

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No.12855 of 1994**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE J.M.PANCHAL**

AND

**HON'BLE SMT. JUSTICE ABHILASHA KUMARI**

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment?
  - 2 To be referred to the Reporter or not?
  - 3 Whether Their Lordships wish to see the fair copy of the judgment?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
  - 5 Whether it is to be circulated to the Civil Judge?
- =====

**GUJARAT FLOURCHEMICALS LTD - Petitioner**

**Versus**

**COMMISSIONER OF INCOME TAX & ORS.- Respondents**

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**Appearance:**

MR RK PATEL for Petitioner.

MS MONA BHATT FOR MR MANISH R BHATT for Respondents.

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**CORAM :**                   **HONOURABLE MR.JUSTICE J.M.PANCHAL**  
**and**  
**HON'BLE SMT. JUSTICE ABHILASHA KUMARI**

**Date: 03/07/2007**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR.JUSTICE J.M.PANCHAL)**

By filing the instant petition under Articles 226 and 227 of the Constitution, the petitioner has prayed to set aside: (1) the order dated October 6, 1992 passed by the Commissioner of Income Tax, Baroda, by which the claim of interest on refund advanced by the petitioner was rejected as inadmissible under Sections 243(1)(b), 244(1A) and Section 214(2) of the Income Tax Act, 1961 (“the Act” for short); (2) the order dated January 18, 1993 passed by the Chief Commissioner of Gujarat, Ahmedabad, by which interest claimed by the petitioner on the excess amount of tax deducted at source was rejected on the ground that excess amount of tax deducted at source was not as a result of order passed by an authority under the Act and that the provisions of Section 244A(1) of the Act were not applicable since those provisions were brought into force only from the assessment year 1989-90; and, (3) the order dated April 19, 1993 passed by the Government of India by which the claim for interest advanced by the petitioner was refused on the ground that the refund was not issued in pursuance of order of assessment or penalty and, therefore, provisions of Section 244(1A) of the Act were not applicable to the facts of the case. The petitioner has further prayed to issue a writ of mandamus directing the respondents to award compensation by way of interest on the amount of refund for the period from July 1, 1987 to November 13, 1990.

2. The petitioner is a company incorporated under the provisions of the Companies Act, 1956 and is manufacturing Anhydrous Hydrogen Fluoride and Chlorofluorocarbon Refrigerant Gases. For this purpose, the promoters of the petitioner company had entered into a technical collaboration agreements with a company based at U.S.A. Necessary approval was granted by the Reserve Bank of India to above mentioned collaboration agreement. On June 19, 1987, the petitioner had paid a sum of Rs.23,96,032/- to its collaborator. The petitioner thereafter intimated the Income Tax Officer, Company Circle-III, New Delhi, regarding payment made by it by making applications dated June 20, 1987 and requested him to issue no objection certificate. The case of the petitioner is that the said Income Tax Officer directed the petitioner to deduct and pay taxes at the rate of 30% on the amount remitted by the petitioner to M/s.Stearans Catalytic Corporation, U.S.A. Accordingly, the petitioner deducted and paid Rs.34,22,900=00 towards the tax. Subsequently, the assessee company claimed that in view of the amended provisions of Section 6(10) of the Act, no grossing was required to be made as the payment was to be remitted under the agreement approved by the Government of India and claimed refund. The Income Tax Officer, Ward-2(1), Baroda, by order dated November 30, 1990 held that the petitioner was entitled to refund of Rs.10,26,868/-. A copy of the said order is produced by the petitioner at Annexure-K to the petition. The petitioner thereafter requested the respondent No.4, i.e. Income Tax Officer, Ward-2(1), Baroda, to grant interest on the excess amount of tax refunded by letter dated January 17, 1991. As there was no response from the respondent No.4 to the said letter, the petitioner applied on July 15, 1992 to the

Commissioner of Income Tax, Baroda, with a prayer to grant interest on the amount refunded. However, the Commissioner of Income Tax by his letter dated October 6, 1992 declined to entertain the claim of interest on the ground that the same was not admissible either under Section 243(1)(b) or 244(1A) or under Section 214(2) of the Act. A copy of the said order is produced by the petitioner at Annexure-N to the petition. Feeling aggrieved, the petitioner approached the Chief Commissioner of Income Tax, Gujarat, Ahmedabad, by making an application dated October 31, 1992. However, the Chief Commissioner of Income Tax also by letter dated January 18, 1993 refused to entertain the claim of the petitioner for interest on the excess amount of tax paid on the ground that excess amount of tax deducted at source was not as a result of any order passed by an authority under the Act nor the provisions of Section 244A(1) of the Act were applicable to the facts of the case.

