

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

& THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

& THE HONOURABLE MR.JUSTICE BASANT BALAJI

THURSDAY, THE 31ST DAY OF MARCH 2022 / 10TH CHAITHRA, 1944

WA NO. 1939 OF 2018

AGAINST THE JUDGMENT IN WP(C) 19283/2007 OF HIGH COURT OF KERALA

APPELLANT/S:

M/S.STATE BANK OF INDIA
(FORMERLY KNOWN AS STATE BANK OF TRAVANCORE), HEAD
OFFICE , POOJAPPURA, THIRUVANANTHAPURAM, -695 012,
REPRESENTED BY ITS DEPUTY GENERAL MANAGER(FINANCE AND
ACCOUNTS).

BY ADVS.A.KUMAR; P.J.ANILKUMAR; P.S.SREE PRASAD

RESPONDENT/S:

- 1 CHIEF COMMISSIONER OF INCOME TAX
AYAKAR BHAVAN, THIRUVANANTHAPURAM- 695 003.
- 2 ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE I(I), THIRUVANANTHAPURAM-695003.
- 3 DEPUTY COMMISSIONER OF INCOME TAX
(ASSESSMENT), SPECIAL RANGE, THIRUVANANTHAPURAM-695001.
- 4 THE CENTRAL BOARD OF DIRECT TAXES,
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, GOVERNMENT
OF INDIA, NEW DELHI-110001.

BY ADVS.
SRI.K.M.V.PANDALAI, INCOME TAX DEPARTMENT
SRI.CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT

THIS WRIT APPEAL HAVING COME UP FOR REFERENCE AND RESERVED FOR
JUDGMENT ON 04.03.2022, THE COURT ON 31.03.2022 DELIVERED THE FOLLOWING:

J U D G M E N T

S.V. Bhatti, J.

We have Heard Mr A Kumar learned counsel for the appellant, and Mr Christopher Abraham learned Standing Counsel for the respondents.

2. Through the order dated 24.01.2019, a question of considerable importance under Section 244A of the Income Tax Act 1961 (for short ‘the Act’), is referred to the Full Bench, and we find it useful, at the outset, to preface the operative portion of the Reference Order, which reads thus:

“9. The amendment brought in the year 2017 according to us is only clarificatory in nature. The Department which would have ordinarily refunded the amounts due with interest on finalisation of proceedings cannot be mulcted with the liability of interest for the period in which amounts were retained, by reason only of defects in TDS certificates which could not be accepted or processed for the

purpose of credit to tax payable; and effecting refund if found in excess. The Department would not be concerned as to at whose hands the default was occasioned since the obligation to submit the proper TDS form is on the assessee who claims such credit of the tax deducted at source. However, our finding being contrary to what has been held by the Division Bench of this Court, we are of the opinion that the matter requires reference to a Larger Bench.”

3. State Bank of India/assessee filed W.P.(C) No. 319283/2007 for quashing or setting aside Exts.P1, P2, P3, P4 and P5, and for a further direction for payment of interest which was rejected by the orders impugned in the writ petition. The circumstances necessary for disposing of the Reference are as follows:

3.1 The appellant, for the Assessment Years 1992-93, 1993-94, 1995-96 and 2001-02 claimed interest on refund of surplus TDS effected in the respective years. The Revenue did not accept the appellant’s interest claim while refunding the excess amount received for the return period. Hence, the writ

petition was filed to set aside the orders rejecting the assessee's claim for interest during the delayed period. The issue is considered, and turns around on Section 244A of the Act, which 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 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,

(i) from the 1st day of April of the assessment year to the date on which the refund is granted, if the return of income has been furnished on or before the due date specified under sub-section (1) of section 139; or

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

(aa) where the refund is out of any tax paid under section 140A, 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 date of furnishing of return of income or payment of tax, whichever is later, to the date on which the refund is granted:

Provided that no interest under clause (a) or clause (aa) 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 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.

"(IA) In a 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 reassessment, the assessee shall 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 to the date on which the refund is granted.

