Sandvik Asia Ltd vs Commissioner Of Income Tax-I, Pune & Ors on 27 January, 2006

Equivalent citations: AIR 2006 SUPREME COURT 1223, 2006 (2) SCC 508, 2006 AIR SCW 468, 2006 (2) AIR KANT HCR 199, 2006 TAX. L. R. 239, (2006) 150 TAXMAN 591, 2006 (1) SCALE 569, (2006) 1 CTC 741 (SC), (2006) 1 SCALE 569, (2006) 1 SUPREME 608, (2006) 280 ITR 643, (2006) 200 CURTAXREP 505, (2006) 193 TAXATION 163, (2006) 196 ELT 257, MANU/SC/752/2006, (2006) 2 SCJ 422, (2006) 70 CORLA 101, (2006) 4 BOM CR 886, 2006 (1) BOM LR 435, 2006 BOM LR 1 435

Author: Ar. Lakshmanan

Bench: H.K. Sema, Ar. Lakshmanan

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           CASE NO.:
Appeal (civil)  1337-1340 of 2005

PETITIONER:
Sandvik Asia Ltd.

RESPONDENT:
Commissioner of Income Tax-I, Pune & Ors.

DATE OF JUDGMENT: 27/01/2006

BENCH:
H.K. Sema & Dr. AR. Lakshmanan

JUDGMENT:
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J U D G M E N T Dr. AR. Lakshmanan, J.

These appeals raise substantial and important questions of law of great general public importance as well as under the Income Tax Act, 1961 pertaining to assessment years 1977-78, 1978-79, 1981-82 and 1982-83 requiring consideration of this Court. Since common questions of law and facts arise in all these appeals, they were heard together and are being disposed of by this common judgment. The impugned common judgment was passed by the High Court of Bombay rejecting the appellant's claim on interest holding that no such interest on interest is payable under any of the provisions of the Income Tax Act, 1961 (for short 'the Act').

The main issue raised in these appeals is whether an assessee is entitled to be compensated by the Income-tax Department for the delay in paying to the assessee amounts admittedly due to it? The delay in the instant case was for various periods ranging from 12 to 17 years.

The following facts are not in dispute:-

Assessment Year 1977-78:

Notice of demand was issued to the appellant by respondent No.2 for advance tax payable of Rs.2,74,31,250/-. The appellant paid a sum of Rs.1,86,04,450/-. Assessment order was passed by respondent No.2 determining income of Rs.3,88,37,630/-. Respondent No.2, after rectifying his assessment order, determined the income of Rs.3,45,91,830/- and tax thereon at Rs.1,99,76,781/- and raised a demand for further tax payable of Rs.13,72,331/-. The appellant paid the said sum. Commissioner of Income-tax (Appeals) disposed of the appellant's appeal substantially allowing the same. Respondent No.2 gave effect to the appellate order determining income at Rs.2,68,88,220/- and tax thereon at Rs.1,47,88,521. The appellant on 30.04.1986 received a refund of Rs.42,38,260/- and became entitled to receive interest on the refund and requested respondent No.2 to grant interest on refund under Sections 214 and 244 of the Act for the period from 01.4.1977 to 31.03.1986.

Assessment Year 1978-79:

Notice of demand was issued to the appellant by respondent No.2 for payment of advance tax on Rs.2,14,56,853/-. The appellant submitted its estimate of advance tax and paid instalments thereon at Rs.1,11,81,844/-. An assessment order determining income of Rs.1,54,17,090/- and tax payable thereon at Rs.89,03,368/- after adjusting the advance tax paid against the tax payable a refund of Rs.22,78,476 was determined. However, respondent No.2, declined to grant interest on refund to the appellant. The appellant filed a revision petition with Respondent No.1 under Section 264 of the Act against the second respondent's refusal to grant interest under Section 214 of the Act. Respondent No.1 rejected the same. Commissioner of Income-tax disposed of the appellant's appeal against the Assessment Order substantially allowing the same. Respondent No.2 gave effect to the appellate order determining income at Rs.93,93,180/- and tax payable thereon at Rs.54,24,561/- Respondent No.2 granted a refund of Rs.34,78,807/- and the appellant also became entitled to receive interest on the said refund.

Assessment Year 1981-82:

The appellant submitted its estimate of advance tax and paid instalments thereon amounting to Rs. 1,49,62,292/-. Respondent No.2 passed a provisional Assessment Order determining the tax payable at Rs.1,29,54,736/- and, therefore, granted a refund of Rs.20,07,556/-. Respondent No.2 passed an Assessment Order determining the total income of Rs.1,79,84,200/- and tax payable thereon at Rs.1,06,33,157/- and hence granted a further refund on Rs.23,20,051/-. Along with the said refund, a sum of Rs.10,06,464/- was also paid as interest under Section 214

of the Act. The Commissioner of Income-tax (Appeals) disposed of the appellant's appeal substantially allowing the same. Respondent No.2 gave effect to the appellate order determining income of Rs.89,02,070/- and tax payable thereon at Rs.52,63,348/-. The appellant received a refund of Rs.53,69,809/- and became entitled to receive interest on the refund. The appellant requested to grant interest on refund under Sections 214 and 244 of the Act was for the period from 01.04.1981 to 31.03.1986. Respondent No.2 rectified its order and granted further interest of Rs.1,87,203/- under Section 214 of the Act but refused to grant interest under Sections 214(1A) and 244 (1A) of the Act.

Assessment Year 1982-83:

The appellant submitted its estimate of advance tax and paid instalments thereon of Rs. 1,45,48,006/- a provisional Assessment Order determining the tax payable at Rs.1,28,46,079/- and, therefore, granted a refund of Rs.17,01,927/-. He passed an Assessment Order determining the total income of Rs.2,43,41,780/- and tax payable thereon at Rs.1,37,22,678/- and raised demand for further tax of Rs.8,76,600/- which was paid by the appellant on 30.03.1985. The Commissioner of Income-tax (Appeals) disposed of the appellant's appeal substantially allowing the same. Respondent No.2 gave effect to the appellate order determining income of Rs.2,05,91,540/- and tax payable thereon at Rs.1,16,07,670/-. The appellant received a refund of Rs.21,15,008/- and became entitled to receive interest on the refund. The appellant requested respondent No.2 to grant interest on refund under Sections 214 and 244 of the Act for the period from 01.04.1982 to 31.03.1986. Respondent No.2 granted interest of Rs.1,20,533/-.

FOR ALL FOUR ASSESSMENT YEARS

02.01.1987 Appellant asked for further interest on the advance tax paid for the Assessment Years 1977-78, 1978-79, 1981-82 & 1982-83 12.01.1987 Appellant asked for further interest on the advance tax paid which was rejected by Respondent No.2 holding that interest under Section 244(1A) of the Act was admissible only on post assessment taxes.

27.02.1987 Appellant filed four Revision Petitions under Section 264 of the Act before the 1st respondent for grant of interest under Sections 214 and 244 of the Act for the following periods:

Assessment years Period 1977-78 01.04.1977 to 30.04.1986 1978-79 01.04.1978 to 30.04.1986 1981-82 01.04.1981 to 30.04.1986 1982-83 01.04.1982 to 30.04.1986

28.02.1990 Respondent No.1 rejected the revision petitions. 30.04.1997 Being aggrieved by the 1st Respondent's Order, appellant moved this Court which by its common order passed in Civil Appeal No.1887 of 1992 with Civil Appeal Nos. 2649 of 1992 etc. directed respondent No.1 to consider the revision petitions in light of its decision in the case of Modi Industries Ltd. Vs. CIT reported in 216 ITR 759.

