Supreme Court of India
Union Of India Tr.Dir.Of I.T vs M/S Tata Chemicals Ltd on 26 February, 1947
Author: .....J.
Bench: H.L. Dattu, S.A. Bobde

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6301 OF 2011

|Union of India Through Director of Income Tax |.. Appellant(s) |

Versus

|M/s Tata Chemicals Ltd. |.. Respondent(s) |

W i t h

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
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CIVIL APPEAL NO. 2945 of 2012
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CIVIL APPEAL NO.3508 of 2014 @SLP(C) NO.14048/2012
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CIVIL APPEAL NO.3510 of 2014 @SLP(C) NO.14051/2012
CIVIL APPEAL NO.3511 of 2014 @SLP(C) NO.14049/2012
CIVIL APPEAL NO.3512 of 2014 @SLP(C) NO.20154/2012
CIVIL APPEAL NO. 5408 OF 2012
CIVIL APPEAL NO.3513 of 2014 @SLP(C) NO.27453/2012
CIVIL APPEAL NO.3514 of 2014 @SLP(C) NO.27454/2012
CIVIL APPEAL NO.3515 of 2014 @SLP(C) NO.27455/2012
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CIVIL APPEAL NO.3517 of 2014 @SLP(C) NO.27457/2012
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CIVIL APPEAL NO.3519 of 2014 @SLP(C) NO.27459/2012
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CIVIL APPEAL NO.3522 of 2014 @SLP(C) NO.27462/2012
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CIVIL APPEAL NO. 7596 of 2012
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CIVIL APPEAL NO.3525 of 2014 @SLP(C) NO.25727/2012
CIVIL APPEAL NO.3526 of 2014 @SLP(C) NO.14768/2012
CIVIL APPEAL NO.3527 of 2014 @SLP(C) NO.5730/2013
CIVIL APPEAL NO. 7772 of 2012
CIVIL APPEAL NO. 3436 of 2012
CIVIL APPEAL NO. 3427 of 2012

O R D E R

1. Leave granted.

2. The issue that arise for our consideration and decision in this batch of appeals is, whether the revenue is legally responsible under Section 244A of the Income Tax Act, 1961 (for short, "the Act") for payment of interest on the refund of tax made to the resident/deductor under Section 240 of the Act.

3. At the outset, it is relevant to notice that the assessment years in all these appeals are on and after 01.04.1989, that is after the admittance of Section 244A of the Act by Direct Tax Laws (Amendment) Act, 1987 (4 of 1988) with effect from 01.04.1989, whereby provision for interest on refunds on any amount due to the assessee under the Act was introduced.

FACTS:-

4. We would refer to the facts in Civil Appeal No. 6301 of 2011. The respondent is a company incorporated under the provisions of Companies Act, 1956. It is engaged in the manufacture of nitrogenous fertilizer. During the assessment year 1997-98, the respondent-company had commissioned its naptha desulphurization plant and to oversee the operation of the said plant it had sought the assistance of two technicians from M/s. Haldor Topsoe, Denmark. M/s. Haldor Topsoe had raised an invoice aggregating to US$ 43,290,06/- as service charges for services of the technicians (US$ 38,500/-) and reimbursements of expenses (US$ 4,790/-).

5. The resident/deductor had approached the Income Tax Officer under Section 195 (2) of the Act inter alia requesting him to provide information/ determination as to what percentage of tax should be withheld from the amounts payable to the foreign company, namely, M/s. Haldor Topsoe, Denmark. On the request so made, the Assessing Officer/ Income Tax Officer had determined and passed Special order under Section 195 (2) of the Act directing the resident/ deductor to deduct/ withhold tax at the rate of 20% before remitting aforesaid amounts to M/s.Haldor Topsoe. Accordingly, the resident/ deductor had deducted tax of Rs.1,98,878/- on the entire amount of US$

43,290.00/- and credited the same in favour of the Revenue.