(1B) Where refund of any amount becomes due to the deductor in respect of any amount paid to the credit of the Central Government under Chapter XVII-B, such deductor shall be entitled to receive, in addition to the said amount, simple interest thereon calculated at the rate of one-half per cent for every month or part of a month comprised in the period, from the date on which –

(a) claim for refund is made in the prescribed form; or
(b) tax is paid, where refund arises on account of giving effect to an order under section 250 or section 254 or section 260 or section 262, to the date on which the refund is granted.

(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee or the deductor, as the case may be,] 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 "under sub-sections (1) or (1A) "or (1B), 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.

(emphasis supplied)

4. Mr Kumar contends that the assessee's claim is for a refund of excess tax collected or deducted as advance tax, self-

assessment tax paid, tax paid on regular assessment etc. The assessee has the right to claim interest along with a refund. In the case on hand, the delay in finalisation of return is on account of commission or omission caused in the issue of TDS certificates by the deductor/assessee-Bank. The judgment of this Court in *Commissioner of Income-tax, Thiruvananthapuram v. State Bank of Travancore*¹, which is a judgment *inter-parties* for the Assessment Year 1989-90 and 1990-91; the same view is applicable to the subject Assessment Year as well. To the same effect are the judgments reported in *Commissioner of Income-Tax v. Larsen and Toubro Ltd*²; *Commissioner of Income Tax-I, Chandigarh v. M/s.Punjab State Cooperative Bank*³; *Commissioner of Income Tax – LIU v. Union Bank of India*⁴; *The Commissioner of Income Taxiv v.*

¹ (2014) 42 Taxmann.com 572 (Kerala)

² (2011) 330 ITR 340

³ Judgment dated 16.12.2008 in I.T.A. No.674 of 2008

⁴ Judgment dated 17.12.2018 in ITA Nos.894 & 920/2016

*Nagarjuna Finance Ltd*⁵; *The Meghalaya Cooperative Apex Bank Ltd v. The Chairman Central Board of Direct Taxes*⁶; and *Union of India, Through Director of Income Tax v. Tata Chemicals Limited*⁷.

4.1 Mr Kumar further contends that Section 244A sub-section (2) on facts and in the circumstances of the case is not attracted, for, the delay is not on account of assessee's commission or omission. He lays much emphasis on *Larsen and Toubro Ltd* and *Union Bank of India* cases (supra) and argues that there is no legal ground available for disagreeing with the view taken in the said judgments, and the ratio is applicable in all fours. Referring to the *Tata Chemicals Limited* case, he argues that the Supreme Court *in extenso* considered the scheme of refund, right of the assessee for interest, and the denial of interest claim as unjustified. The assessee could get the defects pointed out in the TDS certificates cured and the time taken

⁵ Judgment dated 29.01.2019 in Income Tax Tribunal Appeal No.632 of 2018 Telangana High Court

⁶ Judgment dated 31.05.2017 in W.P.(C) No.317/2014

⁷ (2014) 6 SCC 335

does not result in denial of interest to the assessee. He argued that the Reference Order dated 24.01.2019, in substance, calls upon this Court to view the claim of interest of assessee for the period where delay attributed to the assessee is concerned. In other words, the Full Bench could also decide whether the view taken by this Court in the judgment *inter-parties* applies to the Assessment Years on hand and the interpretation placed on Section 244A of the Act is tenable or not?

5. *Per contra*, Mr Christopher Abraham argues that the decisions relied on by the assessee; namely, *Larsen and Toubro Ltd*; *Union of India*, and *inter-parties* judgment in *State Bank of Travancore*- cannot be said as laying down a principle of law concerning Section 244A of the Act. Section 244A (1) reads that: (a) if refund of any amount becomes due to the assessee under this Act, (b) the assessee is subject to the provisions of this section, entitled to receive in addition to the refund amount, (c)

simple interest thereon calculated as per Section 244A(1)(b). Section 244A(2), which is part of Section 244A, deals with: (a) if the proceedings resulting in a refund, are delayed for reasons attributable to the assessee, (b) whether wholly or in part, (c) the period of the delay so attributable to the assessee shall be excluded from the period for which interest is payable under sub-section (1) or (1A) or (IB), (d) a question as to the period to be excluded be decided by the Principal Commissioner, whose decision shall be final.

