

A M/S. K. LAKSHMANYA AND COMPANY

v.

COMMISSIONER OF INCOME TAX & ANR.

(Civil Appeal No. 4335 of 2012)

B NOVEMBER 01, 2017

[R. F. NARIMAN AND SANJAY KISHAN KAUL, JJ.]

C *Income Tax Act, 1961– ss.244(A), 240 and s.245(D)(4) – Assessment years 1993-94 and 1994-95 – Interest on refund – Entitlement of – High Court held that the assessee in the instant case was not entitled to interest u/s.244(A) of the Act, when refund arose to it on account of partial waiver of interest chargeable u/s. 234(A) to (C) by an order of the Settlement Commission – Propriety of – Held: Settlement Commission referred to the CBDT circular which enabled it to waive interest in favour of assessee – U/s. 244(A),*
D *it is enough that the refund become due under the Income-tax Act, in which case the assessee shall be entitled to receive simple interest – Expression “due” only means that a refund becomes due if there is an order under the Act which either reduces or waives tax or interest – It is of no matter that the interest that is waived is discretionary in nature, for the moment that discretion is exercised,*
E *a concomitant right springs into being in favour of the assessee – Therefore, the High Court was incorrect in its view that since a discretionary power has been exercised, no concomitant right was found for refund of interest to the assessee.*

F Allowing the appeals, the Court

G **HELD:** 1. The Settlement Commission, by its order referred to a circular of the CBDT which gave it the power to waive interest; and by the aforesaid order, interest was partially waived for the assessment years 1993-94 and 1994-95 in favour of assessee. Under Section 244(A) of the Income Tax Act, 1961, it is enough that the refund become due under the Income-tax Act, in which case the assessee shall, subject to the provisions of this Section, be entitled to receive simple interest. [Paras 2, 10][646-G-H; 650-E]

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2. A corresponding right exists, to refund to individuals any sum paid by them as taxes which are found to have been wrongfully existed or believed to be, for any reason, inequitable. The statutory obligation to refund, being non- discretionary, carries with it the right to interest, also making it clear that the right to interest is parasitical. The right to claim refund is automatic once the statutory provisions have been complied with. [Para 17][653-G-H]

3. The expression “due” only means that a refund becomes due if there is an order under the Act which either reduces or waives tax or interest. It is of no matter that the interest that is waived is discretionary in nature, for the moment that discretion is exercised, a concomitant right springs into being in favour of the assessee. The view of the C.I.T. (Appeals) and the ITAT was correct and that consequently, the High Court was incorrect in its view that since a discretionary power has been exercised, no concomitant right was found for refund of interest to the assessee.[Para 20][654-E]

Commissioner of Income-Tax, Bhopal v. H.E.G Limited (2010) 15 SCC 349; Union of India v. Tata Chemicals Ltd. (2014) 6 SCC 335 : [2014] 3 SCR 298 – relied on.

Commissioner of Income-Tax v. Needle Industries Pvt. Ltd. 233 ITR 370; Sandvik Asia Ltd. v. Commissioner of Income Tax I, Pune and Others (2006) 2 SCC 508 : [2006] 2 SCR 811; Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala and Ors. (2002) 1 SCC 633 : [2001] 4 Suppl. SCR 303 – referred to.

Case Law Reference

233 ITR 370	referred to	Para 3
[2006] 2 SCR 811	referred to	Para 4
[2001] 4 Suppl. SCR 303	referred to	Para 4
(2010) 15 SCC 349	relied on	Para 15
[2014] 3 SCR 298	relied on	Para 16

A **CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4335 of 2012.**

From the Judgment and Order dated 09.12.2009 of the High Court of Karnataka at Bangalore in ITA No. 486 of 2004.

WITH

B Civil Appeal Nos. 4357, 4358, 4359, 4356, 4346, 4349, 4355, 4353, 4339, 4343, 4348, 4345, 4350, 4351, 4347, 4336, 4340, 4338, 4337, 4354, 4352, 4344, 4342, 4341, 4361, 4362, 4360, 4365, 4363, 4366, 4364 of 2012

C Civil Appeal No. 5478 of 2013.

Preetesh Kapur, Mohit Chaudhary, Ashok A. Kulkarni, Ms. Puja Sharma, Kunal Sachdeva Balwinder Singh Suri, Ms. Garima Sharma, Rankit B. Raut, Mrs. Bina Gupta, Ms. Puja Sharma, Mrs. Anil Katiyar, Advs. for the Appellant.