6. After such deposit, the resident/ deductor had preferred an appeal before the Commissioner of Income Tax (Appeals) against the aforesaid order passed by the Assessing Officer/ Income Tax Officer under Section 195 (2) of the Act. The appellate authority while allowing the appeal so filed by the resident/ deductor, had concluded, that, the reimbursement of expenses is not a part of the income for deduction of tax at source under Section 195 of the Act and accordingly, directed the refund of the tax that was deducted and paid over to the Revenue on the amount of US$ 4790.06/- representing reimbursement of expenses by order dated 12.07.2002.

7. After disposal of the appeal, the resident/ deductor had claimed the refund of tax on US$ 4790/- (amounting to Rs.22,005/-) with the interest thereon as provided under Section 244A(1) of the Act by its letter dated 09.12.2002.

8. The Assessing Officer/ Income Tax Officer while declining the claim made, has observed, that, Section 244A provides for interest only on refunds due to the assessee under the Act and not to the deductor and since the refund in the instant case is in view of the circulars viz. Circular No. 769 and 790 issued by the Central Board of Direct Taxes (for short “the Board”) and not under the statutory provisions of the Act, no interest would accrue on the refunds under Section 244A of the Act. Therefore, the Assessing Officer/Income Tax Officer while granting refund of the tax paid on the aforesaid amount has refused to entertain the claim for interest on the amount so refunded by order dated 29.07.2003.

9. Since the Assessing Officer/Income Tax Officer had declined to grant the interest on the amount so refunded, the resident/ deductor had carried the matter by way of an appeal before the Commissioner of Income Tax (Appeals). The First Appellate Authority by its order dated 28.03.2005 has approved the orders passed by the Assessing Officer/ Income Tax Officer and declined the claim of the deductor/resident on two counts : (a) that the refund in the instant case would fall under two circulars viz. Circular No. 769 and 790 issued by the Board which specifically provide that the benefit of interest under Section 244A of the Act on such refunds would not be available to the deductor/ resident and (b) that a conjoint reading of Section 156 and the explanation appended to Section 244A (1)(b) of the Act would indicate that the amount refunded to the deductor/resident cannot be equated to the refund of the amount(s) envisaged under Section 244A(1)(b) of the Act, wherein only the interest on refund of excess payment made under Section 156 of the Act pursuant to a notice of demand issued on account of post-assessment tax is contemplated and not the interest on refund of tax deposited under self-assessment as in the instant case.

10. The deductor/resident, aggrieved by the aforesaid order, had carried the matter before the Income Tax Appellate Tribunal (for short, “the Tribunal”). The Tribunal while reversing the judgment and order passed by the Commissioner of Income Tax (Appeals) has opined, that, the tax was paid by the deductor/ resident pursuant to an order passed under Section 195 (2) of the Act and the refund was ordered under Section 240 of the Act, therefore, the provisions of Section 244A(1)(b) are clearly attracted and the revenue is accountable for payment of interest on the aforesaid refund

amount. Accordingly, the Tribunal has allowed the appeal of the deductor/ resident and directed the Assessing Officer/ Income Tax Officer to acknowledge the claim and allow the interest as provided under Section 244A(1)(b) of the Act on the aforesaid amount of refund, by order dated 28.06.2008.

11. The Revenue being of the view that they are treated unfairly by the Tribunal had carried the matter by way of Income Tax Appeal before the High Court. The High Court has refused to accept the appeal filed by the Revenue by the impugned judgment and order, dated 18.06.2009. That is how the Revenue is before us in these appeals.

12. We have heard the learned counsel appearing for the Revenue and the respondent-assessee in these appeals and also carefully perused the orders passed by the forums below.

RELEVANT PROVISIONS:-

13. To appreciate the view point of the learned counsel for the Revenue, we require to notice certain provisions of the Act prior to the insertion of Section 244A of the Act. The sections that require to be noticed are; Sections 156, 195(2), 240 and 244 of the Act. A perusal of these sections essentially would indicate the procedure whereby the tax amount is paid and the refund of excess amount is claimed by the assessee. The relevant part of the said sections is sequentially reproduced:

> "Section 156. Notice of demand When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Assessing Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable.
>
> *** *** ***
>
> Section 195. Other sums-
>
> (1) Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest or any other sum chargeable under the provisions of this Act (not being income chargeable under the head 'Salaries') 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:

> Provided that in the case of interest payable by the Government or a public section bank within the meaning of clause (23D) of Section 10 or a public financial institution within the meaning of that clause, deduction of tax shall be made only at the time of payment thereof in cash or by the issue of chaque or draft or by any other mode:

Provided further that no such deduction shall be made in respect of any dividends referred to in Section 115-O.