5.1 Mr Christopher Abraham argues that the plain or textual interpretation of Section 244A sub-section (1) on the one hand, and sub-section (2) on the other hand, is that the right to receive interest under the Act stems out from an assessment order made by the Assessing Officer. The assessee is expected to file the return fully compliant with the law requirements. The assessee admitted to curing the defects or

rectifying the omissions pointed out in the income tax return by the Assessing Officer. And at a subsequent point in time, the defects are remedied. Then, the Assessing Officer finalises the return, the tax paid/payable, the assessee's claim for refund, etc., becomes determinable under the Act. During the period where omissions are noted in the returns filed, the assessee takes time for curing or rectifying the omissions; levy of interest during this period on the Department is unavailable from the plain language of Section 244A sub-section (1) and sub-section (2). Section 244A sub-section (1) specifically refers to, subject to the provisions of the Section, i.e., the period calculation, exclusion etc., is part of Section 244A sub-sections (1) and (2). He distinguishes the judgment relied on by the assessee and further contends that the decision of the Apex Court in the *Tata Chemicals Limited* case supports the construction of Section 244A sub-sections (1) and (2) for

exclusion of time taken by the assessee to cure the defects.

5.2 On the other hand, by any standard for inaction, commission or omission of the assessee in completing the assessment, the Department cannot be mulcted with the compensatory amount by way of interest. According to him, the interpretation now placed by the assessee would render sub-section (2) completely otiose. In support of his argument, he relies on the judgments in *L. Madanlal Steels Ltd. v. Chief Commissioner of Income-Tax*⁸; *Pala Marketing Co-operative Society Ltd. v. Commissioner of Income-Tax*⁹; *Escorts Ltd. v. Commissioner of Income-Tax*¹⁰; and *Kerala State Civil Supplies Corporation Ltd. v. Joint Commissioner of Income-Tax (Assessment)*¹¹. Therefore, it is argued that the reasons expressed by the Division Bench in the Reference Order are tenable.

⁸ (2015) 370 ITR 205 (T&AP)

⁹ (2016) 389 ITR 304 (Ker.)

¹⁰ (2002) 257 ITR 468 (Del.)

¹¹ (2006) 282 ITR 647 (Ker.)

6. After perusing the judgments, we notice that these judgments relied on by the appellant do not throw light on the point noted by the Division Bench in the Reference Order or deal with the effect of sub-section (2) of Section 244A of the Act. We find it helpful to refer to the following excerpts from the *Tata Chemicals Limited* judgment at this juncture of our consideration.

“30. The refund becomes due when deducted at source, advance tax paid, self-assessment tax paid and tax paid on regular assessment exceeds tax chargeable for the year as a result of an order passed in appeal or other proceedings under the Act. When refund is of any advance tax (including tax deducted/collected at source), interest is payable for the period starting from the first day of the assessment year to the date of grant of refund. **No interest is, however, payable if the excess payment is less than 10 per cent of tax determined under Section 143(1) or on regular assessment. No interest is payable for the period for which the proceedings resulting in the refund are delayed for the reasons attributable to the assessee (wholly or partly).** The rate of interest and entitlement to interest on excess tax are

determined by the statutory provisions of the Act. Interest payment is a statutory obligation and non-discretionary in nature to the assessee. In tune with the aforesaid general principle, Section 244-A is drafted and enacted. The language employed in Section 244-A of the Act is clear and plain. It grants substantive right of interest and is not procedural. The principles for grant of interest are the same as under the provisions of Section 244 applicable to assessments before 1-4-1989, albeit with clarity of application as contained in Section 244-A.

31. The Department has also issued circular clarifying the purpose and object of introducing Section 244-A of the Act to replace Sections 214, 243 and 244 of the Act. It is clarified therein, that, since there was some lacunae in the earlier provisions with regard to non-payment of interest by the Revenue to the assessee for the money remaining with the Government, the said section is introduced for payment of interest by the Department for delay in grant of refunds. A general right (sic duty) exists in the State to refund any tax collected for its purpose, and a corresponding right exists to refund to individuals any sum paid by them as taxes which are found to have been wrongfully exacted or are believed to be, for any reason, inequitable. The statutory obligation to refund carried with it the right to interest also. This is true in the case

of the assessee under the Act.

