

**IN THE HIGH COURT OF MEGHALAYA AT  
SHILLONG**

**: ORDER :**

**WP (C) No.317 of 2014**

The Meghalaya Cooperative Apex Bank Ltd. & Anr ..... Petitioners

-Versus-

The Chairman Central Board of Direct Taxes & Ors .....  
Respondents

**Date of Order: :: 31.05.2017**

**PRESENT**

**HON'BLE SHRI JUSTICE DINESH MAHESHWARI, CHIEF JUSTICE**  
**HON'BLE SHRI JUSTICE VED PRAKASH VAISH**

Shri VK Jindal, Sr. Adv, with Ms. MK Marak, for the petitioner  
Shri S Sharma, for the respondents

**AFR BY THE COURT: (per Hon'ble the Chief Justice) (Oral)**

The petitioners, Meghalaya Cooperative Apex Bank Limited and its Managing Director, have preferred this writ petition on their grievance in relation to the claim for refund of the Tax Deducted at Source ['TDS'] for the Assessment Years 2000-2001, 2001-2002, 2002-2003 and 2003-2004, particularly where the Central Board of Direct Taxes ['CBDT'], though condoned the delay in filing the claim for refund under Section 119 (2) (b) of the Income Tax Act, 1961 ['the Act'] but, directed the Assessing Officer to allow the claim of refund while declining interest; and where in the assessment orders dated 30.12.2013, the Assessing Officer declined to allow the interest as also a portion of the refund claim on the ground of non-confirmation from the deductors.

The petitioners would assert that denial of interest and a part of refund claim is violative of their rights under Section 244-A of the Act and that they are entitled to be compensated by way of further interest over interest.

Shorn of unnecessary details, the relevant background aspects of the matter are as follows: The petitioner No.1 is said to be a Co-operative Bank engaged in the business of banking and claim to be exempted from the payment of income tax on the income derived from the interest on securities as per the provisions contained in Section 80 P (2)(a)(i) of the Act. During the financial years 1999-2000 to 2002-2003, corresponding to the Assessment Years 2000-2001 to 2003-2004 respectively, the petitioner bank made huge investments in the Central, State and Trustee Securities and earned income through interest over such deposits. The case of the petitioners had been that the concerned organizations with whom the investments were made for the said Assessment Years, deducted TDS on the interest income under Section 193 of the Act to the tune of Rs.2,24,07,941/- and deposited this deducted amount with the respondents, though the petitioners were not liable for any such tax over the income derived from the interest on securities.

Admittedly, a claim for refund of TDS (after adjustment of tax liability) to the tune of Rs.2,22,78,250/- was made on behalf of the petitioner-bank only on 05.10.2006 by filing its returns for the aforesaid Assessment Years while quoting PA Number as: AADCM3043M. It is the case of the petitioners that while submitting the returns for subsequent Assessment Years, it was noticed that PA

Number earlier obtained was not correct as per the status of the petitioner as a Co-operative Bank and hence, a new PA Number AAAAM8227G was obtained in order to correct the status of petitioner; and revised returns for the Assessment Years 2000-2001, 2001-2002, 2002-2003 and 2003-2004 were filed on 08.03.2007. Further case of the petitioners is that after repeated requests for processing the claim of refund, the respondent No.2-Assistant Commissioner of Income Tax, Circle-Shillong informed, by his letter dated 11.09.2007, that the belated refund claim exceeded a sum of Rs.1 lakh and by virtue of CBDT's Circular No.670 dated 26.10.1993, such a claim was not admissible in his office. The petitioners have further pointed out that they made a request before the respondent No.3-Chief Commissioner of Income Tax, Shillong, but looking to the quantum of the amount involved, the prayer had to be made to the CBDT and accordingly, they filed a petition under Section 119(2)(b) of the Act on 26.02.2008 before the CBDT for admitting the claim for refund of excess tax paid by way of TDS along with interest.

