

[TS-5428-HC-2009(PUNJAB)-O], (2010) 329 ITR 0069, (2010) 195 TAXMAN 0299

IN THE HIGH COURT OF PUNJAB

M.M. KUMAR, J.

CIVIL WRIT PETN. NOS. 10223 TO 10225 AND 10235 OF 2007

ROADMASTER INDUSTRIES OF INDIA (P) LTD. VS COMMISSIONER OF
INCOME TAX & ANR.

ASSESSMENT YEAR

1978-1979, 1979-1980, 1980-1981

SECTION REFERRED

214, 244(1A)

IN FAVOR OF

Assessee

DATED

25-05-2009

APPELLANT BY

Sanjay Bansal

RESPONDENT BY

Ms. Urvashi Dhugga

JUDGMENT

M.M. Kumar, J. :

The assessee-petitioner has filed four writ petitions, namely, Civil Writ Petn. Nos. 10223 to 10225 and 10235 of 2007, challenging the common order dt. 30th April, 2007 passed by the CIT, Patiala, under [s. 264](#) of the IT Act, 1961 (for brevity, "the Act"), in respect of the asst. yrs. 1978-79, 1979-80 and 1980-81. A further prayer has been made for directing the respondents to pay interest to the assessee-petitioner on the amount of refund as per the provisions of [s. 244\(1A\)](#) and/or [s. 214](#) of the Act, keeping in view the dicta of the Hon'ble Supreme Court in the case of Sandvik Asia Ltd. vs. CIT (2006) 200 CTR (SC) 505 : (2006) 280 ITR 643 (SC).

Therefore, the following substantial question of law which arises for consideration of this Court is :

"Whether in the facts and circumstances of the case, the assessee-petitioner is entitled to payment of interest on the amount of refund in accordance with the provisions of s. 244(1A) and [s. 214](#) of the Act as interpreted in Sandvik Asia Ltd. vs. CIT (2006) 200 CTR (SC) 505 : (2006) 280 ITR 643 (SC) ?"

Civil Writ Petn. No. 10223 of 2007—asst. yr. 1978-79

2. On 13th Dec., 1977, the assessee-petitioner had paid advance tax amounting to Rs. 1,47,000. Thereafter, return was filed declaring loss of Rs. 3,77,096. The assessment was completed under [s. 143\(3\)](#) of the Act on 26th March, 1981 at an income of Rs. 2,17,720. The tax liability was assessed at Rs. 1,37,164 on account of income-tax and surcharge. After adjusting the tax liability from the advance tax of Rs. 1,47,000 deposited by the assessee-petitioner balance of Rs. 9,836 was ordered to be refunded. The interest amount of Rs. 3,430 was also determined to be paid under [s. 214](#) of the Act.

3. It is also pertinent to mention that in respect of the previous years 1976-77 and 1977-78 a rectification order was passed under [s. 154](#) of the Act on 28th Jan., 1984, and the assessee-petitioner was given the benefit of unabsorbed depreciation in respect of those years. Consequently, refund order amounting to Rs. 1,61,456 was issued to the assessee-petitioner. However, on 2nd Dec., 1986 the assessee-petitioner filed an application No. RMI : DIR : 859 and demanded interest amounting to Rs. 1,14,837. The demand of interest has been made from the date of payment of advance tax, i.e., from 13th Dec., 1977 to 28th Jan., 1984. As per the provisions of s. 214(1) of the Act, simple interest on advance tax refund is payable from the 1st April next following the financial year to the date of regular assessment. Accordingly, the period works out to be 1st April, 1978 to 26th March, 1981. However, the assessee petitioner has demanded interest upto the date of payment of refund, i.e., 28th Jan., 1984. The AO, vide his order dt. 14th Jan., 1987, issued refund of Rs. 61,658. A copy of the order is taken on record as mark "A".

4. The assessee-petitioner in his application under [s. 264](#) of the Act (P.9) before the Commissioner of Income-tax, Patiala (for brevity "the CIT") has raised demand of further interest of Rs. 51,046 and claimed that it was only the demand on simple interest for the period which was not allowed by the AO. His claim is based on the date of payment of advance tax, i.e., 13th Dec., 1977 to 13th March, 1978 and from 26th March, 1981 which is the date of regular assessment to 28th Jan., 1984 when the refund order was issued. The assessee-petitioner did not demand interest on interest as per the calculation made by the assessee himself. The calculation of Rs. 51,046 was only in respect of the period which was not allowed by the AO. He has allowed interest under [s. 214](#) of the Act from 1st April, 1978 to 26th March, 1981. The claim made by the assessee-petitioner is that under [s. 244\(1A\)](#) of the Act, interest has to be allowed from the date on which such amount was paid to the date of grant of refund. Therefore, the basic difference between the assessee-petitioner and the AO is regarding the period for which the interest is payable.

