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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 23.10.2024

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W.P.(C) 17537/2022

**M /S GE CAPITAL EUROPEAN TREASURY SERVICES
LIMITED**

.....Petitioner

Through: Mr. Sachit Jolly, Ms. Soumya
Singh, Mr. Devansh Advocates.

versus

**DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE
INTERNATIONAL TAXATION 1 3 1, NEW DELHI & ORS.**

.....Respondents

Through: Mr. Puneet Rai, Sr.SC

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

YASHWANT VARMA, J. (Oral)

1. The present writ petition has been preferred seeking the following reliefs: -

“a. Writ of Mandamus or Writ, Order or Direction in the nature of Mandamus, or any other appropriate Writ, Order or Direction under Article 226 / 227 of the Constitution of India directing the Respondents to produce and provide a copy of order passed giving effect to the order of Commissioner of Income Tax (Appeals) for A.Y. 2001-02 to 2004-05, if any;

b. Writ of Mandamus or Writ, Order or Direction in the nature of Mandamus, or any other appropriate Writ, Order or Direction under Article 226 & 227 of the Constitution of India directing the Respondents to determine and grant interest u/s 244A of the Act till the date of adjustment against liability under the Vs V Scheme or actual grant of refund, whichever is later;



c. Writ of Mandamus or Writ, Order or Direction in the nature of Mandamus, or any other appropriate Writ, Order or Direction under Article 226 I 227 of the Constitution of India directing the Respondents to issue/grant refund of Rs. 39,85,83,552/- which are legitimately due to the Petitioner for AYs 2001-02 to 2004-05 in terms of FORM 5 issued under the Vs V Act, along with applicable interest for delay in grant of refund.

d. Pass such further and other reliefs, as this Hon'ble Court may deem fit, proper and appropriate in the nature and circumstances of this case”

2. The petitioner has undoubtedly obtained a declaration of settlement under the **Direct Tax Vivad Se Vishwas Act, 2020**¹. The solitary question which stands raised for our consideration is whether the statutory interest payable under Section 244A of the **Income Tax Act, 1961**², and which right, according to the writ petitioner, had accrued and crystallized prior to the submission of the requisite forms in terms of Sections 3 and 4 of the VSV, would survive notwithstanding the determination of the settlement amount under Section 4 thereof.

3. The principal ground on which the claim for interest under Section 244A of the IT Act rests is the assertion of the writ petitioner that the **Assessing Officer**³ was bound to pass an appeal effect order on or before 31 March 2015 by virtue of the provisions contained in Section 153(2)(a) of the IT Act. It is in the aforesaid backdrop that Mr. Jolly, learned counsel appearing for the writ petitioner, submits that the right of interest which accrued prior to the submission of the declaration under the VSV could not have been taken away merely by virtue of the fact that the petitioner had applied for settlement under

¹ VSV

² IT Act

³ AO



the said enactment. It was further contended that the statutory injunct in respect of grant of interest under Section 244A of the IT which stands enshrined in the Explanation to Section 7 would have to be construed as being confined to a determination which is undertaken under the VSV and in respect of a tax arrear which is found and determined to exceed the amount payable under Section 3 thereof.

4. In order to evaluate the challenge that is raised, it would be apposite to advert to the following essential facts.

5. The writ petition pertains to **Assessment Years**⁴ 2001-02 to 2004-05 and emanates from an assessment made under Section 147 read with Section 143(3) of the IT Act on 27 December 2006. Pursuant to the assessments so undertaken, the net taxable income of the petitioner for AYs' 2001-02 to 2004-05 came to be determined at INR 180,11,93,673/-, INR 203,41,21,713/-, INR 224,32,83,980/- and INR 225,73,72,225/- respectively.