On the petition so filed on 26.02.2008, the CBDT, in its order dated 19.10.2011, found it to be a case of genuine hardship and on the facts and in the circumstances of the case, while condoning the delay in filing the returns to claim refund for the aforesaid Assessment Years, directed the Assessing Officer to allow the refund claims subject to verification but also directed that "no interest should be paid on these refund claims". In the impugned order dated 19.10.2011, the CBDT, inter alia, observed and directed as under:-

*“4. In its written submission the applicant has stated that since it had no knowledge of the procedure to claim refund, it omitted to file the returns of income within the specified time limit as per section 139(4).*

*5. A factual report has been submitted by the CCIT, Shillong on the application of the Bank. On examination it is found that it is a case of genuine hardship.*

*6. Keeping in view the facts and circumstances of this case, the Central Board of Direct Taxes in exercise of the power conferred under clause (b) of sub-section (2) of Section 119 of the Income Act 1961, hereby condones the delay in filing return to claim refund for Assessment Years 2000-01, 2001-02, 2002-03 and 2003-04 and directs the Assessing Officer to allow the claim of refund, subject to verification, for the aforesaid Assessment Years as per Instruction No.13 of 2006. No interest should be paid on these refund claims.”*

For the reason that in the aforesaid order dated 19.10.2011, interest had been disallowed on refund, the petitioner No.2 made another petition to the CBDT on 11.01.2012 to consider the payment of interest on the refund claim as per the provisions of Section 244-A of the Act. This prayer was, however, declined by the CBDT by way of its communication dated 25.01.2012, while stating as under:-

*“I am directed to refer to your letter No.MCAB/HO/CEN/IT Refund/2000-03/Intt./2012/23443 dated 11/01/2011 (sic) addressed to the Board on the above mentioned subject. After careful consideration of the same, the Board is of the view that no claim of interest is admissible in view of Section 244A(2) of Income Tax Act, 1961, r/w Instruction No.13/2006 dated 22/12/2006.”*

Thereafter, the petitioners made a request to the respondent No.2 to grant the refund as per the CBDT order dated 19.10.2011; and followed it up with several communications and even complaints for expeditious processing of their claim for refund. Ultimately, the petitioners were informed by the respondent No.2 under the communication dated 20.05.2014 that returns of income for the aforesaid Assessment Years had been accepted and while giving

effect to the CBDT's order, the refunds were allowed in the following manner:-

| <i>"Sl.No.</i> | <i>Assessment Year</i> | <i>Refund amount</i>    |
|----------------|------------------------|-------------------------|
| <i>1.</i>      | <i>2000-01</i>         | <i>Rs.2,59,483.00</i>   |
| <i>2.</i>      | <i>2001-02</i>         | <i>Rs.45,47,911.00</i>  |
| <i>3.</i>      | <i>2002-03</i>         | <i>Rs.66,26,881.00</i>  |
| <i>4.</i>      | <i>2003-04</i>         | <i>Rs.96,44,154.00"</i> |

The aforesaid refund claims were accepted in separate assessment orders passed on 30.12.2013 in relation to the aforesaid four Assessment Years. It is noticed that in the said orders dated 30.12.2013, certain parts of the claim of the petitioners were not allowed for want of confirmation from the deductors, the particulars whereof are as under:-

| <i>"Sl.No.</i> | <i>Assessment Year</i> | <i>Amount not Refunded</i>                       | <i>Reasons</i>   |
|----------------|------------------------|--|--|
| <i>1.</i>      | <i>2000-01</i>         | <i>Rs.1,45,953/-</i><br><br><i>Rs.1,86,488/-</i> | <i>Non confirmation of TDS from Deductors viz; VIDC &amp; TIDC</i><br><br><i>Non confirmation of TDS from Deductors viz; WBIDFCL</i> |
| <i>2.</i>      | <i>2001-02</i>         | <i>Rs.1,63,739/-</i><br><br><i>Rs.3,08,000/-</i> | <i>Non confirmation of TDS from Deductors viz; VIDC &amp; TIDC</i><br><br><i>Non confirmation of TDS from Deductors viz; WBIDFCL</i> |
| <i>3.</i>      | <i>2002-03</i>         | <i>Rs.1,06,312</i>                               | <i>Non confirmation of TDS from Deductors viz; IIBI</i>  |
| <i>4.</i>      | <i>2003-04</i>         | <i>Rs.87,329/-</i><br><br><i>Rs.1,47,000/-</i>   | <i>Non confirmation of TDS from Deductors viz; IIBI</i><br><br><i>Non confirmation of TDS from Deductors viz; WBIDFCL"</i>           |

