

RESERVED

(AFR)

Case :- WRIT TAX No. - 102 of 2012

Petitioner :- Prayag Udyog Pvt.Ltd.Allahabad

Respondent :- Union Of India Through Secretary,Ministry Of Finance & Ors.

Petitioner Counsel :- S.D.Singh

Respondent Counsel :- C.S.C.(Income Tax),Bharatji Agarwal,R.K. Upadhyaya

Hon'ble Ashok Bhushan,J.

Hon'ble Prakash Krishna,J.

(Delivered by Prakash Krishna, J.)

The petitioner is a company duly incorporated under the Companies Act, 1956. It has been pleaded that for previous years relevant to the assessment years 1992-93, 1993-94 and 1994-1995, the petitioner deposited the income tax in pursuance of the assessment orders passed by the Assessing Officer, under the provisions of Income Tax Act, 1961. The assessment orders were subject matter of challenge by the petitioner first before First Appellate Authority and thereafter before the Income Tax Appellate Tribunal. The petitioner was granted marginal relief by the First Appellate Authority and in the second appeals by the Tribunal as well. The petitioner's case is that the income tax deposited by it, in pursuance of the demand notices issued under section 156 of the Act by the Assessing Officer, the petitioner is entitled to get refund of the excess tax deposited for all these three assessment years. The orders of the Tribunal for the assessment years 1992-93, 1993-1994 and 1994-95 all have become final and the following amounts of refund have become due:-

<u>Assessment Year</u>	<u>Amount</u>
1992-93	Rs.7,45,163/-
1993-94	Rs.6,39,771/-
1994-95	Rs.2,05,770/-

The petitioner has been pursuing its refund claim for the last five to six years but without any success.

In the petition the following reliefs have been claimed:-

- (I) A writ, order or direction in the nature of Mandamus directing the respondent No.2 & 3 to grant refund of Rs.15,90,694/- of excess deposit of tax for AY 1992-93, 1993-94 and 1994-95 together with exemplary interest for delay of 5-6 years in making refund.
- (II) Issue any other Writ, Order or Direction, as this Hon'ble Court may deem fit

and proper under the facts and circumstances of the case.

(iii) Award cost of the petition to the petitioner.

The above writ petition was filed on 12.1.2012 after giving its notice to the learned standing counsel for the respondent department. It appears that after the receipt of the notice of the writ petition good sense prevailed upon the department and the department on 27.2.2012 and 16th April, 2012 issued refund vouchers for all the three years. True copies of the communication received by the petitioner in this regard have been filed as Annexure-SA 1 to the supplementary affidavit dated 30th April, 2012.

Sri S.D Singh, learned counsel for the petitioner stated before us, that the grievance of the petitioner with regard to the refund stands fully redressed and the petitioner has now no claim for refund of any further amount towards all these three assessment years. But he submitted that in view of the statutory provision as contained in the Income Tax Act, the petitioner is entitled for interest on the delayed refund. He, therefore, confined the writ petition for the grant of interest amount on the delayed refund, i.e on the refund amount refunded with delay.

Contesting the case of the petitioner a counter affidavit sworn by Sri Girish Chand Shukla, Income Tax Inspector on behalf of the respondents has been filed. It is a short document and the most of the allegations of the petitioners have not been disputed. The relevant paragraph is paragraph 3 which was referred by Sri R.K. Upadhyay, learned standing counsel for the department wherein it has been stated that there has been some delay in grant of refund due to the petitioner for several reasons including frequent changes of Assessing Officers and inaction on the part of the petitioner in bringing the facts relating to the delay in grant of refund to the notice of the Assessing Officer. It has been further stated that the Department tentatively decided to grant refund along with statutory interest on refund amount as per calculation in ITNS 150 dated 1st of February, 2012 of Rs.29,83,056/- has been worked out. The refund order shall be issued shortly after seeking the approval of the competent authority.

The respondents have also filed a reply to the first supplementary affidavit of the petitioner with regard to the grant of interest on the sum so refunded by disputing the claim of the petitioner for interest. They have come out with the case that no interest is payable as per section 244A of the Income Tax Act. The stand of the department is that in view of the Explanation attached to section 244A, interest will be calculated from the date of payment of "tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand." Emphasis has been laid on the words "paid in excess of such demand." According to them, in view of Explanation to section 244A, the petitioner having not paid any amount in excess of demand notices issued by the Assessing Officer under section 156, the petitioner is not entitled for any interest.

