, on 19 May 2022, the Revenue passed a rectification order under Section 154 read with Section 250 and Section 143(3) of the Act, whereby, balance refund of INR 21,61,76,130/- was determined including the interest under Section 244A(1) of the Act.

8. In the said order, since additional interest under Section 244A(1A) of the Act was not granted to the assessee, the assessee, by way of a representation on 22 June 2022, again raised the said demand. Consequently, on 18 November 2022, the Revenue rejected the claim of additional interest and therefore, the assessee has filed the instant petition to ventilate its grievance.

9. Mr. Sachit Jolly, learned counsel appearing for the assessee, submits that the additional interest under Section 244A(1A) of the Act is statutory in nature and if the refund emanates from an appeal effect order. According to him, the only exception under Section 244A(2) of the Act is where reasons of delay be attributable to the assessee. He further submitted that by no stretch of imagination could the reasons recorded in the impugned order i.e., amalgamation of the assessee, non-availability of functionality on the portal and the prevailing COVID-19 outbreak, could constitute grounds for rejection of the additional interest as mandated under Section 244A(1A) of the Act. He has, in this regard, placed reliance on an order dated 22 May 2019, passed by this Court in W.P.(C.) 2315/2019 titled as **M/s. Clix Finance India Pvt. Ltd. v. DCIT.**

10. Mr. Gaurav Gupta, learned counsel appearing on behalf of the Revenue, on the other hand, vehemently opposed the submissions of



the assessee. He submitted that *vide* order dated 19 May 2022, assessee had already been granted interest in accordance with Section 244A(1) of the Act. He further submitted that due to non-functionality of the Income Tax Business Application [“ITBA”] portal to take up the case of the assessee in view of the amalgamation of the assessee, additional interest under Section 244A(1A) could not be granted. He further contends that since there was the COVID-19 outbreak and the Department was working remotely, the ITBA portal could not be fixed and thus, refund could not be initiated.

11. While justifying the reasons for disallowing the additional interest as enumerated in the impugned order, he further submitted that since the delay for non-issuance of refund is attributable to the assessee, therefore, the additional interest under Section 244A(1A) of the Act cannot be granted to the assessee in light of the mandate as prescribed under Section 244A(2) of the Act. He sought to draw the attention of the Court on the scope of invocation of equity jurisdiction of the Court under Article 226 of the Constitution.

12. We have heard learned counsels appearing on behalf of the parties and perused the record.

13. The short controversy in the instant writ petition lies in a narrow compass as to whether the assessee, in the facts and circumstances of the instant case is entitled to additional interest as prescribed under Section 244A(1A) of the Act or not. Before proceeding further, it is pertinent to refer to Section 244A(1A) of the Act, which reads as under

“244-A. Interest on refunds. :-

[(1-A) In a case where a refund arises as a result of giving effect to an order under Section 250 or Section 254 or Section 260 or



Section 262 or Section 263 or Section 264, wholly or partly, otherwise than by making a fresh assessment or reassessment, the assessee shall be entitled to receive, in addition to the interest payable under sub-section (1), an additional interest on such amount of refund calculated at the rate of three per cent per annum, for the period beginning from the date following the date of expiry of the time allowed under sub-section (5) of Section 153 to the date on which the refund is granted:]

[Provided that where proceedings for assessment or reassessment are pending in respect of an assessee, in computing the period for determining the additional interest payable to such assessee under this sub-section, the period beginning from the date on which such refund is withheld by the Assessing Officer in accordance with and subject to provisions of sub-section (2) of Section 245 and ending with the date on which such assessment or reassessment is made, shall be excluded.]”

14. A bare reading of Section 244A(1A) of the Act would reflect that once the assessee’s right of refund originates as a result of an appeal effect order under Section 250 of the Act, whereby, fresh assessment or reassessment has not been undertaken, then the assessee is entitled to receive an additional interest of three per cent per annum apart from the interest accrued under Section 244A(1) of the Act, for the duration starting from the date following the date of expiry of time as permitted under Section 153(5) of the Act to date on which the refund is granted.

