

Commissioner of Income Tax, Gujarat

v.

Gujarat Flouro Chemicals

(Supreme Court Of India)

HON'BLE CHIEF JUSTICE MR. S.H. KAPADIA HON'BLE MR. JUSTICE MADAN B. LOKUR

Special Leave to Petition (Civil) No. 11406 Of 2008 | 23-08-2012

1. The short point which arises in the present case is:- What is the character of Tax Deductible at Source (TDS)/Advance Tax under the Income Tax Act, 1961?

2. Advance Tax is leviable in the very year in which income accrues or arises. It is normally paid in three instalments. A similar situation arises in the case of TDS. It is Tax Deductible at Source which is also called as 'Withholding Tax' under Section 195 of the Income Tax Act, Act 1961 'Act', for short]. Broadly, both Advance Tax as well as TDS are based on estimation of income by the assessee.

3. The question which arises in this case is, whether interest is payable by the Revenue to the assessee if the aggregate of instalments of Advance Tax/TDS paid exceeds the assessed tax? This controversy arises in a number of cases pending before this Court.

4. The assessee before us has relied upon the judgement of a Division Bench of this Court in the case of Sandvik Asia Limited v. Commissioner of Income Tax & Ors., (2006) 280 ITR 643 : 2006 (2) S.C.C. 658, That was a case relating to payment of Advance Tax. The main issue which arose for determination in Sandvik Asia [supra] was, whether the assessee was entitled to be compensated by the Revenue for delay in paying to it the amounts admittedly due. In other words, the assessee was entitled to a refund. A refund order was passed in favour of the assessee. The question was, whether the Revenue was obliged to pay interest on the amount ordered to be refunded.

5. The argument in Sandvik Asia [supra] on behalf of the assessee was that it was entitled to compensation by way of interest for the delay in payment of the amounts lawfully due to it which were wrongly withheld for a long period of seventeen years. Vide Paragraph (23) of Sandvik Asia [supra], the Division Bench held that, in view of the express provisions of the Act, the assessee was entitled to compensation by way of interest for the delay in payment of the amounts lawfully due to the assessee, which were withheld wrongly by the Revenue. With due respect, Section 214 of the Act does not provide for payment of compensation by the Revenue to the assessee in whose favour a refund order has been passed. Moreover, in

Sandvik Asia [supra], interest was ordered on the basis of equity. It was also ordered to be paid on the basis of Article 265 of the Constitution.

6. We have serious doubts about the correctness of the judgement in Sandvik Asia [supra]. In our view, the judgement of this Court in the case of Modi Industries Limited v. Commissioner of Income Tax, 1995 (6) S.C.C. 396 correctly holds that Advance Tax or TDS loses its identity as soon as it is adjusted against the liability created by the Assessment Order and becomes tax paid pursuant to the Assessment Order. If Advance Tax or TDS loses its identity and becomes tax paid on the passing of the Assessment Order, then, is the assessee not entitled to interest under the relevant provisions of the Act? In this connection, we may refer to the provisions of Sections 195(1), 195A, 214, 219, 237, 243 and 244, which stood at the relevant time. They are as under:

"195(1). Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest (not being on securities) or any other sum chargeable under the provisions of this Act (not being income chargeable under the head 'Salaries' or dividends) shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force.

Explanation: For the purposes of this section, where any interest or other sum as aforesaid is credited to any account, whether called 'Interest payable account' or 'Suspense account' or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

195A. Where, under an agreement or other arrangement, the tax chargeable on any income referred to in the foregoing provisions of this Chapter is to be borne by the person by whom the income is payable, then, for the purposes of deduction of tax under those provisions such income shall be increased to such amount as would, after deduction of tax thereon at the rates in force for the financial year in which such income is payable, be equal to the net amount payable under such agreement or arrangement.