Sri S.D. Singh, learned counsel for the petitioner, submits that on a true and correct interpretation of section 244A, the petitioner is entitled for interest on the delayed

payment of refund amount. Submission is that the interest is payable from the date of actual deposit till the date of actual payment of refund amount at the rate specified in section 244A (1) (b). Reliance has been placed on a departmental circular No.549 dated 1st of October, 1999 explaining the scope and effect of newly inserted section 244A as amended by the Direct Tax Laws (Amendment) Act, 1989.

Further reliance has been placed upon an Apex Court judgment **Sandvick Asia Ltd. Vs. CIT (2006) 2 SCC 508** in support of the claim that the interest upon interest is payable to the petitioner.

Sri R.K. Upadhyay, learned standing counsel for the department, on the other hand, submits that on true and correct interpretation of the Explanation to Section 244A, the department is not liable to pay any interest. His further submission is that the department is also not liable to pay interest as the refund was delayed for reasons attributable to the assessee/petitioner as per Section 244A (2).

Considered the respective submissions of the learned counsel for the parties and perused the record.

The only point mooted in the present writ petition is about the entitlement of the petitioner to receive the interest on the refund amount in view of Explanation to Section 244A and also interest upon interest.

During the course of the argument, the learned counsel for the petitioner handed over a calculation chart which is reproduced below:-

	A.Y. 1992-93	A.Y.1993-94	A.Y.1994-95
Date of Ass. Order	27.3.1995	29.2.1996	31.3.1997
Dt. of ITAT Order	29.3.2006	29.3.2006	9.6.2006
Income Assessed	Rs.12,03,690.00 Rs.4,00,991.00	Rs.7,62,080.00 Rs.2,93,724.00	Rs.10,54,570.00 Rs. 3,94,267.00
Tax Ass. (with int.)	Rs.6,92,122.00 Rs.2,56,422.00	Rs.4,38,196.00 Rs.2,16,815.00	Rs.6,09,253.00 Rs.2,90,129.00
Tax Deposited	Rs.9,15,842.00	Rs.8,08,662.00	Rs.4,32,463.00
Refund Due	Rs.6,59,420.00	Rs.5,91,847.00	Rs.1,42,334.00
Refund Paid on	27.02.2012	16.4.2012	27.2.2012
Interest Payable	Rs.9,14,082.34	Rs.6,75,860.33	Rs.2,17,098.18
Period of Interest due`	29.3.1995 to 26.2.2012	25.3.1996 to 15.4.2012	27.2.1997 to 26.2.2012
Interest on Interest	28.2.2012 to dt. of payment.	16.4.2012 to dt. of payment.	27.2.2012 to dt of payment.
	Total Int. payable	Rs.18,07,040.85	

At the outset, we may add that the dispute in the present writ petition relates to the period subsequent to 31st of March, 1989. Section 244A is operative with regard to the payment of interest on refund for the assessment year 1989-90 and thereafter. The provisions relating to refund and interest of the Income Tax Act, were drastically amended by the Direct Tax Laws Amendment Act, 1989 w.e.f. 1st of April, 1989.

Provisions relating to refund and interest are contained in Chapter XIX of the Income Tax Act. Section 237 provides that if the Assessing Officer is satisfied with the liability of tax paid by any persons or by any other person on behalf of the assessee for any Assessment Year exceeds the amount with which he is properly chargeable under the Act for that year, the said person shall be entitled to a refund of the excess amount. Section 240 deals with the refund of the tax as result of an appellate order. Sections 243 and 244 deals with interest on delayed refund and interest on refund where no claim application needed. But these provisions shall not apply in respect of any assessment for the assessment year commencing on the 1st April, 1989 or any subsequent assessment years.

The material section for the present purposes is Section 244A. It is common case of the learned counsel for the parties that clause (a) of section 244A (1) is not at all attracted. The case of the petitioner is that his case falls in clause (b) of section 244A (1). For the sake of convenience the aforesaid Section is reproduced below:

“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 ¹ [paid under section 115WJ or] ² [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 ³[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 ⁴[under ⁵[sub-section (1) of section 115WE or] sub-section (1) of section 143 or] on regular assessment.

