

COMMISSIONER OF INCOME TAX, GUJARAT

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v.

GUJARAT FLUORO CHEMICALS

(Special Leave Petition (C) No. 11406 of 2008 etc.)

SEPTEMBER 18, 2013

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[H.L. DATTU, SUDHANSU JYOTI MUKHOPADHAYA
AND M.Y. EQBAL, JJ.]

*Income Tax Act, 1961 – s. 214 and 244A – Whether Revenue liable to pay interest to assessee, if aggregate of instalments of Advance Tax of TDS paid, exceeds the assessed tax – The question referred by Division Bench of Supreme Court for consideration – Doubting the correctness of judgment passed in *Sandvik Asia Ltd. case, whereby it was held that the assessee was entitled to be compensated by the Revenue for delay in payment of interest on the amount admittedly due to the assessee – Held: In Sandvik case, the Court had directed the Revenue to pay compensation for the delay in payment of statutory interest and the same was not an interest on interest – s.244A (as inserted by Act No. 4 of 1988) provides for interest on refunds under various contingencies – Thus, it is only that interest provided under the statute which may be claimed by the assessee from the Revenue and no other interest on such statutory interest – Question answered accordingly.*

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Sandvik Asia Limited vs. Commissioner of Income Tax and Ors. (2006) 2 SCC 508: 2006 (2) SCR 811 – referred to.

Case Law Reference:

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2006 (2) SCR 811

referred to

Para 1

CIVIL APPELLATE JURISDICTION : SLP (Civil) No. 11406 of 2008.

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A From the Judgment and Order dated 03.07.2007 of the High Court of Gujarat at Ahmedabad in Special Civil Application No. 12855 of 1994.

WITH

B SLP (C) Nos. 14048, 14050, 14051, 14049, 14768, 20154, 21851, 25727, 27453, 27454, 27455, 27456, 27457, 27458, 27459, 27460, 27461, 27462, 27463, 27677 of 2012 & 5730, of 2013, C.A. Nos. 6301 of 2011, 2534, 2535, 2536, 2537, 2539, 2540, 2541, 2542, 2543, 2944, 2945, 3436, 3437, 3445, 3446, 5408, 7596, 7772 of 2012, 2589, 5478 of 2013, 4630, 3825, 3826 of 2012, 7217 of 2011, 4335, 4336, 4337, 4338, 4339, 4340, 4341, 4342, 4343, 4344, 4345, 4346, 4347, 4348, 4349, 4350, 4351, 4352, 4353, 4354, 4355, 4356, 4357, 4358, 4359, 4360, 4361, 4362, 4363, 4364, 4365 & 4366 of 2012.

D Rajiv Dutta, R.P. Bhatt, M.S. Syali, Arijit Prasad, Rahul Kaushik, Sadhna Sandhu, B.V. Balaram Das, Anil Katiyar, Bhargava V. Desai, Shreyas Mehrotra, Priteesh Kapoor, Ranjit Raut, Anuj Dhir, Bina Gupta, Mohit Chaudhary, Harsh Sharma, Damini Chawla, Puja Sharma, Akshat Shrivastava, Siddharth Shrivastava, Manjeet Kripal Jayashree Wad, Ashish Wad, Tamali Wad, Kanika Baweja, Niharika Bapna (for J.S. Wad & Co.), Sunil Kumar Jain, Shiv Kumar Suri, Rustom B. Hathikhanawala, G.C. Srivastava, Preeti Bhardwaj, Vijay Kumar, Vabhav Kulkarni, Kavita Jha, Ruby Singh Ahuja, Neha Gupta, Naomi Chandra, Manik Karanjawala (for Karanjawala & Co.) for the appearing parties.

The following Order of the Court was delivered

ORDER

1. Doubting the correctness or otherwise of the decision of this Court in the case of *Sandvik Asia Limited vs. Commissioner of Income Tax & Ors.*, (2006) 2 SCC 508, a bench of two learned Judges has referred the following question

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of law for our consideration and authoritative pronouncement by order dated 28.08.2012: A

“The question which arises in this case is, whether interest is payable by the Revenue to the assessee if the aggregate of installments of Advance Tax OF TDS paid exceeds the assessed tax?” B

2. In the aforesaid order of reference, this Court has briefly noticed the facts and the discussion in *Sandvik case (supra)* wherein, the main issue for consideration and determination by this Court was, whether the assessee is entitled to be compensated by the Revenue for delay in payment of the amount admittedly due to the assessee. This Court has noticed *inter alia* the provisions of Section 214 of the Income Tax Act, 1961 (for short ‘the Act’) and in light of the same has doubted the correctness of the decision in *Sandvik case (supra)*. C D

3. In order to answer the aforesaid issue before us, we have carefully gone through the judgment of this Court in *Sandvik case (supra)* and the order of reference. We have also considered the submissions made by the parties to the *lis*. E

4. We would first throw light on the reasoning and the decision of this Court on the core issue in *Sandvik case (supra)*. The only issue formulated by this Court for its consideration and decision was whether an assessee is entitled to be compensated by the Income Tax Department for the delay in paying interest on the refunded amount admittedly due to the assessee. This Court in the facts of the said case had noticed that there was delay of various periods, ranging from 12 to 17 years, in such payment by the Revenue. This Court had further referred to the several decisions which were brought to its notice and also referred to the relevant provisions of the Act which provide for refunds to be made by the Revenue when a superior forum directs refund of certain amounts to an assessee while disposing of an appeal, revision etc. F G

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A 5. Since, there was an inordinate delay on the part of the Revenue in refunding the amount due to the assessee this Court had thought it fit that the assessee should be properly and adequately compensated and therefore in paragraph 51 of the judgment, the Court while compensating the assessee had directed the Revenue to pay a compensation by way of interest for two periods, namely; for the Assessment Years 1977-78, 1978-79, 1981-82, 1982-83 in a sum of Rs.40,84,906/- and interest @ 9% from 31.03.1986 to 27.03.1998 and in default, to pay the penal interest @ 15% per annum for the aforesaid period.

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D 6. In our considered view, the aforesaid judgment has been misquoted and misinterpreted by the assessees and also by the Revenue. They are of the view that in *Sandvik case* (supra) this Court had directed the Revenue to pay interest on the statutory interest in case of delay in the payment. In other words, the interpretation placed is that the Revenue is obliged to pay an interest on interest in the event of its failure to refund the interest payable within the statutory period.

E 7. As we have already noticed, in *Sandvik case* (supra) this Court was considering the issue whether an assessee who is made to wait for refund of interest for decades be compensated for the great prejudice caused to it due to the delay in its payment after the lapse of statutory period. In the facts of that case, this Court had come to the conclusion that there was an inordinate delay on the part of the Revenue in refunding certain amount which included the statutory interest and therefore, directed the Revenue to pay compensation for the same not an interest on interest.

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G 8. Further it is brought to our notice that the Legislature by the Act No. 4 of 1988 (w.e.f. 01.04.1989) has inserted Section 244A to the Act which provides for interest on refunds under various contingencies. We clarify that it is only that interest provided for under the statute which may be claimed by an

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assessee from the Revenue and no other interest on such A
statutory interest.

9. With the aforesaid clarification we now refer back all the B
matters before a Two Judge Bench of this Court to consider
each case independently and take an appropriate decision one
way or the other.

Ordered accordingly.

K.K.T. Matter referred to Two Judge Bench.