Explanation.- For the purpose 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.

(2) Where the person responsible for paying any such sum chargeable under this Act other than salary to a non-resident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted under sub-section (1) only on that proportion of the sum which is so chargeable.

*** *** *** Section 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.

*** *** *** Section 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 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 subsection, no interest under sub-section (1) shall be payable to him in respect of the amount so found to be in excess.

(2) * * * (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.

14. Section 156 of the Act talks about payment of tax, interest, penalty, fine or any other sum payable in consequence of any order passed under the Act on service of notice of demand issued by the assessing officer to the assessee specifying the said amounts.

15. Section 195(1) casts an obligation upon every person in this Country to deduct tax at the prevailing rates from out of any sum which is remitted to a non resident/Foreign Company. Sub Section (2) of Section 195 provides that where a person responsible for paying any such sum chargeable under the Act to a non resident/Foreign Company considers that the whole of such sum would not be the income chargeable in the case of recipient, he may make an application to the assessing officer/income tax officer to determine, by general or special order, the appropriate proportion of such sum so chargeable. The assessing officer is expected to determine such sum/tax which are deductible out of remittance to be sent to the recipient and only after deduction and payment of such sum/tax, the balance amount is to be remitted to the non-resident. We clarify here that it is the statutory obligation of the person responsible for paying such sum to deduct tax thereon before making payment, if such application is not filed.

16. Section 240 of the Act provides for refund on appeal etc. The Section envisages that if an amount becomes due to the assessee by virtue of an order passed in appeal, reference, revision, rectification or amendment proceedings, the assessing officer is bound to refund the amount to the assessee without the assessee being required to make any claim in that behalf. The expression ‘other proceedings under the Act’ used in Section 240 of the Act, are wide enough to include any order passed in proceedings other than the appeals under the Act.

17. Section 244 of the Act provides for interest on refunds where no claim is made or required to be made by the assessee. The said section envisages that where a refund is due to the assessee in pursuance of an order passed under Section 240 of the Act, 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 a simple interest of 15% per annum on the amount of refund due from the date immediately following the expiry of the period of three months as aforesaid to the date on which the refund is granted.

18. Since there was disconcert in the minds of both the assessee and the Revenue regarding the cases where payment of interest was required to be made to the assessee by the Revenue, the Parliament has thought it fit to insert a new Section 244A in the place of Sections 214, 243 and 244 in respect of assessments for the assessment year 1989-90 and onwards. The Section is extracted:

> "244A. Interest on refunds.
>
> (1)Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely:-
>
> (a) Where the refund is out of any tax paid under section 115WJ or collected at source under section 206C or paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted.
>
> Provided that no interest shall be payable if the amount of refund is less than ten per cent of the tax as determined under sub-section (1) of section 115WE or sub-section (1) of section 143 or on regular assessment;
>
> (b) in any other case, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of tax or penalty to the date on which the refund is granted.
>
> EXPLANATION.- For the purpose of this clause, "date of payment of tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.
>
> (2) * * * (3) * * * (4) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment year" (emphasis supplied)

19. The objects and reasons for introduction of the aforesaid Section is clarified by the Board in its Circular No. 549, dated 31.10.1989. Relevant paragraphs of which are as under:

> "11.2 Insertion of a new section 244A in lieu of sections 214, 243 and 244,- Under the provisions of section 214, interest was payable to the assessess on any excess advance tax paid by him in a financial year from the 1st day of April next following the said financial year to the date of regular assessment. In case the refund was not granted within three months from the date of the month in which the regular assessment was completed, section 243 provided for further payment of interest. Under section 244,

> interest was payable to the assessee for delay in payment of refund as a result of an order passed in appeal, etc., from the date following after the expiry of three months from the end of the month in which such order was passed to the date on which refund was granted. The rate of interest under all the three sections was 15 per cent annum.