1 Inserted by the Finance Act, 2005. w.e.f. 1-4-2006.

2 Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

3 Substituted for “two-third per cent” by the Taxation Laws (Amendment) Act, 2003, w.e.f. 8.9.2003. Earlier “two-third per cent” was substituted for “three-fourth per cent” by the Finance Act, 2002, w.e.f. 1-6-2002, “three-fourth per cent” was substituted for “one per cent” by the Finance Act, 2001, w.e.f. 1-6-2001 and “one per cent” was substituted for “one and one-half per cent” by the Finance (No.2) Act, 1991, w.e.f. 1-10-1991.

4 Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

5 Inserted by the Finance Act, 2005, w.e.f. 1-4-2006.

(b) in any other case, such interest shall be calculated at the rate of one ⁶[*] percent, 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.

(3) Where, as a result of an order under sub-section (3) of section 115WE or section 11SWF or section 115WG or sub-section (3) of section 143 or section 144 or section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and in a case where the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the amount of the excess interest paid and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly”

(4)

The case of the department for denying the claim of petitioner with regard to the interest is that in view of the Explanation quoted above, as no amount was paid in excess of the demand notice issued under section 156, interest is not payable.

We are unable to accept it, for various reasons, given hereinafter.

Firstly, we may notice the interpretation as put on section 156 of the Act and subsequent amendment in the Act, from time to time, to understand its scope.

I Section 156 reads as follows:

“When any tax, interest, penalty, fine or any other sum ⁷[...] is payable in consequence of any order passed under this Act, the ⁸ [Assessing] Officer

6 The words “and one-half” have been omitted by the Finance (No.2) Act, 1991 (49 of 1991), s.64 (w.e.f 1.10.1991).

7 (including annuity deposit referred to in Chapter XXII-A) omitted by the Finance Act, 1966, w.e.f 1.4.1967. Originally, the said expression was inserted by the Finance Act, 1964, w.e.f 1.4.1964.

8 Substituted for 'Income tax' by the Direct Tax Laws (Amendment) Act, 1987, w.e.f 1.4.1988.

shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable:

[**Provided** that where any sum is determined to be payable by the assessee under sub-section (1) of section 143, the intimation under that sub-section shall be deemed to be a notice of demand for the purposes of this section]

Its corresponding section 29, under the old Income Tax Act, was interpreted by the Apex Court in the case of ***Income Tax Officer versus Segu Bechiah Setty (1964) 52 ITR 538*** wherein the Apex Court has held that if the assessment order is modified and demand is reduced in appeal, fresh service of notice of demand is necessary and the assessee cannot be treated as assessee in default. The recovery proceedings initiated against him on the basis of original demand, therefore, rightly quashed, by the High Court.

To overcome the difficulty faced by the revenue, a Validation Act 1964 was passed with retrospective effect. Section 3, without the proviso, may be read as a whole:

"Continuation and validation of certain proceedings.- (1) Where any notice of demand in respect of any Government dues is served upon an assessee by a Taxing Authority under any scheduled Act, and any appeal or other proceeding is filed or taken in respect of such Government dues, then,-

(a) where such Government dues are enhanced in such appeal or proceeding, the Taxing Authority shall serve upon the assessee another notice of demand only in respect of the amount by which such Government dues are enhanced and any proceedings in relation to such Government dues as are covered by the notice or notices of demand served upon him before the disposal of such appeal or proceeding may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;

(b) where such Government dues are reduced in such appeal or proceeding-

(i) it shall not be necessary for the Taxing Authority to serve upon the assessee a fresh notice of demand;

(ii) the Taxing Authority shall give intimation of the fact of such reduction to the assessee, and where a certificate has been issued to the Tax Recovery Officer for the recovery of such amount, also to that officer;

(iii) any proceedings initiated on the basis of the notice or notices of demand served upon the assessee before the disposal of such appeal or proceeding may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal;

(c) no proceedings in relation to such Government dues (including the imposition of penalty or charging of interest) shall be invalid by reason only that no fresh

notice of demand was served upon the assessee after the disposal of such appeal or proceeding or that such Government dues have been enhanced or reduced in such appeal or proceeding :"

In ***Union of India versus Jardine Henderson Ltd. (1979) 118 ITR 112,(S.C)***, the Apex Court considered the effect of the Validation Act 1964 and held that proceeding in relation to the Government dues shall not be invalid merely because no fresh notice of demand was served upon the assessee after the dues were enhanced or reduced in any appeal or proceeding. The recovery proceedings will continue and no fresh notice is necessary. It follows that the notice of demand remains valid and effective to the extent the tax is finally determined to be due and payable by the assessee.

