

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION No. 7073 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE Mr. JUSTICE AKIL KURESHI

and

HONOURABLE Mr. JUSTICE B.N. KARIA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

NIMA SPECIFIC FAMILY TRUST

Versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 5(2)

Appearance :

Mr B S SOPARKAR, Advocate for the PETITIONER(s) No. 1

MRS MAUNA M BHATT, Advocate for the RESPONDENT(s) No. 1

CORAM: HONOURABLE Mr. JUSTICE AKIL KURESHI

and

HONOURABLE Mr. JUSTICE B.N. KARIA

3rd October 2018

ORAL JUDGMENT (PER : HONOURABLE Mr. JUSTICE AKIL KURESHI)

The petitioner has made the following prayer :

“(a) Modify the *impugned* demand raised by the respondent vide order dated 08.03.2018 at 'Annexure A' and direct the respondent to give effect of the credit to the refund due to the petitioner and the interest u/s 244A (1) and 244 (1A) and the additional compensation due to the petitioner.”

This prayer of the petitioner arises in the following background :

The petitioner is a Trust. For Assessment Year 2004-2005, the petitioner had filed the return of income on 21st October, 2004 declaring total income of Rs. 3,63,92,470/=. The petitioner's tax liability on such returned income came to Rs. 50,77,588/=. The petitioner had claimed refund of Rs. 31,69,265/= which was excess tax paid in advance.

The return of the petitioner was taken in scrutiny. The Assessing Officer passed order of assessment under Section 143 (3) of the Income-tax Act, 1961 [“**the Act**” for short] on 29th December 2006 in which, he assessed the petitioner's total income at Rs. 6,81,90,670/= and consequently raised the tax demand of Rs. 97,41,109/=. Against such order of assessment, petitioner preferred appeal before the Appellate Commissioner. While this

appeal was pending, the Department recovered tax of Rs. 97,41,109/=, pursuant to the order of assessment, by adjusting part of the petitioner's refund in relation to AY 2002-03. The Commissioner (Appeals) disposed of the petitioner's appeal on 5th March 2009 giving substantial relief. On 23rd April 2009, the petitioner, therefore, sought refund of the tax already recovered, but which, by virtue of the order of the Appellate Commissioner became refundable. The Department did not grant such refund presumably because the Revenue had filed appeal against the order of Commissioner (Appeals) before the Income Tax Appellate Tribunal ["ITAT" for short]. Such appeal was dismissed by the Tribunal on 30th June 2011. The Department has filed further appeal before the High Court. Appeal is admitted and is pending hearing before the Court.

Between 2012 and 2016, the petitioner made several representations to the Department seeking refund of the excess tax. On 12th January 2018, the petitioner finally wrote to the Central Board of Direct Taxes ["CBDT" for short] and complained about the Department not giving effect to the appellate order passed by

the Commissioner (Appeals) as far back as on 5th March 2009. On 8th March 2018, the Assessing Officer passed an order which was titled as “**Order giving appeal effect of CIT (A)**”. In such order, he noted that the CIT (A) is the said order had granted total relief to the assessee to the tune of Rs. 3,40,62,302/=. Accordingly, he revised the petitioner's net tax liability for the said AY 2004-2005. In the concluding portion of the order, he recorded that the assessee had requested to give credit of the refund amount of Rs. 97,41,109/= adjusted on 29th March 2008. He further observed that the credit of such amount is not given as the same is not reflecting on “ITD”.

The petitioner, therefore, once again wrote to the Department pointing out that the request for giving credit of the said sum of Rs. 97,41,109/= and refund of the excess tax is pending since long. The petitioner had also submitted an indemnity bond for receiving the same. The request for refund was rejected only on the ground that the same was not reflected in the system of the Department. The petitioner, therefore, requested that necessary steps be taken to enable the petitioner to receive the refund. Till

the date of filing of the petition, no order was passed by the Departmental authorities. After the High Court issued notice, the Assessing Officer passed a further order on 22nd June 2018 which is placed on record by the respondent along with an affidavit. In such order, the Assistant Commissioner briefly recorded the background facts and observed as under :

“On verification of the case records, it was noticed that the contention of the assessee is to be found correct and the mistake is apparent from the record and accordingly rectification order under Section 154 of the Act is passed for giving credit of regular payments to the extent of Rs. 97,41,109/= after due verification. The total income of the assessee remains unchanged as per order under Section 250 of the I.T Act dated 08.03.2018 *ie.*, Rs. 5,56,35,547/=”

Consequently, along with statutory interest under Section 244A, on the principal sum required to be refunded, he ordered total payment of Rs. 1,22,83,620/=.