D K. Radhakrishnan, M. S. Syali, Sr. Advs., Arijit Prasad, Ms. Rashmi Malhotra, Mrs. Anil Katiyar, B. V. Balaram Das, Rustom B. Hathikhanawala, Mayank Nagi, Vikrant A. Maheshwari, Tarun Singh, Advs. for the Respondents.

The Judgment of the Court was delivered by

E **R. F. NARIMAN, J. 1.** The question which this appeal raises is whether the High Court of Karnataka at Bangalore was correct in holding that the assessee in the present case was not entitled to interest under Section 244 (A) of the Income-Tax, 1961 Act, when refund arose to it on account of interest that was partially waived by an order of the Settlement Commission. We are concerned in the present case with the assessment years 1993-94 and 1994-95. The assessee, being a partnership firm, filed a return for these years and once the order of assessment was completed, interest under Sections 234(A) to (C) was levied.

F 2. Aggrieved by this levy of interest, the assessee filed an application before the Settlement Commission, requesting the Commission to waive the interest on the ground that it caused hardship to it. The Settlement Commission, by its order dated 22.03.2000, referred to a circular of the CBDT which gave it the power to waive such interest; and by the aforesaid order, interest was partially waived for the

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assessment years in question. On an application made by the assessee, the Assessing Officer, by his order dated 25.04.2000 refused to grant interest on the refund that was payable, and was not paid, within three months from the specified date. This was done on two grounds, namely, that the provisions of Section 244(A) do not provide for payment of interest on refund due on account of waiver of interest that is charged under Sections 234(A)-(C) of the Act and second, that the power assumed by the Settlement Commission for waiver of interest, by following the CBDT circular referred to, does not enable the Commission to provide for payment of interest under Section 244(A).

3. An appeal that was filed before the C.I.T. (Appeals) was allowed. This was done by referring to a judgment of the Madras High Court in Commissioner of Income-Tax Vs. Needle Industries Pvt. Ltd. 233 ITR 370 and with reference to the CBDT circular which enabled the Settlement Commission to waive interest. An appeal by the Revenue to the Income-Tax Appellate Tribunal (ITAT) was dismissed. However, in appeal to the High Court, by the impugned judgment dated 09.12.2009, the High Court of Karnataka held that, since waiver of interest was within the discretion of the Settlement Commission, no right flowed to the assessee to claim refund as a matter of right under law. In the aforesaid circumstances, the judgments of the Tribunal and C.I.T. (Appeals) were set aside and the Assessing Officer's order was restored.

4. Mr. Preetesh Kapur, learned counsel appearing on behalf of the appellant, has placed the relevant statutory provisions before us and has relied upon the Madras High Court judgment in Needle Industries (supra) and pointed out to us that this very judgment has been affirmed by this Court in Sandvik Asia Ltd. Vs. Commissioner of Income Tax I. Pune and Others 2006 (2) SCC 508. According to him, since Section 244(A) is wider than the pre-existing Section 241, it is clear that all the judgments which deal with Section 241 apply with all force to the facts of this case. He also relied upon the judgment of this Court in Commissioner of Income Tax, Mumbai Vs. Anjum M.H.Ghaswala and Ors. 2002 (1) SCC 633 para 34 in particular, to show that when the power to waive interest payable under a substantive provision of the Act was given by a circular of the Board to the Settlement Commission, interest could be so waived and that a circular of the Board gave such power which was exercised by the Settlement Commission in the present case. According to him, the judgments of the C.I.T. (Appeals) and the

A Tribunal are, therefore, correct and ought not to have been set aside by the High Court.

5. Mr. K.Radhakrishnan, learned senior counsel appearing for the respondent-Revenue, emphasised the expression “due to” which is present in Sections 240 and 244(A) and would, therefore, show that the refund must be “due” i.e. assessee should be entitled, as a matter of law to such refund or else interest would not become payable. He also referred to Sections 245(D)(4)and(6) to buttress the aforesaid submission. According to him, the judgment in Ghaswala’s case (supra) would show, paragraphs 23 and 30 in particular, that the Settlement Commission was given no power to waive interest, the idea of a Settlement Commission being that the assessee pays tax promptly and that no concession can be given by the said Commission. He referred to the reasons given by the Assessing Officer in support of his order and stated that both reasons were correct in law. He also referred to paragraph 12 of the judgment under appeal and stated that the High Court was right, in that there was no entitlement to refund in the facts of the present case.