An assessee who has paid the tax as demanded in the notice of demand issued under section 156 of the Act, and also challenged the demand in appeal and the appeal is allowed fully or partially the demand stands modified accordingly, to the extent the relief is granted, the amount becomes in excess to the original demand and it is liable to be refunded.

The first consideration to which we must refer is the object and purpose of enactment of Section 244A. The keywords for our present purposes are "tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand." The true meaning of "such demand" and "paid in excess" may provide answer to the issue. The Explanation refers to notice of demand issued under section 156.

A statute is the best understood if we look to the reasons for it. The words of the statute take their colour from the reason for it. No provision in the statute and no word of the statute may be construed in isolation.

When the words of a statute are clear, plain or unambiguous, the Courts are bound to give effect to that meaning irrespective of the consequences. In such cases no question of interpretation is involved.

It will be useful to reproduce the following two paragraphs from "Principles of Statutory Interpretation" by Justice G.P.Singh, page 51, 10th Edition.

"It may look somewhat paradoxical that plain meaning rule is not plain and requires some explanation. The rule, that plain words require no construction, starts with the premise that the words are plain, which is itself a conclusion reached after construing the words. It is not possible to decide whether certain words are plain or ambiguous unless they are studied in their context and construed.⁹ The rule, therefore, in reality means that after you have construed the words and have come to the conclusion that they can bear only one meaning, your duty is to give effect to that meaning.

9 D.Sibaba v.Bar Council of India, AIR 2003 SC 2502, 2507: (2003) 6 SCC 186: (2003) 2 KLT 669. (This proposition is **approvingly** referred from p.45 eighth edition of this book). See further Ibrahimpatnam Taluk Vyavasaya Coolie Sangham v.K.Suresh Reddy, (2003) 7 SCC 667 pp.677, 678.

The true import of the rule is well brought out in an American case where JUDGE PEARSON after reaching his conclusion as to the meaning of the statutory language said: "That seems to me a plain clear meaning of the statutory language in its context. Of course, in so concluding I have necessarily construed or interpreted the language. It would obviously be impossible to decide that language is 'plain' (more accurately that a particular meaning seems plain) without first construing it. This involves far more than picking out dictionary definitions of words or expressions used. Consideration of the context and setting is indispensable properly to ascertain a meaning. In saying that a verbal expression is plain or unambiguous, we mean little more than that we are convinced that virtually anyone competent to understand it and desiring fairly and impartially to ascertain its significance would attribute to the expression in its context a meaning such as the one we derive, rather than any other; and would consider any different meaning by comparison, strained, or far-fetched, or unusual or unlikely."

We may also notice the principles of interpretation relating to an "Explanation" and the meaning of words contained in the section. If the language of the Explanation shows a purpose and a construction consistent with that purpose can be reasonably placed upon it, that construction will be preferred as against any construction which does not fit in with the description or the avowed purpose as said on page 203 of the book referred to above.

In Commisisoner of Agricultural Income Tax versus Plantation Corporation of Kerala Ltd. (2001) 247 ITR 155, the Apex Court has laid down as follows:

"That apart an Explanation is intended to either explain the meaning of certain phrases and expressions contained in a statutory provision or depending upon its language it might supply or take away something from the contents of a provision and at times even, by way of abundant caution, to clear any mental cobwebs surrounding the meaning of a statutory provision spun by interpretative process to make the position beyond controversy or doubt."

In ***Keshavji Ravji and Co.versus Commisisoner of Income Tax (1990) 183 ITR I*** the Apex Court has held as follows:

"When words acquire a particular meaning or sense because of their authoritative construction by superior courts, they are presumed to have been used in the same sense when used in a subsequent legislation in the same or similar context."

In ***M/s Aphali Pharmaceuticals Ltd. Versus State of Maharashtra*** AIR1989 SC 2227, it has been held as follows:

*“An Explanation, as was found in Bihta Marketing Union v. Bank of Bihar, AIR 1967 SC 389: (1967) 1 SCR 848, may only explain and may not expand or add to the scope of the original section. In State of Bombay v. United Motors, AIR 1953 SC 252: (1953) SCR 1069, it was found that an Explanation could introduce, a fiction or settle a matter of controversy. Explanation may not be made to operate as "exception" or "proviso". The construction of an Explanation, as was held in Collector of Customs v. G. Dass & Co., AIR 1966 SC 1577, must depend upon its terms and no theory of its purpose can be entertained unless it is to be inferred from the language used. It was said in *Burmah Shell Oil Ltd. v. Commercial Tax Officer*, AIR 1961 SC 3 15: (1961) 1 SCR 902, that the explanation was meant to explain the Article and must be interpreted according to its own tenor and it was an error to explain the Explanation with the aid of the Article to which it was annexed. We have to remember what was held in *Dattatraya Govind Mahajan v. State of Maharashtra*, AIR 1977 SC 915 (928): (1977) 2 SCR 790, that mere description of a certain provision, such as "Explanation" is not decisive of its true meaning. It is true that the orthodox function of an explanation is to explain the meaning and effect of the main provision to which it is an explanation and to clear up any doubt or ambiguity in it, but ultimately it is the intention of the legislature which is paramount and mere use of a label cannot control or deflect such intention. *State of Bombay v. United Motors*, (supra) laid down that the interpretation must obviously depend upon the words used therein, but this must be borne in mind that when the provision is capable of two interpretations, that should be adopted which fits the description. An explanation is different in nature from a proviso for a proviso excepts, excludes or restricts while an explanation explains or clarifies. Such explanation or clarification may be in respect of matters whose meaning is implicit and not explicit in the main section itself. In *Hiralal Ratanlal v. State of U.P.*, [1973] 1 SCC 216 (225), it was ruled that if on a true reading of an Explanation it appears that it has widened the scope of the main section, effect be given to legislative intent notwithstanding the fact that the Legislature named that provision as an Explanation. In all these matters courts have to find out the true intention of the Legislature. In *D.G. Mahajan v. State of Maharashtra*, (supra) xx this Court said that legislature has different ways of expressing itself and in the last analysis the words used alone are repository of legislative intent and that if necessary an Explanation must be construed according to its plain language and 'not on any a priori consideration'.”*

By applying the above principle, it is evident that the word “demand” has been used in the sense 'the amount' as finally determined in appeal both in section 156 as found herein above as also in the Explanation.

The expression "tax or penalty specified in the notice of demand issued under

section 156 is paid in excess of such demand” has been used in section 244A in the above text and context.

The Explanation intends to define "date of payment of tax or penalty" for the purposes of calculation of interest amount. The circumstances when interest will be payable by the Revenue has been given sub section (1) of 244A. The Explanation therefore, cannot be interpreted in a manner which will control, prevail upon the sub section (1) of 244A. It can not control the substantive provision.

Looked from another angle, we find that the stand of the department with regard to interpretation of the “Explanation” is not sustainable in view of sub-section (3) of Section 244-A. This sub-section provides where as a result of appellate order etc. “the amount on which interest was payable under sub-section (1) has been increased or reduced”. It contemplates a situation which may arise on account of decision of appeal u/s 250 or section 254 resultantly the amount on which interest is payable is varied in either way, the interest amount will be varied accordingly. The liability to pay interest by the department is (i) as a result of assessment order etc. under sub-section (1) of Section 244-A, as also (ii) as a result of appellate order, the amount on which the interest is payable is enhanced, due to the relief granted to the assessee by appellate authority.

The interpretation of the Explanation as suggested by the Department runs counter to the scheme of grant of interest on refund. The said interpretation cannot be accepted as there cannot be any situation from where a person will pay tax or penalty over and above or in excess of the demand notice under section 156. It is beyond comprehension that a man of ordinary prudence will pay the tax or penalty in excess of the sum so demanded. It is irrational and unreasonable also. An interpretation which would create an unfair, irrational or unreasonable result should be avoided. A result not intended to be sub served by the object of the legislation should be avoided. **[See CIT versus J.H.Gotla, (1985) 156 ITR 323 (S.C)].**

The Supreme Court in the case of **Sandvik Asia Ltd. Versus Commissioner of Income Tax I, Pune & others (2006) 2 Supreme Court Cases 508** though with the reference to the assessment years prior to assessment year 1989-90 while interpreting the Sections 237 and 240 of the Act has pointed out that Section 240 of the Act provides for refund by the Revenue on appeal etc, deals with all subsequent stages of proceedings and in that connection, it is “phrased in terms of “any amount becoming due to an assessee.” More or less the Explanation is similarly worded. It follows that the words any amount of tax or penalty specified in the notice of demand issued under section 156 “is paid in excess of such demand” would mean the amount of tax or penalty found in excess of the demand in the light of the appellate or revisional order. “ The excess of such demand” in the Explanation would mean demand as ultimately upheld by appellate

or revisional authority or any court and as a result thereof the amount paid by the assessee has been found in excess.