The petitioner does not dispute computation of principal sum to be refunded, nor disputes the computation of interest payable under Section 244A of the Act. The petitioner's surviving grievances, however, are two fold – Firstly, according to the petitioner, there was enormous delay on the part of the

department in refunding the excess tax adjusted by the Department. The petitioner would point out that the Commissioner [Appeals] had substantially allowed the petitioner's appeal on 5th March 2009 and actual refund was granted only in June 2018. In-between, the petitioner had made several representations and filed grievance petitions. Thus, the Department took nine years in giving effect to the Commissioner's appellate order. The second grievance of the petitioner is that no interest under the newly inserted sub-section [1A] of Section 244A of the Act has been granted. A subsidiary issue raised by the petitioner is that in large number of cases of the petitioner and other group assesses, the Department has with-held refunds for years together. Necessary directions should be issued so that individual petitions for such purpose are not required to be filed. Counsel for the petitioner pointed out that in some of the cases, the refund claims are extremely small, making it impracticable for the assessee to file petitions before the High Court. Nevertheless, the Department cannot retain such amounts which would be without authority of law.

On the other hand, Department resisted the petition contending that there was no willful delay in granting the refund. The refund has been granted with statutory interest. Initially, the Department had challenged the order of Appellate Commissioner before the Tribunal. Thereafter, further appeal has been filed before the High Court which is pending. Counsel for the Department had further argued that the Nirma Group of assesses have created multiple trusts, companies and subsidiaries. Inter-connection with such assesses and liability of individual assesses for several years have to be minutely examined before clearing the refund claims. He argued that interest under the newly inserted sub-section [1A] of Section 244A cannot be granted retrospectively since the legislature has made the provision prospective.

We would first address the petitioner's grievance of undue delay in granting the refund. We may recall that after the Assessing Officer passing order of assessment on 29th December 2006 making substantial additions, raising tax demands, a sum of Rs. 97.41 lakhs [*rounded off*] was recovered through adjustment of refund for earlier assessment year. Subsequently, the petitioner's

appeal was substantially allowed by the Appellate Commissioner on 5th March 2009. This gave rise to the petitioner's claim for refund of excess tax collected. Though the Department had filed appeal against the order of Commissioner [Appeals], there was no stay granted by the Tribunal. Thereafter, the Tribunal also dismissed the Department's appeal on 30th June 2011. Again, the Department filed appeal before the High Court. Such appeal is pending without any stay.

It is well settled legal proposition that an order passed by the judicial or *quasi* judicial authority should be implemented within a reasonable period; if no specific time frame is provided in such order. The aggrieved person may reasonably pursue the appeal options but not wait indefinitely to implement the adverse order. Mere pendency of the appeal would not prevent implementation of the order under challenge. Unless the order is stayed, the same must be given effect to within a reasonable period.

The Department therefore cannot take shelter of pendency of the appeal before the Tribunal and thereafter before the High Court, since in both cases, the appellate *fora* had not granted any

stay against the order of the Appellate Commissioner. In the present case, even after the Tribunal dismissed the Department's appeal on 30th June 2011, no steps were taken by the Department to refund the excess tax. First pro-active step taken by the departmental authorities was passing of an order dated 8th March 2018. Even such order was a mere paper order not giving any relief to the petitioner, since as noted, in such order the authority noted that the petitioner's request for refund of adjusted tax of Rs. 97.41 lakhs [*rounded off*] cannot be granted since the same is not reflected in the Department's portal. Only after High Court issued notice in the present petition that the Assistant Commissioner passed a further order granting actual refund of the excess tax collected. At all stages, thus, the departmental machinery moved rather slowly. For years together, the Department waited for the outcome of the appeals. Eventually, even after passing of an order recognizing the petitioner's right to receive refund, actual refund was delayed on the ground that tax was not reflecting in the department's portal. No explanation would be sufficient to cover a period of nine years. What ever tax structure of the petitioner and

the group entities and whatever Department's resource limitations be, the delay of nearly nine years in granting the refund simply cannot be explained away.

