
(2014) 07 BOM CK 0271
In the Bombay High Court
Case No : Writ Petn. No. 2529 of 2004

Merck Ltd.

APPELLANT

Vs

Tarkeshwar Singh

RESPONDENT

Date of Decision : 07-07-2014

Acts Referred:

Constitution of India, 1950 — Article 142, 226, 227
Income Tax Act, 1961 — Section 139, 140A, 143(3), 148, 156

Citation : (2014) 270 CTR 355

Hon'ble Judges : M.S. Sanklecha, J;G.S. Kulkarni, J

Bench : Division Bench

Advocate : A. Vissanji and S.J. Mehta, Advocate for the Appellant; Suresh Kumar, Advocate for the Respondent

Judgement

M.S. Sanklecha, J.—This petition under Art. 226 of the Constitution of India challenges an order dt. 28th May, 2004 passed by respondent No. 1 i.e. CIT in revision under s. 264 of the IT Act, 1961 (the Act) in respect of asst. yr. 1986-87. By the impugned order dt. 28th May, 2004, the CIT rejected the petitioners claim for interest on the delayed refund of self assessment tax by the Revenue for the period from its payment i.e. 30th July, 1986 till the date of refund i.e. 30th March, 1998. The petitioner had made a claim for interest under s. 244(1A) of the Act.

Facts:

For the asst. yr. 1986-87, the petitioner paid tax in the aggregate amounting to Rs. 63,87,214 comprising of the following:

2. On 31st July. 1986, the petitioner filed its return of income for asst. yr. 1986-87 declaring its total income at Rs. 1,27,74,430. By an order dt. 28th March, 1989 passed under s. 143(3) of the Act, the AO assessed the petitioner to an income of Rs. 1,60,00,970. The tax payable was determined at Rs. 80,70,506. The assessment order dt. 28th March, 1989 after giving credit for

taxes paid demanded the balance tax along with interest of Rs. 24,90,126 from the petitioner.

3. The order of assessment dt. 28th March, 1989 was subject to challenge in appeal by the petitioner and by way of a revision by the Revenue. These challenges culminated in two orders both dt. 11th Aug., 1997 of the Tribunal, disposing of the grievances of the Revenue and the petitioner.

4. Consequent to the orders dt. 11th Aug., 1997 of the Tribunal, the AO by two orders dt. 30th March, 1998 gave effect to the same and granted refund of Rs. 23,29,486 including interest. On 29th Aug., 2000, the petitioner by rectification application pointed out to the AO that there was a shortfall in payment of interest to the extent of Rs. 6,74,002 in view of interest payable on self assessment tax. The AO by his order dt. 19th March, 2001 rejected the application on the ground that interest of Rs. 6,76,002 claimed is attributable to self assessment tax paid and the same was inadmissible under s. 244(1A) of the Act.

5. Being aggrieved by the order dt. 19th March, 2001 of the AO, the petitioner filed a revision application under s. 264 of the Act with the CIT. In its revision application, the petitioner reiterated its demand for interest of Rs. 6,76,002 on the amount of Rs. 7,90,280 paid as self assessment tax under s. 244(1A) of the Act.

6. By the impugned order dt. 28th May, 2004, the CIT rejected the revision application as filed by the petitioner under s. 264 of the Act. The impugned order dt. 28th May, 2004 holds that no interest under s. 244(1A) of the Act is payable as there is no provision for payment of interest therein on excess amount paid as self assessment tax.

7. It is the impugned order dt. 28th May, 2004 passed by the CIT under s. 264 of the Act which is the subject-matter of challenge before us.

8. Before considering the rival submissions, it may be convenient to set out the relevant provisions of the Act, particularly in view of the fact that from the asst. yr. 1989-90, the interest on refund is not governed by s. 244 of the Act but by s. 244A of the Act. Therefore, we reproduce s. 244 of the Act which applied to asst. yr. 1986-87 i.e. prior to 1989-90 and reads as under:

"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 AO 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-s. (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-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 installments, such interest shall be payable on the amount of each such installment or any part of such installment, which was in excess, from the date on which such installment 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 sub-section, no interest under sub-s. (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 s. 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 appeal 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 s. 241 is passed to the date the refund is granted.

(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."

9. Ms. A. Vissanji, learned counsel appearing for the petitioner in support of the petition submits as under:

(i) The impugned order dt. 28th May, 2004 of the CIT refusing to grant interest on the refunded self assessment tax paid by the petitioner is in the face of the binding decision of the Supreme Court in the matter of Modi Industries Limited, Modinagar and Others Vs. Commissioner of Income Tax, Delhi and Another, allowing payment of interest on advance tax paid post the assessment order. In Modi Industries (supra), the phrase "in pursuance of an order of assessment" found in s. 244(1A) of the Act, was construed to include advance tax and tax deducted at source (TDS) which were paid prior to assessment order. This on the basis that the amounts were set off against the tax demand raised in the assessment order. It is submitted on the same principle as above, interest is payable by the Revenue on the excess self assessment tax paid;

(ii) The aforesaid interpretation put on the phrase "paid in pursuance to an order of assessment" by the apex Court in Modi Industries Ltd. (supra) has been applied in respect of payment of interest on self assessment tax by various High

Courts. In particular, attention was drawn to:

- (a) Commissioner of Income Tax Vs. Hansa Agencies Pvt. Ltd., ;
- (b) Commissioner of Income Tax Vs. Gujarat State Warehousing Corporation, ;
- (c) Commissioner of Income Tax Vs. N.G.E.F. Limited, ;
- (d) Commissioner of Income Tax Vs. SIV Industries Ltd. ; and
- (e) Commissioner of Income Tax Vs. Jyotsna Holding (P) Ltd., .

Thus, uniformity of interpretation would commend following the above decisions.

(iii) The petitioner is entitled to interest on refund of the tax paid on self assessment tax from the date of payment till the date of refund in terms of s. 244(1A) of the Act. This is so as interest is payable on the refund due in pursuance of the order passed in appeal or other proceedings under s. 240 of the Act. As this payment of tax in respect of which interest is sought, is the tax paid after 31st March, 1975 in pursuance of the order of assessment; and

(iv) In any view of the matter, interest is compensatory in nature. The petitioner is entitled to be compensated by payment of interest by the Revenue for the period of time the excess amount was retained by the Revenue till the same was refunded. In support, reliance was placed upon the decisions of the apex Court in the matter of Sandvik Asia Ltd. Vs. Commissioner of Income Tax-I, Pune and Others, and Union of India (UOI) Through Director of Income Tax Vs. Tata Chemicals Ltd., .

10. As against the above, Mr. Suresh Kumar, learned counsel for the Revenue in support of the impugned order dt. 28th May, 2004 submits as under:

(i) Sec. 244(1A) of the Act would have no application in respect of refund of self assessment tax as the self assessment tax has not been paid in pursuance of an order of assessment but prior thereto. The rule of strict interpretation of fiscal statute would only mean that payments made after the passing of assessment order would be covered by the words "in pursuance of assessment order" found in s. 244(1A) of the Act;

(ii) The decision of the apex Court in the matter of Modi Industries Ltd. & Ors. (supra) will have no application to the present facts as it was concerned with grant of interest on refund attributable to advance tax and not on self assessment tax as in this case. Consequently, the decision of High Courts relied upon by the petitioner can also have no application as all of them incorrectly applied the decision of the apex Court in the Modi Industries Ltd. & Ors. (supra) to the case of refund of self assessment tax;

(iii) Self assessment tax which is paid by the assessee is a voluntary payment made under the Act. This payment is made after closure of accounts and to correct the shortfall in paying appropriate tax as advance tax. Therefore, this delayed payment of self assessment tax is not entitled to any interest;

(iv) In the alternative, it was submitted that in view of the second proviso of s. 244(1A) of the Act, payment of interest in respect of self assessment tax refunded would commence, if the refund is not made to the assessee for a period of one month from the date of passing of the order in appeal. In view of the above, it is submitted that no interest is payable till one month of passing of order in appeal, even if it is assumed that the amount attributable to self assessment tax is entitled to interest when refunded; and

(v) Interest, if any, payable on refund of self assessment tax would be covered under s. 244(1) of the Act and not under s. 244(1A) of the Act. It is submitted that if interest is paid on refund of all taxes including those paid before any demand under s. 156 of the Act is made, it would render s. 244(1) of the Act otiose. Therefore, to give a proper meaning to s. 244 of the Act, the interest payable on self assessment tax has to be paid only from the end of three months of an order passed in appeal under s. 240 of the Act. In this case, the order in appeal under s. 240 of the Act was passed on 11th Aug., 1997 and the refund was granted on 30th March, 1998. Therefore, interest, if any, payable on the amount attributable to self assessment tax would be for the period 1st Dec., 1997 to 30th March, 1998.

In view of the above, it is submitted that the petition should be dismissed.

11. We have considered the rival submissions. The scheme of the Act for payment of taxes is that all taxes have to be normally paid during the financial year relevant to the assessment year. These taxes are either in the form of credit attributable to the assessee on the TDS or in the form of advance tax as provided in the Act. However, where there has been short payment of tax payable for any reason i.e. incorrect estimate of income and/or large business income during the end of year, the said shortfall in payment of advance tax is payable as self assessment tax under s. 140A of the Act. This self assessment tax had to be paid by the assessee before filing its return of income under ss. 139 or 148 of the Act and the evidence of such payment has to accompany the return of income. Post 1st April, 1989, such self assessment tax has to be paid along with the interest payable for delay in payment of advance tax to the extent of its shortfall. Under sub-s. (2) of s. 140A of the Act as existing prior to 1989 and even today, any amount which is paid as self assessment tax would be deemed to have been paid towards regular assessment under the provisions of the Act. Sec. 243 of the Act at all times relevant to this petition provides that on making an assessment order, if any amount found in excess of the tax payable, is not refunded within three months from the end of the month in which the assessment order is passed, then the Central Government would pay interest on the amount to be refunded from the date immediately following the expiry of the period of three months to the order granting refund. However, when the refund becomes payable to an assessee by virtue of an order in appeal or other proceedings, then in terms of s. 240 of the Act, the AO is obliged to refund such amount to the assessee without the assessee even having to apply for such

refund. Such refund of tax would carry interest in terms of s. 244 of the Act. Sec. 244(1) of the Act provides for interest consequent to the order passed in an appeal or other proceedings under s. 240 of the Act in case the AO does not grant such refund within three months from the date of the order in appeal. Sub-s. (1A) of s. 244 of the Act which was introduced w.e.f. 1st Oct., 1975 deals with the refund due under s. 244(1) of the Act in respect of any amounts paid by the assessee after 31st March, 1975 in pursuance of an order of assessment which is thereafter found in appeal to be in excess. The second proviso to s. 244(1A) of the Act provides that no interest under this sub-section shall be payable for a period of one month from the date of passing of order in appeal.

12. In the present facts, the petitioner has paid self assessment tax of Rs. 7,90,280 on 30th July, 1986. As a consequence of the orders dt. 11th Aug., 1997 passed in the appeal by the Tribunal, the AO granted a refund of Rs. 23,29,486 including interest. The petitioner filed a rectification application, pointing out that there was a shortfall of payment of interest. The AO by order dt. 19th March, 2011 rejected the application for rectification on the ground that the interest of Rs. 6,76,002 is not payable as the same is attributable to self assessment tax of Rs. 7,90,280. In revision, the CIT by the impugned order dt. 28th May, 2004 upheld the order of the AO dt. 19th March, 2001.

13. The petitioner's contention is that the entire issue of payment of interest on refund of self assessment tax stands covered by the decision of the apex Court in *Modi Industries Ltd.* (supra). In the facts of *Modi Industries* (supra), the petitioner sought refund of interest paid on the amount attributable to advance tax paid for the period from the date of the assessment order passed in its case. This demand for interest was under s. 244(1A) of the Act. The Court held that the amount of advance tax on the passing of the assessment order loses its character as advance tax and becomes income-tax paid. It was also observed that any amount still standing to the credit of the assessee is to be refunded along with interest from the 1st day of April next following the financial year in which it is payable up to the date of assessment order under s. 214 of the Act. The petitioner therein sought interest post the order of assessment on the refund of the excess amount paid as tax, consequent to order in appeal under s. 240 of the Act. The apex Court held that the interest would be payable from the date of the order of assessment on the excess amount refunded consequent to order in appeal till the date of grant of refund under s. 244(1A) of the Act. The apex Court while dealing with the words "in pursuance of any order of assessment" in s. 244(1A) of the Act has observed as under:

"Therefore, the phrase "any amount having been paid.....after 31st March, 1975" occurring in sub-s. (1A) of s. 244 must be construed to mean not only the amount which has been paid directly pursuant to the order of assessment but will also include the amount of tax deducted at source and advance tax, which were lying to the credit of the assessee and were ultimately adjusted and set off against the tax demands raised in the assessment order. The excess amount of

tax paid under sub-s. (1A) of s. 244 must be calculated by treating the amount of tax deducted at source and the amount of advance tax which were adjusted against the assessee's liability to pay tax as well as the amount of tax paid directly upon the assessment under Chapter XVII of the IT Act. In other words, so far as the amount of advance tax is concerned, it must be understood to have been paid in pursuance of any order of assessment" only on the date of the original order of assessment and not on the date of actual payment. The reason is obvious: on the day the advance tax amount is paid there is no assessment and, hence, it cannot be said to have been paid "in pursuance of any order of assessment". This view was also taken by the Punjab High Court in the case of Commissioner of Income Tax Vs. Leader Engineering Works, ."

Finally at p. 808 it recorded a summary of its findings as under:

"(i)"

(ii) If any tax is paid pursuant to an assessment order after 31st March, 1975 (which will include tax deducted at source and advance tax to the extent the same has been retained and treated by the ITO as payment of tax in discharge of the assessee's tax liability in the assessment order) becomes refundable wholly or in part as a result of any appellate or other order passed, the Central Government will have to pay the assessee interest on the refundable amount under s. 244(1A). For the purpose of this section, the amount of advance payment of tax and the amount of tax deducted at source must be treated as payment of income-tax pursuant to an order of assessment on and from the date when these amounts were set off against the tax demand raised in the assessment order, in other words the date of the assessment order.

(iii)"

The above rationale in respect of interest on advance tax would in our view equally apply to self assessment tax. This is for the reason that like payment of advance tax, the self assessment tax under s. 140A of the Act would be treated as pursuant to the order of assessment i.e. when the amounts already paid were set off against the demand raised in assessment order. We are fortified in our above understanding by the decisions of Punjab & Haryana High Court in Hansa Agencies (I) Ltd., (supra), Madras High Court in Siv Industries Ltd. (supra), Delhi High Court in Jyotsna Holdings (P) Ltd. (supra), Gujarat High Court in Gujarat State Warehousing Corpn. (supra) and Karnataka High Court in NGEF Ltd. (supra).

14. Mr. Suresh Kumar, learned counsel appearing for the Revenue urged that the decision of the apex Court in Modi Industries Ltd. (supra) was with regard to the advance tax and thus can have no application with regard to self assessment tax. It is true that the facts involved in the case of Modi Industries Ltd. (supra) dealt with the interest payable on refund of amounts attributable to advance tax and TDS. However, the principle laid down therein, that any amounts paid even before the assessment order would be construed to have been paid in pursuance

of an assessment order on the reasoning that the amounts paid as tax prior to assessment order were set off against the demand raised in the assessment order. Thus, the Court concluded in *Modi Industries (supra)* that payment of tax though paid as advance tax is to be considered as a payment made in pursuance of the assessment order. To our mind, the distinction drawn by the CIT in the impugned order dt. 28th May, 2004 and before us by the learned counsel for the Revenue is a pedantic distinction and not a distinction of substance. The ratio of the decision in *Modi Industries Ltd. (supra)* and in particular the interpretation and meaning given to the words "in pursuance of order of assessment" is binding upon us to mean not only the amounts paid consequent to a notice of demand issued under s. 156 of the Act consequent to the order of assessment but would also include payments made as tax prior to the order of assessment, either in terms of advance tax or self assessment tax.

15. The other objection/distinction sought to be made by the Revenue is that self assessment tax is voluntarily paid and therefore no interest can be granted. This submission overlooks the fact that advance tax is also voluntarily paid by an assessee. The self assessment tax is paid as much under the provisions of the Act as advance tax. Thus, this distinction is also of no substance.

16. The petitioner's next contention is that the interest is payable not from the date of assessment order under s. 244(1A) of the Act but from the date when the petitioner paid the self assessment tax under s. 140A of the Act i.e. on 30th July, 1986 and not from the date of assessment order i.e. 28th March, 1989. This submission of the petitioner that the interest should be paid from the date when self assessment tax was tendered under s. 140A of the Act and not from the date of assessment order, would negate the interpretation put by the apex Court in *Modi Industries Ltd. (supra)* to the words "in pursuance of the order of assessment". If the petitioner's contention is accepted then the payment has been made to the Revenue by the petitioner not in pursuance of any order of assessment but prior thereto and therefore, s. 244(1A) of the Act will not be applicable. One more reason why the payment of interest on the amount of the refund attributable to the self assessment tax is not payable from the date it was tendered is for the reason that the self assessment tax under s. 140A of the Act is paid by the assessee because there is shortfall in payment of advance tax. Sec. 140A of the Act does not provide for payment of interest from date of payment till the date of passing of the assessment order. Contrast this with advance tax where the Act has specifically provided under s. 214 that the interest is payable on the advance tax paid from the 1st April of the assessment year upto the date of the assessment order. No such provision has been made in respect of self assessment tax paid by the assessee. Therefore, the statute itself does not provide for any interest to be paid on the amount attributable to the self assessment tax till such time as the assessment order is passed unlike in a case where the amount refunded is attributable to the payment of advance tax.

17. It was next contended by the petitioner assessee that they are entitled to

interest from the date of payment on account of fact that the interest is merely compensatory in nature and the Revenue is bound to refund the amount illegally retained by it to the assessee along with interest thereon. Ms. Vissanji placed reliance on the decision of the apex Court in *Tata Chemicals Ltd.* (supra) which was dealing with the provisions in force for interest on refund of tax under s. 244A of the Act which is applicable to asst. yr. 1989-90 onwards. The Court held that interest is a compensation for use and retention of money collected unauthorizedly by the Department in the context of a refund claim filed by a person. However, the Court also held that interest payment is a statutory obligation and non-discretionary in nature. The right of interest is a substantive right and not procedural. In the present case, s. 244(1A) of the Act provides for interest and the petitioners are also claiming interest thereunder. It is well-settled that when there are specific provisions in the statute governing the grant of interest i.e. under s. 244(1A) of the Act, then general principles of compensation for use and retention of money would not displace the statutory provision. The apex Court in *Modi Industries Ltd.* (supra) has already dealt with the appropriate interpretation of the words "in pursuance of order of assessment" to mean and include any tax paid earlier in point of time to the order of assessment would yet be considered as tax paid in pursuance of the order of assessment for the reasons that the tax assessed in the assessment order is set off with the amount of tax paid either as advance tax or self assessment tax prior to the assessment order. In that view of the matter, following the decision of the apex Court in *Modi Industries Ltd.* (supra) as well as the decisions of the various High Court holding that interest is payable on refund of self assessment tax consequent to the order in appeal from the date of assessment order till the grant of refund albeit excluding period of one month as provided in the second proviso to s. 244(1A) of the Act.

18. It was contended by the Revenue that in any event in terms of the second proviso to s. 244(1A) of the Act, no interest is payable till after the expiry of the month from the date of passing the order in appeal. This interpretation by the Revenue does violence to the language of the second proviso which only states that no interest will be payable for a period of one month from the date of passing of the order in appeal. It does not state that no interest will be payable till after one month of the order in appeal. The second proviso to s. 244(1A) of the Act only excludes a period of one month for payment of interest. In fact, on almost identical facts, the Punjab & Haryana High Court in *Hansa Agencies (P) Ltd.* (supra) while following the decision of the Supreme Court in *Modi Industries Ltd.* (supra) has held that the assessee is entitled to interest under s. 244(1A) of the Act on the self assessment tax paid by him from the date when the original assessment order was made with the rider in terms of second proviso to s. 244(1A) of the Act, a period of one month from the date of passing the order in appeal will not carry any interest and the same is to be excluded. Thus, we find no substance in the above submission of the Revenue.

19. In view of the above, we set aside the order dt. 28th May, 2004 passed by

the CIT under s. 264 of the Act for the asst. yr. 1986-87. We direct the respondent viz., the CIT, Mumbai to pay after verification to the petitioner the amount of Rs. 6,76,002 being the interest payable from 28th March, 1989 to the date of grant of refund on 30th March, 1998 after excluding a period of one month as provided in second proviso to s. 244(1A) of the Act.

20. So far as the prayer for interest on delayed refund of interest of Rs. 6,76,002 from 1st April, 1998 till payment, the learned counsel for the Revenue pointed out that the same could not be granted to the petitioner in view of decision of the apex Court in Commissioner of Income Tax, Gujarat Vs. Gujarat Fluoro Chemicals, . It is pointed out that in Gujarat Fluoro (supra), a Bench of three learned Judges of the Hon"ble Supreme Court while considering the correctness of the decision of two Member Bench of Learned Judge of the Hon"ble Supreme Court in Sandvik Asia Ltd. (supra) had inter alia observed as under:

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

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

8. Further it is brought to our notice that the legislature by the Act No. 4 of 1998 (w.e.f. 1st April, 1989) has inserted s. 244A to the Act which provides for interest on refunds under various contingencies. We clarify that it is only that interest provided for under the statute which may be claimed by an assessee from the Revenue and no other interest on such statutory interest."

(Emphasis, italicized in print, supplied)

On the basis of the above, it is submitted by Mr. Suresh Kumar, learned Counsel appearing for the Revenue that the Supreme Court has observed that in Sandvik Asia (supra), interest has been paid as compensation. This was done by the Supreme Court in exercise of its powers under art. 142 of the Constitution i.e., to do complete justice between parties. In fact, in Gujarat Fluoro Chemicals (supra), the Larger Bench of the apex Court has observed that in Sandvik Asia (supra), no interest on interest was paid but compensation for delayed payment of interest was paid. This according to Mr. Suresh Kumar could only be done by

the apex Court in exercise of its powers under Art. 142 of the Constitution.

21. In response, Ms. Vissanji, learned counsel appearing for the petitioner in support, stated that interest on interest could be granted and drew our attention to the decision of the Supreme Court in *Commissioner of Income Tax Vs. Narendra Doshi*, wherein the question framed in a reference before the High Court of Madhya Pradesh was whether the Tribunal was justified in allowing interest on interest when the law provides for grant of simple interest only. The High Court answered the question in the affirmative and the Supreme Court upheld the High Court's decision. We notice that the Supreme Court dismissed Revenue's appeal on the ground that in two earlier decisions of Gujarat High Court on the same issue holding that the grant of interest on interest is permissible, had been accepted by the Revenue. Therefore, the Supreme Court held that the Revenue is bound by the principle laid down in earlier two decisions of the High Court and dismissed the Revenue's appeal. In *Narendra Doshi* (supra), the Supreme Court did not deal with the issue on merits of the claim for interest on interest as done in the later case of *Gujarat Fluoro Chemicals* (supra) which is binding upon us.

22. Learned counsel appearing for the petitioner then drew our attention to the decision of the Supreme Court in *Sandvik Asia Ltd.* (supra) to contend that the Supreme Court held that assessee is entitled to interest on interest while granting refund of interest which had accrued for the period during which interest was not paid. It was emphasized that the Supreme Court has passed the order in an appeal filed from an order of the High Court in appeal under s. 260A of the Act. Further, interest on interest as compensation was awarded only due to the delay on the part of the Government. It is contended that the above principles should be extended and applied to this case. We cannot accept the above submission as the apex Court has explained its decision in *Sandvik Asia* (supra) in its Larger Bench decision given in *Gujarat Fluoro Chemicals* (supra). In the above case, the Supreme Court held that in *Sandvik Asia* (supra), no interest on interest was granted but compensation for the inordinate delay in refunding the amount of interest was granted. It is clear that this compensation was granted by Supreme Court to do complete justice between the parties in exercise of its power under Art. 142 of the Constitution of India. In exercise of our powers under Art. 226 of the Constitution we would be within our jurisdiction to direct the statutory authorities to grant interest as permissible under the statute and accordingly enforce the statutory rights of the petitioner but not what is outside the statute. The petitioner's claim for compensation is undisputedly outside the statutory provisions.

23. Our attention was next drawn to *Commissioner of Income Tax, Bhopal Vs. H.E.G. Ltd.*, wherein the apex Court was dealing with s. 244A of the Act which is currently in force and was not in the statute book during the period with which we are concerned. In that case, the assessee had claimed interest of Rs. 45.73 lakhs for 57 months i.e. between 1st April, 1993 to 31st Dec, 1997. The Madhya

Pradesh High Court granted benefit of interest. Revenue went up in appeal on the ground that the assessee has been allowed interest on interest. This the apex Court said was not factually correct. The Supreme Court held that on the non-payment of the amount of refund of Rs. 45.73 lakhs interest becomes payable on the aforesaid principal amount of Rs. 45.73 lakhs till such time as it is not paid. This decision also does not assist the petitioner as interest was paid only on the delay in refunding the principal amount of Rs. 45.75 lakhs for a period of 57 months. In the case on hand, the principal amount has been paid. The demand for interest on delayed payment of the principal amount is justified as granted by the apex Court. It was not a case of interest on interest.

24. On the above issue also, the petitioner placed reliance upon the decision rendered in *Tata Chemicals Ltd.* (supra) and specifically drew our attention to observations therein as follows:

"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 for 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."

It is submitted that the Revenue is obliged to grant the refund of interest not paid along with interest thereon. However, the factual situation in *Tata Chemicals* (supra) is completely different. Interest therein was being demanded only on the delayed amount of refund and not interest on interest not paid for the delayed refund of the principal as in this case. The amount of interest therein was granted on the refund in terms of the Act. In this case, it is being urged before us that we grant interest on interest for which we find no sanction in the Act. We are bound by the decision of the apex Court in *Gujarat Fluoro Chemicals* (supra).

25. Reliance was also placed upon the unreported decision of the Andhra Pradesh High Court in *Sirpur Paper Mills Ltd. vs. Jt. CIT & Ors.* in Writ Petn. No. 5807 of 1999, dt. 20th March, 2014 [reported as (2014) 270 CTR (AP) 371 : (2014) 108 DTR (AP) 33--Ed.] wherein following the decision of the Supreme Court in *Sandvik Asia Ltd.* (supra) interest on interest for delayed payment was granted. With greatest of respect in all humility, it appears that this decision of the Andhra Pradesh High Court was rendered per incuriam as the decision of the apex Court in *Gujarat Fluoro Chemicals* (supra) was not brought to the notice of the Hon'ble High Court. Be that as it may, we are bound by the apex Court's decision in *Gujarat Fluoro Chemicals* (supra).

26. Thereafter, it was urged on behalf of the petitioner that powers of the High Court are very wide and in the course of moulding reliefs, this Court should direct payment of interest on interest retained by the Revenue for over sixteen years. In support, reliance was placed upon the following three decisions:

(a) *ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation*

of India Ltd. and Others, ;

(b) M/s. Shree Baidyanath Ayurved Bhawan Pvt. Ltd. Vs. State of Bihar and others, ; and

(c) Sri Justice S.K. Ray Vs. State of Orissa and Others, .

We are afraid that none of the above decisions seem to support the petitioner's submissions and is of no avail to the petitioner. Even if the principle of moulding of relief is to be applied by the High Court in exercise of its jurisdiction under Art. 226 of the Constitution, the same can be done only within the statutory framework and not otherwise. Therefore, the petitioner's submission that the reliefs be moulded to award compensation cannot be countenanced.

27. It is true that the Revenue by not paying over the interest due to the petitioner, may have deprived the petitioner of its money for sixteen long years. However, on the other hand, it is the Revenue's contention that on interpretation of s. 244(1A) of the Act, they were of the view that no interest can be paid on tax paid on self assessment tax. Thus, according to Revenue, it was debatable issue. Be that as it may, we are bound by the decision of the apex Court in Gujarat Fluoro Chemicals (supra) and cannot direct the statutory authority to pay interest on interest to the petitioner de hors the Act. This is in accordance with the decision of the apex Court in Union of India and Another Vs. Kirloskar Pneumatic Company Limited, wherein it has been held that the High Court in exercise of its powers under Arts. 226/ 227 of the Constitution, cannot direct the authority under the Customs Act to ignore or act contrary to its Parent Act.

28. In the light of the above discussion, we pass the following order:

(i) The CIT-respondent No. 1 is directed to verify and pay the petitioner the amount of Rs. 6,76,002 being the interest payable from 28th March, 1989 up to the grant of refund on 30th March, 1998 after having excluded interest for one month in terms of second proviso to s. 244(1A) of the Act; and

(ii) We reject the petitioner's prayer to direct the CIT to grant interest on the interest of Rs. 6,76,002 from 28th March, 1989 till payment.

Accordingly, this writ petition is partly allowed in the aforesaid terms, with no order as to costs.