Apart from above, an amount of Rs.55,000/- was not allowed in the order pertaining to the Assessment Year 2000-2001 for the reason that the said TDS was not referable to the Assessment Year in question. This part of the order impugned is not in dispute and is left at that only. The petitioners have, however, pointed out that different cheques amounting to Rs.2,10,78,429/- were issued to them towards the refund allowed but even those cheques returned unpaid for want of double signatures and then, the respondents issued the fresh cheques.

Aggrieved of the aforesaid orders dated 19.10.2011 and 25.01.2012 by CBDT denying interest over refund as also the aforesaid assessment orders dated 30.12.2013, the petitioners have preferred this writ petition essentially with the contentions that denial of refund to the tune of Rs.11,44,821/- on the alleged ground of non-confirmation of TDS from the concerned deductors is not sustainable because the assessee had given complete details of the deductors and had furnished TDS certificates discharging its onus and want of confirmation from the deductors cannot be a ground for denying the refund which is otherwise admissible in law; and that denial of interest over the refund amount remains entirely unjustified and is contrary to the provisions contained in Section 244-A of the Act, which invest the petitioners with a statutory right of receiving interest at the rate provided therein over the amount that had remained in deposit with the department. It is also submitted that under sub-section (2) of Section 244-A of the Act, if the proceedings resulting in refund are delayed for the reasons attributable to the assessee, the period of

delay so attributable may be excluded from the period for which the interest is payable, but this provision is not attracted in the present case because initial delay of claiming the refund had already been condoned by the CBDT. It is further submitted that when no such tax was to be deducted from the income of the petitioner-bank, and the same was nevertheless deducted and deposited with the Income Tax department, it was required of the department to refund the same with statutory interest; and for having denied the same and having driven the petitioners to unnecessary litigation, the department is liable to compensate the petitioners by way of interest over interest.

The respondents have filed their counter affidavit with the submissions, inter alia, that obtaining of a wrong PA Number as a Company was a fault on the part of the petitioners only; and the revised returns with correct PA Number were filed only on 08.03.2007, though the returns for claiming refund for the aforesaid Assessment Years 2000-2001, 2001-2002, 2002-2003 and 2003-2004 ought to have been filed on or before 31.03.2002, 31.03.2003, 31.03.2004 and 31.03.2005 respectively. It is also submitted that because of inordinate delay on the part of the petitioners and multiple claims from multiple agencies, the verification process was bound to, and had, consumed extra time for carrying out necessary verification for which, there had been no fault or default on the part of the respondents. While giving out the details of the tax deductors who failed to respond, it is submitted by the respondents that when there was no confirmation, the refund of TDS was required to be, and was, rightly disallowed.

It is also submitted on behalf of the respondents that apart from gross delay in filing returns, in fact, the petition for condonation of delay by the petitioners was also grossly belated and yet, the Board took a liberal view of the matter while taking into consideration the geographical location and backwardness of the State and the fact that the bank was catering to the needy sections of population. According to the respondents, denial interest in the present matter has been solely for the reasons attributable to the petitioners and neither any claim for interest nor any claim for interest over interest is sustainable. It is also submitted that the cheques of refund had to be re-issued because earlier cheques carried a minor technical error but only six days extra time was taken in the process.

The petitioners have filed a rejoinder affidavit with the submissions that the matter of delay was brought to the notice of the CBDT in the petition dated 26.02.2008 but thereafter, neither the CBDT nor the Assessing Officer dealt with the matter with reasonable expedition with the result that ultimately, the refund amount was received by the petitioner-bank only in the month of May, 2014 and therein too, a part of the amount was not refunded on an untenable ground, of want of confirmation. Hence, the petitioners assert on their entitlement to the reliefs as claimed.