214. (1) The Central Government shall pay simple interest at fifteen per cent per annum on the amount by which the aggregate sum of any instalments of advance tax paid during any financial year in which they are payable under sections 207 to 213 exceeds the amount of the assessed tax from the 1st day of April next following the said financial year to the date of the regular assessment for the assessment year immediately following the said financial year, and where any such instalment is paid after the expiry of the financial year during which it is payable by reason of the provisions of section 213, interest as aforesaid shall also be payable on that instalment from the date of its payment to the date of regular assessment:

Provided that in respect of any amount refunded on a provisional assessment under section 141A, no interest shall be paid for any period after the date of such provisional assessment.

(1A) Where as a result of an order under 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 payable 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.

(2) On any portion of such amount which is refunded under this Chapter, interest shall be payable only up to the date on which the refund was made.

219. Any sum, other than a penalty or interest, paid by or recovered from an assessee as advance tax in pursuance of this Chapter shall be treated as a payment of tax in respect of the income of the period which would be the previous year for an assessment for the assessment year next following the financial year in which it was payable, and credit therefore shall be given to the assessee in the regular assessment:

Provided that where, before the completion of the regular assessment, a provisional assessment is made under section 141A, the credit shall be given also in such provisional assessment.

237. If any person satisfies the Assessing Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess.

243.(1) If the Assessing Officer does not grant the refund, --

[a] in any case where the total income of the assessee does not consist solely of income from interest on securities or dividends, within three months from the end of the month in which the total income is determined under this Act, and

[b] in any other case, within three months from the end of the month in which the claim for refund is made under this Chapter, the Central Government shall pay the assessee simple interest at fifteen per cent per annum on the amount directed to be refunded from the date immediately following the expiry of the period of three months aforesaid to the date of the order granting the refund.

Explanation: If the delay in granting the refund within the period of three months aforesaid is attributable to the assessee, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable.

(2) Where any question arises as to the period to be excluded for the purposes of calculation of interest under the provisions of this section, such question shall be determined by the Chief Commissioner or Commissioner whose decision shall be final.

(3) The provisions of this section shall not apply in respect of any assessment for the assessment year commencing on the 1st day of April, 1989 or any subsequent assessment years.

244.(1) Where a refund is due to the assessee in pursuance of an order referred to in section 240 and the Assessing Officer does not grant the refund within a period of three months from the end of the month in which such order is passed, the Central Government shall pay to the assessee simple interest at fifteen per cent per annum on the amount of refund due from the date immediately following the expiry of the period of three months aforesaid to the date on which the refund is granted.

[1A] Where the whole or any part of the refund referred to in sub-section (1) is due to the assessee, as a result of any amount having been paid by him after the 31st day of March, 1975, in pursuance of any order of assessment or penalty and such amount or any part thereof having been found in appeal or other proceeding under this Act to be in excess of the amount which such assessee is liable to pay as tax or penalty, as the case may be, under this Act, the Central Government shall pay to such assessee simple interest at the rate specified in sub-section (1) on the amount so found to be in excess from the date on which such amount was paid to the date on which the refund is granted:

Provided that where the amount so found to be in excess was paid in instalments, such interest shall be payable on the amount of each such instalment or any part of such instalment, which was in excess, from the date on which such instalment was paid to the date on which the refund is granted:

Provided further that no interest under this sub-section shall be payable for a period of one month from the date of the passing of the order in appeal or other proceeding:

Provided also that where any interest is payable to an assessee under this sub-section, no interest under Sub-section (1) shall be payable to him in respect of the amount so found to be in excess.

[2] Where a refund is withheld under the provisions of section 241, the Central Government shall pay interest at the aforesaid rate on the amount of refund ultimately determined to be due as a result of the appeal or further proceeding for the period commencing after the expiry of three months from the end of the month in which the order referred to in section 241 is passed to the date the refund is granted.

[3] The provisions of this section shall not apply in respect of any assessment for the assessment year commencing on the 1st day of April, 1989 or any subsequent assessment years."

7. We say no more. With respect, we are of the view that Sandvik Asia [supra] has not been correctly decided.

8. In the circumstances, we direct the Registry to place this matter before Hon'ble the Chief Justice on the administrative side for appropriate orders.

9. The Registry is also directed to place similar matters, which are pending in this Court, along with this petition.