A look to the scheme of the Income Tax clearly demonstrates that at the initial stage of any proceedings under the Act, any refund will depend on whether any tax has been paid by an assessee in excess of tax actually payable by him. In Section 237 of the Act similar kind of words, tax paid in excess of amount “properly chargeable” have been used.

The ambit and scope of newly inserted section 244A has been explained by departmental circular no.549 dated 31st October, 1989.

It finds therein that the old provisions regarding payment of interest by the department as contained in Sections 214, 243 and 244 were complicated. Certain gaps were left for which the 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 Amendment Act, 1987 has inserted a new section 244A in the Income Tax Act. Meaning thereby Section 244A has been added to remove the complication and make the department liable to pay interest for the money remaining with the government.

The relevant portions from the circular is extracted below:

“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 per annum to 1.5 per cent 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.”

In this connection relevant extract from paragraph 11.4 of the said circular is reproduced below:-

11.4 The provisions of the new section 244A.—“The provisions of the new section 244A are as under:

- (i) Sub-section (1) provides that where in pursuance of any order passed under this Act, refund of any amount becomes due to the assessee then—

(a) if the refund is out of any advance tax paid or tax deducted at source during the financial year immediately preceding the assessment year, interest shall be payable for the period starting from the 1st April of the assessment year and ending on the date of grant of the refund. No interest shall, however, be payable if the amount of refund is less than 10% of the tax determined on regular assessment;

(b) if the refund is out of any tax, other than advance tax or tax deducted at source, or penalty, interest shall be payable for the period starting from the date of payment of such tax or penalty and ending on the date of the grant of the refund. **(Refer to Example III in para. 11.8)**

The interest is to be calculated @ 1.5%¹⁰ “per month or part of a month” comprised in the period of delay for which the interest is payable. As already explained in para. 10.11 *ante*, the meaning of this expression is that even where the delay is for part of a month, interest @ 1.5% will be charged.”

The object and purpose can be found out in paragraph 11.3 of the said departmental communication. In the subsequent paragraphs, the provisions of section 244A have been explained. The illustration for the purposes of calculation of the interest i.e. the date from which interest would be payable by the department and the period up to which the department will pay the interest as a result of appeal in a case covered under clause (b) of section 244A has been given, in Example–III in para 11.8. For the sake of convenience, the said Example-III is reproduced below:-

Example-III.—Grant of refund as a result of appellate order.— Interest payable by the Department under section 244A:

(i) Tax due as per return of income for the assessment year 1989-90 filed on 31-10-1989, the due date	Rs.3,00,000
(ii) The tax of Rs.3,00,000 due as per return has been paid by the assessee as follows:	
By way of advance tax by 31-3-1989	Rs.2,80,000
Under section 140A on 31-10-1989	<u>Rs.20,000</u> Rs. 3,00,000
(iii) Tax determined on completion of regular assessment under section 143(3) on 31-3-1990	Rs.4,00,000
(iv) Date of payment of further demand of Rs.1,00,000 [col. (iii) minus (ii)]	1-5-1990
(v) Tax determined as a result of appellate order under section 250 on 30-9-1990	Rs. 3,20,000
(vi) Refund due as a result of appeal	Rs. 80,000
(vii) Date of grant of actual refund	31-10-1990

¹⁰ Reduced to 1%, w.e.f. 1-10-1991.

(viii) Interest payable by the Department @ 1.5%

per month for 6 months (1-5-1990-31-10-1990),

i.e., @ 9% on Rs.80,000

Rs.7,200

The aforesaid example perfectly fits in the case of the petitioner. A reading of the said example would show that the interest would be payable by the department at the prescribed rate per month from the date of actual deposit to the date of appellate order on the sum found excess beyond the tax determined finally. The Explanation should be interpreted accordingly. The rule of construction by reference to contemporaneous exposit is a well established rule for interpreting a statute. **(See K.P Varghese versus ITO, (1981) 131 ITR 597 (S.C))** The Apex Court has approved the view that it is well settled principle of interpretation that courts will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it. The above circular supports our view that interest on refund amount is due from the date of actual payment u/s 244A(1) (b) to the date of refund. It would be most harsh and inequitable to such an assessee to deny the interest, who in obedience of demand notice pays the tax, which has been subsequently found not payable. Such honest tax payers be respected and compensated suitably by the department. It is difficult to conceive any rational reason why the legislature should have thought to deprive such assessee of their legitimate claim of interest by way of compensation, for the fault of the department for raising an incorrect demand of tax. Law as is applicable prior to assessment year 1989-90 or the object and purpose of enactment of Section 244A, as mentioned in the circular or scheme of the Act, none of them warrant the interpretation of Explanation in the manner, as suggested by the respondents herein.