Before proceeding further, we may indicate in the passing that earlier, a Division Bench of this Court, while considering this petition on 26.05.2015 and 16.06.2015, pondered over an entirely different issue as to why Income Tax department is not charging tax from tribals whose source of earning is situated within the municipal area



of Shillong. Thereafter, on 15.09.2015, the Division Bench further expanded on the said issue and indicated on the desirability of Income Tax Department requiring returns from the citizens even if exempted from tax under Section 10(26) of the Act. Thereafter, on 26.11.2015, another Division Bench observed that apart from this issue, the matter has to be heard on merits.

Thereafter, when the matter came up before this Bench, it was considered appropriate to examine only the issues that arise for determination in this petition on the grounds as urged and reliefs as claimed; and to leave other generalized issues open for examination in the appropriate proceedings and at the appropriate occasion. Therefore, to put the record straight, it is made clear that the other issues, as indicated in the earlier orders passed in this petition, shall remain open for consideration in appropriate proceedings and whenever occasion would arise therefor.

On the relevant background aspects as noticed hereinabove and the grounds as urged, the following questions arise for determination in this matter: (1) As to whether the respondents were not right in declining interest on refund of TDS to the petitioners? (2) As to whether in the impugned orders dated 30.12.2013, the Assessing Officer has wrongly declined refund of TDS amounting to Rs.11,44,821/- for want of confirmation from the deductors? (3) As to whether the petitioners are entitled to compensation for delayed payment of interest in the form of interest over interest.

**Question No.1:**

*As to whether the respondents were not right in declining interest on refund of TDS to the petitioners?*

Learned counsel for the petitioners has referred to the provisions of Section 244-A of the Act and has strenuously argued that the payment of interest follows a matter of course, in case of refund of the amount deposited as tax and sub-section (2) of Section 244-A of the Act nowhere provides that the assessee is not entitled to interest on refund. According to the learned counsel, the CBDT had grossly erred in passing the impugned orders dated 19.10.2011 and 25.01.2012 declining payment of interest and the learned Assessing Officer has wrongly deprived the petitioners of interest in the impugned assessment orders dated 30.12.2013. Learned counsel would also argue that even if there had been some delay on the part of the petitioners in making the claim for refund, once the CBDT found it to be a case of genuine hardship and condoned the delay, there was no reason that the respondents yet chose to deny the interest over the refund. Learned counsel has referred to and relied upon the decisions in the case of ***Union of India v. Tata Chemical Limited: (2014) 6 SCC 335*** and ***National Horticulture Board v. Union of India: (2002) 125 Taxman 922 (P&H)***.

Per contra, learned counsel for the respondents has vehemently argued that sub-section (2) of Section 244-A puts restrictions on payment of interest when the process of refund is delayed on account of the reasons attributable to the assessee; and in the present case, when the assessee-bank chose not to make the

claim for refund for an abnormally long length of time, and even the delayed claim was not made to the concerned authority in the first place, and the prayer for condonation was submitted before the CBDT after a long delay, the CBDT had rightly exercised its discretion in declining interest even while condoning the delay. Learned counsel has referred to and relied upon the decision of Hon'ble Kerala High Court in the case of ***Pala Marketing Co-Op. Society Ltd. v. Commissioner of Income Tax: WP (C) No.17664 of 2013*** decided on 23.09.2016. Learned counsel would also argue that the petitioners made the prayer for processing the refund claims as per the CBDT orders dated 19.10.2011 and 25.01.2012 and hence, having accepted the said orders, are now not entitled to make any claim for interest.

Having given thoughtful consideration to the rival submissions and having perused the material placed on record, this Court is unable to accept the contentions of the respondents that interest over refund is to be denied to the petitioners altogether. However, in the given set of facts and circumstances, it appears just and proper that the interest be allowed to the petitioners w.e.f. 26.02.2008, the date of their making the petition to CBDT and not before.

