

Commissioner Of Income Tax, Gujarat vs Gujarat Fluoro Chemicals on 18 September, 2013

Equivalent citations: AIR ONLINE 2013 SC 116

Bench: M.Y. Eqbal, Sudhansu Jyoti Mukhopadhyaya, H.L. Dattu

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. 11406 of 2008

|Commissioner of Income Tax, Gujarat |..Petitioner(s) |

Versus

|Gujarat Fluoro Chemicals |..Respondent(s) |

WITH

SPECIAL LEAVE PETITION (C) No.14048 OF 2012
SPECIAL LEAVE PETITION (C) No.14050 OF 2012
SPECIAL LEAVE PETITION (C) No.14051 OF 2012
SPECIAL LEAVE PETITION (C) No.14049 OF 2012
SPECIAL LEAVE PETITION (C) No.14768 OF 2012
SPECIAL LEAVE PETITION (C) No.20154 OF 2012
SPECIAL LEAVE PETITION (C) No.21851 OF 2012
SPECIAL LEAVE PETITION (C) No.25727 OF 2012
SPECIAL LEAVE PETITION (C) No.27453 OF 2012
SPECIAL LEAVE PETITION (C) No.27454 OF 2012
SPECIAL LEAVE PETITION (C) No.27455 OF 2012
SPECIAL LEAVE PETITION (C) No.27456 OF 2012
SPECIAL LEAVE PETITION (C) No.27457 OF 2012
SPECIAL LEAVE PETITION (C) No.27458 OF 2012
SPECIAL LEAVE PETITION (C) No.27459 OF 2012
SPECIAL LEAVE PETITION (C) No.27460 OF 2012
SPECIAL LEAVE PETITION (C) No.27461 OF 2012
SPECIAL LEAVE PETITION (C) No.27462 OF 2012
SPECIAL LEAVE PETITION (C) No.27463 OF 2012
SPECIAL LEAVE PETITION (C) No.27677 OF 2012
SPECIAL LEAVE PETITION (C) No.5730 OF 2013

CIVIL APPEAL No.6301 OF 2011
CIVIL APPEAL No.2534 OF 2012
CIVIL APPEAL No.2535 OF 2012
CIVIL APPEAL No.2536 OF 2012
CIVIL APPEAL No.2537 OF 2012
CIVIL APPEAL No.2539 OF 2012
CIVIL APPEAL No.2540 OF 2012
CIVIL APPEAL No.2541 OF 2012
CIVIL APPEAL No.2542 OF 2012
CIVIL APPEAL No.2543 OF 2012
CIVIL APPEAL No.2944 OF 2012
CIVIL APPEAL No.2945 OF 2012
CIVIL APPEAL No.3436 OF 2012
CIVIL APPEAL No.3437 OF 2012
CIVIL APPEAL No.3445 OF 2012
CIVIL APPEAL No.3446 OF 2012
CIVIL APPEAL No.5408 OF 2012
CIVIL APPEAL No.7596 OF 2012
CIVIL APPEAL No.7772 OF 2012
CIVIL APPEAL No.2589 OF 2013
CIVIL APPEAL No.5478 OF 2013
CIVIL APPEAL No.4630 OF 2012
CIVIL APPEAL No.3825 OF 2012
CIVIL APPEAL No.3826 OF 2012
CIVIL APPEAL No.7217 OF 2011
CIVIL APPEAL No.4335 OF 2012
CIVIL APPEAL No.4336 OF 2012
CIVIL APPEAL No.4337 OF 2012
CIVIL APPEAL No.4338 OF 2012
CIVIL APPEAL No.4339 OF 2012
CIVIL APPEAL No.4340 OF 2012
CIVIL APPEAL No.4341 OF 2012
CIVIL APPEAL No.4342 OF 2012
CIVIL APPEAL No.4343 OF 2012
CIVIL APPEAL No.4344 OF 2012
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CIVIL APPEAL No.4358 OF 2012
CIVIL APPEAL No.4359 OF 2012
CIVIL APPEAL No.4360 OF 2012
CIVIL APPEAL No.4361 OF 2012
CIVIL APPEAL No.4362 OF 2012