Civil Writ Petn. No. 10224 of 2007—asst. yr. 1979-80

5. On 14th June, 1978, 15th Sept., 1978 and 14th Dec., 1978, the assessee-petitioner had paid advance tax amounting to Rs. 8,22,097. The assessee-petitioner filed return declaring loss of Rs. 6,53,170 on 31st July, 1979. On 31st March, 1982, the assessment was completed under [s. 143\(3\)](#) of the Act at an income of Rs. 11,71,840. The assessee was found liable to pay Rs. 7,93,781 on account of income-tax and surcharge which was adjusted out of the advance tax of Rs. 8,22,097. The balance refund of Rs. 22,361 was determined. The AO also fixed interest under [s. 214](#) of the Act amounting to Rs. 7,805. Subsequently, some orders under ss. 154, 263 and 143(3) of the Act were passed resulting in nominal change in the demand or refund. As per the order dt. 22nd Aug., 1985 passed under [s. 154](#) of the Act, the income of the assessee-petitioner for the period under consideration became nil after granting benefit of the unabsorbed brought forward depreciation/losses for the earlier years, viz., 1976-77 to 1978-79. Accordingly, refund of Rs. 7,46,657 was issued to the petitioner. The assessee-petitioner filed an application : No. RMI DIR : 858 dt. 2nd Dec., 1986, vide which he requested for interest amounting to Rs. 6,48,837. As per the calculations by the assessee-petitioner the interest has been demanded from the dates of payment of advance tax, i.e., 14th June, 1978, 15th Sept., 1978 and 14th Dec., 1978 whereas as per the provisions of [s. 214\(1\)](#) of the Act, simple interest on advance tax refund is payable from the 1st April next following the financial year to the date of regular assessment which in the present case would be 1st April, 1979 to 31st March, 1982. The assessee-petitioner has claimed interest upto the date of refund, i.e., upto 22nd Aug., 1985 in respect of advance tax refund whereas under [s. 214\(1\)](#) of the Act interest is payable upto the date of regular assessment which is 31st March, 1982.

6. The AO, vide order dt. 14th Jan., 1987, issued refund of Rs. 2,70,172. A true copy of the application claiming interest under [s. 244\(1A\)](#) of the Act read with [s. 214\(1\)](#) of the Act is taken on record and is marked "B". The refund order of Rs. 2,70,172 was issued on 14th Jan., 1987 which is marked as "B1". According to the application filed under [s. 264](#) of the Act before the CIT, Patiala, the assessee-petitioner has claimed payment of interest amounting to Rs. 3,60,093. The basis of calculation is computation of simple interest in respect of the period interest has not been allowed by the AO such as from the dates of payment of advance tax, i.e., 14th June, 1978, 15th Sept., 1978 and 14th Dec., 1978 to 31st March, 1979 and from 31st March, 1982 (the date of regular assessment) to 22nd Aug., 1985 (the date of issuance of refund). The assessee-petitioner had not demanded interest on interest. The AO has allowed interest under [s. 214](#) of the Act from 1st April, 1978 to 26th March, 1981, which is the date of regular assessment whereas interest under [s. 244\(1A\)](#) of the Act is admissible from the date of payment to the date of issuance of refund. The application dt. 8th Oct., 1987, filed by the petitioner under [s. 264](#) of the Act is on record as Annex. P5. Accordingly, the basic

difference between the calculations made by the assessee-petitioner and the AO has been regarding the period for which interest is payable.