6. Basis the aforesaid assessment, the following demands of tax came to be raised against the petitioner: -

Assessment Year (AY)	Demand of Tax
AY 2001-02	INR 162,58,29,455/-
AY 2002-03	INR 188,24,57,968/-
AY 2003-04	INR 148,44,03,441/-
AY 2004-05	INR 133,32,15,323/-

7. The petitioner thereafter appears to have moved the AO for rectification which came to be accepted and the total assessed income was reduced. This led to revised notices of demand coming to be issued and details whereof are extracted hereinbelow: -

⁴ AY



Assessment Year (AY)	Demand of Tax
AY 2001-02	INR 10,99,09,017/-
AY 2002-03	INR 18,38,67,400/-
AY 2003-04	INR 19,05,21,564/-
YA 2004-05	INR 29,75,18,691/-

8. It is admitted before us that the petitioner made all deposits in terms of those tax demands. Aggrieved by the orders of assessment as framed, the petitioner is stated to have approached the **Commissioner of Income Tax (Appeals)**⁵ which passed a common order pertaining to AYs' 2001-02 to 2004-05 on 08 August 2013. In terms of that order framed by the CIT(A), only 50% of the profits were held to be attributable to the alleged Permanent Establishment of the petitioner in India as opposed to a 100% profit attribution which constituted the basis of the original assessment order.

9. Aggrieved by the order of the CIT(A), both the petitioner as well as the Revenue instituted appeals before the **Income Tax Appellate Tribunal**⁶. It was during the pendency of those appeals that the petitioner filed an application on 16 December 2020 calling upon the AO to give effect to the order passed by the CIT(A) insofar as that authority had ruled in its favour. Close on the heels of the said application, the petitioner proceeded to file its application under the VSV on 23 December 2020.

10. The record would reflect that Forms 1 and 2 which the petitioner presented under the VSV were duly accepted by the Designated Authority. It becomes pertinent to note at this stage that

⁵ CIT(A)

⁶ Tribunal



the Forms that were submitted for settlement under the VSV pertained to both the appeals, namely, the appeal preferred by the petitioner as well as that submitted by the Revenue aggrieved by the order passed by the CIT(A). It was the aforesaid disclosure as contained in those applications which were ultimately taken up for consideration under the said VSV.

11. As noted above, the petitioner has not questioned the computation of tax arrears under the VSV. The limited relief that is claimed is in respect of interest which, according to it, was liable to flow irrespective of the aforesaid application having been moved for the purposes of settlement and closure of all disputes.

12. As was noticed in the preceding parts of this decision, the principal submission of Mr. Jolly was that the Explanation to Section 7 would not detract from the right of the writ petitioner to claim interest in terms of Section 244A of the IT Act with the same being confined to any amount that may ultimately come to be determined by the Designated Authority and where it comes to the conclusion that the amount as deposited by such an applicant under the IT Act exceeds the amount payable under Section 3 of the VSV. According to Mr. Jolly, it is the refund of such excess amount alone which could be said to be subject to the rigour of the Explanation to Section 7 and it is only that excess amount that cannot carry interest as contemplated under Section 244A of the IT Act.

13. According to Mr. Jolly, there was, and indisputably, a failure on the part of the AO to frame orders giving effect to the order of the CIT(A) and thus acting in clear violation of the mandate of Section



153(2)(a) of the IT Act. It was submitted that the said statutory obligation was in no manner interdicted by the filing of the application under the VSV. It was thus contended by Mr. Jolly that if the definition of disputed tax is borne in consideration, it becomes apparent that there would be manifest discrimination between the category of cases that would fall under clause (A) and those that could be said to form the subject matter of clause (B) of Section 2(1)(j) if the contention of the respondents were to be accepted. This submission is noted in greater detail hereinafter.

14. The aforementioned submissions were addressed in light of the stand of the respondents that since the tax disputes that formed the subject matter of contestation of both the appeals were submitted for settlement, it would be clause (A) that would apply and the expression “after giving effect to the order so passed” as appearing in clause (B) would have no application. Mr. Jolly on the other hand contended that in cases that fall within the ambit of clause (B) of Section 2(1)(j), the application which is tendered under the VSV would compute the disputed tax after giving effect to the order of the appellate order already passed. This benefit, according to learned counsel, cannot be denied to an applicant who may choose to prefer an application during the pendency of an appeal and thus fall within the scope of clause (A).