The order of this Court dated 30.04.1997 is reproduced hereunder:-

> "CIVIL APPEAL NO. 1887 OF 1992 Sandvik Asia Ltd. . Appellant Versus S.M.Soni & Ors.
>
> (With C.A.Nos. 2649/92, 2550/92, 2687/92 & 1471/96) O R D E R These appeals are covered against the revenue by the decision of this Court in Modi Industries Ltd. & Ors. Vs. Commissioner of Income Tax 216 ITR 759. For the reasons given in the said judgment these appeals are allowed, the impugned order passed by Respondent No. 1 are set aside and the matter is remitted to him for considering the revision petitions filed by the appellant claiming interest under Section 214 of the Income Tax Act, 1961 in accordance with the principles laid down in Modi Industries Ltd. Case (supra). No order as to costs.
>
> Sd/-
>
> (S.C.Agarwal) Sd/-
>
> (D.P.Wadhwa) New Delhi, April 30, 1997"

27.03.1998 Pursuant to the 1st Respondent's direction, the 2nd Respondent passed an Order paying amounts under Sections 214 and 244(1A) of the Act up to the date of refund of tax. The refund order has been marked as Annexure P-16 (Colly).

For the sake of brevity, the working of interest under Sections 214 and 244 (1A) is reproduced hereunder:-

> "WORKING OF INTEREST U/S 214/244 (1A) I) Interest u/s 214(1) of the Act at 12% on Rs. 22,78,400 For the period 1.4.1978 to 28.2.1981 7,97,440
>
> ii) Interest u/s 214(1) of the Act at 12% p.a. on Rs. 34,78,800/-

for the period 1.4.1978 to 27.3.1981 (u/s 143(3)) 12,17,580

iii) Int. u/ss 244(1A) on Rs.

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       34,78,800/- (R.O. issued on 23/4/1986)

From 1.4.1981 to 30.9.1984 @ 12%                                    14,61,09

From 1.10.1984 to 31.3.1986 @ 15%                                    7,82,730
                                                                   ----------
                                                                     42,38,846

Interest granted on 28.11.1986                          1,73,940
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Interest payable to the assessee 40,84,906

27/3/1998

Sd/-
(Surinder Jit Singh)
Dy. Commissioner of Income Tax
Spl.Rg.2, Pune"

25.09.2000 Appellant's revision petition dated 03.07.1998 asking for interest on the delayed payment of interest up to the date of payment of the same was rejected by the 1st respondent on the ground that as the monies were refunded to the assessee only after the direction of this Court, the question of granting of interest for the period the matter was sub judice, does not really arise.

07.06.2001 Appellant filed four writ petitions in the High Court at Bombay challenging the aforesaid orders of Respondent No.1.

16.01.2004 Impugned common judgment and order passed by the High Court.

Aggrieved by the above common judgment, the appellant has filed the above civil appeals.

We heard Mr. Jehangir D. Mistri, learned counsel assisted by Mr. Rustom B. Hathikhanawala, for the appellant and Mr. Mohan Parasaran, learned ASG assisted by Mr. Manish Tiwari and Others for the respondents.

The order rejecting the claim for interest on interest is sought to be challenged on the ground that the appellant's were entitled to be paid for interest @ 15% p.a. on the total amount of refund including the interest accrued thereon from the day such refund amount became due and payable till the date of actual payment in terms of Sections 214(1), 214(1A) and 244(1A) read with Section 240 and Section 244(1) of the Income Tax Act, 1961 and in the alternative, assuming that no such interest on interest is payable under any of the provisions of the Act then the same shall be ordered to be paid in exercise of writ jurisdiction since the amount of interest payable under Section 214(1) read with Sections 214(1A) and 244(1A) of the said Act was illegally and wrongfully withheld by the respondents for a very long period as stated in the writ petition.

Mr. Jehangir D. Mistri, learned counsel for the appellant, submitted that:

1) In view of the express provisions of the Act, the High Court ought to have held that an assessee is entitled to compensation by way of interest on the delay in the payment of amounts lawfully due to the appellant which were withheld wrongly and contrary to law by the Income-tax Department for an inordinately long period of up to 17 years;

2) The appellant being undisputedly entitled in law to receive certain amounts from the Department in view of excess taxes paid by/collected from it (which amounts included interest) and payment of these amounts having been admittedly delayed by

the respondents contrary to law, the appellant was entitled to receive interest on the said amount;

3) The High Court is not right in holding that interest under Sections 214 and 244 of the Act is not a refund under Section 240 and hence Department is not liable to pay interest under Section 244 in respect of delay in payment of the aforesaid interest;

4) Admittedly there was a delay on the part of the Department in paying the interest under Sections 214 and 244 of the Act. The High Court has failed to appreciate that during the intervening period, the Department had enjoyed the benefit of these funds while the appellant was deprived of the same;

5) The High Court failed to appreciate that the appellant's monies had been withheld by the department contrary to law, that interest on delayed payment of refund was not paid to the appellant on 27th March, 1981 and 30th April, 1986 due to the erroneous view that had been taken by the respondents, that this Court in the appellant's own case had passed Order dated 30.04.1997 which finally resulted in the respondents granting interest on the delayed payment of refund, that the said Order of this Court is a declaration of law as it always was, that interest on refund was granted to the appellant after a substantial lapse of time and hence it should be entitled to interest for this period of delay;

6) The High Court has committed an error in basing its interpretation of the provisions of the Act very largely upon other statutory provisions which were not even enacted during the relevant time and which contentions were never urged or put to counsel appearing in the matter;

7) The High Court has also erred in purporting to distinguish/explain the decision of this Court based on various decisions (about 20) which were never cited during the course of the hearing which were never put to counsel appearing and which, therefore, the appellant had no opportunity of dealing with;

8) The decision of the High Court was erroneous as it rejected the appellant's claim on the sole ground that as the "amount due" to the appellant was of interest, no compensation could be paid to it, even when gross delay in payment was admittedly made by the Income-tax Department contrary to law;

9) That the High Court erred in holding that an assessee was entitled to interest only on the amounts paid by him in excess of amounts chargeable under the Act. It ought to have held that interest is also payable by the Income-tax Department under Section 244 or otherwise on any amount that becomes "due" to an assessee and which has not been paid within the time allowed by the Act.

10) The High Court has erred in relying on the proviso to Section 240 of the Act for reaching the conclusion that interest is payable only on the amounts paid by the assessee in excess of that chargeable under the Act. The High Court has miserably failed to appreciate that the proviso was inserted by the Direct Tax Laws (Amendment) Act, 1987 with effect from 1st April, 1989 and hence was not applicable to the present case. In any event, it failed to appreciate that proviso to Section 240 was inserted to overcome the difficulty caused by the view that if any assessment had been annulled for any reason the department was not permitted to retain even the tax due on the basis of the returned income.

Section 240 of the Act as it stood then at the relevant point of time, namely, the assessment years in question and the insertion of the proviso to Section 240 w.e.f. 01.04.1989 is reproduced hereunder for the sake of convenience:-

"240. Refund on appeal, etc. Where, as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due to the assessee, the Income-tax Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf."

"240. Refund on appeal, etc. Where, as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due to the assessee, the Assessing Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf:

7[Provided that where, by the order aforesaid,-

(a) an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund, if any, shall become due only on the making of such fresh assessment;

(b) the assessment is annulled, the refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee.]"

7. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.

11) The High Court erred in purporting to distinguish this Court's decision in Narendra Doshi's case and, in particular, the said decision has sought to be distinguished based on various decisions which were never cited during the course of the hearing which were never put to counsel appearing.

In this context, the High Court has failed to appreciate that this Court in the case of C.I.T. vs. Narendra Doshi, 254 ITR 606 (SC) had set out the two issues before itself, viz., whether when department had not challenged the correctness of the Gujarat High Court decisions it was bound by the principle laid down therein;

Whether the Gujarat High Court had rightly laid down the principle that an assessee would be entitled to interest on interest.

