

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 23RD DAY OF SEPTEMBER 2016/1ST ASWINA, 1938

WP(C).No. 19283 of 2007 (U)

PETITIONER(S) :

STATE BANK OF TRAVANCORE, HEAD OFFICE,
POOJAPURA, THIRUVANANTHAPURAM - 695 012,
REPRESENTED BY ITS DEPUTY GENERAL MANAGER,
(FINANCE AND ACCOUNTS).

BY ADVS.SRI.P.BALAKRISHNAN
SRI.V.SREEKUMAR

RESPONDENT(S) :

1. CHIEF COMMISSIONER OF INCOME TAX,
AYAKAR BHAVAN, THIRUVANANTHAPURAM - 695 003.
2. ASSISTANT COMMISSIONER OF INCOME TAX,
CIRCLE I (1), THIRUVANANTHAPURAM - 695 003.
3. DEPUTY COMMISSIONER OF INCOME TAX
(ASSESSMENT), SPECIAL RANGE, THIRUVANANTHAPURAM.
4. THE CENTRAL BOARD OF DIRECT TAXES,
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE,
GOVERNMENT OF INDIA, NEW DELHI - 110 001.

BY ADVS. SRI.GEORGE K. GEORGE, SC
SRI.P.K.R.MENON,SR. COUNSEL
SRI.JOSE JOSEPH, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-08-2016 THE COURT ON 23-09-2016, DELIVERED THE
FOLLOWING:

msv/

WP(C) .No. 19283 of 2007 (U)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE ORDER BEARING NO.F.NO.244/G2/
CC-TVM/2004-2005 FOR ASSESSMENT YEAR 1995-1996
DTD.31.1.2006 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P2 TRUE COPY OF ORDER BEARING F.NO.244/G3/CC-TVM/2004-05
FOR ASSESSMENT YEAR 1993-1994 DTD.31.1.2006 ISSUED BY
THE 1ST RESPONDENT.

EXHIBIT P3 TRUE COPY OF THE ORDER BEARING F.NO.244/G9/
CC-TVM/2004-05 FOR ASSESSMENT YEAR 1992-1993
DTD.31.1.2006 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P4 TRUE COPY OF ORDER BEARING NO.244/G8/CC-TVM/2004-2005
DTD.27.6.2005 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P5 TRUE COPY OF LETTER DTD.6.9.2006 ISSUED BY THE
4TH RESPONDENT TO THE PETITIONER.

RESPONDENT(S) ' EXHIBITS

EXT.R1(A) : COPY OF THE ORDER SHEET.

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.M.SHAFFIQUE, J

W.P.C.No.19283 of 2007

Dated this the 23rd day of September 2016

J U D G M E N T

Petitioner, an assessee under the Income Tax Act, 1961, has filed this writ petition challenging Ext.P1, P2, P3, P4 and P5 and for a direction to the respondents to pay the petitioner interest on the refund.

2. Ext.P1 is an order dated 31/01/2006 passed by the Chief Commissioner of Income Tax considering an application filed by the petitioner under Section 244A of the Act. By the said order, the Chief Commissioner came to a finding that interest is not payable to the petitioner for the period of delay which occurred in curing defects in the TDS certificates. In the return of income for the assessment year 1995-96, petitioner declared a total income of Rs.22,14,47,788/- and a revised return was filed on 27/02/1996 declaring total income of Rs.26,29,72,328/-. The return was processed on 09/10/1996. On scrutiny under Section 143(3), the assessment was completed on 02/03/1999. However as per order dated 22/02/2004 and 27/05/2004, interest was not granted under Section 244A on account of the delay in curing the

defects in the TDS certificates. Assessee therefore filed an application dated 15/04/2004 before the Chief Commissioner to grant interest under Section 244A on the TDS amount refunded to them as per proceedings dated 27/05/2004. This came to be rejected by the Chief Commissioner on the ground that the delay was attributable to the assessee. Exts.P2, P3 and P4 are similar orders passed with reference to assessment years 1993-94, 1992-93 and 2001-02. The petitioner appears to have taken up the matter before the Government of India, Ministry of Finance who informed the petitioner that they cannot directly interfere in the matter. It is, in these circumstances, inter alia contending that the delay cannot be attributable to the petitioner that this writ petition is filed.