3. Dissatisfied by the said order, the petitioner approached CBDT by making application on February 26, 1993. The petitioner reiterated its submissions made before the Chief Commissioner of Income Tax. However, the CBDT also by order dated April 19, 1993 refused to accept the claim made by the petitioner for awarding interest on the amount of excess tax paid by it. A copy of the said letter is produced by the petitioner at Annexure-R to the petition.

4. According to the petitioner, the petitioner is entitled to refund of tax with interest as the amount of tax was paid to the treasury as per the direction of the Income Tax Officer. According to the petitioner, excess amount was wrongfully detained by the respondents and, therefore, the petitioner is entitled to interest thereon. After explaining that interest is the return of compensation for use of another's money and asserting that Article 265 of the Constitution and Section 72 of the Indian Contract Act should be read conjointly, the petitioner has prayed to direct the respondents to pay interest on the excess amount, which was retained by them. Under the circumstances, the petitioner has filed the instant petition and claimed the reliefs to which reference is made earlier.

5. On service of notice, Mr.R.B.Goswami, Deputy Commissioner of Income-Tax (Asst.), Special Range-3, Baroda, has filed reply affidavit controverting the averments made in the petition. In the reply, it is stated that the petitioner failed to produce any evidence in support of its claim that the Assessing Officer had asked the petitioner to deduct tax at the rate of 30% on the income derived on receipt of technical knowhow fees by a foreign company and, therefore, the petitioner is not entitled to reliefs claimed in the petition. It is further stated in the reply that the petitioner failed to fulfill certain conditions laid down in Sections 238 and 239 of the Act as a result of which the petitioner was not entitled to claim interest on refund under Section 237 of the Act. What is mentioned in the reply is that the record does not show that the petitioner had acted in pursuance of any order of the Assessing Officer intimating the actually calculated tax to be deducted and, therefore, the petition should be dismissed. It is stated in the reply that the petitioner's

claim that it had paid the excess TDS in view of the tax liability computed for the purpose of obtaining No Objection Certificate, is not covered within the meaning of the words 'assessing order' or 'penalty order' passed by the Assessing Officer for the purpose of Section 244(1A) of the Act and, therefore, the petitioner is not entitled to the interest on the amount of tax refunded to it. It is also mentioned in the reply that the intention of the Legislature is only to pay interest on the disputed amount paid and as the TDS had been refunded in the first proceedings under Section 237 itself, the petitioner is not entitled to any interest under Section 244(1A) of the Act. The deponent has further stated that there is no evidence on record showing that the department had issued any order to pay a sum of Rs.10,26,868/- and as the said payment was not as a result of any order passed by the Assessing Officer, there is no question of payment of interest under Section 244(1A) as compensation. Thus, by filing the reply, Mr.R.B.Goswami, Deputy Commissioner of Income Tax, has demanded dismissal of the petition.

6. The petitioner has filed rejoinder to the affidavit-in-reply filed by Mr.Goswami and reiterated what is stated in the petition. Therefore, detailed reference to the same is avoided.
7. This Court has heard Mr.R.K.Patel, learned counsel for the petitioner, and Ms.Mona M. Bhatt, learned advocate for M/s.M.R.Bhatt & Company, for the respondents.