This brings us to the claims of the petitioner. In this context, learned counsel Shri Soparkar had made two principal claims – one was that additional interest under sub-section [1A] of Section 244A of the Act should be granted. He argued that this provision was inserted by the legislature by way of a remedial measure and should therefore be applied to all pending cases, even those which might have arisen prior to enactment of such section. His second prayer was to grant compensation for long delay in granting refund. He contended that though the Supreme Court in the case of **Gujarat Flourochemicals Ltd. v. Commissioner of Income-Tax & Ors.**, reported in [2015] 377 ITR 307 [Guj.] had disapproved the claim of interest-on-interest, had not held that the compensation for delay in giving refund cannot be ordered.

In this context, we may refer to the relevant statutory provisions. Section 244A of the Act pertains to **“Interest on refunds.”** Sub-section [1] of Section 244A mandates the Revenue to

grant interest at the statutory rate where refund of any amount becomes due to the assessee under the Act. The situations envisaged under sub-section [1] of Section 244A are sub-divided into three parts contained in clauses (a), (aa) and (b). Clause (a) of sub-section [1] of Section 244A covers situations 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 of the Act. Clause (aa) refers to refund which arises out of any tax paid under section 140A of the Act which pertains to self-assessment and clause (b) pertains to claim of refund in any other case. For all the three situations, the period during which such interest would be computed and the rate of interest to be paid are specified.

Sub-section [1A] was inserted in Section 244A of the Act by the Finance Act, 2016 *w.e.f* 1st June 2016 and reads as under:-

“[1A] Where the whole or any part of the refund referred to in sub-section (1) is due to the assessee, as a result of any amount having been paid by him after the 31st day of March 1975, in pursuance to any order of assessment or penalty and such amount or any part thereof having been found in appeal or other proceeding under this Act to be in excess of the amount which such assessee is liable to pay as tax or penalty, as

the case may be, under this Act, the Central Government shall pay to such assessee simple interest at the rate specified in sub-section (1) on the amount so found to be in excess from the date on which such amount was paid to the date on which the refund is granted.”

Simultaneously, the legislature has also amended Section 153 of the Act which pertains to time-limit for completion of assessment, reassessment and re-computation. Entire section 153 was substituted for the original by the Finance Act 2016 *w.e.f* 1st June 2016. Sub-section [5] of Section 153 of the Act reads as under :

“[5] Where effect of an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 is to be given by the Assessing Officer, wholly or partly, otherwise than by making a fresh assessment or re-assessment, such effect shall be given within a period of three months from the end of the month in which order under section 250 or section 254 or section 260 or section 262 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner; as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner :

Provided that where it is not possible for the Assessing Officer to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the Assessing Officer, if satisfied, may allow an additional period of six months to give effect to the order :

Provided further that where an order under section 250 or section 254 or section 254 or section 260 or section 262 or section 263 or section 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order under section 250 or section 254 or section 260 or section 262 of section 263 or section 264 shall be made within the time specified in sub-section (3)."

We may note that in the earlier form, Section 153 of the Act did not contain any provision similar or equivalent to sub-section (5) of Section 153 of the Act.

Brief analysis of the above provisions would show that prior to the amendments in the Act, by virtue of which Section 244A [1A] and Section 153 [3] were brought into effect from 1st June 2016, the Legislation did not envisage any interest on refund in addition to the interest prescribed under sub-section [1] of Section 244A. Likewise, Section 153 of the Act did not contain any provision prescribing time limit for giving effect to the appellate or

revisional orders. With the amendment, sub-section [1A] of Section 244A now provides that in 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 re-assessment, the assessee would 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 of the Act to the date on which the refund is granted. Provisions of sub-section [1A] can be summarized, thus-

- [i] this sub-section would be applicable :
- (a) where the refund arises as a result of giving effect to an appellate or revisional order under the sections mentioned therein.
 - (b) is otherwise than by making a fresh assessment or re-assessment;

[ii] In such circumstances, in addition to interest under sub-section (1), the assessee would receive additional interest at the rate of three *per cent per annum*.