Sub-sections (1) and (2) of Section 244-A of the Income Tax Act, 1961 read as under:-

*"244-A. (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 paid under section 115WJ or collected at source under section 206C or paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one-half per cent 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 115WE or sub-section (1) of section 143 or on regular assessment;*

*(b) in any other case, such interest shall be calculated at the rate of one-half 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.*

*Explanation.- For the purposes of this clause, “date of payment of tax or penalty” means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.*

*(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable, and where any question arises as to the period to be excluded, it shall be decided by the Chief Commissioner or Commissioner whose decision thereon shall be final.”*

On a plain reading with their ordinary meaning, evident it is that the aforesaid provisions invest the assessee with a right to receive simple interest, on the refund of any amount that has become due for refund under the Act, as per the method provided in the sub-clauses of sub-section (1) thereof. Of course, sub-section (2) of Section 244-A *ibid.* puts a restriction on payment of interest but only to the extent that if the proceedings resulting in refund are delayed for the reasons attributable to the assessee, the assessee is not entitled to interest for the period of delay which is attributable to him. It is not the provision that whenever there is a delay in claiming refund, the assessee has to be denied interest as a matter of course. Contrary to this, as per sub-section (2) of Section 244-A *ibid.*, only the period of delay attributable to the assessee is to be excluded from the period for which the interest is payable. In the case of *Tata Chemical Limited*

(supra), the Hon'ble Supreme Court has pointed out the legal principles underlying the payment of interest in case of refund of the amount paid as tax as also the liability of Government in the following:-

*“38. Providing for payment of interest in case of refund of amounts paid as tax or demand tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the aforesaid amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing statute. Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there-being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party which ex ae quo et bono ought to be refunded, the right to interest follows, as a matter of course.”*

In *National Horticulture Board* (supra) the Hon'ble Punjab and Haryana High Court has also indicated the rationale behind such provisions and the unquestioned right of the assessee to receive interest in the following:-

*“.....A conjoint reading of the provisions quoted above shows that the assessee is entitled to receive interest on the amount of refund at the rates prescribed in clauses (a) and (b) of sub-section (1) of section 244A. The rationale underlying this provision is to compensate the assessee in lieu of the deprivation of his property right by virtue of unlawful collection of tax. If the proceedings resulting in the refund are delayed due to reasons attributable to the assessee, then the period of delay has to be excluded from the period for which the interest is payable. In other words, if the assessee is responsible for the delay in the finalisation of the proceedings on the basis of which he becomes entitled to refund, then the period of delay is to be excluded from the total period for which becomes payable. However, there is nothing in the plain language of sub-sections (1) and (2) of section 244A from which it can be inferred that the assessee can be deprived of the interest in respect of the period during which his application for refund remains pending before the competent authority.*

*6. The argument of Shri Sawhney that the submission of an application for award of interest is implicit in the Scheme of section 244A and interest cannot be claimed by the assessee as if right unless there is an unexplained delay in deciding such application sound attractive but lacks merit and deserves to be rejected because a reading of the plain language of section 244A(1) and its two clauses makes it clear that the right to receive interest on the amount of refund does not depend on the submission of an application by the assessee. Rather, it follows as a natural corollary to the assessee's right to receive refund. Therefore, the mere fact that the application filed by the petitioner was decided expeditiously cannot be made a ground for declining its prayer for award of interest."*

In the case of *Pala Marketing Co-Op. Society Ltd.* relied upon by the learned counsel for the respondents, it appears that the claim for refund of TDS in the Assessment Year 1997-1998 was made only by way of returns filed in the year 2000 and then, the application for condonation of delay was rejected by the CBDT and ultimately, the High Court condoned the delay on 26.11.2007. Thereafter, the Assessing authority passed an order on 11.02.2008 directing the refund without interest. In the given fact situation, the Court found denial of interest justified, while observing as under:-