That sequitur to the first issue was that the department having accepted the Gujarat High Court decisions they were bound by the same and, therefore, they ought not to have filed an appeal against the M.P. High Court's decision. The High Court failed to appreciate that this Court did not hold that the department ought not to have filed an appeal. On the contrary, it had decided the second issue while holding that, "following that principle, the question has, as we find, been rightly answered in the affirmative and in favour of the assessee." It, therefore, erred in holding that this Court had only decided the issue relating to correctness of the decision of the M.P. High Court and not the decisions of the Gujarat High Court.

12) That the doctrine of merger was not argued at all before the High Court. However, the High Court has considered the said point from pages 46-54 of its judgment.

Mr. Jehangir D. Mistri, learned counsel for the appellant, took us through the entire pleadings, annexures marked in these appeals and the documents relied on by both the parties in the High Court and of this court and also cited the following decisions in support of his contention.

1. D.J. Works vs. Deputy Commissioner of Income-Tax, 195 ITR 227

2. Commissioner of Income-Tax vs. Narendra Doshi, 254 ITR 606

3. Berger Paints India Ltd. Vs. Commissioner of Income-Tax, 266 ITR 99

4. Union of India & Ors. Vs. Kaumudini Narayan Dalal & Anr., 249 ITR 219

5. Commissioner of Income-Tax vs. Shivsagar Estate, 257 ITR 59

6. Chimanlal S. Patel vs. Commissioner of Income-Tax & Anr., 210 ITR 419

7. Jwala Prasad Sikaria & Ors. Vs. Commissioner of Income-tax & Ors., 175 ITR 535 at 539

8. Commissioner of Income-tax vs. Goodyear India Ltd., 249 ITR 527

9. Commissioner of Income-Tax vs. Needle Industries Pvt. Ltd., 233 ITR

10. Suresh B. Jain vs. P.K.P. Nair and Ors. 194 ITR 148 Mr. Mohan Parasaran, learned ASG appearing for the respondents, on the other hand, submitted that the Commissioner had decided the matter in terms of the directions issued by the Apex Court and the direction was to decide the claim in relation to the interest payable to the appellant in the light of the law laid down in Modi Industries Ltd. case (supra). According to him, none of the provisions of law contained in the said Act provide for payment of interest on interest and certainly under Section 244(1). He would further submit that in the matter of interpretation of a taxing statute and the provisions of law contained

therein, there can be no scope for consideration of equity or intendment and what is expected is the strict interpretation. He has further argued that when the statute does not permit grant of interest, it would be inappropriate to grant interest in exercise of writ jurisdiction.

Arguing further and placing strong reliance on Modi Industries Ltd. Case (supra), Mr. Parasaran submitted that this Court in Modi Industries Ltd. Case (supra) has clarified two factors, namely, the amount on which the interest is to be granted and the time period for which the interest is to be granted under Sections 214 and 244 (1A). The decision of Modi Industries Ltd. Case (supra) does not refer to interest on interest and that the decision of this Court had been given on September, 1995.

Mr. Mohan Parasaran submitted that in the present case, the Assessing Officer did not grant interest to the assessee as per his claim and the Assessing Officer's stand was upheld by the C.I.T. Pune vide his order dated 28.02.1990 under Section 264 and it can be seen that the order under Section 264 passed by the CIT is as per the position of law as it then was and before the decision of this Court and that the decision of Modi Industries Ltd. Case (supra) had been given in 1995 and this Court has only clarified the position regarding payment of interest under Sections 214 and 244(1A). This Court's decision was received on 29.09.1997. Under such circumstances, it cannot be said that the Department had wrongfully withheld the assesse's money without any authority of law and naturally such a conclusion cannot be drawn. The C.I.T. Pune had considered and judiciously interpreted the provisions of Sections 214 and 244 (1A) as per the established position of law as on that date i.e. 28.02.1990 and on the assessee's reference this Court had issued directions after seven years i.e. on 29.09.1997 which should have been expeditiously complied with as the monies were refunded to the assessee after the direction of this Court, the question of granting interest for the period the matter was sub judice, does not really arise. Mr. Mohan Parasaran has not cited or relied on any other judgment except Modi Industries Ltd. Case (supra). It was further submitted that interest payable on the refund amount under Section 244(1) is a simple interest at the rate specified therein and neither compound interest nor interest on interest is payable and that under Section 244(1A) no further interest will be payable under Section 244(1) for the same period and on the same amount and that there is no provision in the Act for payment of interest on interest.

The High Court through a detailed analysis and study of relevant case law correctly rejected the alternative claim of the appellant by following the decision of this Court in the case of Modi Industries case (supra), wherein the scope of Section 214 of the Act was discussed and it was held that there is no right to get interest on refund except as provided by statute. This Court was pleased to pass the order of remand on 30.4.1997 directing the Commission of Income Tax Pune, to consider the Revision Petition in the light of the decision in the case of Modi Industries. By order dated 29.9.1997, the Commissioner of Income Tax, Pune, directed the payment of interest according to the decision in Modi Industries case and in pursuance thereto the Dy. Commissioner of Income Tax (SR-2), Pune, passed order dated 27.3.1998 giving effect to the order of the CIT dated 29.9.1997 and granted interest to the tune of Rs. 40,84,906/- in addition to Rs. 1,73,940/- which had already been paid on 28.11.1986, thereby totalling the interest amount to Rs. 42,38,846/-. This interest was calculated strictly as per the provisions of Section 214 read with Section 244(1A) of the Act. Hence it is vehemently denied that the Department has ever enjoyed any funds of the appellant rather in all

fairness and in strict accordance with the statute, the interest on the refund has been paid to the appellant.

Questions of law:

The substantial questions of law of general public importance arising out of the common impugned judgment and order are as under:-

A. Whether in view of binding decisions of this Court the respondents are estopped from urging that compensation as claimed by the appellant is not payable by them? And therefore whether the Bombay High Court erred in allowing them to urge such a contention in the impugned judgment?

B. Assuming for the sake of argument that there is no provision in the Income-tax Act, 1961 ("the Act") for grant of such compensation, this Court had upheld the view of the Gujarat & Madhya Pradesh High Courts that compensation should be granted (whether called interest or otherwise) and hence the impugned judgment was contrary to a decision of this Court and ought to be reversed? C. Whether on a proper interpretation of the various provisions of the Act an assessee was entitled to be compensated for the delay in paying to it any 'amount' due to it even if such 'amount' comprised of interest, as had been held by the Delhi and Madras High Courts and hence the impugned judgment was erroneous and ought to be reversed ?

D. Whether in any event in the facts and circumstances of the case the Bombay High Court ought to have ordered that the assessee be compensated for the extraordinary delay of up to 17 years?

E. Whether the High Court ought to have held that sections 240 and 244 of the Act refer to 'refund of any amount', which phrase clearly includes any amount (including interest) due by the Income Tax department to the assessee, and hence the appellant was entitled to interest on the delay in the payment of amounts due from the Income-tax department ?

F. Whether the High Court erred in purporting to distinguish/explain the decision of this Court in the case of CIT vs. Narendra Doshi 254 ITR 606 (SC) based on inter alia various (about 20) decisions which were never cited during the course of the hearing, which were never put to counsel appearing and which therefore the appellant had no opportunity of dealing with?

G. Whether the High Court erred in basing its interpretation of the provisions of the Act very largely upon other statutory provisions which were not even enacted during the relevant time, and which contentions were never urged or put to counsel appearing in the matter?

H. Whether the High Court is right in considering the doctrine of merger which contentions were never urged by counsel for both the sides.

Before considering the rival claims, it would be beneficial to reproduce the Section as it stood then (at the relevant point of time) Sections 237, 240 (reproduced in paragraphs (supra), 243 & 244.

"237. Refunds. If any person satisfies the Income-tax 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. Interest on delayed refunds. (1) If the Income-tax 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 dividend, 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 (twelve) 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 Commissioner whose decision shall be final.

244. Interest on refund where no claim is needed. (1) Where a refund is due to the assessee in pursuance of an order referred to in section 240 and the Income-tax 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 [twelve] 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 appear 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 appear 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 appear 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."