Civil Writ Petn. No. 10225 of 2007—asst. yr. 1980-81

7. On 15th June, 1979, 15th Sept., 1979 and 15th Dec., 1979, the assessee-petitioner had paid advance tax amounting to Rs. 12,90,000. The assessee-petitioner filed return declaring an income of Rs. 16,68,255 (income Rs. 30,75,316 as reduced by brought forward losses/depreciation of Rs. 14,07,065) on 29th Aug., 1980. On 28th Feb., 2003 the assessment was completed under [s. 143\(3\)](#) of the Act at an income of Rs. 45,77,520. The assessee was found liable to pay Rs. 29,52,500 on account of income-tax and surcharge and interest, etc. After adjustment of the advance tax of Rs. 12,90,000, balance demand of Rs. 16,62,500 was created against the assessee-petitioner. After completion of assessment proceedings under [s. 143\(3\)](#) of the Act, the assessee-petitioner paid Rs. 10,00,000 against the outstanding demand of Rs. 16,62,500. Some amounts were recovered from the assessee-petitioner out of the refunds payable to the assessee for different years. Subsequently, some orders under [s. 154](#) of the Act were passed resulting in nominal change in demand. The assessee-petitioner was also allowed waiver of interest charged under ss. 215 and 139(8) of the Act by the CIT. As per the order dt. 8th Nov., 1985, passed by the AO to give to appeal effect to the order of the CIT, the assessee-petitioner's income for the year under consideration was reduced to Rs. 3,73,370 and giving benefit of unabsorbed brought forward depreciation/losses for the earlier years, viz., 1976-77 to 1979-80, a refund of Rs. 25,16,609 was issued to the assessee-petitioner. The assessee-petitioner filed an application No. RMI : DIR : 857, dt. 2nd Dec., 1986, vide which he demanded interest amounting to Rs. 14,69,072. As per the calculation submitted by the assessee-petitioner interest has been demanded from the dates of payment of advance tax which is w.e.f. 1st April, 1978, 15th Sept., 1978 and 15th Dec., 1978 whereas correct dates of payment of advance tax is 15th June, 1979, 13th Sept., 1979 and 15th Dec., 1979. As per the calculation submitted by the assessee, the interest has been demanded upto the date of refund, i.e., 8th Nov., 1985 in respect of advance tax refunds as well as the payments made by the assessee-petitioner after completion of the assessment under [s. 143\(3\)](#) of the Act whereas the same is payable upto the date of regular assessment under [s. 214\(1\)](#) of the Act which is 28th Feb., 1983 in respect of advance tax and regarding the regular payments made by the assessee, interest under [s. 244\(1A\)](#) of the Act is payable from the date of payment to the date of refund.

8. The AO, vide order dt. 9th Jan., 1987, determined interest payable to the assessee-petitioner at Rs. 5,57,628. According to the application filed under [s. 264](#) of the Act before the CIT by the assessee-petitioner, further interest of Rs. 7,62,394 was demanded. As per the calculation of interest of Rs. 7,62,394, it was only the demand of simple interest for the period from the dates of payment of advance tax, i.e., 15th June, 1979, 15th Sept., 1979 and 15th Dec., 1979 to 8th Nov., 1985 (date of issuance of refund). The assessee-petitioner has, not demanded interest on interest. The AO has allowed interest under [s. 244\(1A\)](#) of the Act from the date of payment to 1st Sept., 1985. As per [s. 244\(1A\)](#) of the Act, no interest is payable for the period of one month from the date of passing of the order in appeal or other proceedings. A copy of the application filed under [s. 264](#) of the Act by the assessee-petitioner is on record as Annex. P6.

Civil Writ Petn. No. 10235 of 2007—asst. yr. 1980-81

9. The issue raised in the instant petition is regarding non-payment of interest on the refund amount of Rs. 1,88,250 which was determined as payable to the assessee-petitioner after giving appeal effect to the CIT(A) order dt. 15th May, 1991. As per the order passed in appeal the income of the assessee-petitioner was reduced from Rs. 3,00,859 to nil and refund of Rs. 1,88,250 was determined. The assessee-petitioner filed an application on 8th Oct., 1991, with a request for payment of interest amounting to Rs. 3,04,259 after calculating the same on the refund amount of Rs. 1,88,250 in respect of the period from 14th June, 1979 to 15th April, 1991. The request made by the assessee-petitioner was rejected by the AO, vide order dt. 6th March, 1992 (P.7). It is further pertinent to mention that the application filed by the assessee-petitioner under [s. 264](#) of the Act was rejected by the CIT, vide order dt. 8th Sept., 1992 by observing that the assessee-petitioner was not entitled to interest under [s. 244\(1A\)](#) of the Act in respect of the amount paid as advance tax and reliance was placed on a Full Bench judgment of the Gujarat High Court in the case *Bardolia Textile Mills vs. ITO* (1985) 45 CTR (Guj)(FB) 274 : [\(1985\) 151 ITR 389](#) (Guj)(FB). The Full Bench relied upon a circular issued by the CBDT being Circular No. 179, dt. 30th Sept., 1975 [(1976) 102 ITR (St) 9], which provided that no interest under [s. 244\(1A\)](#) of the Act was payable in such circumstances. However, after issuance of directions of this Court in Civil Writ Petn. No. 69 of 1990 decided on 29th May, 2006, the CIT, vide its order dt. 30th April, 2007 (P.11) has rejected the petition of the assessee-petitioner by a common order.