15. Furthermore, Section 244A(2) of the Act would manifest that the only contingency in which the statutory interest can be denied to the assessee is the circumstances where the delay is attributable to the assessee itself. This is evident from Section 244A(2) of the Act, which reads as under:-

“244-A. Interest on refunds. :-

(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee [or the deductor, as the case may be.], whether wholly or in part, the period of the delay so



attributable to him shall be excluded from the period for which interest is payable [under sub-sections (1) or (1-A) [or (1-B)]], and where any question arises as to the period to be excluded, it shall be decided by the [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner] whose decision thereon shall be final. ”

16. Thus, the reasons for non-issuance of the refund alongwith additional interest which is statutorily prescribed under Section 244A(1A) of the Act should be weighed on the anvil that those reasons are attributable to the assessee or not.

17. In light of this, we proceed to examine the rationale as provided by the Revenue for denial of the additional interest in the impugned order. The impugned order records the following reasons for justifying the denial of additional interest which are culled out as under:-

“3.0 In this regard, it is again mentioned that, CIT(A) order was received in this office on 26.06.2019. Aggrieved by the order, Revenue had filed an appeal before Hon'ble ITAT in the month of August, 2019. On receipt of CIT(A) order, consequential proceedings were initiated in ITBA portal giving effect to CIT(A) order in the month of August, 2019 itself.

4.0 It is pertinent to mention that vide Hon'ble High court of Hyderabad order dated 17.08.2015 (F/G), M/s. Genpact India got amalgamated with M/s. Empower Research Knowledge Service Pvt. Ltd. w.e.f. 01.04.2015. Subsequently, the company M/s. Empower Research Knowledge Service Pvt. Ltd. got renamed to M/s. Genpact India Pvt. Ltd. (GIPL).

5.0 Due to the above stated facts, the appeal effect order could not be passed by our office in the system on account of the following issues:

- i. The appeal effect order was not passed on the old PAN of M/s. Genpact India since it was non-existent. If in case, the appeal effect was given on New PAN, there was no functionality on ITD/ITBA to migrate the Tax credit from the old PAN to new PAN.
- ii. There were certain demands outstanding in the system under old PAN of M/s. Genpact India and the refund resulting from the appeal effect needs to be adjusted against the afore-said demands.

6.0 Accordingly, the said matter/issue was taken up by this office with Directorate of Systems requesting them to provide the



procedure to implement the appeal effect order on the new PAN. In response thereto, the Directorate of System has clarified that there has not been any functionality available to transfer Tax credits from one PAN to another PAN to implement the appeal effect order on the new PAN i.e. PAN of Genpact India Private Limited. Further, as there was no functionality available to issue the refund through system, the then AO started refund processing through paper mode as per the 'ITBA-Assessment Instruction no. 11' dated 18.06.2019(F/E) of DIT(Systems), wherein it is mentioned that in case of exceptional circumstances, paper refunds can be issued after approval of Ld. CCIT.

7.0 It is pertinent to mention that at the time of processing of refund, situation of Covid-19 was prevailing and due to many procedural approvals required to issue the manual refund, the refund could only be issued on 31.07.2021. In this regard, kind attention is invited to the provision of section 244A(2) of the IT Act, which provides as below:

“if the proceedings resulting in the refund are delayed for reasons attributable to the assessee whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable [under sub-section (1) of (1A)] [or (1B)], and where any question arises as to the period to be excluded, it shall be decided by the [Pr. Chief Commissioner or] Chief Commissioner or [Pr Commissioner or] Commissioner whose decision thereon shall be final”.

8.0 In view of the above, it may thus be seen that the delay was attributable to amalgamation of Assessee Company, non availability of functionality and prevailing Covid-19 situation. Considering the above stated facts, since there is no deliberate delay to issue the refund, the additional interest in terms of section 244A(1A) of the Act is not applicable.

9.0 It may further be mentioned that interest u/s 244A(1) was duly provided till the date of issue of refund. As regards interest u/s. 244A(1A), approval of Pr.CIT-4, Delhi has been obtained u/s. 244A(2) to reject the same.”

18. A perusal of the same and the submissions on behalf of the Revenue would reflect that the denial of additional interest is based on the aforementioned reasons namely, amalgamation of the assessee, non-availability of the functionality of ITBA portal and the prevailing COVID-19 situation.



19. It is noteworthy that the primary rationale behind denying refund to the assessee by the Revenue is non-functionality of ITBA portal due to the amalgamation of the assessee. It is the case of the Revenue that due to the amalgamation of the assessee, the appeal effect order could not be passed on the old Permanent Account Number [“PAN”] of the assessee since it was non-existent. It is also the case of the Revenue that if in case, the appeal effect was given on new PAN, there was no functionality on ITBA portal to migrate the tax credit from the old PAN to the new PAN of the assessee.