We, therefore, find sufficient force in the submission of the learned counsel for the petitioner that the petitioner is entitled to receive interest from the date of actual deposit on the excess amount made in pursuance of the demand notice issued under section 156 of the Income Tax Act to the date of actual refund. The stand of the department that since the petitioner has not paid in excess of any sum mentioned in the notice of demand issued under section 156, no interest is payable, is rejected. This is a novice stand which has been taken by the department in the present case. The said stand has been taken in ignorance of a situation when the demand is ultimately reduced as a result of an order passed by the higher authority or court.

The Income Tax Act statutorily provides for payment of interest on the excess deposit of tax. It has gone to the extent by providing that if an assessee deposits the excess tax by way of advance tax or excess tax is deducted at source under 206 C or is treated as paid under section 199, the assessee would be entitled to receive the simple interest on the excess amount as per formula provided under clause(a) of Section 244A

(1).

On a correct reading of the Explanation, date of actual payment of tax or penalty, in the light of Explanation III referred in the Departmental Circular No.549 will be the date from which the refund is due. The word excess used in the Explanation means the amount as found “excess” as a result of subsequent to the order ordering the issue of notice of demand under section 156 of the Act.

There is another aspect of the case. The Apex Court in the case of ***Sandvik Asia Ltd. Versus Commissioner of Income Tax (Supra)*** has examined the question of payment of interest upon the interest amount in great depth. In that connection it has observed that payment of interest for delayed refund is nothing but a compensation for depriving the assessee to utilize the money. It has been laid down that: assuming that there is no provision in the Act for payment of compensation, compensation for delay is required to be paid in view of its judicial pronouncements.

There is another reason to reject the contention of the Department. If the interpretation of the Explanation as suggested by the Department is accepted, the main provision, sub section(b) of Section 244-A(1) would become redundant. In no case where a refund is due to an assessee as a result of the subsequent order, the assessee will receive interest on the refund amount, which is not so contemplated under the Act.

We therefore, reject the above contention of the learned counsel for the respondent.

Then it was urged that in view of sub section (2) of Section 244-A, the delay is attributable to the petitioner and therefore, the petitioner is not entitled for any interest. The said argument has been stated to be rejected. Before proceeding further, it is necessary to have a look to the pleadings of the Department. The Court was taken through paragraph 3 of the counter affidavit of Shri Girish Chandra Shukla.

For the sake of convenience, the said paragraph is reproduced below:

“That the deponent submits that the main and only prayer of the petitioner is for seeking a direction to respondents for issue of refunds relating to assessment years 1992-93 to 1994-95. Apparently, there has been some delay in grant of refunds due to the petitioner for several reasons including frequent changes of incumbent Assessing officers and inaction on the part of the assessee petitioner in bringing the fact regarding delay in grant of refund to the notice of the Assessing Officers. For example, the present Assessing Officer (Shri Ram Singh, Assistant Commissioner of Income Tax) joined as Assessing Officer in the month of June 2011 but the assessee/petitioner never brought to his notice the fact regarding pending refunds. Even the official receipts of all earlier so called reminders have not been filed. Some of the alleged reminders

are not available in the official records. May as it be, the fact is that there has been some delay on the part of the department and, therefore, the department has tentatively decided to grant refund along with statutory interest on the refund amounts. It may be informed that as per calculation in ITNS 150 dated 1.2.2012, refund of Rs.29,82,056/- has been worked out. The refund order of actual amount will be issued after approval of the competent authority at an early date.”

The respondents have come out with the case that there has been delay in grant of refund due to frequent changes of the Assessing Officers. In the same breath, it has been stated that delay has been caused due to inaction on the part of the assessee petitioner in bringing the fact regarding grant of refund to the notice of the assessing authority.