*"10. Going by the judgments relied upon by either side, I am of the view that the liability to pay interest on refund arises from the date when claim for refund is made with all necessary particulars. As already indicated, Section 244A(2) imposes a restriction on payment of interest when the procedure for refund is on account of the delay attributed to the assessee. In the case on hand, what is to be looked into is whether the delay in refund was due to a cause attributable to the assessee. The facts involved in the case would disclose that the return of income for the assessment year 1997-98 was filed only on 01/02/2000 on account of delay in auditing. Return was filed belatedly and thereby it was rejected. Thereafter an application was filed under Section 119(2)(b), seeking for condoning the delay in filing the return, was rejected and ultimately the matter reached this Court wherein this Court had directed the delay to be condoned. There cannot be two ways to look at it. Admittedly, there had been delay on the part of the assessee which had given rise to a situation to condone the same. Delay has been condoned only for the purpose of accepting the return. But it cannot be stated that the delay was not attributable to the assessee. Even if such instances where the delay is condoned, still when it is attributable to the assessee, there is justification on the part of the Commissioner to*

*deny interest under Section 244A(2). Therefore, I do not find any error in the impugned orders passed by which the claim for interest has been rejected.”*

The aforesaid decision in the case of *Pala Marketing Co-Op. Society Ltd.*, proceeding on its own facts, has no direct application to the facts of the present case nor in the said case, Hon'ble Kerala High Court has ruled that the interest is to be denied a matter of course in every case of delay in claiming refund. In any event, the said decision cannot be read as laying down any law contrary to the plain statutory provisions of Section 244-A and the law declared by the Supreme Court.

Taking up the facts of the present case, it is noticed that there had, of course, been an initial delay on the part of the petitioners inasmuch as the claim for refund of TDS deducted and deposited in the Assessment Years 2000-2001, 2001-2002, 2002-2003 and 2003-2004 was for the first time made only on 05.10.2006 by filing the returns and that too with an incorrect PA Number. The revised returns with freshly obtained correct PA Number for the said Assessment Years were filed only on 08.03.2007. Even then, the petitioners did not take requisite steps for filing appropriate petition before the concerned authority i.e., the Central Board of Direct Taxes for condonation of delay. Such a petition was filed before the CBDT only on 26.02.2008.

On the factual aspect of the matter as noticed hereinabove, we are satisfied that the delay in claiming refund, from the date it should have been claimed for the relevant Assessment Years and until

26.02.2008 for each of the four aforesaid Assessment Years, is squarely attributable to the petitioners alone; and the petitioners cannot be held entitled to interest until 26.02.2008, the date of making the petition before the CBDT. However, the manner of dealing with the matter after filing of the petition by the petitioners before the CBDT has left several things to be desired on the part of the respondents.

The petition dated 26.02.2008 for condoning the delay and entertaining the refund claims was decided by the CBDT only on 19.10.2011 i.e., after nearly two years and eight months of filing. There is no explanation whatsoever on the part of the respondents as to why the said petition was decided after such a delay of more than two and a half years. Even thereafter, the Assigning Officer took further extra time in finally concluding on the assessments by the order dated 30.12.2013. Even if the verification process was to be carried out, it remains explicable that such a process took more than two and half years to complete. Yet further, it is noticed that even after 30.12.2013, the information about part acceptance of the claim for refund was sent to the petitioners only on 20.05.2014; and then, wrong cheques were sent and which were corrected after about a week.

The submissions on the part of the learned counsel for the petitioners that once CBDT condoned the delay, interest could not have been denied at all remains unsustainable for the reason that the CBDT, while passing the order under Section 119 (2)(b) of the Act considered it expedient to direct the Assessing Officer to admit the



claim of refund after accepting it to be a case of genuine hardship but, such directions by the Board cannot by themselves override the operation of sub-section (2) of Section 244-A whereby, the interest is denied for the period of delay attributable to the assessee.