20. However, we do not find any merit in the aforesaid contention of the Revenue as a bare perusal of the record would reveal that the assessee had already intimated the Revenue regarding the scheme of amalgamation on 18 April 2016 itself and thus, the amalgamation of the assessee is not a novel fact which the Revenue had been apprised of, post the CIT(A) order. Thus, the responsibility imposed upon the assessee to intimate the Revenue regarding the scheme of amalgamation, as also noted in the case of **CIT v. Mahagun Realtors (P) Ltd.** [2022 SCC OnLine SC 407], stood fulfilled.

21. The amalgamation is permissible and has duly been carried out. The same, at a later stage, cannot be treated to be detrimental to the interest of the assessee and that too, for denying statutory benefits. Furthermore, the non-functionality of the ITBA portal due to the deletion of the old PAN of assessee, pursuant to the amalgamation of the assessee, in all possibility, can never come under the umbrella of Section 244A(2) of the Act i.e., delay attributable to the assessee. The non-functionality of the ITBA portal is an administrative difficulty on the part of the Revenue. The technical glitch of the ITBA portal maintained by the Revenue which has not incorporated appropriate



provisions for the transfer of tax credit in lieu of the amalgamation of the assessee is a contingency which the Revenue ought to have resolved. Thus, the non-functionality of the ITBA portal could not have been attributed to the assessee and statutory interest cannot be denied by taking resort to Section 244A(2) of the Act.

22. At this juncture, it is pertinent to appreciate the underlying legislative mandate behind the introduction of Section 244A of the Act. It is discernible that the objects and reasons for introduction of Section 244A of the Act was clarified by the CBDT in its Circular No. 549 dated 31 October 1989. The relevant paragraphs of the said Circular are reproduced as under:-

“**11.2** Insertion of a new Section 244-A in lieu of Sections 214, 243 and 244—under the provisions of Section 214, interest was payable to the assessee on any excess advance tax paid by him in a financial year from the 1st day of April next following the said financial year to the date of regular assessment. In case the refund was not granted within three months from the date of the month in which the regular assessment was completed, Section 243 provided for further payment of interest. Under Section 244, interest was payable to the assessee for delay in payment of refund as a result of an order passed in appeal, etc., from the date following after the expiry of three months from the end of the month in which such order was passed to the date on which refund was granted. The rate of interest under all the three sections was 15% per annum.

11.3. These provisions, apart from being complicated left certain gaps for which interest was not paid by the Department to the assessee for the money remaining with the Government. To remove this inequity, as also to simplify the provisions in this regard, the Amending Act, 1987, has inserted a new Section 244-A in the Income Tax Act, applicable from the assessment year 1989-1990 and onwards which contains all the provisions for payment of interest by the Department for delay in the grant of refunds. The rate of interest has been increased from the earlier 15% per annum to 1.5% per month or part of a month, comprised in the period of delay in the grant of refund. The Amending Act, 1987, has also amended Sections 214, 243 and 244 to provide that the provisions of these sections shall not apply to the Assessment Year 1989-1990 or any subsequent assessment years.”



23. Furthermore, the intent behind Section 244A of the Act and the statutory obligation of the Revenue to issue refund alongwith interest is also encapsulated in the decision of the Hon'ble Supreme Court in **Union of India v. Tata Chemicals Ltd.** [(2014) 6 SCC 335], wherein, it was held as under:-

“30. The refund becomes due when tax deducted at source, advance tax paid, self-assessment tax paid and tax paid on regular assessment exceeds tax chargeable for the year as a result of an order passed in appeal or other proceedings under the Act. When refund is of any advance tax (including tax deducted/collected at source), interest is payable for the period starting from the first day of the assessment year to the date of grant of refund. No interest is, however, payable if the excess payment is less than 10 per cent of tax determined under Section 143(1) or on regular assessment. No interest is payable for the period for which the proceedings resulting in the refund are delayed for the reasons attributable to the assessee (wholly or partly). The rate of interest and entitlement to interest on excess tax are determined by the statutory provisions of the Act. Interest payment is a statutory obligation and non-discretionary in nature to the assessee. In tune with the aforesaid general principle, Section 244-A is drafted and enacted. The language employed in Section 244-A of the Act is clear and plain. It grants substantive right of interest and is not procedural. The principles for grant of interest are the same as under the provisions of Section 244 applicable to assessments before 1-4-1989, albeit with clarity of application as contained in Section 244-A.