CIVIL APPEAL No.4363 OF 2012
CIVIL APPEAL No.4364 OF 2012
CIVIL APPEAL No.4365 OF 2012
AND WITH
CIVIL APPEAL No.4366 OF 2012

O R D E R

1. Doubting the correctness or otherwise of the decision of this Court in the case of Sandvik Asia Limited vs. Commissioner of Income Tax & Ors., (2006) 2 SCC 508, a bench of two learned Judges has referred the following question of law for our consideration and authoritative pronouncement by order dated 28.08.2012:

"The question which arises in this case is, whether interest is payable by the Revenue to the assessee if the aggregate of installments of Advance Tax OF TDS paid exceeds the assessed tax?"

2. In the aforesaid order of reference, this Court has briefly noticed the facts and the discussion in Sandvik case (supra) wherein, the main issue for consideration and determination by this Court was, whether the assessee is entitled to be compensated by the Revenue for delay in payment of the amount admittedly due to the assessee. This Court has noticed inter alia the provisions of Section 214 of the Income Tax Act, 1961 (for short 'the Act') and in light of the same has doubted the correctness of the decision in Sandvik case (supra).

3. In order to answer the aforesaid issue before us, we have carefully gone through the judgment of this Court in Sandvik case (supra) and the order of reference. We have also considered the submissions made by the parties to the lis.

4. We would first throw light on the reasoning and the decision of this Court on the core issue in Sandvik case (supra). The only issue formulated by this Court for its consideration and decision was whether an assessee is entitled to be compensated by the Income Tax Department for the delay in paying interest on the refunded amount admittedly due to the assessee. This Court in the facts of the said case had noticed that there was delay of various periods, ranging from 12 to 17 years, in such payment by the Revenue. This Court had further referred to the several decisions which were brought to its notice and also referred to the relevant provisions of the Act which provide for refunds to be made by the Revenue when a superior forum directs refund of certain amounts to an assessee while disposing of an appeal, revision etc.

5. Since, there was an inordinate delay on the part of the Revenue in refunding the amount due to the assessee this Court had thought it fit that the assessee should be properly and adequately compensated and therefore in paragraph 51 of the judgment, the Court while compensating the assessee had directed the Revenue to pay a compensation by way of interest for two periods, namely; for the Assessment Years 1977-78, 1978-79, 1981-82, 1982- 83 in a sum of Rs.40,84,906/- and interest @ 9% from 31.03.1986 to 27.03.1998 and in default, to pay the penal interest @ 15% per annum for the aforesaid period.

6. In our considered view, the aforesaid judgment has been misquoted and misinterpreted by the assesseees and also by the Revenue. They are of the view that in Sandvik case (supra) this Court had directed the Revenue to pay interest on the statutory interest in case of delay in the payment. In other words, the interpretation placed is that the Revenue is obliged to pay an interest on interest in the event of its failure to refund the interest payable within the statutory period.

7. As we have already noticed, in Sandvik case (supra) this Court was considering the issue whether an assessee who is made to wait for refund of interest for decades be compensated for the great prejudice caused to it due to the delay in its payment after the lapse of statutory period. In the facts of that case, this Court had come to the conclusion that there was an inordinate delay on the part of the Revenue in refunding certain amount which included the statutory interest and therefore, directed the Revenue to pay compensation for the same not an interest on interest.

8. Further it is brought to our notice that the Legislature by the Act No. 4 of 1988 (w.e.f. 01.04.1989) has inserted Section 244A to the Act which provides for interest on refunds under various contingencies. We clarify that it is only that interest provided for under the statute which may be claimed by an assessee from the Revenue and no other interest on such statutory interest.

9. With the aforesaid clarification we now refer back all the matters before a Two Judge Bench of this Court to consider each case independently and take an appropriate decision one way or the other.

Ordered accordingly.

.....J. [H.L. DATTU]J. [SUDHANSU JYOTI MUKHOPADHAYA]
.....J. [M.Y. EQBAL] NEW DELHI, SEPTEMBER 18, 2013.