[iii] the period during which such interest would be computed would begin from the date of expiry of the time limit referred to in sub-section (5) of Section 153 of the Act and would end on the date when the refund is granted.

Sub-section (5) of Section 153 provides that where the effect to an order of appellate or revisional authority under various sections of the Act is to be given by the Assessing Officer, otherwise than by making a fresh assessment or re-assessment; wholly or partly, such effect would be given within three months from the end of the month on which such appellate order is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, or passed by the revisional authority; as the case may be.

Proviso to sub-section (5), however, provides that where it is not possible for the Assessing Officer to give effect to such order within such time, for reasons beyond his control, the Principal

Commissioner or Commissioner, on receipt of such request in writing from the Assessing Officer, if satisfied, may allow an additional period of six months to give effect to the order. The further *proviso* to sub-sec. (5) provides that where an appellate or revisional order requires verification of any issue by way of submission of any document by the assessee or any other person, or where an opportunity of being heard is to be provided to the assessee, the order giving effect to such order shall be made within the time specified in sub-sec. (3). Sub-section (3) in turn provides for a time limit for passing fresh assessment pursuant to appellate or revisional order by prescribing time limit of nine months from the end of financial year in which the order under section 254 is received, or order under section 263 or section 264 is passed.

Analysis of sub-section (5) of Section 153 would show that the said provision prescribes a time limit of three months for the Assessing Officer to pass an order giving effect to the appellate or revisional order from the end of the month in which appellate order is received or revisional order is passed. Such time limit could be extended by additional period of six months by the

Principal Commissioner or Commissioner, if he is satisfied that it was not possible for the Assessing Officer to give effect to such order within time prescribed, for reasons beyond his control. Cases where appellate or revisional order requires verification of any issue by way of submission or documents, or where opportunity of being heard is to be given to the assessee, would be governed separately. The time limit prescribed therein would be same as in sub-section (3) of Section 153.

In absence of the provisions contained in sub-section (5) of Section 153, the Assessing Officer was under no obligation to pass order giving effect to the appellate or revisional orders within a particular time. Sub-section (5) now lays down such time limit. Likewise, in absence of provisions contained in sub-section (1A) of Section 244A, there was no further adverse effect on the revenue for not passing consequential orders giving effect to appellate or revisional order which may be in favour of the assessee; except for paying interest as prescribed under sub-section (1) of Section 244A. These provisions, therefore, on one hand lay down time limits for giving effect to the appellate or revisional orders and on

the other hand, provide for payment of additional interest at the rate of three *per cent per annum* from the end of the period for passing order giving effect to such appellate or revisional orders. For obvious reasons, the inability of the Assessing Officer to pass orders giving effect to the appellate or revisional orders which had given relief to the assessee within the time prescribed under sub-sec. (5) of Section 153, would not make the proceedings non-est. It is the assessee who stands to gain out of the appellate or revisional order, and therefore, would be eager to have the Assessing Officer give effect to such order. The Assessing Officer, if for some reason cannot pass order within prescribed time, must still do so but, this would trigger the liability of the revenue to pay additional interest; as provided under sub-sec. [1A] of Section 244A.

This somewhat detailed analysis of the statutory provisions was necessary in order to ascertain whether the provisions are meant to be applied prospectively or retrospectively. It is well settled that a statutory amendment making substantive changes would have prospective effect unless either expressly or by necessary implications, the legislature has provided for

retrospective operation thereof. In his book **“Principles of Statutory Interpretation”**, Justice GP Singh refers to observations of Frankfurter in his article **“Some reflections on the Reading of Statutes”**, wherein, it is observed that, *“Legislation has an aim, it seeks to obviate some mischief, to supply and inadequacy, to effect a change of policy, to formulate a plan of government. That aim, that policy is not drawn, like nitrogen, out of the air, it is evidenced in the language of the statute, as read in the light of other external manifestations of purpose.”*

Though it is well settled that statutes dealing with substantive rights are *prima facie* prospective, unless it is expressly or by necessary implication made to have retrospective operation, such rigors are not recognized by the Courts when it comes to dealing with remedial statutes. Nevertheless, whether remedial statute is meant to apply to past situations arising before introduction of the provisions in the statute book must depend on the language used in the statute and the purpose for which the amendment was being made by the legislature.