Noticeably, the said paragraph has been sworn not on the basis of the record or by any of the Assessing Officers of the petitioner. It has been sworn on the basis of the legal advice. It follows that the plea that delay is attributable to the assessee has been set out on getting the legal advice. Such a plea is liable to be rejected at its threshold. It is the obligation of the Department to grant refund of the excess amount as a result of appellate or revisional order. The Act does not contemplate that the assessee should run to the Department for refund of the excess amount. After the filing of the writ petition, the refund has been made. Till the filing of the writ petition, the Department slept over the matter and made the petitioner to run from pillar to post for years without any rhyme or reason.

It is apposite to note that the delay attributable to assessee is referable to the late filing of the return etc. and has nothing to do with regard to claim of the refund. The said point can be illustrated with the help of Example II as given in the Departmental Circular No. 549. It demonstrates that where the return was filed with delay of four months, the interest shall not be payable by the Government for the period of delay attributable to the assessee. Except making a bald statement, it was neither pleaded nor proved with the help of cogent material to show that the delay was attributable to the petitioner.

We therefore, reject the above stand of the Department.

Next it was urged by the learned counsel for the petitioner that in view of the judgment of Apex Court in the case of ***Sandvik Asia Ltd. Versus Commissioner of Income Tax (Supra)***, the petitioner is entitled to receive interest on the interest amount as well.

We are leaving this question open for consideration by the Department by providing that the Department shall consider this stand of the petitioner first. The Department shall consider the decision of the Apex Court in the case of ***Sandvik Asia Ltd. Versus Commissioner of Income Tax (Supra)*** in this regard.

Before saying omega to the case, we cannot resist our temptation to notice that paragraph 3 of the counter affidavit sworn by Shri Girish Chandra Shukla, the following has been stated :

*“May as it be, the fact is that there has been some delay on the part of the department and, therefore, the department has tentatively decided to **grant refund along with statutory interest on the refund amount.**”*

Further it has been stated that the refund order of actual amount will be issued after approval of the competent authority at an early date. The same has been reiterated in paragraph-17 of the counter affidavit.

It appears that for the reasons best known to the Department, or to the competent authority referred in paragraphs 3 & 17, the interest amount has been withheld and is awaiting the approval of the competent authority.

We do not wish to say anything more in this regard and leaving the matter open to the concerned authority to take such action as it may be deemed fit against the competent authority or any other person concerned for not taking an appropriate decision or for inaction. Noticeably, the Apex Court has already expressed its displeasure in paragraph 49 for the inaction on the part of such Officers by making the following observations. We follow them.

For the sake of convenience, paragraph 49 is reproduced below:

“49. This is the fit and proper case in which action should be initiated against all the officers concerned who were all in charge of this case at the appropriate and relevant point of time and because of whose inaction the appellant was made to suffer both financially and mentally, even though the amount was liable to be refunded in the year 1986 and even prior thereto. A copy of this judgment will be forwarded to the Hon'ble Minister for Finance for his perusal and further appropriate action against the erring officials on whose lethargic and adamant attitude the Department has to suffer financially.”

In nutshell, our conclusions are as follows:

- i) The expression 'excess of such demand' used in the Explanation means the demand which is found in excess as a result of appellate order.
- ii) The Explanation is relevant only for the purposes of determination of date of payment of tax or penalty.
- iii) The Departmental Circular referred to above the existence of which was not disputed by the respondents clinches the issue.
- iv) The date of payment is the date when the amount is deposited by the assessee in

pursuance of a demand notice. .

v)The interest is payable by way of compensation as held by the Supreme Court in the case of ***Sandvik Asia Ltd.versus Commissioner of Income Tax (Supra)***.

vi)The delay was not attributable to the petitioner in the present case.

In view of above discussions, we find that the petitioner is entitled to receive interest on the refund amount which was refunded to it on various dates for the relevant assessment years from the date of actual deposit to the date of actual refund. While doing so, the Department shall also pass a speaking order in the light of the judgment of the Supreme Court referred to above with regard to the claim of the petitioner for payment of interest upon interest amount.

By moulding the relief, the writ petition succeeds and is allowed. The petitioner shall be entitled to receive Rs.5000/- towards cost. The respondent nos. 2 & 3 in particular are directed to pay the interest on the excess deposit of tax on the sum so refunded on 26.2.2012 for the assessment year 92-93 and 1994-1995, on 15.4.2012 for the assessment year 1993-94 from the date of actual payment within a period of one month.

(Prakash Krishna,J.) (Ashok Bhushan,J.)

Order Date: 31.5.2012

LBV/IB