37A "tax refund" is a refund of taxes when the tax liability is less than the tax paid. As per the old section an assessee was entitled for payment of interest on the amount of taxes refunded pursuant to an order passed under the Act, including the order passed in an appeal. In the present fact scenario, the deductor/assessee had paid taxes pursuant to a special order passed by the assessing officer/Income Tax Officer. In the appeal filed against the said order the assessee has succeeded and a direction is issued by the appellate authority to refund the tax paid. The amount paid by the resident/deductor was retained by the Government till a direction was issued by the appellate authority to refund the same. When the said amount is refunded it should carry interest in the matter of course. As held by the Courts while awarding interest, it is a kind of compensation of use and retention of the money collected unauthorisedly by the Department. When the collection is illegal, there is corresponding obligation on the Revenue to refund such amount with interest inasmuch as they have retained and enjoyed the money deposited. Even the Department has understood the object behind insertion of Section 244-A, as that, an assessee is entitled to payment of interest for money remaining with the Government which

would be refunded. There is no reason to restrict the same to an assessee only without extending the similar benefit to a resident/deductor who has deducted tax at source and deposited the same before remitting the amount payable to a non-resident/ foreign company.

38. Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the aforesaid amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing statute. Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there-being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party which *ex ae quo et bono* ought to be refunded, the right to interest

follows, as a matter of course.”

6.1 In *Sandvik Asia Ltd v. Commissioner of Income Tax 1, Pune*¹², the Supreme Court considered the entitlement of refund, refund with interest, interest on interest for abnormal delay in refund of tax and interest, and payment of compensation on delayed payment. Award of interest on the refunded amount is as per the statutory provisions of law as it then stood and on peculiar facts and circumstances of each case. Adverting to the entitlement of interest, in paragraph 34 therein, the Supreme Court held as follows:

“In our opinion, the appellant is entitled to interest under Section 244 and /or Section 244-A of the Act in accordance with the terms and provisions of the said sections.”

6.2 In our view, the Supreme Court has laid down, as emphasised in the preceding paragraphs, that no interest is

¹² (2006) 2 SCC 508

payable on refund of excess tax received for the delayed period in finalisation of assessment on account of assessee's fault (wholly or partially). The construction principles are well established and familiar enough that by applying the golden rule of construction, the section must receive a meaning, as spelt out in the enactment. Section 244A, when construed by the golden rule of interpretation, we hold that refund of any amount firstly becomes due to the assessee upon order of assessment made by the assessing officer. In addition to a refund of excess tax received or collected, the assessee is also entitled to interest on the excess refunded by order of assessment; however, the period of interest is governed by Section 244A (2). Section 244A (2) provides that the period taken by the assessee to cure the defects in finalising the assessment is excluded for interest calculation. As it stood for the applicable assessment years, sub-Section (2) merely refers

to reasons attributable to the assessee. Therefore, omission or commission in the return filed by the assessee resulting in a delay in assessment is attributable to the assessee; hence, the time taken to cure those omissions and defects is excluded for interest calculation. Having availed the time for rectifying the defects and claiming interest for the defect rectification time is unavailable. Such an interpretation does not fit into the requirement of filing a return fully compliant with the order of assessment, levy of interest, refund etc. The period taken by the assessee for curing the defects cannot be excluded while calculating interest; then, for no fault of the Department, the Department is called upon to compensate by way of interest.

6.3 For the above discussion, and by relying on judgments of the Supreme Court in *Tata Chemicals Limited* and *Sandvik Asia Ltd* cases, we hold that the assessee is not entitled to interest for the period taken by the assessee for curing the

defects or omissions in the return or in the annexures filed along with the returns. In other words, the interregnum period, i.e., the period taken by the assessee for rectifying the defects or curing the omissions, does not entail the receipt of interest.

We agree with the view expressed by the Division Bench in the Order under Reference. The appeal fails and is dismissed. No order as to costs.

Sd/-

S.V.BHATTI

JUDGE

Sd/-

BECHU KURIAN THOMAS

JUDGE

Sd/-

BASANT BALAJI

JUDGE

APPENDIX OF WA NO. 1939/2018

APPELLANTS EXHIBITS

ANNEXURE A TRUE COPY OF THE REVIEW PETITION R P NO.369 OF 2017

**ANNEXURE B TRUE COPY OF THE JUDGMENT IN THE REVIEW PETITION
NO.369 OF 2017 DATED 14.03.2018**