We have noticed that prior to the relevant amendments made in the Act and introduced *w.e.f* 1st June 2016, there was neither a limit prescription for passing orders giving effect to appellate or revisional orders in which relief – partially or fully may have been given to the assessee nor was there any adverse impact on the revenue if such action was delayed; except for paying statutory interest under sub-sec. [1] of Section 244A of the Act. Sub-section [5] of Section 153 introduced time limits for passing such orders. Such time limits were also prescribed in graded manner. Ordinarily, the Assessing Officer would have three months to pass orders giving effect to appellate or revisional orders. If the Commissioner was satisfied that it was not possible for the Assessing Officer to do so within such time, he could extend the time by further six months but no more. In cases where the order required verification of any issue by way of submission of document by the assessee or any other person, or where an opportunity of being heard is to be provided to an assessee, the time limit from the outset would be longer. This laying down of the time limit *per se* would be of no consequence unless non

adherence to the time would result into some adverse consequences to the Revenue. It is therefore that sub-section [1A] of Section 244A provides for additional interest at the rate of three *per cent per annum* upon the Assessing Officer failing to pass an order giving effect to the appellate or revisional order within the time frame.

These provisions thus are in the nature of deterrence to the Assessing Officer's inaction. Simultaneously, the assessee would be compensated for delay by way of additional interest.

These provisions are thus remedial in nature and meant to address the issue of inordinate delay in giving effect to the appellate or revisional orders made in favour of the assessee. However, minute examination of these provisions would show that the same were not meant to have retrospective effect. The computation provision for granting such interest provides for two terminal points – the beginning point is the end of the period beginning from the date following the date of expiry of time allowed under section (5) of Section 153 and the end point of computing the interest would be the date on which refund is

granted. Applying such provisions for the past period would immediately throw a question as to from which date such interest liability would arise. For the past period, there being no provision in sub-section (5) of Section 153 laying time limits, the computation of beginning of the period for granting interest would be unworkable. Claim of interest for the past period cannot be accepted for want of any machinery provided by the legislature to calculate such interest. The legislature therefore by necessary implications did not desire to give any retrospective effect to these provisions. The claim for additional interest therefore cannot be granted for the periods when the provisions of Section 244A [1A] and 153 [3] as they stand now were not in statute book at all.

There would however be a caveat to this proposition and it is this. There may be cases where the appellate or revisional order may have been passed long before 1st June 2016. Till the relevant provisions of Section 244 [1A] and 153 [5] were added by the legislature on 1st June 2016, the Assessing Officer may not have passed the consequential order. Even after such amendments, he may not have passed the order within the time provided ion such

amendments. Even in such a case, if the amended provision of sub-section [1A] of Section 244 of the Act is not applied for the period past 1st June 2016, the same would give rise to two class of cases – [i] where the appellate or revisional order is passed after 1st June 2016 and the other where such order is passed before such date. In the former, all the provisions of sub-section [1A] of Section 244A as well as sub-section (5) of Section 153 of the Act would apply. In the latter, if harmonious construction approach is not adopted, the Assessing Officer could contend that he is under no obligation to pass order giving effect to the appellate or revisional order, nor would the revenue be liable to pay additional interest even after the time available to the Assessing Officer for passing such order has expired. The legislature could not be expected to have brought about such a situation. Any such interpretation would also restrict the prospective effect of these provisions. In such circumstances, the harmonious construction of the statutory provisions would require that if any order giving effect to the appellate or the revisional order is not passed by the Assessing Officer within the time permitted under section 153 [5], after the

amendments were made in the statute book, even though the appellate or revisional order was passed before 1st June 2016, the liability to pay additional interest under sub-section [1A] of Section 244A would arise upon completion of such period as if the starting point for computing such period for passing the order was 1st June 2016. To this limited extent, the petitioner would be entitled to additional interest for limited period, but not for the entire period starting from the original order of Commissioner dated 5th March 2009.