15. Mr. Rai, learned counsel who appeared for the respondents, however, controverted the aforementioned submissions and contended that it would be apparent upon a conjoint reading of the expressions “*appellant*”, “*disputed tax*” as well as “*tax arrears*” as defined, that an applicant under the VSV is conferred the choice of seeking a



settlement with respect to issues which may form part of either an appeal preferred by it, or for that matter, even one which has been instituted by an income tax authority. If the provisions of the VSV were to be viewed in light of the aforesaid defining provisions, Mr. Rai submitted, it becomes evident that it was open for the petitioner to restrict the prayer for settlement and closure to either its own appeal, the appeal of the Revenue or both.

16. According to learned counsel, having chosen to submit the application seeking closure of all questions which formed the subject matter of the two competing appeals, it would be impermissible for the petitioner to assert that interest under Section 244A of the IT Act would be payable in respect of amounts which became refundable pursuant to the order of the CIT (A) and which undoubtedly formed the subject matter of the appeal of the Revenue.

17. Learned counsel laid stress on the fact that at the time when the application came to be filed under the VSV, the appeal of the Revenue was still pending consideration of the Tribunal. The settlement thus led to a closure of the challenge which was laid by the Revenue as well and to the extent to which it questioned the relief accorded by the CIT (A) to the petitioner. It is in the aforesaid backdrop that Mr. Rai would submit that the settlement is liable to be viewed as impacting not just the benefits that were denied to the petitioner but also the challenge of the Department which was pending on that date.

18. Learned counsel had also drawn our attention to Circular Nos. 9/2020 and 21/2020 and more particularly Question 40 of the FAQs', which according to him, fortifies the submission of the applicant being



entitled to seek settlement of either its own appeal as well as cross-appeals that may have been preferred by the Revenue and which may have been pending on the specified date. The relevant extracts of the FAQs that are relied upon are reproduced hereinbelow: -

Question No.	40.	Where the two appeals filed for an assessment year one by the appellant and one by the tax department, whether the appellant can opt for only one appeal? If yes, how would the disputed tax be computed?
Answer		The appellant has an option to opt to settle appeal filed by it or appeal filed by the department or both. Declaration file is to be filed assessment year wise i.e. only one declaration for one assessment year. For different assessment years separate declarations have to be filed. So the declarant needs to specify in the declaration Form No. 1 whether he wants to settle his appeal, or department's appeal in his case or both for a particular assessment year. The computation of tax payable would be carried out accordingly.

19. Having set out the rival submissions that were addressed, we at the outset note that insofar as the appeal preferred by the petitioner was concerned, the same pertained to the order of the CIT(A) and to the extent that it had stopped short of granting relief in entirety to the petitioner. As was noticed hereinabove, the CIT(A) had modified and partly allowed the appeals of the petitioner by providing that only 50% of the profits would be attributable to the alleged PE of the petitioner in India instead of 100% of those profits as was provided for in the assessment orders.

20. The submission of Mr. Jolly proceeds on the premise that to the extent of relief which already stood granted to the petitioner and flowed from the order of the CIT(A) would be deemed to have attained finality and could not be said to form part of “disputed tax”. It was in the aforesaid backdrop that learned counsel had argued that the



same would necessarily carry interest as contemplated under Section 244A of the IT Act.

21. We, however, find ourselves unable to sustain that submission when we bear in consideration the manner in which the expressions “appellant”, “disputed tax” and “tax arrears” stand defined under the VSV. Those provisions are extracted hereinbelow: -

“(1) In this Act, unless the context otherwise requires, --

(a) “**appellant**” means-

(i) a person in whose case an appeal or a writ petition or special leave petition has been filed either by him or by the income-tax authority or by both, before an appellate forum and such appeal or petition is pending as on the specified date.

(ii) a person in whose case an order has been passed by the Assessing Officer, or an order has been passed by the Commissioner (Appeals) or the Income Tax Appellate Tribunal in an appeal, or by the High Court in a writ petition, on or before the specified date, and the time for filing any appeal or special leave petition against such order by that person has not expired as on that date;

(iii) a person who has filed his objections before the Dispute Resolution Panel under section 144C of the Income-tax Act, 1961 (43 of 1961) and the Dispute Resolution Panel has not issued any direction on or before the specified date.