We have given our anxious and thoughtful consideration on the elaborate submissions made by counsel appearing on either side. In our opinion, the High Court has failed to notice that in view of the express provisions of the Act an assessee is entitled to compensation by way of interest on the delay in the payment of amounts lawfully due to the appellant which were withheld wrongly and contrary to the law by the Department for an inordinate long period of up to 17 years. The High Court, in our opinion, has unnecessarily made the judgment a bulky one by considering various provisions of the Act and, in particular, Section 240 which was inserted by Direct Tax Laws (Amendment) Act, 1987 with effect from 01.04.1989 and hence was not applicable to the present case. The High Court has not considered Section 240 as it stood then i.e. at the relevant point of time. This apart, the High Court has also considered the question of merger and relied on many number of judgments which were not even relied on or cited by counsel for the parties. Counsel for the appellant has taken specific grounds in regard to the above factors in the special leave petition grounds which were not denied by the Department. Cartload of judgments were cited by counsel for the appellant which is directly and pointedly cover the issue raised in these appeals.

1) D.J. Works vs. Deputy Commissioner of Income-Tax, 195 ITR 227 The above judgment is identical to the case on hand and there is no factual difference. In awarding interest, the Gujarat High Court has held as under:

> "Section 214(1) itself recognizes in principle the liability to pay interest on the amount of tax paid in excess of the amount of assessed tax and which is retained by

> the Government. Interest on the excess amount is payable at the rate of 15 per cent from the first day of the year of assessment to the date of regular assessment. It would thus appear that the Legislature itself has considered it fair and reasonable to award interest on the amount paid in excess, which has been retained by the Government. We do not see any reason why the same principle should not be extended to the payment of interest which has been wrongfully withheld by the Assessing Officer or the Government. It was the duty of the Assessing Officer to award interest on the excess amount of tax paid by the petitioner while giving effect to the appellate order and granting refund of the excess amount. If the excess tax paid cannot be retained without payment of interest, so also the interest which is payable thereon cannot be retained without payment of interest. Once the interest amount becomes due, it takes the same colour as the excess amount of tax which is refundable on regular assessment. Therefore, in our opinion, though there is no specific provision for payment of interest on the interest amount for which no order is passed at the time of passing the order of refund of the excess amount and which has been wrongfully retained, interest would be payable at the same rate at which the excess amount carries interest. In other words, the amount payable by way of interest would carry simple interest at the rate of 15 per cent per annum from the date it became payable to the date it is actually paid. The decisions, which were cited at the Bar do not have a direct bearing on the above question and therefore, we do not propose to refer to or deal with them. On general principles, we are of the opinion that the Government is liable to pay interest, at the rate applicable to the excess amount refunded to the assessee, on the interest amount which had become due under section 214(1) of the Act. In the light of the above discussion, this petition must succeed."

2) Commissioner of Income-Tax vs. Narendra Doshi, 254 ITR 606 (S.P. Bharucha, Y.K. Sabharwal and Brijesh Kumar,JJ.) In this case, this Court has affirmed the decision of the M.P. High Court (Indore Bench) in I.T.R. No. 5 of 1996. In that case, the High Court was called upon to answer the following question:

> "Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was justified in law in upholding the order of the Deputy Commissioner of Income-tax (Appeals), Indore, directing to allow interest on interest, when the law points for grant of simple interest only?"

The High Court answered the question in the affirmative and in favour of the assessee, relying upon the judgments which laid down that interest was payable on the excess amount paid towards income-tax. The Tribunal, whose decision the M.P. High Court affirmed had relied upon the decision of the Gujarat High Court in the case of D.J. Works vs. Deputy CIT (supra), which had been followed by the same High Court in Chimanlal S. Patel vs. CIT, (supra). These decisions hold that the Revenue is liable to pay interest on the amount of interest which it should have paid to the assessee but has unjustifiably failed to do. This Court, in the above case, held as under:

> "The Revenue has not challenged the correctness of the two decisions of the Gujarat High Court. They must, therefore, be bound by the principle laid down therein. Following that principle, the question has, as we find, been rightly answered (by Madhya Pradesh High Court) in the affirmative and in favour of the assessee. The civil appeal is dismissed. No order as to costs."

3) Berger Paints India Ltd. Vs. Commissioner of Income-Tax, 266 ITR 99 [K.G. Balakrishnan and B.N. Srikrishna, JJ.] This case deals with doctrine of estoppel. The decision in the case of one assessee was accepted by the Department and the correctness was not challenged. This Court held that it is not open to the Department to challenge in the case of other assesses without just cause.

Speaking for the Bench B.N. Srikrishna, J. has observed thus:

> "There is no doubt that the judgment of the Gujarat High Court in Lakhanpal National Ltd.'s case [1986] 162 ITR 240 is completely in favour of the assessee as it accepts the contention of the assessee in toto. It is not in dispute that the decision in Lakhanpal National Ltd.'s case [1986] 162 ITR 240 (Guj) was not challenged by the Department before this court and thus has been accepted by the Department. The interpretation placed on section 43B in Lakhanpal National Ltd.'s case [1986] 162 ITR 240 (Guj) was directly followed by the judgment of the Bombay High Court in CIT v. Bharat Petroleum Corporation Ltd. [2001] 252 ITR 43 and by the Madras High Court in Chemicals and Plastics India Ltd. v. CIT [2003] 260 ITR 193. These two judgments also appear to have been accepted by the Revenue and have not been challenged before this court at all. This fact asserted before us by the petitioner-assessee has not been disputed in the counter affidavit of the Department.
>
> In view of the judgments of this court in Union of India v. Kaumudini Narayan Dalal [2001] 249 ITR 219; CIT v. Narendra Doshi [2002] 254 ITR 606 and CIT v. Shivsagar Estate [2002] 257 ITR 59, the principle established is that if the Revenue has not challenged the correctness of the law laid down by the High Court and has accepted it in the case of one assessee, then it is not open to the Revenue to challenge its correctness in the case of other assessees, without just cause.
>
> The decision in Lakhanpal National Ltd.'s case [1986] 162 ITR 240 (Guj), which clearly laid down the interpretation of section 43B was followed by the judgments of the Madras High Court and Bombay High Court and was again followed by the decision of the Special Bench of the Income-tax Appellate Tribunal, none of which have been challenged. In these circumstances, the principle laid down in Union of India v. Kaumudini Narayan Dalal [2001] 249 ITR 219 (SC); CIT v. Narendra Doshi [2002] 254 ITR 606 (SC) and CIT v. Shivsagar Estate [2002] 257 ITR 59 (SC) clearly applies. We see no "just cause" as would justify departure from the principle. Hence, in our view, the Revenue could not have been allowed to challenge the principle laid down in Lakhanpal National Ltd.'s case [1986] 162 ITR 240 (Guj), which was followed by the Inspecting Assistant Commissioner in the case of the assessee in the

> three assessment years in question. We are, therefore, of the view that the Commissioner, the Income-tax Appellate Tribunal and the Calcutta High Court erred in permitting the Revenue to raise a contention contrary to what was laid down by the Gujarat High Court in Lakhanpal National Ltd.'s case [1986] 162 ITR 240. This decision has been subsequently followed by the decisions of the Bombay High Court in CIT v. Bharat Petroleum Corporation Ltd. [2001] 252 ITR 43 and the Madras High Court in Chemicals and Plastics India Ltd. v. CIT [2003] 260 ITR 193 as well as the decision of the Special Bench in Indian Communication Network Pvt. Ltd. v. IAC [1994] 206 ITR (AT) 96 (Delhi), which have all remained unchallenged."