Learned counsel Shri Soparkar had, however, argued that the compensation for delayed payment of refund should be granted. This contention and claim was independent of the claim for interest on interest which he agreed would not be payable by virtue of the judgment of the Supreme Court in the case of *Gujarat Flourochemicals Limited* [Supra] and also independent of the additional interest under sub-section [1] of Section 244A. This judgment has a short history, which we may record. As is well-known, the Supreme Court in the case of **Sandvik Asia Limited v. Commissioner of Income-tax & Ors.**, reported in [2006] 280 ITR

643 [SC] had an occasion to consider a situation in which the advance tax paid by the assessee became refundable pursuant to an appellate decision. The principal was refunded but refund of interest was withheld for a long time. The Supreme Court posed a question to itself - whether on general principles, the assessee ought to have been compensated for the inordinate delay for receiving monies properly due to it. It was noticed that the revenue has retained such monies of the assessee for the periods ranging from 12 to 17 years. The Court held that the revenue having unjustifiably withheld the refund for seventeen years without any reason, the assessee would be entitled to receive such amount with further interest. The larger Bench of the Supreme Court considered the question whether the decision in case of *Sandvik Asia Limited v. CIT* [Supra] lays down the principle that interest on interest is payable when the refund is delayed. The Supreme Court explained the decision in case of *Sandvik Asia Limited* [Supra] observing that the Supreme Court in such case was considering the issue as to whether the assessee who was made to wait for refund of interest for decades should be compensated for

great *prejudice* caused to it due to delay in its payment after the lapse of statutory period. It was in this background, the Court directed the Revenue to pay compensation which cannot be seen as a direction for payment of interest on interest. The Supreme Court held and observed as under :

“6. In our considered view, the aforesaid judgment has been misquoted and misinterpreted by the assesses 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.

7. As we have already noted, 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* cause 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.”

For subsequent year also, in the case of the same assessee -*Gujarat Flourochemicals Limited*, a similar issue came up before the Supreme Court. Upon an appeal against the judgment passed by

the High Court, the Supreme Court remanded the proceedings before the Court after making reference to its earlier judgment in the case of *Gujarat Flourochemicals Limited* [Supra]. It was in this background that the Gujarat High Court in the case of *Gujarat Flourochemicals Limited v. Commissioner of Income-tax*, [2015] 377 ITR 307 [Guj.] was examining the issue of payment of interest for delayed refund made by the Revenue. The Court noticed observations of the Apex Court that the interest on the amount of refund, if provided by the statute, such would govern the field. The Court was of the opinion that in case of *Gujarat Flourochemicals Limited* [Supra], the Supreme Court did not shut out the question of directing the Government to pay compensation for non payment of statutory interest. In this background, the Court gave suitable directions for payment of compensation.

The situation therefore emerges is that as held by the Supreme Court in the case of *Gujarat Flourochemicals Limited* [Supra], whenever statute provides for interest on delayed refunds, the same would hold the field. Further, there cannot be any direction for payment of interest on interest. In the present

case, the statute provides for interest on delayed refund in terms of sub-section [1] of Section 244A of the Act. As and when applicable, newly inserted sub-section [1A] of Section 244A provides for additional interest. The statutory provisions thus govern the situations where the interest on delayed refund would be paid as also the rate on which such interest is to be calculated. There cannot be any further direction for payment of interest over and above such statutory prescriptions. This is not a case where the principal refund is granted at one point of time, withholding the interest and the Revenue thereafter, having frozen the liability of interest seeks to avoid making any further payment of compensation on the amount of interest which remained unpaid for a long period of time.

Under the circumstances, the petition is disposed of with the following observations and directions :-

[i] The petitioner would not be entitled to additional interest under sub-section [1A] of Section 244A of the Act during the entire period after passing of the appellate order, but would be entitled to such additional interest after introduction of the relevant

statutory provisions *w.e.f* 1st June 2016 in terms of the observations made in this judgment.

[ii] The petitioner cannot claim any further interest or compensation over and above the statutory interest prescribed. However, looking to long delay which has clearly remained explained in giving effect to the appellate order, the respondent shall pay cost of Rs. 1,00,000/= [*rupees one lakh*] to the petitioner.

[iii] It is expected that the concerned Assessing Officers would pass necessary orders giving effect to the appellate or revisional orders in case of petitioner and other group entities as expeditiously as possible. We expect that the Revenue would not drive the petitioner to unnecessary litigation in this respect.

Petition is disposed of accordingly.

[Akil Kureshi, J.]

[B.N Karia, J.]

Prakash