3. Counter affidavit has been filed by the respondent supporting the stand taken in the matter. It is inter alia contended that submitting TDS certificates without any defect is the obligation of the assessee. When substantial time has been taken to cure the defects and resubmitting the same, the delay can only be attributed to the assessee. Paragraph 6 of the counter affidavit is relevant which reads as under:

“6. For the assessment year 1992-93 interest under Section 244A was not granted for 27 months from January 1993 to March 1995 for the TDS certificates resubmitted after curing defects. For the Asst.year 1993-94, interest u/s 244A was not granted from August 1994 to December 1994 for the TDS certificates resubmitted after curing defects. For the Asst.Year 1995-96 also, interest u/s 244A was not granted for various dates as the TDS certificates were resubmitted on various dates after curing defects. This is strictly in accordance with the provisions of Section 244A(2) which stipulates that if the proceedings resulting in refund are delayed for reasons attributable to the assessee wholly or in part the period of delay so attributable to him shall be excluded from the period to which interest is payable. In this case the delay in proceedings granting refund was attributable to the assessee in filing proper TDS certificates after curing defects. While passing the order for these assessment years, the Chief Commissioner of Income Tax has not merely relied on the order for Assessment year 2001-02 but after considering all the facts and affording an opportunity of being heard to the applicant. The contentions of the assessee's representative were dealt with in great detail in these orders.

The reference to the order for the assessment year 2001-02 was made only to state that there was no material to take a different view from that taken for that assessment year 2001-02. The orders for the assessment years 1992-93, 93-94 and 94-95 were passed after due application of mind and considering all the facts brought on record and mentioning the order for the assessment year 2001-02 was only incidental."

4. Learned counsel for the petitioner places reliance on the judgment of the Apex Court in **Sandvik Asia Ltd. v. Commissioner of Income Tax and Others [(2006) 280 ITR 643] (SC)**. Specific reference is made to paragraph 79 which reads as under:

"The facts and the law referred to in paragraph (supra) would clearly go to show that the appellant was indisputably entitled to interest under Sections 214 and 244 of the Act as held by the various High Courts and also of this Court. In the instant case, the appellant's money had been unjustifiably withheld by the Department for 17 years without any rhyme or reason. The interest was paid only at the instance and the intervention of this Court in Civil Appeal No. 1887 of 1992 dated 30.04.1997. Interest on delayed

payment of refund was not paid to the appellant on 27.03.1981 and 30.04.1986 due to the erroneous view that had been taken by the officials of the respondents. Interest on refund was granted to the appellant after a substantial lapse of time and hence it should be entitled to compensation for this period of delay. The High Court has failed to appreciate that while charging interest from the assessees, the Department first adjusts the amount paid towards interest so that the principle amount of tax payable remain outstanding and they are entitled to charge interest till the entire outstanding is paid. But when it comes to granting of interest on refund of taxes, the refunds are first adjusted towards the taxes and then the balance towards interest. Hence as per the stand that the Department takes they are liable to pay interest only upto the date of refund of tax while they take the benefit of assessees funds by delaying the payment of interest on refunds without incurring any further liability to pay interest. This stand taken by the respondents is discriminatory in nature and thereby causing great prejudice to the lakhs and lakhs of assessees. Very large number of assessees are adversely affected inasmuch as the Income Tax Department can now simply refuse to pay to the assessees amounts of

interest lawfully and admittedly due to that as has happened in the instant case. It is a case of the appellant as set out above in the instant case for the assessment year 1978-79, it has been deprived of an amount of Rs.40 lakhs for no fault of its own and exclusively because of the admittedly unlawful actions of the Income Tax Department for periods ranging up to 17 years without any compensation whatsoever from the Department. Such actions and consequences, in our opinion, seriously affected the administration of justice and the rule of law.”

5. It is argued that under Section 244A, the interest is statutorily payable and non-payment of interest can only be on account of any delay being caused by the assessee while considering the refund application.

6. On the other hand, based on Section 244A, learned Standing Counsel appearing on behalf of the revenue contends that the TDS certificates without any defects were to be submitted within a reasonable time for processing the application and if any delay is caused by the assessee, the assessee cannot claim any interest on the amount of refund. There is no dispute regarding the obligation on the part of the Income Tax

Department (for short 'Department') in giving simple interest on the amount of refund as provided under Section 244A(1) of the Act. However, Section 244A(2) indicates that if the proceedings resulting in the refund are delayed for reasons attributable to the assessee, the period of delay so attributable shall be excluded from the period for which interest is payable. 244A(1) and (2) of the IT Act reads as under:

“244A. Interest on refunds.

(1) 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 thereon calculated in the following manner, namely:-

(a) where the refund is out of any tax paid under section 115WJ or 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 per cent for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted: Provided that no interest shall be payable if the

amount of refund is less than ten per cent of the tax as determined under sub-section (1) of section 115WE or 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.

Explanation.- For the purposes 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.

(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable, and where any question arises as to the period to be excluded, it shall be decided by the Chief Commissioner or Commissioner whose decision thereon shall be final."

7. As provided under the Statute, if any question arises regarding the period to be excluded, it has to be decided by the

Chief commissioner or Commissioner, whose decision is said to be final.