10. Mr. Sanjay Bansal, learned senior counsel on behalf of the assessee-petitioner, has argued that the matter is squarely covered in favour of the assessee-petitioner on the plain reading of s. 244(1A) of the Act which has now been interpreted in Sandvik Asia Ltd.'s case (supra). The CIT in his order dt. 30th April, 2007 (P.12) has rejected the claim of the assessee-petitioner in respect of all the three assessment years. The CIT adopted the approach that s. 214(1A) of the Act, as amended, w.e.f. 1st April, 1985, was not applicable to the facts of the present case which were to take effect from the asst. yr. 1985-86 only. According to the CIT, the assessee-petitioner was eligible for payment of simple interest on the amount for which aggregate sum in instalments of advance tax paid during any financial year in which they were payable exceeded the amount of tax determined on regular assessment from the 1st April commencing following financial year to the date of regular assessment. The view of the CIT is discernible from para 7 of the judgment which reads thus :

"7. According to s. 214(1), the assessee had been eligible for simple interest on the amount by which the aggregate sum of any instalment of advance tax paid during any financial year in which they were payable exceeded the amount of the tax determined on regular assessment from the first of April next following the said financial year to the date of the regular assessment for the assessment year immediately following the said financial year. The expression 'regular assessment' has been defined under s. 2(40) of the IT Act, 1961 which means the assessment made under s. 143 or s. 144. The orders of the rectification and orders giving appeal effect are passed under different sections and hence cannot be termed as orders of regular assessment. Therefore, 'regular assessment' as mentioned in s. 214(1) means only the assessment made under s. 143 or 144. Thus, a combined reading of s. 214(1) and s. 2(40) makes it unambiguously clear that interest under s. 214(1) was to be payable upto the date of regular assessment only. The operation of s. 244(1A) was to come into force only when the excess payment had been made in pursuance of the order passed after 31st March, 1975, and interest was to be paid from the date of payment to the date of refund. It was not for nothing that the two separate sections, i.e., 214(1) and 244(1A) were on the statute book, each operated in different spheres."

11. After placing reliance on some judgments of the Tribunal, Bombay High Court and Kerala High Court, the CIT concluded that the assessee-petitioner had been correctly paid interest under s. 214(1) of the Act on the excess amount of advance tax and interest under s. 244(1A) of the Act. The CIT also dealt with the judgment of the Hon'ble Supreme Court in Sandvik Asia Ltd.'s case (supra) by stating that the Supreme Court has granted relief only in a particular case and no principle of universal application was laid down. The CIT further pointed out that the assessee did not seek the relief of interest on interest in its original petition under s. 264 of the Act and only simple interest was to be given.

12. Ms. Urvashi Dhugga, learned counsel for the Revenue, has defended the order of the CIT and argued that simple interest which has been claimed stands paid to the assessee-petitioner and there is no other interest payable to it either under (1) or under (1A) of the Act. She has submitted that the judgment in Sandvik Asia Ltd.'s case (supra) has no application to the facts of the present case.

13. Having heard the learned counsel we are of the view that on the plain language of s. 244(1A) of the Act the writ petition deserves to succeed. It would be necessary to read ss. 244(1) and (1A) of the Act which reads thus :

"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 s. 240 and the ITO 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-s. (1) is due to the assessee, as a result of any amount having been paid by him after the 31st 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-s. (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 passing of the order in appeal or other proceedings :

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

14. A perusal of the aforesaid provisions show that any amount paid by the assessee after 31st March, 1975 and if any refund or part of refund in respect of the aforesaid amount is due to the assessee on account of any order of assessment or penalty having been found in appeal or other proceedings under the Act to be in excess of the amount which such assessee is liable to pay as tax or penalty, then such an assessee is entitled to simple interest at 12 per cent, per annum as per the provisions of [s. 244\(1A\)](#) of the Act. The interest has to be calculated on the amount so found to be in excess from the date on which such amount was paid till the date on which the refund is granted. The grievance made by the assessee-petitioner is that the interest has been paid by the AO from the date of deposit of advance tax only to the date of assessment order which is violative of the provisions of [s. 244\(1A\)](#) r/w [s. 244\(1\)](#) of the Act. It has been claimed that interest on refund is required to be paid to the assessee-petitioner from the date of deposit of advance tax following the 1st April of the next financial year till the refund is granted at 12 per cent.

15. The aforesaid provision came up for consideration before the Hon'ble Supreme Court in *Sandvik Asia Ltd.'s case (supra)*. The Hon'ble Supreme Court posed the question as to whether the IT Act provides for payment of compensation for delayed payment of amounts due to an assessee where the amount includes interest. Referring to a number of judgments it has been held that the phrase "any amount" used in [s. 244\(1A\)](#) would not be confined only to "tax" but would also include "interest". The aforesaid view is discernible by reading of paras 63, 66 and 67 of the report which is as under (pp. 671, 672) :

"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.....

As already noticed in para supra, the Madras High Court in *CIT vs. Needle Industries (P) Ltd.* (1998) 147 CTR (Mad) 514 : [\(1998\) 233 ITR 370](#) (Mad), has also interpreted the phrase 'any amount' in the same manner when considering the provisions of [s. 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 *CIT vs. Ambat Echukutty Menon* (1988) 67 CTR (Ker) 287 : [\(1988\) 173 ITR 581](#) (Ker). 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 the assessee.

In our opinion, the appellant is entitled to interest under [s. 244](#) and/or [s. 244A](#) of the Act in accordance with the terms and provisions of the said sections. The interest previously granted to it has been computed upto 27th March, 1981 and 31st March, 1986 (under different sections of the Act) and its present claim, is for compensation for periods of delay after these dates."

16. The Hon'ble Supreme Court also considered the question whether on general principle the assessee ought to have been compensated for inordinate delay in receiving the money due to it. The Hon'ble the Supreme Court placed reliance on the circular issued by the Central Excise Department on the subject of refund of deposits and concluded in para 78 of the report as under (p. 675) :

"A close scrutiny of the contents of the circular dt. 2nd Jan., 2002, would disclose as to the modalities for return of predeposits. 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 of 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 accrued 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 CITs were advised implementation of these instructions and ensure their implementation through a suitable monitoring mechanism. It is also specifically mentioned that the CITs 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 para (supra) would clearly go to show that the appellant was undisputably entitled to interest under ss. 214 and 244 of the Act as held by the various High Courts and also 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 dt. 30th April, 1997. 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 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. . . .

17. It is further pertinent to mention that their Lordships of the Hon'ble Supreme Court were dealing with the asst. yrs. 1977-78, 1978-79 and so on and so forth. In the present case also the same assessment years are in question. The aforesaid principles have been followed and applied by the Division Bench of this Court in the case of Garga Steel Industries vs. CCE (2009) 239 ELT 241 (P&H) (Customs Appeal No. 21 of 2006, decided on 9th Jan., 2009). When we apply the principles laid down by their Lordships' of the Hon'ble Supreme Court in Sandvik Asia Ltd.'s case (supra) to the facts of the present case, it emerges that the refund claim of the assessee-petitioner has been withheld for unreasonably long period and it cannot be deprived of the payment of interest as compensation because the amount has been used by the respondent-Department during all that period. Accordingly, the assessee-petitioner is entitled to statutory rate of interest at 12 per cent, per annum as per the provisions of s. 244(1) of the Act, from the date the amount was deposited by the assessee-petitioner till the date on which refund was granted. The assessee-petitioner shall also be entitled to recover the interest on interest as per the ratio of the judgment in Sandvik Asia Ltd.'s case (supra).

18. As a sequel to the aforesaid discussion, these writ petitions are allowed and the order dt. 30th April, 2007 (P12) passed by the CIT is hereby quashed. Consequently, the respondents are directed to calculate the amount of interest payable to the assessee-petitioner from the date the amount was deposited by it till the date the refund is granted. The assessee-petitioner shall also be entitled to the amount of interest on interest. The aforesaid directions shall be subject to adjustment of the amount which might have already been paid to the assessee-petitioner. The needful shall be done within a period of three months from the date of receipt of a certified copy of this order.

19. The writ petitions and pending civil miscellaneous applications are disposed of.