31. The Department has also issued circular clarifying the purpose and object of introducing Section 244-A of the Act to replace Sections 214, 243 and 244 of the Act. It is clarified therein, that, since there was some lacunae in the earlier provisions with regard to non-payment of interest by the Revenue to the assessee for the money remaining with the Government, the said section is introduced for payment of interest by the Department for delay in grant of refunds. A general right (sic duty) exists in the State to refund any tax collected for its purpose, and a corresponding right exists to refund to individuals any sum paid by them as taxes which are found to have been wrongfully exacted or are believed to be, for any reason, inequitable. The statutory obligation to refund carried with it the right to interest also. This is true in the case of the assessee under the Act.”



24. The next prong of the Revenue's submission is that due to the prevailing COVID-19 pandemic at the relevant time, whereby, the employees of the department were working remotely and in limited capacity, principles of equity may be considered by this Court and the decision of the Revenue in denying additional interest as permitted under Section 244A(1A) of the Act must be upheld.

25. It is evident that concomitants of the principles of equity can be resorted to when the remedy prescribed under the law is impermissible or unjustified. It is a trite position of law that principle of equity is not the panacea to cure any defect rather it can only supplement the law and not supplant it.

26. The above position of law also holds feet in light of the decision of the Hon'ble Supreme Court in the case of **National Spot Exchange Ltd. v. Dunar Foods Ltd. (Resolution Professional)** [(2022) 11 SCC 761], wherein, it was observed as under:-

“15.1. In *BSNL v. Mishri Lal*, (2011) 14 SCC 739 , it is observed that the **law prevails over equity if there is a conflict. It is observed further that equity can only supplement the law and not supplant it.**

15.2. In *Raghunath Rai Bareja v. Punjab National Bank*, (2007) 2 SCC 230], in paras 30 to 37, this Court observed and held as under :

“30. Thus, in *Madamanchi Ramappa v. Muthaluru Bojjappa*, AIR 1963 SC 1633, this Court observed :

‘12. ... [W]hat is administered in Courts is justice according to law, and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law.’

31. In *Council for Indian School Certificate Examination v. Isha Mittal*, (2000) 7 SCC 521, this Court observed :

‘4. ... Considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law.’

32. Similarly, in *P.M. Latha v. State of Kerala*, (2003) 3 SCC 541, this Court observed :



‘13. Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law.’

33. In *Laxminarayan R. Bhattad v. State of Maharashtra*, (2003) 5 SCC 413 this Court observed :

‘73. It is now well settled that when there is a conflict between law and equity the former shall prevail.’

34. Similarly, in *Nasiruddin v. Sita Ram Agarwal*, (2003) 2 SCC 577 this Court observed :

‘35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom.’

35. Similarly, in *E. Palanisamy v. Palanisamy*, (2003) 1 SCC 123] this Court observed :

‘5. Equitable considerations have no place where the statute contained express provisions.’”

27. In the instant case, it is seen that the additional interest of three percent per annum as mandated under Section 244A(1A) of the Act is the statutorily prescribed interest and can only be denied if the statute so permits. It is also evident that the contingency for the denial of additional interest under Section 244A(1A) of the Act is envisaged under Section 244A(2) of the Act and only on the ground where the delay is attributable to the assessee. In any case, it is not the case of the Revenue that the COVID-19 pandemic is attributable to the assessee. The Revenue may have had some difficulties in dealing with such instances, however, the same would not absolve the Revenue from the rigour of Section 244A(1A) of the Act.

28. Notably, since the Revenue has already granted the interest under Section 244A(1) of the Act without attributing any reason of delay to the assessee, we do not find any cogent reason for not



granting additional interest as mandatorily prescribed under Section 244A(1A) of the Act. In fact, the reasons of delay attributed to the assessee are without any logical explanation and lack merit. Therefore, taking into consideration the abovenoted facts and legal position, we find no reason to sustain the impugned order.

29. In light of the above, we accordingly allow the writ petition and hereby quash and set aside the order dated 18 November 2022. We further direct the Revenue to grant the statutorily prescribed interest as mandated under the Section 244A(1A) of the Act to the assessee, with due expediency.

30. The petition is disposed of in the aforesaid terms alongwith the pending application(s), if any.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.
FEBRUARY 27, 2024/priya