8. The question whether an assessee is entitled to compensation by way of interest for the delay in the payment of amounts lawfully due to the assessee, which are withheld wrongly and contrary to law, stands concluded in favour of the petitioner by the judgment of the Supreme Court rendered in ***Sandvik Asia Limited vs. Commissioner of Income-Tax & Ors., [2006] 280 ITR 643 (SC)***. In the said case, for the assessment year 1977-78 for which the assessee had paid advance tax, the assessee was granted refund of tax on the basis of the assessment order and was asked to pay additional tax after rectification. The Commissioner (Appeals) gave substantial relief and the assessee received refund only of the excess amount paid as advance tax. The assessee was not granted interest on the amounts found refundable. For the assessment year 1978-79, the assessee was granted refund of tax on the basis of the assessment order but no interest was paid on the refund. After the Commissioner (Appeals) gave substantial relief, the assessee received refund only of the excess amount paid as advance tax, but no interest was granted. For the assessment year 1981-82, the assessee was granted refund as well as interest on the amount under Section 214. After the Commissioner (Appeals) granted substantial relief the assessee was allowed interest only under Section 214 but no interest was granted under Sections 214(1A) and Section 244(1A) of the Act. For the assessment year 1982-83, the assessee paid further tax on the assessment, but the Commissioner (Appeals) gave substantial relief and the assessee received refund of the excess tax paid without interest provided under Section 214 or Section 244. Pursuant to the order of the Supreme Court, the department granted interest up to March 27, 1998 but the department refused interest

on interest. The assessee thereupon filed writ petition challenging the orders, but the High Court dismissed the petition. The question considered by the Supreme Court was whether an assessee was entitled to compensation by way of interest for the delay in the payment of amounts lawfully due to the assessee which are withheld wrongly and contrary to law. After examining the scheme of Section 214 and Section 244 as well as earlier decisions on the point, the Supreme Court has held as under:

*“The facts and the law referred to in paragraph (supra) would clearly go to show that the appellant was undisputably entitled to interest under Sections 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 dated April 30, 1997. Interest on delayed payment of refund was not paid to the appellant on March 27, 1981, and April 30, 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. The High Court has failed to appreciate that while charging interest from the assessees, the Department first adjusts the amount paid towards interest so that the principal amount of tax payable remains outstanding and they are entitled to charge interest till the entire outstanding is paid. But, when it comes to granting of interest on refund of taxes, the refunds are first adjusted towards the taxes and then the balance towards interest. Hence, as per the stand that the Department takes they are liable to pay interest only up to the date of refund of tax while they take the benefit of the assessee's funds by delaying the payment of interest on refunds without incurring any further liability to pay interest. The stand taken by the respondents is discriminatory in nature and thereby causing great prejudice to lakhs and lakhs of assessees. Very large number of assessees are adversely affected inasmuch as the Income-tax Department can now simply refuse to pay to the assessees amounts of interest lawfully and admittedly due to them as has happened in the instant case. It is a case of the appellant as set out above in the instant case for the assessment year 1978-79, it has been deprived of an amount of Rs.40 lakhs for no fault of its own and exclusively because of the admittedly unlawful actions of the Income-tax Department for periods ranging up to 17 years without any compensation whatsoever from the*

*Department. Such actions and consequences, in our opinion, seriously affect the administration of justice and the rule of law.*

*Compensation:*

*The word "compensation" has been defined in P.Ramanatha Aiyar's Advanced Law Lexicon 3rd Edition 2005 page 918 as follows:*

*"An act which a court orders to be done, or money which a court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price of a privilege purchased; some thing given or obtained as an equivalent; the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value; a recompense given for a thing received; recompense for the whole injury suffered; remuneration or satisfaction for injury or damage of every description; remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or wages given to an employee or officer."*

*There cannot be any doubt that the award of interest on the refunded amount is as per the statute provisions of law as it then stood and on the peculiar facts and circumstances of each case. When a specific provision has been made under the statute, such provision has to govern the field. Therefore, the court has to take all relevant factors into consideration while awarding the rate of interest on the compensation.*

*This is a fit and proper case in which action should be initiated against all the officers concerned who were all in charge of this case at the appropriate and relevant point of time and because of whose inaction the appellant was made to suffer both financially and mentally, even though the amount was liable to be refunded in the year 1986 and even prior thereto. A copy of this judgment will be forwarded to the Hon'ble Minister for Finance for his perusal and further appropriate action against the erring officials on whose lethargic and adamant attitude the Department has to suffer financially.*