11.3. These provisions, apart from being complicated left certain gaps for which interest was not paid by the Department to the assessee for money remaining with the Government. To remove this inequity, as also to simplify the provisions in this regard, the Amending Act, 1987, has inserted a new Section 244A in the Income Tax Act, applicable from the assessment year 1989-90 and onwards which contains all the provisions for payment of interest by the Department for delay in the grant of refunds. The rate of interest has been increased from the earlier 15 per cent annum to 1.5% per month or part of a month, comprised in the period of delay in the grant of refund. The Amending Act, 1987, has also amended sections 214, 243 and 244 to provide that the provisions of these sections shall not apply to the assessment year 1989-90 or any subsequent assessment years." (emphasis supplied) SUBMISSIONS:-

20. Shri Arijit Prasad, learned counsel appearing for the Revenue would submit, that, if the tax is paid under Section 195(2) of the Act, then while refunding the amounts so paid, the Revenue need not be burdened with payment of interest on the amount so refunded. He would submit that while Section 244A(1)(a) specifically provides for the four instances under specific provisions where the interest would be payable on the refund of tax paid, Section 244A(1)(b) does not provide for any specific instance but mentions "any other cases" and the explanation appended to the said Section requires payment of refund to be made in cases where notice of demand was issued under Section 156 of the Act and since no demand notice was issued to the assessee under Section 156 of the Act the assessee would not be covered even by the aforesaid provision and hence, no interest is payable to the assessee by the Revenue. It is further submitted that interest under Section 244A is to be granted in case where refund of any amount becomes due to an assessee under this Act and the refund of tax deducted at source made to the deductor/resident is not under any statutory provisions of the Act, the deductor/ resident is not entitled for interest on the amount of tax deducted and deposited with the revenue.

21. Per contra, learned senior counsel appearing for the resident/deductor would submit that since the payment made under Section 195(2) is payment made under the Act pursuant to an order passed by the assessing officer which in turn would be sheltered under the provisions of Section 156 of the Act, by virtue of clause(b) of sub-Section(1) of Section 244A of the Act, the Revenue is obliged to refund the tax with interest.

DISCUSSION:-

22. It is cardinal principle of interpretation of Statutes that the words of a Statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning unless such construction leads to some absurdity or unless there is something in the context or in the object of the Statute to the contrary. The golden rule is that the words of a

Statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of a Statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning irrespective of the consequences. It is said that the words themselves best declare the intention of the law giver. The Courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a Statute as being inapposite surpluses, if they can have proper application in circumstances conceivable within the contemplation of the Statute (See Gurudevdatta VKSSS Maryadit v. State of Maharashtra [2001] 4 SCC 534).

23. It is also well settled principle that the courts must interpret the provisions of the Statute upon ascertaining the object of the legislation through the medium or authoritative forms in which it is expressed. It is well settled that the Court should, while interpreting the provisions of the Statute, assign its ordinary meaning.

24. This Court in Shyam Sunder vs. Ram Kumar (2001) 8 SCC 24 has observed that in relation to beneficent construction, the basic rules of interpretation are not to be applied where (i) the result would be re- legislation of a provision by addition, substitution or alteration of words and violence would be done to the spirit of legislation, (ii) where the words of a Provision are capable of being given only one meaning and (iii) where there is no ambiguity in a provision, however, the Court may apply the rule of beneficent construction in order to advance the object of the Act.

25. Before the insertion of Section 244A as a composite Section by the Direct Tax Laws (Amendment) Act, 1987, the liability to pay interest on refund of pre-paid taxes was contained in Sections 214, 243 read with Section 244 (1A) of the Act. The Parliament has introduced a new Section in the place of Sections 214, 243 and 244 in respect of assessment for the assessment year 1989-90 and onwards.

26. The language of the Section is precise, clear and unambiguous. Sub-Section (1) of Section 244A speaks of interest on refund of the amounts due to an assessee under the Act. The assessee is entitled for the said amount of refund with interest thereon as calculated in accordance with clause (a) & (b) of sub-Section (1) of Section 244A. In calculating the interest payable, the section provides for different dates from which the interest is to be calculated.