(iv) a person in whose case the Dispute Resolution Panel has issued direction under sub-section (5) of section 144C of the Income-tax Act and the Assessing Officer has not passed any order under sub-section (13) of that section on or before the specified date.

(v) a person who has filed an application for revision under section 264 of the Income-tax Act and such application is pending as on the specified date.

[Explanation.-For the removal of doubts, it is hereby clarified that the expression appellant shall not include and shall be deemed never to have been included a person in whose case a writ petition or special leave petition or any other proceeding has been filed either by him or by the income-tax authority or by both before an



appellate forum, arising out of an order of the Settlement Commission under Chapter XIX-A of the Income-tax Act, and such petition or appeal is either pending or is disposed of.

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(j) **“disputed tax”**, in relation to an assessment year or financial year, as the case may be, means the income-tax, including surcharge and cess (hereafter in this clause referred to as the amount of tax) payable by the appellant under the provisions of the Income-tax Act, 1961 (43 of 1961), as computed hereunder: --

(A) in a case where any appeal, writ petition or special leave petition is pending before the appellate forum as on the specified date, the amount of tax that is payable by the appellant if such appeal or writ petition or special leave petition was to be decided against him.

(B) in a case where an order in an appeal or in writ petition has been passed by the appellate forum on or before the specified date, and the time for filing appeal or special leave petition against such order has not expired as on that date, the amount of tax payable by the appellant after giving effect to the order so passed.

(C) in a case where the order has been passed by the Assessing Officer on or before the specified date, and the time for filing appeal against such order has not expired as on that date, the amount of tax payable by the appellant in accordance with such order.

(D) in a case where objection filed by the appellant is pending before the Dispute Resolution Panel under section 144C of the Income-tax Act as on the specified date, the amount of tax payable by the appellant if the Dispute Resolution Panel was to confirm the variation proposed in the draft order.

(E) in a case where Dispute Resolution Panel has issued any direction under sub-section (5) of section 144C of the Income-tax Act and the Assessing Officer has not passed the order under sub-section (13) of that section on or before the specified date, the amount of tax payable by the appellant as per the assessment order to be passed by the Assessing Officer under sub-section (13) thereof;

(F) in a case where an application for revision under section 264 of the Income-tax Act is pending as on the specified date, the amount of tax payable by the appellant if such application for revision was



not to be accepted:

Provided that in a case where Commissioner (Appeals) has issued notice of enhancement under section 251 of the Income-tax Act on or before the specified date, the disputed tax shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued:

Provided further that in a case where the dispute in relation to an assessment year relates to reduction of tax credit under section 115JAA or section 115JD of the Income-tax Act or any loss or depreciation computed thereunder, the appellant shall have an option either to include the amount of tax related to such tax credit or loss or depreciation in the amount of disputed tax, or to carry forward the reduced tax credit or loss or depreciation, in such manner as may be prescribed.

[Explanation. -For the removal of doubts, it is hereby clarified that the expression disputed tax, in relation to an assessment year or financial year, as the case may be, shall not include and shall be deemed never to have been included any sum payable either by way of tax, penalty or interest pursuant to an order passed by the Settlement Commission under Chapter XIXA of the Income-tax Act.]

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(o) “**tax arrear**” means, -

(i) the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax, and penalty leviable or levied on such disputed tax; or

(ii) disputed interest; or

(iii) disputed penalty; or

(iv) disputed fee,

as determined under the provisions of the Income-tax Act.

[Explanation. -For the removal of doubts, it is hereby clarified that the expression tax arrear shall not include and shall be deemed never to have been included any sum payable either by way of tax, penalty or interest pursuant to an order passed by the Settlement Commission under Chapter XIX-A of the Income-tax Act.]



(2) The words and expressions used herein and not defined but defined in the Income-tax Act shall have the meanings respectively assigned to them in that Act.]”