4) Union of India & Ors. Vs. Kaumudini Narayan Dalal & Anr., 249 ITR 219 (S.P. Bharucha, N. Santosh Hegde and Y.K. Sabharwal,JJ.) In this case, the Revenue followed the earlier judgment of the same High Court in the case of Pradip Ramanlal Sheth vs. Union of India [1993] 204 ITR 866. Enquiries with the registry reveal that no appeal against that judgment was preferred by the Revenue. This Court held thus:

> "If the Revenue did not accept the correctness of the judgment in the case of Pradip Ramanlal Sheth [1993] 204 ITR 866 (Guj), it should have preferred an appeal thereagainst and instructed counsel as to what the fate of that appeal was or why no appeal was filed. It is not open to the Revenue to accept that judgment in the case of the assessee in that case and challenge its correctness in the case of other assesses without just cause. For this reason, we decline to consider the correctness of the decision of the High Court in this matter and dismiss the civil appeal. No order as to costs."

5) Commissioner of Income-Tax vs. Shivsagar Estate, 257 ITR 59 (S.P. Bharucha, R.C. Lahoti and N. Santosh Hegde,JJ.) In this case, following its decision for an earlier year, the High Court held for certain subsequent years that the income from property held by 65 co-owners had to be assessed separately in the hands of the individual co-owners and not in the hands of an association of persons. The Department preferred appeals and special leave petitions to this Court. This Court dismissed the appeals and petitions on the ground that no appeal had been taken to this Court for the earlier year.

6) Chimanlal S. Patel vs. Commissioner of Income-Tax & Anr., 210 ITR 419 In this case, the Division Bench of the Gujarat High Court held as follows:-

> "The Government is liable to pay interest on the interest amount at the same rate at which interest is payable on the excess amount refundable to the assessee. Excess tax cannot be returned without payment of interest: so also, interest which is payable thereon cannot be retained without payment of interest. There is no specific provision for payment of interest on the interest amount. Interest would be payable at the same rate at which the excess amount carries interest."

The above judgment has also relied on the reported decision in the case of D.J. Works vs. Dy. CIT [1992] 195 ITR 227 (Guj).

The Court further held as under:

> "Mr. Shah, learned advocate, further submitted that the Government is liable to pay interest on the amount of tax paid in excess of the amount of assessed tax and the Government has withheld payment of interest wrongfully. Section 214 of the Act itself recognises in principle the liability to pay interest on the amount of tax paid in excess of the amount of assessed tax which is retained by the Government. Relying on a reported decision in the case of D.J.Works v. Dy. CIT (1992) 195 ITR 227 (Guj.) , the learned advocate submitted that the Government is liable to pay interest on the interest amount at the same rate at which interest is payable on the excess amount refundable to the assessee. Excess tax cannot be returned without payment of interest. So also, interest which is payable thereon cannot be retained without payment of interest. The Court, while deciding the above case, observed that there is no specific provision for payment of interest on the interest amount. Interest would be payable at the same rate at which the excess amount carries interest. In other words, the court held that the amount payable by way of interest would carry simple interest at the rate of 15 per cent per annum from the date it became payable to the date it is actually paid."

7) Jwala Prasad Sikaria & Ors. Vs. Commissioner of Income-tax & Ors., 175 ITR 535 at 539 It was argued by Mr. Mohan Parasaran that interest payable on the refund amount under Section 244(1) is a simple interest at the rate specified therein and neither compound interest nor interest on interest is payable and that under Section 244(1A), no further interest shall be payable under Section 244(1) for the same period and on the same amount and that there is no provision in the Act for payment of interest on interest. This contention, in our opinion, has no merits. Learned counsel for the assessee cited the decision Jwala Prasad Sikaria & Ors. (supra) in support of his contention wherein the Gauhati High Court held that a citizen is entitled to payment of interest due to delay even if there is no statutory provision in this regard. The grant of interest to owners whose property was requisitioned under the provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952, was upheld in Abhay Singh Surana vs. Secretary, Ministry of Communication, AIR 1987 SC 2177, and Deputy Commissioner vs. Mamat Kaibarta, AIR 1984 Gauhati 25. The High Court held that where an assessment is made under the Act of 1922 after the commencement of the 1961 Act and refund is granted to the assessee, interest is payable on such refund. The High Court has further held:

> "The interest would, however, be deemed to have accrued after expiry of three months from the end of the month in which refund had become payable. The rate applicable would be that applicable to grant of refund under the Act of 1961 at the relevant time."

The above decision was cited before the Bombay High Court. The High Court very conveniently omitted to consider the decision holding that the decision in 175 ITR 535 was in the peculiar facts of that case.

8) Commissioner of Income-tax vs. Goodyear India Ltd., 249 ITR 527 In the above case, the dispute relates to the assessment year 1967-68. At the instance of the Revenue, the following question has been referred for the opinion of the High Court by the Income-tax Appellate Tribunal, New Delhi.

> "Whether on the facts and in the circumstances of the case, the Tribunal is right in holding that the assessee is entitled to interest under section 244 on the amount of interest amounting to Rs.1,90,499 payable under section 214 of the Income-tax Act, 1961?"

Arijit Pasayat, C.J. speaking for the Bench held as follows:-

> "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.
>
> Section 244 deals with interest on refund where no claim is needed. Sub-section (2), inter alia, provides that 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 the stipulated time, the Central Government is required to pay simple interest at the stipulated rate. Section 240 deals with refund on appeal etc. This provision clearly lays down that where as a result of any order passed in appeal or other proceedings under this Act, refund of any amount becomes due to the assessee, the Assessing Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf. The crucial expressions in section 240 are "any amount which becomes due to the assessee as a result of any order passed in any appeal or other proceedings under the Act" and the "amount becomes due to the assessee". Section 244 refers to the liability fastened on the Central Government in case of failure to grant refund within the stipulated time in a case where refund is due to the assessee in pursuance of an order referred to in section 240. A combined reading of both the provisions makes the position crystal clear that it is any amount which becomes due to the assessee and not necessarily the tax component. Undisputedly, a sum of Rs.1,90,499 which qualifies for interest became payable to the assessee on the basis of an order passed under section 240 of the Act. Merely because this was inclusive of an amount which was payable under section 214 of the Act, that would not make the position any different. It is an amount which became due to the assessee on the basis of the appellate order. Therefore, the assessee was entitled to interest in terms of section 244 of the Act. A similar view has been taken by the Gujarat High Court in D.J.Works v Deputy CIT (1992) 195 ITR 227 and Chiman Lal S.Patel v. CIT (1994) 210 ITR 419 though with different conclusions. Above being the position, we answer the question in the affirmative, in favour of the

assessee and against the Revenue."

9) Commissioner of Income-Tax vs. Needle Industries Pvt. Ltd., 233 ITR 370 Mr. Parasaran argued that the High Court was right in law in rejecting the appellant's claim on the sole ground that as the amount due to the appellant was on interest, no compensation could be paid to it even when gross delay in payment was admittedly made by the Department contrary to law. The Division Bench of the Madras High Court in Commissioner of Income-Tax vs. Needle Industries Pvt. Ltd., 233 ITR 370 succinctly interpreted the expression "amount" in Section 244(1A). In that case, the original assessment for the assessment year 1974-75 was completed on August 29, 1977 and the order of assessment was the subject-matter of appeal before the appellate authority and the Tribunal. The Tribunal ordered refund. The ITO allowed interest under section 244 (1A) the assessee filed an appeal against the order passed by the ITO refusing to grant interest on interest. The Tribunal, on an appeal by the Revenue upheld the due to the CIT (Appeals) and held that the assessee was entitled to interest under Section 244(1A) in respect of interest calculated under section 139(8) and 215 and refunded under the provisions of the Act. The Tribunal at the instance of the Revenue referred certain questions of law for consideration by the High Court. The High Court, while construing the expression "amount" in earlier part of Section 244(1A) held that it would refer to not only the tax but also the interest on the expression "amount" is a neutral expression and it cannot be limited to the tax paid in pursuance of the order of assessment. The High Court held as follows:

> "Further, the expression, "amount" in the earlier part of the section 244(1A) would refer to not only the tax but also the interest and the expression "amount" is a neutral expression and it cannot be limited to the tax paid in pursuance of the order of assessment. We are of the opinion that the expression "tax or penalty" found in the later part of the section 244(1A) would not qualify or restrict the scope of the expression "amount" found in the earlier part to mean only "tax or penalty". As already seen, the function of the later part of section 244(1A) of the Act is to find out the excess of the amount which the assessee paid by way of tax or penalty and that is the reason the expression "tax or penalty" has been employed. However, to determine the amount on which the Revenue is liable to pay interest, section 244(1A) gives emphasis on the amount paid by the assessee in pursuance of the order of assessment and the amount, in our opinion, cannot be limited to the amount of tax or penalty, but would encompass the amount of interest paid by the assess. The clear intention of Parliament is that the right to interest will compensate the assessee for the excess payment during the intervening period when the assessee did not have the benefit of use of such money paid in whatsoever character. In addition, if a literal meaning is given to the expression, "tax"

found in the later part of section 244(1A) of the Act, it will create an anomalous situation resulting in exclusion of the concept of the interest. In our opinion, the word "tax" in the later part of section 244(1A) has to be construed in the light of the expression "amount" found in the earlier part of section 244(1A) of the Act to include the amount of interest paid by the assessee. Therefore, in the context of section 244(1A) of the Act, the expression "tax", in our opinion, would include interest also and the definition of tax in section 2(43) meaning "income-tax" cannot be applied in the context

of section 244(1A) of the Act. Consequently, the interest paid in pursuance of the order of assessment has to be regarded as forming part of income-tax or an adjunct to income-tax. The result would be that the assessee is entitled to interest on the interest refunded also. As a matter of fact, in the subsequent order of rectification, the Income-tax Officer has granted interest on the refunded interest which clearly shows the right thinking of the Department in accepting the position that the assessee would be entitled to interest on the interest refunded. The view of the Appellate Tribunal that the assessee would be entitled to interest on the refunded amount of interest levied under sections 139(8) and 215 of the Act is legally sustainable in law."

(Underlining is ours) In the above judgment, the Madras High Court has followed the judgment in the case of CIT vs. Ambat Echukutty Menon [1988] 173 ITR 581 (kerala) and CIT vs. Sardar Balwant Singh Gujral [1990] 86 CTR 64(MP). The Madhya Pradesh High Court in Sardar Balwant Singh Gujral's case (supra) held that the liability to pay interest is on the amount of refund due and the assessee would be entitled to interest on the amount of refund due which includes interest paid under Sections 139(8) and 215 of the Act. While agreeing with the view expressed by the Kerala High Court and the Madhya Pradesh High Court, the Madras High Court held that the expression "amount" in Section 244(1A) of the Act would include the amount of interest levied and paid under Sections 139(8) and 215 of the Act and collected in pursuance of an order of assessment which was refunded.

10) Suresh B. Jain vs. P.K.P. Nair and Ors. 194 ITR 148 The learned single Judge of the Bombay High Court in the judgment reported above while interpreting the provisions of Section 245 held that a restricted meaning cannot be given to the word "refund" which is commonly understood generic term which refers to the payment by the Income-tax Department on any amount due to an assessee and it does not mean only the return of an amount paid to the Department by an assessee.

The Court held further "The Income-tax Act envisages several situations where amounts are to be paid to the Department or by the Department which include income-tax, penalty, interest, etc., of any assessment year, arrears in respect of these items for earlier years, amounts under any head wrongly paid or paid in excess, amounts pertaining to one person considered in another's hands and, while computing the tax liability or penalty for any year, separate notices are issued for different items but demand or refund is made of the net figure which cannot, therefore, be identified as tax. The amount of interest paid on refunds should not be treated in isolation and the concept of the word "refund" does not admit of a limited meaning but must be held to mean any amount payable by the Department to an assessee whether as and by way of "refund" or "interest". After all, the amount of interest payable to an assessee under section 244 (1A) of the Income-tax Act, 1961, is also an amount that is refunded by the Department to an assessee and, if the same is not permitted to be adjusted under section 245, almost absurd, if not ridiculous, results may ensue inasmuch as the Income-tax Department would be required to pay a certain sum of money to an assessee on account of interest with one hand and take back the same amount as tax liability with the other. This may not only be an inconvenient and cumbersome procedure for the Income-tax Department but may also put an assessee to unnecessary inconvenience and harassment in that one has to take the amount of interest with one hand and pay back the same amount to the Income-tax Department as tax liability with the other. Therefore, if a restricted and technical meaning is given to the word

"refund" while implementing the provisions of section 245, no useful purpose would be served either of the Income-tax Department or of an assessee. There is, therefore, nothing wrong if interest payable to an assessee under section 244(1A) of the said Act is set off and adjusted against the tax liability of an assessee under section 245 as if the said amount was a refund due to an assessee."

We have already considered the judgments cited by learned counsel appearing on either side. We shall now further analyse and discuss about the various judgments cited by the counsel concerned and the arguments advanced by the respective counsel with reference to the pleadings and of the judgment of the Bombay High Court.

Estoppel In the present hearing Mr. Mohan Parasaran only argued that there was no decision of this Court on the merits of the matter and hence estoppel could not apply. It is submitted with respect that whether or not there is a decision of this Court on the merits of the matter is of no relevance, further, even in Berger Paint's case (supra) there was no decision of this Court on the merits of the matter and the principle of estoppel was applied. The only consideration laid down by this Court is whether there is any "just cause" to depart from the principle of estoppel. It is submitted that in the instant case there is no 'just cause' and none has even been claimed by the Revenue. Finally it is the appellant's case that this Court has taken a decision on the merits of the matter.

Assuming that there is no provision in the Act for payment of compensation, compensation for delay is required to be paid in view of decision of inter alia this Court:

> The Gujarat High Court in D.J. Works and Chimanlal Patel's cases (supra) had taken the view that even proceeding on the basis that there was no specific provision for payment of interest on amounts of interest which had been wrongfully retained, the Act itself recognized in principle the liability of the department to pay interest where excess tax was retained and the Court held that the same principle should be extended to cases where interest was retained. The Court held that once interest becomes due it takes the same colour as excess amounts of tax and they awarded interest thereon at the rates prescribed under the Act.
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> The Madhya Pradesh High Court in an Income-tax reference ITR No. 5 of 1996 followed the Gujarat High Court decisions and answered in the affirmative and in favour of the assessee, a question as to whether the Tribunal was right in holding that interest was payable on delayed payments of interest. The question specifically refers to the department's claim that the law allegedly does not provide for any such payment.
>
> This Court in Narendra Doshi's case (supra) dismissed the appeal filed by the Income-tax Department against the said judgment of the Madhya Pradesh High Court. This Court specifically held that following the principle laid down by the Gujarat High Court, viz., that " the Revenue is liable to pay interest on the amount of interest which it should have paid to the assessee but has unjustifiably failed to do the question has, as we find, been rightly answered in the affirmative and in favour of

the assessee." This is clearly a decision of this Court on the merits of the matter, albeit proceeding on the assumption that there was no provision in the Act granting interest on unpaid interest, in favour of the appellant's contentions.

In the impugned order, the Bombay High Court has held that the Madhya Pradesh High Court was not on the point of payment of interest on interest, a view is ex facie erroneous and clearly impossible to sustain as a plain reading of the question before the Madhya Pradesh High Court will show.

The Gauhati High Court in Jwala Prasad Sikaria's case (supra) had also taken a similar view that an assessee is entitled to payment of interest due to delay even if there is no statutory provision in this regard. In the impugned order, the Bombay High Court has held that the decision was in the peculiar facts of the case without elaborating any further as to what these peculiar facts were or how they had any bearing on the case.