27. Clause(a) of sub-Section(1) of Section 244A talks of payment of interest on the amount of tax paid under Section 155WJ, tax collected at source under section 206C, taxes paid by way of advance tax, taxes treated as paid under Section 199 during the financial year immediately preceding the assessment year. Under this clause, the interest shall be payable for the period starting from the first day of the assessment year to the date of the grant of refund. No interest is payable if the excess payment is less than 10% of the tax determined under Section 143(1) of the Act or on regular assessment. Clause(b) of Sub-Section(1) of Section 244A opens with the words "in any other case" that means in any case other than the amounts paid under Clause(a) of Sub-section(1) of Section 244A. Under this clause, the rate of interest is to be calculated at the rate of one and a half per cent per month or a part of a month comprised in the period or the periods from the date or, as the case may be, either the dates of payment of the tax or the penalty to the date on which the refund is

granted. An explanation is appended to clause(b) of the aforesaid sub-Section to explain the meaning of the expression "date of payment of tax or penalty". It clarifies that the “date of payment of tax or penalty” would mean the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

28. Having glanced through the relevant sections and the settled legal principles of interpretation of Statute, let us revert back to the factual situation placed before us in this appeal.

29. In the present case, the resident/ deductor had approached the assessing authority inter alia requesting him to determine the tax that requires to be deducted at source before the payment is made to a non- resident/foreign company. On such a request the assessing officer had passed an order under Section 195(2) of the Act directing the resident/ deductor to deduct tax at a particular rate. The resident/ deductor had appealed against the said order, but had deposited the tax as directed by the assessing officer/Income Tax Officer by the aforesaid order in accordance with the provisions of Section 200 of the Act. When the resident/deductor succeeded in the appeal, a direction was issued by the appellate authority for refund of tax so paid. In observance of the same, the assessing authority had granted the refund of the tax amount under Section 240 of the Act, but declined to grant interest on the said refund amount. The conclusion arrived at by the assessing officer was accepted by the first appellate authority on the ground, inter alia, that the conjoint reading of Section 156 and the explanation appended to Section 244A(1)(b) of the Act would indicate that the amount refunded to the resident/ deductor cannot be equated to the refund contemplated under Section 244A(1)(b) of the Act, whereunder only the interest on refund of excess payment made under Section 156 of the Act on account of post-assessment tax is contemplated and not the interest on refund of tax deposited under self- assessment. However, the Tribunal has rejected the aforesaid rationale of the assessing authority as well as the first appellate authority and granted the claim of the resident/deductor. The High Court has endorsed the view of the Tribunal and dismissed the appeals filed the Revenue.

30. The refund becomes due when tax deducted at source, advance tax paid, self assessment tax paid and tax paid on regular assessment exceeds tax chargeable for the year as a result of an order passed in appeal or other proceedings under the Act. When refund is of any advance tax (including tax deducted/collected at source), interest is payable for the period starting from the first day of the assessment year to the date of grant of refund. No interest is, however, payable if the excess payment is less than 10 percent of tax determined under Section 143(1) or on regular assessment. No interest is payable for the period for which the proceedings resulting in the refund are delayed for the reasons attributable to the assessee (wholly or partly). The rate of interest and entitlement to interest on excess tax are determined by the statutory provisions of the Act. Interest payment is a statutory obligation and non- discretionary in nature to the assessee. In tune with the aforesaid general principle, Section 244A is drafted and enacted. The language employed in Section 244A of the Act is clear and plain. It grants substantive right of interest and is not procedural. The principles for grant of interest are the same as under the provisions of Section 244 applicable to assessments before 01.04.1989, albeit with clarity of application as contained in Section 244A.

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

32. The question before us is, whether the resident/deductor is also entitled to interest on refund of excess deduction or erroneous deduction of tax at source under Section 195 of the Act.