6. Having heard learned counsel for both sides, it is necessary for us to extract the relevant statutory provisions. Section 240 occurs in the Chapter which deals with refund, namely Chapter XIX of the Income-Tax Act, 1961. Section 240 reads as follows:

E “240. Refund on appeal etc.—Where, as a result of any order passed in appeal or other proceedings under this Act, refund of any amount becomes due to the assessee, the Assessing Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf:

F Provided that where, by the order aforesaid,—

(a) an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund, if any, shall become due only on the making of such fresh assessment;

G (b) the assessment is annulled, the refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee.”

7. A cursory reading of the aforesaid section shows that refund may become due to the assessee, either as a result of an order passed in appeal or other proceedings under this Act. It is clear that refund that

arises as a result of an order passed under Section 245(D)(4) is an order passed in "other proceeding under this Act" A

Thus, it is clear that the assessee in the present case is covered by Section 240 of the Act.

8. When it comes to interest on refund, Section 244, which applied to assessment years up to and including assessment year 1989-90, made it clear that it would apply where a refund is due to the assessee in pursuance of an order referred to in Section 240. It is only if the Assessing Officer does not grant the refund within three months from the end of the month in which such order is passed, that the Central Government shall pay to the assessee simple interest on the amount of refund due. B C

9. We are in this appeal directly concerned, however, with Section 244(A) of the Act which reads as follows:

"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 D

thereon calculated in the following manner, namely :—

(a) where the refund is out of any tax collected at source under Section 206C or paid by way of advance tax or treated as paid under Section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one-half percent for every month or part of a month comprised in the period,- E

i) from the F

1st day of April of the assessment year to the date on which the refund is granted:

if the return of income has been furnished on or before the due date specified under sub-section (1) of Section 139; or

(ii) from the date of furnishing of return of income to the date on which the refund is granted, in a case not covered under sub-clause (I); G

(aa) where the refund is out of any tax paid under section 140A, such interest shall be calculated at the rate of one-half percent H

A for every month or part of a month comprised in the period, from the date of furnishing of return of income or payment of tax, whichever is later, to the date on which the refund is granted.

B Provided that no interest under clause (a) or clause (aa) shall be payable, if the amount of refund is less than ten percent of the tax as determined under sub-section (1) of section 143 or on regular assessment;)

(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.”

C Explanation:—For the purpose of this clause,”date of payment of tax or penalty” means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

D 10. A cursory look at the aforesaid section shows that the aforesaid section is even wider than section 244 and is not restricted to refund being issued to the assessee in pursuance to an order referred to in Section 240. Under this Section, it is enough that the refund become due under the Income-tax Act, in which case the assessee shall, subject to the provisions of this Section, be entitled to receive simple interest. The objects and reasons for the aforesaid amendment state:

E “11.2 Insertion of a new section 244A 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 cent annum.

H 11.3. These provisions, apart from being complicated, left certain

gaps for which interest was not paid by the Department to the assessee for 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 244A in the Income Tax Act, applicable from the assessment year 1989-90 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 cent 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 1989-90 or any subsequent assessment years.” (emphasis supplied)”

11. The present case would fall outside sub-clauses a and aa of this provision and, therefore, fall within the residuary clause, namely sub-clause (b) of Section 244(A).

12. The Madras High Court in Needle Industries Pvt. Ltd. (supra) concerned itself with the position prior to the advent of Section 244A. It found that the expression “refund of any amount” used by Section 240 and 244 would include not only tax and penalty but interest also. It was, therefore, held that the clear intention of Parliament is that the right to interest will compensate the assessee for the excess payment during the intervening period when the assessee did not have the benefit of use of such money paid in whatsoever character.

The Court held that the result would be that the assessee would be entitled to interest on refund also.

13. This Court in Sandvik Asia Ltd. (supra) set out several questions of law which arose on the facts of that case. We are concerned with questions C and E which read as follows:

“(C). Whether on a proper interpretation of the various provisions of the Act an assessee was entitled to be compensated for the delay in paying to it any ‘amount’ due to it even if such ‘amount’ comprised of interest, as had been held by the Delhi and Madras High Courts and hence the impugned judgment was erroneous and ought to be reversed ?

A E. Whether the High Court ought to have held that sections 240
and 244 of the Act refer to 'refund of any amount', which phrase
clearly includes any amount (including interest) due by the Income
Tax department to the assessee, and hence the appellant was
entitled to interest on the delay in the payment of amounts due
B from the Income-tax Department ?”

