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Supreme Court allows section 244A interest to tax deductor as 'compensation' for excess taxes deducted

In brief

The Supreme Court¹ (SC) upheld a tax deductor's claim for interest under section 244A of the Income-tax Act, 1961 (the Act) on refund of excess tax deduction at source made pursuant to directions of the tax officer (TO) under section 195(2) of the Act which was subsequently reversed/ reduced by the appellate authority. In concluding so, it was observed by the SC that in addition to the obligation on the Government to refund excess money received, it was the taxpayer's right to receive interest on the said refund.

¹ Union of India v. Tata Chemicals Ltd [2014] 43 taxmann.com 240 (SC) (Civil Appeal No. 6301 of 2011) vide order dated February 26, 2014

Facts

- The resident company (the tax deductor) was to make payments to a non-resident against two separate invoices; one consisting of service charges/ fee and the second for reimbursement of expenses.
- Section 195 of the Act required a person to withhold taxes on any income payable to a non-resident. The tax deductor applied to the TO under section 195(2) of the Act² to determine the appropriate amount of tax to be deducted from the subject payment to the non-resident. The TO directed the tax

² As per provisions of section 195(2) of the Act, where it is considered that the entire amount payable to a non-resident may not be income, an application may be made to the AO for determining the amount of tax which needs to be deducted on the subject payment.

deductor to deduct tax at 20% on the entire amount, i.e. including payment against the reimbursement invoice. The tax deductor complied with the aforesaid direction and credited the amount deducted in favour of the revenue.

- Subsequently, the tax deductor appealed before the Commissioner of Income-tax (Appeals) (CIT(A)) against the TO's directions. The CIT(A) held that reimbursement of expenses was not income and thereby not liable for tax withholding under section 195 of the Act. The CIT(A) accordingly directed the TO to refund the excess TDS deposited by the tax deductor.
- Pursuant to the CIT(A)'s order, the tax deductor applied for refund of excess TDS along with interest under section 244A(1)(b) of the Act.
- Under the provisions of section 244A of the Act, interest is payable at prescribed rates -
 - in case of refund of advance taxes paid by or on behalf of the assessee on account of appeal/ any other proceedings, for the period from the first day of the assessment year until the date of grant of the refund [*Section 244A(1)(a) of the Act*]; and
 - in any other case, for the period from the date of payment of tax until the date of grant of the refund [*Section 244A(1)(b) of the Act*].
- The TO denied the claim for interest under section 244A of the Act. On appeal, the CIT(A) denied the tax deductor's claim and held that:
 - Refund of excess TDS was as per Circulars No. 769³ and 790⁴ issued by the Central Board of Direct Taxes (CBDT) and not under any statutory provisions of the Act.
 - Circular No 790 specifically provided that the interest under section 244A was not payable on refund of excess TDS.

- Section 244A(1)(b) only contemplated payment of interest on refund of excess payment made under demands raised post-assessment and not otherwise. In doing so, the CIT(A) relied on a ruling of Delhi Income-tax Appellate Tribunal⁵ (the Tribunal) wherein no interest under section 244A of the Act had been allowed on excess payment of self-assessment taxes.

- Aggrieved by the aforesaid order, the tax deductor further appealed to the Tribunal. The Tribunal, while allowing the tax deductor's appeal held that refund of excess TDS was pursuant to an appeal filed by the tax deductor and would be entitled for payment of interest by the revenue under section 244A⁶.
- As the revenue's appeal to the High Court was not admitted, they approached the Supreme Court ('SC').

Issue before the SC

Whether the revenue is legally responsible under section 244A of the Act for payment of interest on refund of excess TDS deposited under the directions issued by the TO that has subsequently been reversed/ reduced by an appellate authority?

Revenue's contentions

- Interest under section 244A of the Act was to be granted only in cases where refund of any amount became due to a taxpayer under this Act (tax deductor is not a taxpayer in respect of of the subject income). Furthermore, the refund of excess TDS made to the tax deductor was not under any statutory provisions of the Act, but on account of the Circulars issued by the CBDT in this regard.
- Interest payable in "any other case" (i.e. under section 244A(1)(b) of the Act) required payment of refund to be made only in cases where a notice of demand had been issued, and not in any other mode of excess payment.

⁵ Sutej Industries Ltd. v. ACIT [2003] 86 ITD 335 (Delhi-Trib)

⁶ The Tribunal placed reliance on the ruling of the Honourable Supreme Court in case of *Sandvik Asia Ltd v. CIT [2006]280 ITR 643(SC)* which had principally held that Revenue authorities must compensate for any amount wrongfully withheld from an assessee without authority of law

³ Circular No 769 dated August 6, 1998

⁴ Circular No 790 dated April 20, 2000

Taxpayer's contention

The payment of excess TDS was made pursuant to an order passed by the TO under section 195(2) of the Act. This payment should thus be equated with payment made against a notice of demand, and hence any refund of excess TDS should be compensated along with interest.

SC's decision

- Interest was a kind of compensation for use and retention of the money collected by the revenue that was unauthorised. The revenue having received the money without right, and having retained and used it, was bound to make the party good, just as an individual would be under similar circumstances.
- The obligation to refund money received and retained without right implied and carried with it the right to interest. The rate of interest and entitlement to interest on excess tax were determined by the statutory provisions of the Act. While this right to interest on refund of excess taxes had been given to an assessee under the provisions of section 244A of the Act, it needed examination as to whether the same right could be extended to cases of excess TDS deducted by a tax deductor under section 195 of the Act.
- In the present facts, the tax deductor had deposited TDS pursuant to an order passed by the TO. The tax deductor had succeeded in the appeal filed against that order, and a direction had been issued by the appellate authority to refund the TDS paid. Thus, the amount paid by the tax deductor was retained by the revenue until a direction was issued by the appellate authority to refund this. When the sum was refunded it should have carried interest as a matter of course.
- The SC in one case⁷ had held that Courts may apply the rule of beneficent construction in order to advance the objects of the Act. The object behind section 244A of the Act, which was precise, clear and unambiguous, was to entitle the taxpayer to receive interest for money remaining with the revenue which would be refunded. There was no reason to restrict the interest

payments only to a taxpayer without extending similar benefit to a tax deductor who had deducted tax at source and deposited the tax.

- With respect to the date from which the interest was payable, though the said refund did not fall under section 244A(1)(b) of the Act, on the basis of beneficent construction of the term, 'in any other case', the excess TDS needed to be refunded along with interest from the date of payment of such tax by the tax deductor.

PwC observations

- The eligibility for interest on refund of excess TDS to a tax deductor has been a subject matter of controversy before various Courts. The controversy results from the fact that section 244A of the Act only specifies interest on refund arising against tax payments made by a taxpayer.
- In this regard, the revenue has been consistently taking a view that a tax deductor is obliged to deduct tax on income of other taxpayers and thus, for any excess taxes deposited by the tax deductor, he/ she is not to be treated as a taxpayer for such excess TDS. Various Courts, including the SC⁸ have opined in the past that refund of excess TDS pursuant to any proceedings under the Act or an appellate order needs to be made along with due interest under section 244A of the Act. This decision further affirms this position. The applicability of clarification issued by the CBDT in Circular No 790 regarding non-payment of interest under section 244A of the Act on refund of excess TDS thus gets diluted in the aforesaid cases.
- What however remains unanswered is the question whether, in cases where excess TDS has been deposited by a tax deductor and this has not been subject matter of an assessment or an appeal, such TDS shall also be refunded along with interest under section 244A of the Act. This may continue to be a subject matter of controversy in spite of the aforesaid SC ruling.

⁷ Shyam Sunder v. Ram Kumar [2001] 8 SCC 24 (SC)

⁸ ITO v. Delhi Development Authority [2001] 252 ITR 772 (SC)

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