In the present hearing, Mr. Mohan Parasaran has further argued that there is no provision in the Act for the grant of further compensation and hence the same cannot be granted. Per contra, Mr. Jehangir D. Mistri submitted that there is a provision for grant of compensation but, be that as it may, the Gujarat High Court has proceeded on the basis that there is no such provision and yet allowed compensation to an assessee in circumstances identical to the appellant's. Further it is submitted that on a proper reading of this Court's judgment in Narendra Doshi's case (supra) the Gujarat view has been upheld by this Court on its merits as well. In this view of the matter, the question of there being no provision to grant compensation becomes irrelevant and immaterial. Further the Gauhati & Madhya Pradesh High Courts have also taken the same view.

Mr. Mohan Parasaran argued that the Gujarat High Court principle has to be confined to cases where the amounts due to an assessee have been 'unjustifiably' withheld. The revenue argued that in the present case the amounts have not been unjustifiably withheld since the order of this Court dated 30.04.1997 only required the revenue to apply the decision of Modi Industries case (supra) insofar as interest under Section 214 was concerned, and this has been strictly complied with. In our view, the withholding by the revenue commenced in 1981 and 1986 by its refusal to pay interest amounts due to the appellant and hence the order of this Court on 30.04.1997 is of no relevance.

The counsel for the Revenue argued that the reason for not granting interest was that the amounts on which interest was claimed was amounts of advance tax and no interest under Section 214 could be paid on advance tax after the date of the order of assessment. The question of what interest was payable to it is not the subject matter of the present dispute at all and is now agreed, settled and concluded. In any event, the contentions urged are erroneous as this Court in Modi Industries case (supra) has

clarified that advance tax is to be treated as paid pursuant to an order of assessment and hence interest is payable thereon but under Section 244 of the Act.

In our view, there is no question of the delay being 'justifiable' as is argued and in any event if the revenue takes an erroneous view of the law, that cannot mean that the withholding of monies is 'justifiable' or 'not wrongful'. There is no exception to the principle laid down for an allegedly 'justifiable' withholding, and even if there was, 17 (or

12) years delay has not been and cannot in the circumstances be justified.

Does the Act provide for payment of compensation for delayed payment of amounts due to an assessee in a case where these amounts include interest? In our view, the Act recognizes the principle that a person should only be taxed in accordance with law and hence where excess amounts of tax are collected from an assessee or any amounts are wrongfully withheld from an assessee without authority of law the revenue must compensate the assessee.

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 to him and it is for this reason that Section 237 of the Act is phrased in terms of tax paid in excess of amounts properly chargeable. It is, however, of importance to appreciate that section 240 of the Act, which provides for refund by the Revenue on appeal etc., deals with all subsequent stages of proceedings and therefore is phrased in terms of 'any amount' becoming due to an assessee.

The Delhi High Court in Goodyear India Ltd. Case (supra) held that an assessee is entitled to further interest under Section 244 of the Act on interest under Section 214 of the Act which had been withheld by the Revenue. The case of the Revenue was that interest payable to an assessee under Section 214 of the Act was not a refund as defined in Section 237 of the Act and hence no interest could be granted to the assessee under Section 244 of the Act. The Court held that for this purpose Section 240 of the Act was relevant which referred to refund of 'any amount becoming due to an assessee' and that the said phrase would include interest and hence the assessee was entitled to further interest on interest wrongfully withheld. It is also important to appreciate that the Delhi High Court also referred to the Gujarat High Court decision in D.J. Works case (supra) and read it as taking the same view. This supports the view of the appellant on the correct reading of the Gujarat decision.

As already noticed in paragraph supra, the Madras High Court in Needle Industries Private Ltd. Case (supra) has also interpreted the phrase 'any amount' in the same manner when considering the provisions of Section 244(1A) of the Act, which also uses the same phrase in the context of interest payable by the Revenue. In express terms the Court held that the expression referred not only to the tax but also to interest. The Court agreed with a similar view taken by the Kerala High Court in the case of Ambat Echukutty Menon (supra). Both these were cases where the Court was called upon to decide whether further interest was payable by the Revenue on interest which had to be repaid to assessee.

In our opinion, the appellant is entitled to interest under Section 244 and/or Section 244A of the Act in accordance with the terms and provisions of the said sections. The interest previously granted to it has been computed up to 27.03.1981 and 31.03.1986 (under different sections of the Act) and it's present claim is for compensation for periods of delay after these dates.

In the impugned order, the Bombay High Court has rejected the appellant's contention mainly on the ground that the word refund must mean an amount previously paid by an assessee and does not relate to an amount payable by the revenue by way of interest on such sums. The High Court's conclusion is based mainly on the wording of the proviso to Section 240 of the Act. As already discussed by us in paragraph supra the proviso can have no relevance whatsoever as it was not part of the Act during the relevant period. The said proviso was inserted with effect from 01.04.1989.

The High Court in its judgment has referred to the provisions of Section 244(1A) and the decision of this Court in Modi Industries Ltd. (supra) extracted two paragraphs from this Court's judgment holding that there can be no question of paying interest under both Section 214(1A) and 244(1A) of the Act simultaneously, and further that there is no right to receive interest except as provided by the statute. The decision in Modi Industries case (supra) has no bearing whatsoever on the issue in hand as the issue in that case was the correct meaning of the phrase "regular assessment" and as a consequence under which provision an assessee was entitled to interest for the period up to the date of regular assessment and thereafter. The matter of what was due to it in terms of the decision in Modi Industries case is over, concluded, no longer in dispute and was agreed/accepted on 27.03.1998 when the 2nd respondent gave effect to the previous order of this Court dated 30.04.1997. The working of the respondents itself conclusively shows, further the interest received is admittedly in accordance with the Act. The decision in Modi Industries case (supra), in our view, has no bearing whatsoever on the matter in hand. The main issue now is whether an assessee is entitled to be compensated by the Revenue for the delay in paying to the assessee's amounts admittedly due to it?

The High Court has dissented from the decision of the Delhi High Court in Goodyear's case (supra) on the utterly and ex facie erroneous ground that it proceeded on an assumption as to the meaning of the phrase "any amount". A plain reading of the Delhi High Court judgment will show that this reasoning is utterly erroneous, false and unsustainable.

The High Court has not followed the decision of this Court in Narendra Doshi's case (supra) on the ground that this Court did not decide that further interest was payable by interpretation of the Act. What was urged before the High Court was that this Court decided the matter by upholding the Gujarat High Court view which proceeded on the basis that the provisions of the Act did not provide for such further interest.

The High Court has merely noted the decision of the Madras High Court in Needle Industries case (supra) without dealing with the same in any manner.

The High Court similarly noted and failed to deal with the Kerala High Court's decision in Ambat Echukutty Menon's case (supra) and a previous decision of the Bombay High Court itself in the case

of Suresh B. Jain's case (supra).

In the present appeal, the respondents have argued that the compensation claimed by the appellant is for delay by the revenue in paying of interest, and this does fall within the meaning of refund as set out in Section 237 of the Act. The relevant provision is Section 240 of the Act which clearly lays down that what is relevant is whether any amount has become due to an assessee, and further the phrase any amount will also encompass interest. This view has been accepted by various High Courts such as the Delhi, Madras, Kerala High Court etc. Whether on general principles the assessee ought to have been compensated for the inordinate delay in receiving monies properly due to it? The learned counsel for the appellant says that it cannot be denied that it has been deprived of the use of it's monies for periods ranging from 12 to 17 years. It also cannot be denied that such deprivation is solely due to the actions of the revenue which have been held by this Court to be contrary to the provisions of the Act, on general principles it ought to be compensated for such deprivation. In the impugned order, the Bombay High Court has held that no compensation is required to be paid since " . there was a serious dispute between the parties, which was ultimately ordered to be paid pursuant to the order passed by this Court on 30.04.1997. Undisputedly, the amount pursuant thereto was paid on 27.03.1998 ". The Court further held that since the amount was paid once the controversy was resolved there was no wrongful retention of monies. No authority can ever accept an obligation to make payment and simply refuse to pay. In each and every case an authority must at least claim to act in accordance with law and hence claim it has no obligation to pay for some reason or another. When the claims of the authority are found to be unsustainable or erroneous by the Courts it follows that the authority has acted wrongfully in the sense of not in accordance with law and compensation to the party deprived must follow. If the decision of the High Court is upheld it would mean that there can never be any wrongful retention by an authority until this Court holds that their stand is not in accordance with law. Therefore, that on this issue as well, the impugned judgment cannot be sustained and ought to be reversed.