14. After setting out the relevant statutory provisions, which at
that time covered Section 244 and not Section 244(A), and after referring
to a number of decisions, the Court ultimately referred to Needle
Industries (supra) and expressly approved the same. It concluded the
C aforesaid questions in favour of the assessee as follows:

“In the present appeal, the respondents have argued that the
compensation claimed by the appellant is for delay by the Revenue
in paying of interest, and this does fall within the meaning of refund
as set out in Section 237 of the Act. The relevant provision is
D Section 240 of the Act which clearly lays down that what is relevant
is whether any amount has become due to an assessee, and further
the phrase any amount will also encompass interest. This view
has been accepted by various High Courts such as the Delhi,
Madras, Kerala High Courts etc.

15. In Commissioner of Income-Tax, Bhopal Vs. H.E.G Limited
E 2010 (15) SCC 349, this Court was squarely confronted with the meaning
of the expression “ where refund of any amount become due to the
assessee” in Section 244(A)(1). This question was answered as follows:

“5. In the present case, as stated above, there are two components
of the tax paid by the assessee for which the assessee was granted
F refund, namely TDS of Rs. 45,73,528 and tax paid after original
assessment of Rs. 1,71,00,320. The Department contends that
the words “any amount” will not include the interest which accrued
to the respondent for not refunding Rs. 45,73,528 for 57 months.
We see no merit in this argument. The interest component will
G partake of the character of the “amount due” under Section 244-
A. It becomes an integral part of R. 45,73,528 which is not paid
for 57 months after the said amount became due and payable. As
can be seen from the facts narrated above, this is the case of
short payment by the Department and it is in this way that the
assessee claims interest under Section 244-A of the Income Tax

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Act. Therefore, on both the aforesaid grounds, we are of the view that the assessee was entitled to interest for 57 months on Rs. 45,73,5289. The principal amount of Rs. 45,73,528 has been paid on 31.12.1997 but not of interest which, as stated above, partook the character of 'amount due' under Section 244-A." A

16. In Union of India Vs. Tata Chemicals Ltd. 2014 (6) SCC 335, this Court after going into the object for the enactment of Section 244(A), held: B

"Interest payment is a statutory obligation and non-discretionary in nature to the assessee. In tune with the aforesaid general principle, Section 244A is drafted and enacted. The language employed in Section 244A 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 01.04.1989, albeit with clarity of application as contained in Section 244A." C

31. The Department has also issued a Circular clarifying the purpose and object of introducing Section 244A 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 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 assessee under the Act." D E F

17. The above extract would clearly show that a corresponding right exists, to refund to individuals any sum paid by them as taxes which are found to have been wrongfully exacted or believed to be, for any reason, inequitable. The statutory obligation to refund, being non-discretionary, carries with it the right to interest, also making it clear that the right to interest is parasitical. The right to claim refund is automatic once the statutory provisions have been complied with. G

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A 18. However, Mr. K.Radhakrishnan, learned senior counsel
appearing for the respondent-Revenue, has strongly relied upon the
decision of this Court in Ghaswala's case (supra). In this judgment, this
Court held that the Settlement Commission was introduced into the
Income-tax Act for the purpose of quick settlement of cases before it,
so that the the tax due to the Revenue gets collected at the earliest.
B The object of this exercise is not to assist tax evaders. In so holding,
this Court held that Section 245(D)(6) being procedural in nature, cannot
be used to locate any power to waive interest, if it is not otherwise
waived under some other substantive provision in the Income-Tax Act.

C 19. Ultimately, this Court arrived at the conclusion that the
Commission cannot either waive or reduce interest which is statutorily
payable unless there is express power to do so in that behalf. However,
while so saying, the Court went on to clarify that the circulars issued
pursuant to the powers under Section 119 of the Act, which empower
the authorities under the Act to waive or reduce interest, may be availed
D by the Settlement Commission to waive interest.

E 20. We are of the view that the expression "due" only means that
a refund becomes due if there is an order under the Act which either
reduces or waives tax or interest. It is of no matter that the interest that
is waived is discretionary in nature, for the moment that discretion is
exercised, a concomitant right springs into being in favour of the assessee.
We are, therefore of view that the C.I.T. (Appeals) and the ITAT were
correct in their view and that consequently, the High Court was incorrect
in its view that since a discretionary power has been exercised, no
concomitant right was found for refund of interest to the assessee.

F 21. The appeals are accordingly allowed and the impugned
judgment is set aside.