*By allowing this appeal, the Income-tax Department would have to pay a huge sum of money by way of compensation at the rate specified in the Act, varying from 12 per cent to 15 per cent, which would be on the high side. Though we hold that the Department is solely responsible for the delayed payment, we feel that the interest*

*of justice would be amply met if we order payment of simple interest at 9 per cent per annum from the date it became payable till the date it is actually paid. Even though the appellant is entitled to interest prior to March 31, 1986, learned counsel for the appellant fairly restricted his claim towards interest from March 31, 1986 to March 27, 1998 on which date a sum of Rs.40,84,906 was refunded”*

9. In view of the abovequoted authoritative pronouncement by law of the Supreme Court, there is no manner of doubt that the petitioner is entitled to compensation by way of interest for the delay in payment of amounts lawfully due to the assessee which were withheld wrongly and contrary to law. During the course of hearing of the instant petition, Mr.R.K.Patel, learned counsel for the petitioner, has brought to the notice of the Court Instruction No.2 of 2007 dated 28<sup>th</sup> March 2007 issued by the Central Board of Direct Taxes, which is reproduced in 209 CTR (St.) 17 and 160 Taxman (St.) 21. It reads as under:

*“Under Section 244A of the Income-Tax Act, 1961, interest is to be granted simultaneously with the refund and there should normally be no reason to grant refund without adding the entitled interest. In the case of Sandvik Asia Ltd. vs. CIT (280 ITR 643 (SC)) the Hon'ble Supreme Court, adversely commented upon the delay in grant of interest on refund and awarded compensation to the assessee for the said delay by the Department. While taking this view, the Supreme Court referred to the judgment of D.J. Works vs. Dy. CIT (195 ITR 227 (Guj.)) wherein the High Court had held that though there is no specific provision for payment of interest on interest, but if interest on the refund is wrongfully retained, interest on interest would be payable. The Court further held that even assuming that there was no provision in the Act for payment of compensation, on general principles, compensation was payable to the assessee for the delayed payment of interest. The Court also recommended that action be initiated against the officers responsible for the delay.*

*It is necessary to remind all Assessing Officers that while granting refund to the assessee, care should be taken to ensure that any interest payable under Section 244A on the amount of refund due should be granted simultaneously with the grant of refund and there should, in no case, by any omission or delay in the grant of such interest. Failure to do so will be viewed adversely”*

10. It may be mentioned that the above quoted instruction has been issued on the basis of the judgment of the Supreme Court in ***Sandvik Asia Ltd. (supra)***. Thus, this Court is of the opinion that the petitioner would be entitled to compensation by way of interest for the delay in payment of amounts lawfully due which were withheld wrongly and contrary to law.

The net result of the above discussion is that the petition will have to be accepted.

11. For the foregoing reasons, the petition succeeds. The three orders namely; (1) the order dated October 6, 1992 passed by the Commissioner of Income Tax, Baroda, declining to accept the claim of the petitioner for interest on refund on the ground that it is not admissible under Sections 243(1)(b), 244(1A) and 214(2) of the Act, produced at Annexure-N; (2) the order dated January 18, 1993 passed by the Chief Commissioner of Income Tax, Gujarat, Ahmedabad, refusing to pay interest on the excess amount of tax deducted at source on the ground that the excess amount of tax deducted at source was not as a result of any order passed by the authority under the Income Tax Act, which is produced at Annexure-P to the petition; and, (3) the order dated April 19, 1993 passed by the Government of India refusing to grant interest on refund on the ground that the provisions of Section 244(1A) of the Act would not apply to the facts of the case, which is produced at Annexure-R to the petition, are hereby set aside. The respondents are directed to grant compensation by way of interest at the rate of 9% per annum to the petitioner on the amount refunded for the period from July 1, 1987 to November 13, 1990 as well as make payment of

running interest at the rate of 9% per annum on the amount of interest, which may be granted pursuant to the directions contained in this judgment. Rule is made absolute to the extent indicated hereinabove. There shall be no orders as to costs.

***(J. M. Panchal, J.)***

***(Smt. Abhilasha Kumari, J.)***

Rajendra