In the present context, it is pertinent to refer to the Circular on Trade Notice issued by the Central Excise Department on the subject of refund of deposits made in terms of Section 35F of the Central Excise Act, 1944 and 129E of the Customs Act, 1962. The Circular is reproduced hereunder:-

> "Refund/Return of deposits made under Section 35F of CEA, 1944 and Section 129E of Customs Act, 1962 - Clarifications The issue relating to refund of pre-deposit made during the pendency of appeal was discussed in the Board Meeting. It was decided that since the practice in the Department had all along been to consider such deposits as other than duty, such deposits should be returned in the event the appellant succeeds in appeal or the matter is remanded for fresh adjudication.
>
> 2. It would be pertinent to mention that the Revenue had recently filed a Special Leave Petition against Mumbai High Court's order in the matter of NELCO LTD, challenging the grant of interest on delayed refund of pre- deposit as to whether :
>
> (i) the High Court is right in granting interest to the depositor since the law contained in Section 35F of the Act does in no way provide for any type of compensation in the

event of an appellant finally succeeding in the appeal, and,

(ii) the refunds so claimed are covered under the provisions of Section 11B of the Act and are governed by the parameters applicable to the claim of refund of duty as the amount is deposited under Section 35F of the Central Excise Act, 1944.

The Hon'ble Supreme Court vide its order dated 26-11-2001 dismissed the appeal. Even though the Apex Court did not spell out the reasons for dismissal, it can well be construed in the light of its earlier judgment in the case of Suvidhe Ltd. and Mahavir Aluminium that the law relating to refund of pre-deposit has become final.

3. In order to attain uniformity and to regulate such refunds it is clarified that refund applications under Section 11B(1) of the Central Excise Act, 1944 or under Section 27(1) of the Customs Act, 1962 need not be insisted upon. A simple letter from the person who has made such deposit, requesting the return of the amount, along with an attested Xerox copy of the order-in- appeal or CEGAT order consequent to which the deposit made becomes returnable and an attested Xerox copy of the Challan in Form TR6 evidencing the payment of the amount of such deposit, addressed to the concerned Assistant/Deputy Commissioner of Central Excise or Customs, as the case may be, will suffice for the purpose. All pending refund applications already made under the relevant provisions of the Indirect Tax Enactments for return of such deposits and which are pending with the authorities will also be treated as simple letters asking for return of the deposits, and will be processed as such. Similarly, bank guarantees executed in lieu of cash deposits shall also be returned.

4. The above instructions may be brought to the notice of the field formations with a request to comply with the directions and settle all the claims without any further delay. Any deviation and resultant liability to interest on delayed refunds shall be viewed strictly.

5. All the trade associations may be requested to bring the contents of this circular to the knowledge of their members and the trade in general.

6. Kindly acknowledge receipt.

[Source : M.F.(D.R.) F.No. 275/37/2K-CX.8A, dated 2-1-2002]"

A close scrutiny of the contents of the Circular dated 2.1.2002 would disclose as to the modalities for return of pre-deposits. It again reiterated that in terms of the Supreme Court order such pre-deposit must be returned within 3 months from the date of the order passed by the Tribunal, Court or other fiscal authority unless there is a stay on the order of the fiscal authority, tribunal, court by a superior court. The Department has very clearly stated in the above circular that the delay beyond the period of 3 months in such cases will be viewed adversely and appropriate disciplinary action will be initiated against the concerned defaulting officers, a direction was also issued to all concerned to note that defaulter will entail a interest

liability if such liability accrue by reason of any orders of the Tribunal/Court such orders will have to be complied with and it may be recoverable from the concerned officers. All the Commissioners were advised implementation of these instructions and ensure their implementation through a suitable monitoring mechanism. It is also specifically mentioned that the Commissioners under respective jurisdiction should be advised that similar matters pending in the High Courts must be withdrawn and compliance reported and that the Board has also decided to implement the orders passed by the Tribunal already passed for payment of interest and the interest payable shall be paid forthwith.

The facts and the law referred to in paragraph (supra) would clearly go to show that the appellant was undisputably entitled to interest under Sections 214 and 244 of the Act as held by the various High Courts and also of this Court. In the instant case, the appellant's money had been unjustifiably withheld by the Department for 17 years without any rhyme or reason. The interest was paid only at the instance and the intervention of this Court in Civil Appeal No. 1887 of 1992 dated 30.04.1997. Interest on delayed payment of refund was not paid to the appellant on 27.03.1981 and 30.04.1986 due to the erroneous view that had been taken by the officials of the respondents. Interest on refund was granted to the appellant after a substantial lapse of time and hence it should be entitled to compensation for this period of delay. The High Court has failed to appreciate that while charging interest from the assesses, the Department first adjusts the amount paid towards interest so that the principle amount of tax payable remain outstanding and they are entitled to charge interest till the entire outstanding is paid. But when it comes to granting of interest on refund of taxes, the refunds are first adjusted towards the taxes and then the balance towards interest. Hence as per the stand that the Department takes they are liable to pay interest only upto the date of refund of tax while they take the benefit of assesses funds by delaying the payment of interest on refunds without incurring any further liability to pay interest. This stand taken by the respondents is discriminatory in nature and thereby causing great prejudice to the lakhs and lakhs of assesses. Very large number of assesses are adversely affected inasmuch as the Income Tax Department can now simply refuse to pay to the assesses amounts of interest lawfully and admittedly due to that as has happened in the instant case. It is a case of the appellant as set out above in the instant case for the assessment year 1978-79, it has been deprived of an amount of Rs.40 lakhs for no fault of its own and exclusively because of the admittedly unlawful actions of the Income Tax Department for periods ranging up to 17 years without any compensation whatsoever from the Department. Such actions and consequences, in our opinion, seriously affected the administration of justice and the rule of law.

COMPENSATION:

The word 'Compensation' has been defined in P. Ramanatha Aiyar's Advanced Law Lexicon 3rd Edition 2005 page 918 as follows:

> "An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price of a privilege purchased; some thing given or obtained as an equivalent; the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value; a recompense given for a thing received recompense for the whole injury suffered; remuneration or satisfaction for injury or damage of every description; remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or wages given to an employee or officer."

There cannot be any doubt that the award of interest on the refunded amount is as per the statute provisions of law as it then stood and on the peculiar facts and circumstances of each case. When a specific provision has been made under the statute, such provision has to govern the field. Therefore, the Court has to take all relevant factors into consideration while awarding the rate of interest on the compensation.

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 to. 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.

By allowing this appeal, the Income-tax Department would have to pay a huge sum of money by way of compensation at the rate specified in the Act, varying from 12% to 15% which would be on the high side. Though, we hold that the Department is solely responsible for the delayed payment, we feel that the interest of justice would be amply met if we order payment of simple interest @ 9% p.a. from the date it became payable till the date it is actually paid. Even though the appellant is entitled to interest prior to 31.03.1986, learned counsel for the appellant fairly restricted his claim towards interest from 31.03.1986 to 27.03.1998 on which date a sum of Rs.40,84,906/- was refunded.

The assessment years in question in the four appeals are the assessment years 1977-78, 1978-79, 1981-82 and 1982-83. Already the matter was pending for more than two decades. We, therefore, direct the respondents herein to pay the interest on Rs.40,84,906 (rounded of to Rs.40,84,900) simple interest @ 9% p.a. from 31.03.1986 to 27.03.1998 within one month from today failing which the Department shall pay the penal interest @ 15% p.a. for the above said period.

In the result, the appeals stand allowed. We have no hesitation to set aside the impugned judgment of the High Court of Bombay. No costs.