

*** THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

Writ Petition No. 7844 of 2002

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(Judgment of the Bench delivered by
the Hon'ble Sri Justice L. Narasimha Reddy)

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%12-11-2014

#M/s L. Madandal Steels Limited,
Rep. by its Managing Director,
Mr.Manohar Bagaria, Bollaram

..appellant

Vs.

\$The Chief Commissioner of Income-tax-2,
Hyderabad and another

..Respondents

!Counsel for the appellant : Sri S. Ashok Anand Kumar

^Counsel for the Respondent : Sri S.R. Ashok, Sr. Counsel

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? Cases referred

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

Writ Petition No. 7844 of 2002

JUDGMENT: *(Per the Hon'ble Sri Justice L. Narasimha Reddy)*

The petitioner is an industrial undertaking, involved in the business of conversion of steel scrap into ingots. It has undertaken such an activity in favour of M/s Uni Metal Alloys Limited, Secunderabad, during the financial years 1991-92 and 1992-93. Similar work was undertaken for other agencies also. While making payments for the job work, the agencies have deducted tax at source, aggregating to Rs.3,52,721/-. However, the relevant certificates were not issued to the petitioner.

On its part, the petitioner paid the tax assessed to it. It made a claim for refund of the amount, to the extent of TDS. After prolonged correspondence, the refund was made on 12-06-2001,

for Rs.3,52,721/-. The petitioner submitted representations on 24-06-2001 and 23-10-2001, with a request to pay interest under Section 244-A(2) of the Income Tax Act (for short 'the Act') on the amount, from the due date, till the date of payment.

The same was rejected through reply dated 08-01-2002. The petitioner contends that just as an assessee is liable to pay interest on the delayed payment of tax, the department is also under obligation to pay interest on the delayed refund of the amounts.

It is urged that Section 244-A provides for payment of interest, and in the instant case, though the refund was made almost after a decade, interest was not paid.

The plea of the respondent is that the delay in refunding the amount, representing the TDS, was on account of the failure on the part of the petitioner to furnish the TDS certificates. They plead that it is only in the year 2001, that the petitioner submitted the indemnity bond, filed affidavit, and submitted documents, and that soon thereafter, the amount was refunded.

Heard Sri S. Ashok Anank Kumar, learned counsel for the petitioner and Sri S.R. Ashok, learned Senior Counsel for the respondent.

The Act provides for refund of any amount received by the department, in excess of what was due from an assessee, in a particular assessment year. Section 244-A also provides for payment of interest,

in case the refund is delayed. There are instances where the Courts directed payment of interest on interest also, if there was proven negligence on the part of the department, in refunding the amount. Much, however, would depend upon the facts of each case.

From the payments, that were due to the petitioner, its customers have deducted TDS, being Rs.3,52,721/- in the financial years 1991-92 and 1992-93. The petitioner was entitled for refund or adjustment of the same, only on production of the TDS certificate. The Rules framed under the Act mandate that the adjustment of TDS from the tax payable by an assessee can be made only on production of the certificate, issued by the person or agency, which effected the TDS. In the absence of the same, the department cannot be expected to refund or adjust the amount.

The TDS from the petitioner was, with reference to about 10 bills, spread over one year. The record does not disclose the nature of steps taken by the petitioner for obtaining the TDS certificates, either from the concerned agencies, or even from the department. It was only in the year 2001, that the petitioner came forward with an affidavit as well as indemnity bond, furnishing particulars. Soon thereafter, an order of modification under Section 151 of the Act was passed on 12-06-2001, directing refund also i.e. Rs.3,52,721/-.

The occasion to pay interest would have arisen, if only the delay was on the part of the department. Section 244A of the Act itself mandates that, if the delay in refund is attributable to the assessee, wholly or in part, it shall be excluded from the period for which, the interest is payable. Section 244A of the Act reads,

“244A. (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 [*Principal Chief Commissioner or*] Chief Commissioner or [*Principal Commissioner or*] Commissioner whose decision thereon shall be final."

(Sub-sections (3) and (4) are omitted, since they are not necessary)

It is not the case of the petitioner that even after it has submitted the TDS certificates, or the indemnity bond, there was any delay on the part of the department in making the refund.

The case is covered by sub-section (2) of Section 244-A of the Act.

We do not find any ground to grant any relief to the petitioner. The writ petition is accordingly dismissed.

There shall be no order as to costs.

L.NARASIMHA REDDY, J.

CHALLA KODANDA RAM,J.

Dt.12-11-2014

Note:

L.R copy to be marked.

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