22. As is manifest from the manner in which the word “appellant” stands defined in the VSV, it envisages an applicant to be one in whose case an appeal has been filed either by it, the income tax authority or by both. Section 2(1)(a) thus clearly contemplates a situation where cross-appeals preferred by both the assessee as well as the Revenue may be pending on the specified date and an applicant thus seeking closure of all disputes forming the subject matter of those appeals. An applicant thus stands enabled under the VSV to seek closure of not just its own challenge, and which may possibly be limited to findings and conclusions operating adversely, but also a challenge raised by the Revenue and seek a final termination of those proceedings as well. The resultant effect of such an application thus does not stand confined to the assessee giving up its own challenge but also avoiding the prospect of the Revenue’s appeal being accepted and the possible fallout of that eventuality. Thus, the VSV when empowering the appellant to file a composite application pertaining to its own appeal as well as that of the Revenue, if so chosen and advised, enables it to avoid and obviate such an outcome. This becomes clearer from the discussion which ensues.

23. It becomes pertinent to further observe that the submission of Mr. Jolly with respect to clause (B) of Section 2(1)(j) is clearly not worthy of acceptance since its applicability would be wholly dependent upon an appeal which is yet to be filed. Therefore, it would apply only to a situation where no cross-appeal has been preferred.



Thus, the submission resting on a perceived discrimination between cases which would fall within the ambit of clause (A) and (B) is misconceived and does not sustain.

24. Of crucial and critical significance is Section 2(1)(j) which defines “disputed tax” to mean the income tax including surcharge and cess payable by the appellant in a case where any appeal pending before the appellate forum as on the specified date “*was to be decided against him*”. This necessarily bids us to bear into consideration the outcome of not just a challenge that may have been mounted by the assessee but also comprehend the likelihood of the appeal preferred by the Revenue against a part of an order passed by an authority under the IT Act succeeding. The appellant under the VSV thus stands statutorily enabled to seek closure of disputes forming part of those cross-appeals and thus overcome the specter of not just its own appeal being dismissed as also the appeal of the Revenue coming to be allowed. It is both those contingencies that could form the subject matter of settlement under the VSV. The appellant thus stands entitled to either confine its application for settlement to its own appeal or seek a holistic and comprehensive ending and abatement of cross-appeals as well.

25. In our considered opinion, the crucial element to be borne in mind is that the VSV while defining “disputed tax” entitles an applicant to seek an abatement of both sets of appeals and thus obviate the negative outcome and fallout of not just the appeal preferred by it as well as that of the Revenue. The enactment additionally entitles it to either restrict its application to its own appeal or include the appeal of



the Revenue also for the purposes of settlement and conclusion. This clearly flows from a reading of the FAQs extracted hereinabove. This aspect assumes added significance when one bears in mind the phrase “disputed tax” indubitably bringing within its fold all tax demands that would arise either from a dismissal of the appeal of the assessee or the Revenue succeeding in its challenge in respect of the relief accorded to the assessee as also both of the above.

26. A conjoint reading of the definition of the words “appellant” and “disputed tax” thus leads us to the irresistible conclusion that once an appeal preferred by the Revenue also comes to be included in the application submitted for settlement, all disputes forming the subject matter of that appeal as well as the potential outcome of such a challenge would become the subject of closure and discontinuance. The tax liability arising from such appeal sets would thus be governed exclusively by the VSV.

27. As is manifest from the record, the application for settlement that the petitioner chose to submit under the VSV was not confined to the issues that emanated from its appeal alone. That application sought closure and settlement of all disputes which could be said to form the subject matter of the competing cross-appeals. The closure that was sought, therefore, was in respect of the entire gamut of disputes that formed the subject matter of those appeal sets.

28. We note that in terms of Section 4(2) of the IT Act, upon the filing of a declaration and the issuance of a certificate as contemplated under Section 5(1), any appeal pending before any authority in respect of disputed income, interest, or penalty is by way of a legal fiction



deemed to be withdrawn from the date of issuance of such a certificate. The issuance of the certificate under Section 5 thus would have led to both the appeals being rendered a closure and all aspects of disputation being rendered a quietus.

29. It was perhaps with this intended objective that the petitioner while submitting its application under the VSV had included both the appeals for the purposes of consideration. In our considered opinion, the appeal of the Revenue and the potential decision thereon would have clearly impacted the claim of the writ petitioner which rested on the relief granted by the CIT(A). It was in respect of this component that the petitioner had principally contended that the Section 244A interest would stand attracted. However, once closure came to be accorded to all disputes which formed the subject matter of the two appeals, the claim for interest clearly came to be interdicted and eclipsed. We, accordingly, and for all the aforesaid reasons, find no ground or justification to grant the reliefs as claimed.

30. We also find ourselves unable to countenance the submission of Mr. Jolly based on a perceived element of discrimination between the classes which would fall within clauses (A) and (B) of Section 2(1)(j) of the VSV. It is pertinent to note that clause (A) deals with a situation where appeals have already been preferred and are pending on the specified date. Clause (B), on the other hand, pertains to a situation where an appeal is yet to be instituted and the period of limitation as prescribed has not run out on the specified date. Firstly, and at the outset, it is manifest that clause (B) would not apply to the facts of the present case since admittedly both sets of appeals were pending on the



specified date. In any event, we find ourselves unable to interpret the phrase “*giving effect to the order so passed;*” as relieving an appellant of the obligations that would flow when a composite application is preferred under the VSV, and which is intended to terminate a pending challenge raised at the behest of the Revenue and thus seeking to avoid a potential adverse decision thereon. The phrase “*giving effect to the order so passed*” would thus have to be construed accordingly.

31. That only leaves us to deal with a prayer which is made for the respondents being commanded to pay interest for the period of delay that was caused in the release of the amount as computed under the VSV.

32. From the disclosures which are made in the rejoinder affidavit, we find that a total amount of INR 39,85,83,552/- was ultimately computed by the respondents as payable for AYs’ 2001-02 to 2004-05. The Form 5’s for AYs 2001-02, 2002-03 and 2004-05 came to be issued on 12 February 2021. For AY 2003-04, Form 5 was drawn and communicated to the writ petitioner on 10 November 2021. The amount as computed and noted above was ultimately released and refunded to the petitioner only on 13 February 2023. No plausible explanation has been proffered for the delay between February and November 2021 up to February 2023 and why the amount as determined as refundable was not released with due expedition.

33. It is in the aforesaid backdrop that Mr. Jolly had additionally and insofar as this aspect is concerned, relied upon a decision rendered by a Division Bench of our Court in **Mrs. Anjul vs Office of**



Principal Commissioner of Income Tax-12, & Ors⁷. *Anjul*, too was a case that emanated from the VSV and in which the Court was called upon to consider a prayer for payment of interest on account of delayed refund of the amounts adjudged as payable to the writ petitioner under the said enactment. The Court in *Anjul* had noticed that although the final certificate in Form 5 had come to be issued on 05 April 2021, there was an admitted delay in the ultimate disbursement of the amounts determined as refundable by the respondents. It was in the aforesaid backdrop that it was called upon to examine whether the respondents would be liable to be burdened with interest for having inordinately delayed the refund of the money as computed under the VSV.

34. Dealing with this aspect, our Court in *Anjul* had observed as follows: -

“12. Moreover, as held by the Supreme Court in *Tata Chemicals Limited* (supra), 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. Consequently, this Court is of the view that the petitioner is entitled to interest on the refund amount which was delayed beyond the period of ninety (90) days from the date of determination of the refund amount i.e. 05th April 2021.

13. Keeping view the aforesaid, it is directed that the respondent revenue shall make payment of simple interest @ 5% per annum on delayed refund amount w.e.f. 05th July, 2021 i.e. beyond the period of ninety (90) days from the date of determination of the refund amount on 05th April 2021 till the date of payment i.e. 11th February 2022. Let the said payment be made within eight weeks.”

35. We also find the following passages from our decision in **Om**

⁷ 2022 SCC OnLine Del 4939.



Gems and Jewellery v Principal Commissioner⁸ which would be pertinent to the issue that is canvassed. In *Om Gems and Jewellery*, we had while dealing with the award of interest on moneys wrongly withheld or refunded with unreasonable delay and notwithstanding the statute not placing an explicit obligation with respect to interest observed as under:

“19. We note that interest has been duly recognized as being a necessary corollary to a wrongful retention of capital. We deem it apposite to extract the following passages from the decision of a Division Bench of the Allahabad High Court in *Wig Brother (Builder & Engineers) v. Union of India*.

“27. It may be mentioned that money doubles in six years (because of interest). In this case, the petitioner has avoided payment of cess for about 12 years, counting from the date of the demand notice dated 20.7.1991. Thus, even though we are dismissing this petition, the petitioner has really won the case, because he did not have to pay interest from 20.7.1991 till today.

28. It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all but is the normal accretion on capital. Had the petitioner paid the amount in question in July, 1991, when it was due, the respondents would have invested the same somewhere and earned interest thereon. Instead, the petitioner has kept the money with himself for about 12 years and has earned interest thereon. Hence for every Rs. 100 which the petitioner had to pay in July, 1991, he has in fact, earned an additional Rs. 300. This is because Rs. 100 becomes Rs. 200 after six years, and in another six years this Rs. 200 doubles and becomes Rs. 400. Thus, even though we have dismissed this writ petition today, the petitioner has really not only won the case (because of the interim order of this Court) he has really earned Rs. 300 for every Rs. 100 he had to pay. Thus, even though we are dismissing this petition the petitioner has got three time more amount than what he has to pay now. All this happened because of the interim order of this Court staying the demand.”

⁸ 2023 SCC OnLine Del 7932.



20. Reiterating the principles which were laid down in *Wig Brother, Katju J.* while speaking as a member of the Bench of the Supreme Court in *Alok Shanker Pandey v. Union of India* had held as follows: —

“8. We are of the opinion that there is no hard-and-fast rule about how much interest should be granted and it all depends on the facts and circumstances of each case. We are of the opinion that the grant of interest of 12% per annum is appropriate in the facts of this particular case. However, we are also of the opinion that since interest was not granted to the appellant along with the principal amount, the respondent should then in addition to the interest at the rate of 12% per annum also pay to the appellant interest at the same rate on the aforesaid interest from the date of payment of instalments by the appellant to the respondent till the date of refund of this amount, and the entire amount mentioned above must be paid to the appellant within two months from the date of this judgment.

9. It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence, equity demands that A should not only pay back the principal amount but also the interest thereon to B.”

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22. While we are conscious of the correctness of the decision in Sandvik Asia having been doubted by the Supreme Court and the matter presently stands referred for the consideration of a Larger Bench in light of the order passed in *Commissioner of Income Tax, Gujarat v. Gujarat Fluoro Chemicals*, we note that while framing that reference the Supreme Court has not doubted the compensatory character of interest that may be imposed in case of unjustified retention of monies of an assessee. Their Lordships doubted the view taken on the facts of *Sandvik Asia* bearing in mind that advance tax or tax deducted at source loses its identity once it gets subsumed in a demand of tax created in terms of an assessment.



2024/HC/0216-CB



23. A more lucid explanation of the liability to pay interest is found in the decision of the Supreme Court in *Union of India v. Tata Chemicals Ltd.* Highlighting the compensatory element of such interest being provided by courts, the Supreme Court had held as follows: —

“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 for 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 inasmuch as they have retained and enjoyed the money deposited. Even the Department has understood the object behind insertion of Section 244-A, 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 nonresident/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.”

36. Accordingly, and for all the aforesaid reasons, while we negate the claim for interest under Section 244A of the IT Act, we dispose of the writ petition by providing that the respondents would be obligated to pay interest @ 5% p.a. on account of the delay caused in the release of the amount as determined under the VSV. They would consequently be liable to pay interest for the period between February and November 2021 up to February 2023 on the amounts as determined to be payable to the petitioner.

37. The writ petitions stand disposed of on the aforesaid terms.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

OCTOBER 23, 2024/neha