8. The question is whether in the facts of the present case, the Chief commissioner was justified in rejecting interest for the period of delay. The factual aspects are not in dispute. However, the contention urged by the petitioner is two fold. The 1st contention is that the words 'proceedings resulting in the refund' as stated in Section 244A(2) can only mean the proceedings which culminated in Ext.P1 order and not the entire proceedings by which the return had been processed. Secondly, as far as the claim for refund is concerned, it becomes due at the moment the TDS certificates, after curing the defects, has been accepted. Once it is accepted, it is a confirmation that the amount had come to the account of the Income Tax Department. The delay for curing the defects in the TDS certificates does not amount to a delay in the proceedings resulting in the refund.

9. The Statute clearly indicates that where refund of any amount becomes due with the assessee, he shall be entitled to receive simple interest as stated therein, in addition to the amount of refund. The question is, as to when the amount

becomes due. The amount becomes due only when all the procedures are completed. It does not become due on the date when the amount is deposited by the deductor to the Department. It becomes due only after finalisation of the returns. Of course, if the delay is on the part of the Department in finalizing the returns, interest is payable from the date on which it becomes due, i.e. from the 1st day of April of the assessment year to the date on which the refund is granted. However, sub Section (2) draws a slight deviation from 244A(1) by which the assessee is deprived of the interest, if the delay in the proceedings resulting in refund is attributable to the assessee whether wholly or in part. Therefore the first contention is totally out of place. The delay in the proceedings resulting in refund is definitely with reference to the finalisation of returns and not in regard to the proceedings for refund.

10. The other contention urged by the petitioner is that curing defects in the TDS certificates cannot be a reason which could be attributable to the assessee. TDS certificates are issued by the deductor and defects, if any, can be corrected by them only. If mistakes are noted, the same are sent for correction and

the time spent for obtaining the corrected TDS certificates and presenting the same before the Income Tax Department shall not be a reason for denying interest.

11. The finding of the Department in Ext.P5 is that there was enough time between the date of obtaining of the certificates and filing of the return for the assessee with its network of officers and infrastructure to get the defects cured.

12. In the counter affidavit filed by the 1st respondent it is submitted that for the assessment year 2001-02, interest was not granted from November 2001 to April 2004. For the assessment year 1992-93, interest was not granted for the period from January 1993 to March 1995. In respect of the assessment year 1993-94 interest was not granted from August 1994 to December 1994 and for the assessment year 1995-96 interest was not granted for various dates as TDS certificates were resubmitted on various dates after curing the defects. It is stated that the orders were passed after due application of mind.

13. Under Section 199, any deduction made in accordance with the provisions of Chapter XVII and paid to the Central Government shall be treated as payment of tax on behalf of the

person from whom income tax deduction was made. Section 200 deals with the duty of the person deducting tax. Any person deducting any sum in accordance with the provisions of the Chapter shall pay within the prescribed time the sum so deducted to the credit of the Central Government or as the Board directs. They have also filed a statement in terms of Sub Section (3). Section 201 relates to the consequences of failure to deduct or pay. Section 203 further indicates that every person deducting tax in accordance with the provisions of the Chapter shall within such period as may be prescribed from the time of credit or payment of the sum, furnish to the person to whose account the credit is given or to whom such payment is made. A certificate to the effect that tax has been deducted and specifying the amount so deducted, rate of tax and such other particulars, as may be prescribed. Therefore, there cannot be any dispute about the fact that the obligation to provide a certificate for deducting tax is on the deductor. The question is, if there is any defect in such certificate, and the petitioner fails to get it cured before filing of the return, petitioner can be termed as a person who had caused the delay. No doubt, as rightly held by the respondent, if the

defect is noticeable on receipt of the certificate, it is for the deductee who makes a claim on the basis of the certificate to get the defects cured. This is an instance where substantial time had elapsed for curing the defects, which according to the Department, is attributable to the assessee. When such a view is possible and the claim for interest is denied on that specific period, I do not think that this Court will be justified in taking a different view. No doubt, as rightly contended by the learned counsel for the petitioner, once the defect is cured, the parties have to go back to their original position, but the question is whether there is an obligation on the part of the Department to pay interest on the amount to be refunded. When a statute in the form of Section 244A(2) clearly specifies that interest need not be paid if the proceedings of refund is delayed for reasons attributable to the assessee, in that event, the respondents having refused interest on the basis of factual finding relying upon the statutory provision, I do not think that this Court will be justified in interfering with the said orders.

14. Coming to the judgment in **Sandvik Asia Ltd.** (supra), that was a case in which the question that had arisen was

whether the assessee was entitled to interest on the amounts of interest paid under Section 214 or 244 of the IT Act. Question considered was whether an assessee was entitled to be compensated by the Department for the delay in paying to the assessee all amounts admittedly due to it, the delay ranging from 12 to 17 years. I do not think that the factual issues arising in the present case and the judgment in **Sandvik Asia Ltd.** (supra) has any resemblance. Even otherwise, this is an instance where interest has been paid but denied only for certain period for reasons stated in the impugned orders, since the delay has been attributed to the assessee.

The writ petition is, therefore, dismissed.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr