
(2005) 06 KL CK 0084
In the High Court Of Kerala
Case No : O.P. No. 11259 of 1996

Nalini B.V. Saraf

APPELLANT

Vs

Assistant Controller of Estate Duty

RESPONDENT

Date of Decision : 10-06-2005

Acts Referred:

Arbitration Act, 1940 — Section 3, 41
Civil Procedure Code, 1908 (CPC) — Section 34
Estate Duty Act, 1953 — Section 53(3), 63, 64(7)
Income Tax Act, 1961 — Section 141A, 143(A), 147, 154, 155
Kerala Agricultural Income Tax Act, 1991 — Section 37, 68(4)
Kerala General Sales Tax Act, 1963 — Section 44, 44(1), 44(2), 44(3), 44(4)
Sales of Goods Act, 1930 — Section 61, 61(2)

Citation : (2005) 197 CTR 539 : (2005) 279 ITR 278 : (2005) 3 KLT 943

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : P. Balachandran, for the Appellant; P.K. Raveendranatha Menon and K. George, for the Respondent

Final Decision : Dismissed

Judgement

Siri Jagan, J.—The question posed in this Original. Petition is as to whether the Revenue is liable to pay interest on the amount due as refund of estate duty which became payable on account of orders of the Appellate Tribunal, in the absence of any specific provision in the Estate Duty Act, 1953 for payment of interest on refunds.

2. Although facts are not in dispute, some essential facts necessary for disposal of the case may be noted. The petitioner is the accountable person in respect of the property which passed on the death of late Vithal Govinda Rao Saraf who passed away on 18-10-1984. She filed a statement showing (-) Rs. 6,45,345/- as the principal value of the estate of the deceased. The respondent determined the principal value of the estate at Rs. 70,93,950/- and determined the estate duty payable thereon at Rs. 49,94,200/- and interest u/s 53(3) at Rs.

1,74,797/-. This assessment was later revised at Rs. 57,29,355/- and Rs. 39,66,126/- respectively. Against the assessment, appeal was filed which was partly allowed. Thereafter, assessment was reopened by the assessing officer and principal value redetermined. Against the same, there were appeals by both sides and ultimately, consequent on Ext.P6 orders of the Income Tax Appellate Tribunal, refund of the estate duty amounting to Rs. 42,80,167/- became due to the petitioner and by Ext.P9 order dated 12-12-1995, the respondent modified the assessment granting refund of the said amount. This amount was originally paid by the petitioner pursuant to earlier assessments on the following dates:

28-3-1989	Rs. 15,00,000.00	14-8-1989	Rs. 5,00,000.00	15-9-1989	Rs. 5,00,000.00
14-10-1989	Rs. 5,00,000.00	Refund adjusted on	31-3-1990	Rs. 1,80,000.00	Refund adjusted in
		October,	1992	Rs. 10,99,591.00	
----- Total Rs. 42,80,167.00 -----					

The claim of the petitioner for interest on this amount was rejected by Ext.P9 itself on the ground that there is no provision for granting interest on refunds in the Estate Duty Act, 1953. The petitioner is claiming interest on the above amounts from the dates of payment till refund.

3. It is admitted by both sides that the Estate Duty Act, 1953 does not provide for payment of interest on refunds due pursuant to orders of the Tribunal. Counsel for the petitioner submits that although there is no specific provision for granting interest on refunds, since there is no prohibition in the Act for payment of interest, interest is payable on equity. He submits that Sub-section. 53(3) and 64(7) of the Estate Duty Act, 1953 give sufficient indication that there is no prohibition of payment of interest under the Act. Section 53(3) reads thus:

Every person accountable for estate duty under this Section shall within 6 months of the death of the deceased, deliver to the Controller an account in the prescribed form and verified in the prescribed manner of all the properties in respect which estate duty is payable:

Provided that the Controller may extend the period of six months aforesaid on such terms which may include payment of interest as may be prescribed.

Section 64(7) of the Act reads as follows:

Where the amount of any assessment is reduced as a result of any reference to the High Court, the amount, if any, overpaid as estate duty shall be refunded with such interest as the Controller may allow unless the High Court, on intimation being given by the Controller within 30 days of the receipt of the result of such reference that he intends to ask for leave of appeal to the Supreme Court, makes an order authorising the Controller to postpone payment of such refund until the disposal of appeal in the Supreme Court.

4. Relying on these provisions, counsel submits that there is no prohibition in paying interest under the Act and in such circumstance, interest is payable on the refund, since the petitioner was deprived of the use of his money and the

Revenue had the use of the same. Counsel has cited several decisions of the Supreme Court in support of his contention that in the absence of prohibition in the Act with regard to payment of interest on refund of estate duty, interest is payable.

5. The first of these decisions is that of Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa and Ors. v. N.C. Budharaj (Deceased) by LRs. and Ors. , reported in (2001) 2 SCC 721. That was a case arising under the Arbitration Act, 1940. The question decided in that case was as to whether arbitrator appointed under the said Act has power to award interest in respect of pre-reference period in the absence of such power either in the Act or the arbitration agreement. Counsel drew my attention to paragraph 8 of the judgment in that case which reads thus:

"The Constitution Bench, which decidedly Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, after a critical analysis of the earlier decisions including the one in Jena case (1998) 1 SCC 418 held as follows: (SCC pp.532-33,para43)

43. The question still remains whether an arbitrator has the power to award interest pendente lite, and if so on what principle. We must reiterate that we are dealing with the situation where the agreement does not provide for grant of such interest nor does it prohibit such grant. In other words, we are dealing with a case where the agreement is silent as to award of interest. On a conspectus of the aforementioned decisions the following principles emerge:

(i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference. This is the principle of Section 34 of the CPC and there is no reason or principle to hold otherwise in the case of an arbitrator.

(ii) An arbitrator is an alternative form (sic forum) for resolution of disputes arising between the parties. If so, he must have the power to decide all the disputes or differences arising between the parties. If the arbitrator has no power to award interest pendente lite, the party claiming it would have to approach the court for that purpose, even though he may have obtained satisfaction in respect of other claims from the arbitrator. This would lead to multiplicity of proceedings.

(iii) An arbitrator is the creature of an agreement. It is open to the parties to confer upon him such powers and prescribe such procedure for him to follow, as they think fit, so long as they are not opposed to law. (The proviso to Section 41 and Section 3 of the Arbitration Act illustrate this point.) All the same, the agreement must be in conformity with law. The arbitrator must also act and make his award in accordance with the general law of the land and the agreement.

(iv) Over the years, the English and Indian courts have acted on the assumption that where the agreement does not prohibit and a party to the reference makes a claim for interest, the arbitrator must have the power to award interest pendente lite. *Thawardas Seth Thawardas Pherumal Vs. The Union of India (UOI)*, has not been followed in the later decisions of this Court. It has been explained and distinguished on the basis that in that case there was no claim for interest but only a claim for unliquidated damages. It has been said repeatedly that observations in the said judgment were not intended to lay down any such absolute or universal rule as they appear to, on first impression. Until *Jena* case almost all the courts in the country had upheld the power of the arbitrator to award interest pendente lite. Continuity and certainty is a highly desirable feature of law.

(v) Interest pendente lite is not a matter of substantive law, like interest for the period anterior to reference (pre-reference period). For doing complete justice between the parties, such power has always been inferred."

6. Another decision cited by the petitioner is that of *South Eastern Coalfields Ltd. Vs. State of M.P. and Others*, . Counsel took me to paragraphs 22 to 24 of the said decision which read as follows:

22. We may refer to the decision of this Court in *Executive Engineer, Dhenkanal Minor Irrigation Division v. N. C. Budharaj*) (2001) 2 SCC 721, wherein the controversy relating to the power of an arbitrator (under the Arbitration Act, 1940) to award interest for pre-reference period has been settled at rest by the Constitution Bench, The majority speaking through Doraiswamy Raju, J. has opined that the basic proposition of law that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation by whatever name it may be called viz. interest, compensation or damages and this proposition is unmistakable and valid; the efficacy and binding nature of such law cannot be either diminished or whittled down. It was held that in the absence of anything in the arbitration agreement, excluding the jurisdiction of the arbitrator to award interest on the amount due under the contract, and in the absence of any other prohibition, the arbitrator can award interest.

23. Under the English law, generally speaking, a seller cannot recover interest when the buyer is in default of paying the price, nor can the buyer recover it when claiming a refund of the purchase price. Yet special damages have been held permissible to be awarded in respect of interest paid by the plaintiff as due to the defendant's breach subject to the rule of remoteness. The English law caused considerable debate in India as well, but the matter was set at rest by the enactment of Section 61 of the Sale of Goods Act, 1930. Recovery of interest by way of damages is permissible under Sub-section (2) of Section 61 (see *Mulla on Sale of Goods Act*, 6th Edn. pp. 61-62). Power to award interest by way of damages at a reasonable rate if there be no contract rate specified, or at the contract rate as specified, flows from Section 61 of the Act.

24. We are, therefore, of the opinion that in the absence of there being a prohibition either in law or in the contract entered into between the two parties, there is no reason why the Coalfields should not be compensated by payment of interest for the period for which the consumers/purchasers did not pay the amount of enhanced royalty which is a constituent part of the price of the mineral for the period for which it remained unpaid. The justification for award of interest stands fortified by the weighty factor that the Coalfields themselves are obliged to pay interest to the State on such amount. It will be a traversity of justice to hold that though the Coalfields must pay the amount of interest to the State but the consumers/purchasers in whose hands the money was actually withheld be exonerated from liability to pay the interest.

7. Another decision cited by counsel for the petitioner in support of his argument is the decision in *National Insurance Co. Ltd., Calcutta Vs. Life Insurance Corporation of India*, , in which decision at paragraphs 25 to 27, the Court observed as follows:

(25) The last question is whether interest was payable. The Tribunal held that it had no jurisdiction to award interest because there is no provision in the Act. It followed its own decision in the order passed in an earlier case and declined to grant interest. During the arguments before us, the Corporation agreed that interest is awardable and the dispute only centered round the rate of interest, the amount on which it is payable and the date from which it should be given. There is no doubt that the Life Insurance Corporation Act and the Rules do not contain any express provisions for grant of interest. The Company relied on cases of purchases of immovable property where interest is awarded as a general rule of equity if the purchaser enters into possession without having paid the purchase money to the seller. The reason of the rule was stated a long time ago by Lord St.Loenards L.C. in *Brich v. Joy* (1852) 3 H.L.C. 565:10 ER 222, as follows:-

The parties change characters, the property remains at law just where it was, the purchaser has the money in his pocket and the seller still has the estate vested in him; but they exchange characters in a Court of Equity, the seller becomes the owner of the money and the purchaser becomes the owner of the estate.

(26) On entering possession the purchaser becomes entitled to the rents but if he has not paid the price, interest in equity is deemed payable by him on the purchase price which belongs to the seller. This principle was applied by the House of Lords in cases of compulsory purchases. In *Swift and Co. v. Board of Trade*, (1925) AC 520, Viscount Cave L.C. gave the reason that the practice rests upon the principle that the taking of possession is an implied agreement to pay interest which was stated by Sir Willim Grant M.R. in *Fludyer v. Cocker* (1805)33 ER 10. This principle was further extended by the Privy Council to the compulsory taking over of a business as a going concern in *International Railway Co. v. Niagara Parks Commission*, 1941 AC 328: AIR 1941 PC 114.

(27) In this Court also the principle was applied to the East Punjab Requisition of Immovable Property Act (Temporary Powers Act) (Pun. 48 of 1948) replaced by the Punjab Requisition and Acquisition of Immovable Property Act (Pun. 11 of 1953). Under that Act though compensation was payable there was no provision for the payment of interest. This Court approved the decision of the Privy Council in *Inglewood Pulp and Paper Co. Ltd. v. New Brunswick Electric Power Commission* (1928) AC 492, where the Judicial Committee had observed:

But for all that, the owner is deprived of his property in this case as much as in the other, and the rule has long been accepted-in the interpretation of statutes that they are not to be held to deprive individuals of property without compensation unless the intention to do is made quite clear. The right to receive interest takes the place of the right to retain possession and is within the rule.

This Court observed as follows:

It would thus be noticed that the claim for interest proceeds on the assumption that when the owner of immovable property loses possession of it he is entitled to claim interest in place of the right to retain possession.

8. Lastly, counsel refers to the decision in *Commissioner of Income Tax Vs. Narendra Doshi*, , which is a short decision the text of which is thus:

The question that the High Court was called upon to answer reads thus:

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

It answered it in the affirmative and in favour of the assessee, relying upon the judgments which laid down that interest was payable on the excess amount paid towards Income Tax.

The Tribunal, whose decision the High Court affirmed, had relied upon the decision of the Gujarat High Court in the case of *D.J. Works Vs. Deputy Commissioner of Income Tax*, , which had been followed by the same High Court in *Chimanlal S. Patel Vs. Commissioner of Income Tax and Another*, . These decisions hold that the Revenue is liable to pay interest on the amount of interest which it should have paid to the assessee but has unjustifiably failed to do.

The Revenue has not challenged the correctness of the two decisions of the Gujarat High Court. They must, therefore, be bound by the principle laid down therein. Following that principle, the question has, as we find, been rightly answered in the affirmative and in favour of the assessee.

The civil appeal is dismissed. No order as to costs.

9. With the support of these decisions, counsel for the petitioner argues that in the absence of any express prohibition in the Estate Duty Act, 1953, prohibiting

payment of interest on refunds, the respondent ought to have paid interest on the amounts of refund. He would further submit that when the respondent himself had collected interest on the estate duty u/s 53(3) of the Act at the time of assessment, it is only equitable that the respondent pays interest while refunding the estate duty pursuant to the appellate order.

10. He would also add that Section 64(7) would also lend support to his contention. He submits that during reference before the High Court, the case is actually pending before the Tribunal. Therefore, when the Act provides for interest on refund becoming due when reference is answered by the High Court, interest actually becomes due on the refund pursuant to consequential orders of the Tribunal and, therefore, Section 64(7) should be construed as providing for interest on refund which becomes due pursuant to orders of the Tribunal.

11. In answer to these contentions, counsel for the respondent submitted that in a taxing statute, unless the statute itself specifically provides for interest for refunds, no interest is payable. According to him, this is not a question of equity. He distinguished Section 64(7) by stating that unlike in the case of decision in appeal before the Tribunal which is decided comparatively quickly, reference before the High Court takes time and, therefore, the legislature has provided for paying interest for the period during which reference was pending. Therefore, according to him, it should be presumed that the legislature consciously did not provide for interest in respect of refund consequent to orders of the Tribunal passed otherwise than pursuant to orders of the High Court in reference.

12. Counsel for the respondent relies on the decision in *Modi Industries Limited, Modinagar and Others Vs. Commissioner of Income Tax, Delhi and Another*, . In the said decision, at page 790, it is held as follows:

The argument, which was upheld in some of the cases now under appeal, is that it will be inequitable if the assessee does not get interest on the amount of advance tax paid, when the amount paid in advance is refunded pursuant to an appellate order. This is not a question of equity. There is no right to get interest on refund except as provided by the statute. The interest on excess amount of advance tax u/s 214 is not paid from the date of payment of the tax. Nor is it paid till the date of refund. It is paid only up to the date of the regular assessment. No interest is at all paid on excess amount of tax collected by deduction at source. Before introduction of Section 244(1 A), the assessee was not entitled to get any interest from the date of payment of tax up to the date of the order as a result of which excess realisation of tax became refundable. Interest u/s 243 or Section 244 was payable only when the refund was not made within the stipulated period up to the date of refund. But, if the assessment order was reduced in appeal, no interest was payable from the date of payment of tax pursuant to the assessment order to the date of the appellate order.

Therefore, interpretation of Section 214 or any other section of the Act should not be made on the assumption that interest has to be paid whenever an amount

which has been retained by the tax authority in exercise of the statutory power becomes refundable as a result of any subsequent proceeding.

13. I have carefully considered the arguments of both sides. The first contention of the petitioner is that unless there is a prohibition in the Act itself against payment of interest, interest is payable, for which decisions cited by him are applicable. The decision in (2001) 2 SCC 721 *supra* relates to the power of the arbitrator to award interest which holds that the arbitrator has power to award interest *pendente lite*. The existence of that power would suggest that the arbitrator can, in appropriate cases, deny interest also. The power to grant interest should not be mistaken with the liability to pay interest. The former is a discretion vested with an authority whereas the latter is a liability to be cast on an authority exercising statutory duties. That decision cannot be an authority on the question as to whether, when refund becomes due pursuant to appellate order, interest is payable. May be that could have been relied on for the purpose of deciding as to whether while granting refund, the Tribunal has power to direct payment of interest also.

14. In the decision reported in *South Eastern Coalfields Ltd. Vs. State of M.P. and Others*, , the Supreme Court was dealing with the question as to whether interest was payable for the delay in payment of royalty payable under the Mines and Minerals (Regulation and Development) Act, 1947. So also, in the decision reported in *National Insurance Co. Ltd., Calcutta Vs. Life Insurance Corporation of India*, , the Court was concerned with payment of interest for delayed payment of compensation under the Life Insurance Corporation Act, 1956 by the Life Insurance Corporation to the National Insurance Corporation for the compulsory taking over of the life insurance business of the National Insurance Corporation under the Life Insurance Corporation Act. These situations cannot be equated with the payment of refund consequent to appellate orders under taxing statutes. In those decisions, interest is held to be payable in respect of delay in payment of amounts legally due from one person to another. That is not the case with taxing statutes. Taxes are paid pursuant to orders of assessment by the assessing authority under powers vested in the authority under law. Refund of taxes so paid becomes legally due only when an appellate authority modifies the assessment in appeal. There, the retention of the tax by the Revenue is in accordance with the statute. In such cases, the question of compensation for deprivation of money legitimately due does not arise. Therefore, there cannot be any right to interest on the amount of refund unless the statute which enables the appellate authority to annul the assessment and order refund specifically provides for payment of interest.

15. In this connection, it should be noted that almost all taxing Statutes especially the Income Tax Act specifically provides for payment of interest on certain amounts which becomes due as refund to an assessee pursuant to final assessment. Sections 214 of the Income Tax Act, 1961 provides thus:

214. (1) The Central Government shall pay simple interest at fifteen per cent per

annum on the amount by which the aggregate sum of any instalments of advance tax paid during any financial year in which they are payable under sections 207 to 213 exceeds the amount of the assessed tax from the 1st day 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, and where any such instalment is paid after the expiry of the financial year, during which it is payable by reason of the provisions of Section 213, interest as aforesaid shall also be payable on that instalment from the date of its payment to the date of regular assessment:

Provided that in respect of any amount refunded on a provisional assessment u/s 141A, no interest shall be paid for any period after the date of such provisional assessment.

(1A) Where as a result of an order u/s 147 or Section 154 or Section 155 or Section 250 or Section 254 or Section 260 or Section 262 or Section 263 or Section 264 or an order of the Settlement Commission under Sub-section (4) of Section 245D, the amount on which interest was payable under Sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and in a case where the interest is reduced, the Assessing Officer shall serve on the assessee, a notice of demand in the prescribed form specifying the amount of the excess interest payable and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice u/s 156 and the provisions of this Act shall apply accordingly.

(2) On any portion of such amount which is refunded under this Chapter, interest shall be payable only up to the date on which the refund was made.

(3) This section and Sub-section 215, 216 and 217 shall not apply in respect of any assessment for the assessment year commencing on the 1st day of April, 1989 or any subsequent assessment year and, in the application of the said sections to the assessment for any earlier assessment year, references therein except in Sub-section (1A) and Sub-section (3) of Section 215 to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.

Explanation 1:-- In this section assessed tax shall have the same meaning as in Sub-section (5) of Section 215. --

Explanation 2:--Where, in relation to an assessment year, an assessment is made for the first time u/s 147, the assessment so made shall be regarded as a regular assessment for the purposes of this section.

Sub-section 243, 244 and 244A of the Income Tax Act read thus:

243. (1) If the Assessing Officer does not grant the refund:--

(a) in any case where the total income of the assessee does not consist solely of income from interest on securities or dividends, within three months from the

end of the month in which the total income is determined under this Act, and

(b) in any other case, within three months from the end of the month in which the claim for refund is made under this Chapter,

the Central Government shall pay the assessee simple interest at fifteen per cent per annum on the amount directed to be refunded from the date immediately following the expiry of the period of three months aforesaid to the date of the order granting the refund.

244. (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 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 proceedings 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 proceedings:

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

(2) Where a refund is withheld under the provisions of Section 241, the Central Government shall pay interest at the aforesaid rate on the amount of refund ultimately determined to be due as a result of the 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 Section 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.

Interest on refunds

244A. (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 collected at source u/s 206C or paid by way of advance tax or treated as paid u/s 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of two-third percent 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 143 or on regular assessment;

(b) in any other case, such interest shall be calculated at the rate of two-third 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 the tax or penalty to the date on which the refund is granted.

There are similar provisions in the Kerala Statutes also. Section 68(4) of the Kerala Agricultural Income Tax Act, 1991 and Section 44(4) of the Kerala General Sales Tax Act, 1963, are cases on point. It will be advantageous to quote those provisions here:

68.Refunds:-

(1) If any person satisfies the Agricultural Income tax Officer that the amount of tax paid by him for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess amount so paid.

(2) Where, as a result of any order passed in appeal or other proceedings under this Act, refund of any amount becomes due to the assessee, the Agricultural Income tax Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having made any claim in that behalf.

(3) If any advance tax paid by any person in accordance with Section 37 is found in excess of the amount properly chargeable under this Act for the year, he shall be entitled to a refund of the excess amount so paid.

(4) If any refund due under this section is not paid within three months from the date of receipt of the order by which the claim for refund has arisen simple interest at 15 per cent annum is to be paid to the assessee on such amount from

the date of expiry of the said three months.

Section 44 of the Kerala General Sales Tax Act, 1963 reads as thus:

44. Refunds:--

(1) When an assessing authority finds, at the time of final, assessment, that the dealer has paid tax in excess of what is due from him, it shall refund the excess to the dealer.

(2) When the assessing authority receives an order from any appellate or revisional authority to make refund of tax or penalty paid by a dealer it shall effect the refund.

(3) Notwithstanding anything contained in Sub-section (1) and (2), the assessing authority shall have power to adjust the amount due to be refunded under Sub-section (1) or Sub-section (2), towards the recovery of any amount due, on the date of adjustment, from the dealer.

(4) In case refund under Sub-section (1) or Sub-section (2) or adjustment under Sub-section (3) is not made within ninety days of the date of final assessment or, as the case may be, within ninety days of the date of receipt of the order in appeal or revision or the date of expiry of the time for preferring appeal or revision, the dealer shall be entitled to claim interest at the rate of ten per cent per annum on the amount due to him from the date of expiry of the said period up to the date of payment or adjustment.

Section 64(7) of the Estate Duty Act quoted supra is a similar provision in a Central Statute. This would essentially lead to the inference that by providing for interest in respect of certain amounts under the Act, the legislature consciously did not want to provide for interest in other cases. This could only be in public interest. Refund of tax in accordance with a taxation statute cannot be equated with delay in payment of money legally due from one person to another. In fact, in the decision reported in 254 ITR 607 supra cited by the counsel for the petitioner, the ratio is that the Revenue is liable to pay interest on the amount of interest which it should have paid to the assessee but has unjustifiably failed to pay. This decision and other decisions cited may perhaps be made applicable for the period of delay in payment of the refund for the period subsequent to the order of the Tribunal. The money becomes due only when the appellate authority sets aside or modifies the assessment order and not at any time before.

16. The decision in *Modi Industries Limited, Modinagar and Others Vs. Commissioner of Income Tax, Delhi and Another*, is directly on point regarding the issue. The paragraphs quoted supra categorically deal with the question of payment of interest on the amount of tax paid when the tax paid is refunded pursuant to an appellate order. As held therein, there is no equity involved in such cases. In fact, the question of equity does not arise in taxing statutes. The fact that taxing statutes are not based on principles of equity is exemplified by the fact, that the interest payable to the assessee u/s 214 of the Income Tax Act

on any excess amount standing to the credit of the assessee is limited to the date of the order of assessment and not to the date of the refund. There is no right to get interest on refund except as provided by the statute.

17. The very fact that Section 64(7) of the Estate Duty Act, makes provision for payment of interest where the amount of any assessment is reduced as a result of any reference to the High Court and refund of estate duty overpaid become due to the assessee without any corresponding provision in respect of refunds becoming due pursuant to original orders of the Appellate Tribunal u/s 63 can essentially be construed as a deliberate and conscious act on the part of the law makers, rather than indicating lack of prohibition of interest as contended by counsel for the petitioner. Therefore, as far as taxing statutes are concerned, what is relevant is not whether there is prohibition of payment of interest but whether there is provision for payment of interest. This finding also disposes of the contention of the petitioner that since reference to the High Court u/s 64(7) is considered as part of the proceedings of the Tribunal itself, the provision for interest u/s 64(7) should be construed as providing for interest on refund which becomes due pursuant to the orders of the Tribunal.

18. Therefore, I am of the considered view that while dealing with provisions of a taxing statute, an assessee becomes entitled to interest on refunds only if the statute itself specifically provides for interest and not otherwise.

19. The result of my above finding is that the petitioner is not entitled to interest on the amount of estate duty refunded to her in accordance with Ext.P6 order of the Appellate Tribunal. Therefore, the Original Petition fails and the same is hereby dismissed, but without costs.