33. We would begin our discussion by referring to circular No. 790, dated 20.04.2000, issued by the Board. Omitting what is not necessary, the material portion of the circular is extracted:

> "……..
>
> 6. Refund to the person making payment under Section 195 is being allowed as income does not accrue to the non-resident. The amount paid into the Government account in such cases, is no longer 'tax'. In view of this, no interest under section 244A is admissible on refunds to be granted in accordance with this Circular or on the refunds already granted in accordance with Circular No. 769."

34. What the deductor/ resident primarily contend is that, what has been deposited by him is a tax, may be for and on behalf of non-resident/ foreign company and when the beneficial circular provides for refund of tax to the deductor under certain circumstances, the refund of tax should carry interest.

35. The circular issued by Central Board of Direct Taxes ("the Board" for short) is binding on the department. Binding nature of the circular is explained by this Court in the case of UCO Bank v. CIT 237 ITR 889, wherein this Court has observed that the circulars issued by the Board in exercise of its powers under Section 119 of the Act would be binding on the income tax authorities even if they deviate from the provisions of the Act, so long as they seek to mitigate the rigour of a particular Section for the benefit of the assessee. Therefore, we cannot be taking exception to the reasoning and conclusion reached by the authorities under the Act. However, the Tribunal and the High Court, have granted interest on the amount of tax deposited by the resident/ deductor from the date of payment on the ground, firstly, the refund of tax is directed by the first appellate authority in the appeal filed by the deductor/ resident under Section 240 of the Act and secondly, the Revenue for having retained the sum by way of tax has to compensate the person who had deposited the tax.

36. Section 240 of the Act provides for refund of any amount that becomes due to an assessee as a result of an order in appeal or any other proceedings under the Act. The phrase "other proceedings under the Act" is of wide amplitude. This Court has observed, that, the other proceedings under the

Act would include orders passed under Section 154 (rectification proceedings), orders passed by the High Court or Supreme Court under Section 260 (in reference), or order passed by the Commissioner in revision applications under Section 263 or in an application under Section 273A.

37. A "tax refund" is a refund of taxes when the tax liability is less than the tax paid. As per the old section an assessee was entitled for payment of interest on the amount of taxes refunded pursuant to an order passed under the Act, including the order passed in an appeal. In the present fact scenario, the deductor/assessee had paid taxes pursuant to a special order passed by the assessing officer/Income Tax Officer. In the appeal filed against the said order the assessee has succeeded and a direction is issued by the appellate authority to refund the tax paid. The amount paid by the resident/ deductor was retained by the Government till a direction was issued by the appellate authority to refund the same. When the said amount is refunded it should carry interest in the matter of course. As held by the Courts while awarding interest, it is a kind of compensation of use and retention of the money collected unauthorizedly by the Department. When the collection is illegal, there is corresponding obligation on the revenue to refund such amount with interest in as much as they have retained and enjoyed the money deposited. Even the Department has understood the object behind insertion of Section 244A, as that, an assessee is entitled to payment of interest for money remaining with the Government which would be refunded. There is no reason to restrict the same to an assessee only without extending the similar benefit to a resident/ deductor who has deducted tax at source and deposited the same before remitting the amount payable to a non-resident/ foreign company.

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

39. In the present case, it is not in doubt that the payment of tax made by resident/ depositor is in excess and the department chooses to refund the excess payment of tax to the depositor. We have held the interest requires to be paid on such refunds. The catechize is from what date interest is payable, since the present case does not fall either under clause (a) or (b) of Section 244A of the Act. In the absence of an express provision as contained in clause (a), it cannot be said that the interest is payable from the 1st of April of the assessment year. Simultaneously, since the said payment is not made pursuant to a notice issued under Section 156 of the Act, Explanation to clause (b) has no application. In such cases, as the opening words of clause (b) specifically referred to "as in any other case", the interest is payable from the date of payment of tax. The sequel of our discussion is the

resident/deductor is entitled not only the refund of tax deposited under Section 195(2) of the Act, but has to be refunded with interest from the date of payment of such tax.

40. In the result, the appeals fail. Accordingly, the appeals are dismissed. No order as to costs.

.....J.

(H.L. DATTU) .....J.

(S.A. BOBDE) NEW DELHI;

FEBRUARY 26, 2014.