In an overall comprehension, even while we are of the view that the delay up to the date of filing the petition before CBDT i.e., 26.02.2008 is attributable to the petitioners and they are not entitled to claim interest on refund until this date but the delay thereafter had essentially been on the part of the respondents; and it had been squarely against the plain statutory provisions as also against the spirit of law that the respondents chose to deny interest altogether to the petitioners. The contentions of the learned counsel for the respondents that the petitioners had accepted the CBDT orders and hence, are not entitled to claim interest has only been noted to be rejected. As observed, the right of receiving interest is available to the petitioners as per the statute and nothing of any estoppel could be considered operating against the petitioners over the statutory provisions contained in Section 244-A of the Act.

Thus, we are clearly of the view that the impugned orders dated 19.10.2011 and 25.01.2012 in so far the respondent No.1 had declined the payment of interest over the refundable amount of tax and consequential denial of interest in the impugned assessment orders dated 30.12.2013 cannot be approved; and in modification of the impugned orders, the petitioners deserve to be allowed interest on the refundable amount of tax w.e.f. 26.02.2008.

**Question No.2:**

*As to whether in the impugned orders dated 30.12.2013, the Assessing Officer has wrongly declined refund of TDS amounting to Rs.11,44,821/- for want of confirmation from the deductors?*

Learned counsel for the petitioners has argued that the Assessing Officer has wrongly declined refund to the tune of Rs.11,44,821/- for the alleged want of verification from the concerned deductors. According to the learned counsel, when the deductors had been the agencies and instrumentalities of the Government and TDS certificates had been issued by them and were submitted before the Assessing Officer, there was no reason that such refunds were declined on the ground of alleged want of confirmation from the deductors. It is submitted that the petitioners cannot be held responsible for want of confirmation from the deductors, particularly when they had furnished the original TDS certificates. The learned counsel has particularly relied on the decision of Allahabad High Court in the case of ***Rakesh Kumar Gupta v. Union of India: Civil Miscellaneous Writ Petition (Tax) No.657 of 2013***. Per contra, learned counsel for the respondents would contend that when confirmations were not forthcoming, the Assessing Officer cannot be faulted in declining refund, particularly when the claims were otherwise of old TDS deposits and the concerned deductors did not respond to the communications from the Assessing Officer.

It is noticed from the facts projected before us that the aforesaid amount of TDS was deducted on the interest income of the

petitioners, arising out of the deposits made in the Central Government Securities, State Government Securities and Trustee Securities. It is not the case of the respondents that the petitioners had not made such deposits or had not earned interest income or there was any doubt about the genuineness of the TDS certificates submitted by the petitioners. The Hon'ble Allahabad High Court has indicated on entitlement of the assessee with the principles of presumption in such matters, particularly when the deductor is a Government department, while observing in *Rakesh Kumar Gupta's* case (supra) as under:-

*“12. The petitioner has suffered a tax deduction at source but has not been given due credit in spite of the fact that he has been issued a TDS certificate by a Government department. There is a presumption that the deductor has deposited the TDS amount in the Government account especially when the deductor is a Government department. By denying the benefit of TDS to the petitioner because of the fault of the deductor causes not only harassment and inconvenience but also makes the assessee feel cheated. There is no fault on the part of the petitioner. The fault, if any, lay with the deductor. In the instant case, nothing had been indicated that the fault lay with the petitioner in furnishing false details.”*

The principles aforesaid, in our view, directly apply to the present case too and we see no reason that refund of the said amount of Rs.11,44,821/- was denied to the petitioners in the aforesaid assessment orders dated 30.12.2013. The claim of the petitioners in this regard deserves to be allowed.

### **Question No.3**

*As to whether the petitioners are entitled to compensation for delayed payment of interest in the form of interest over interest?*

Learned counsel for the petitioner has, with strong reliance on the decision of Hon'ble Supreme Court in the case of ***Sandvik Asia Ltd. v. Commissioner of Income Tax-I, Pune and others: [2006] 280 ITR 643 (SC)*** has argued that in the present matter, the petitioners have been deprived of interest on the refund amount as per the statute for a long length of time, and hence, the present one is a fit and proper case where the petitioners be awarded compensation, particularly for inordinate delay on the part of the respondents. Learned counsel for the petitioner has also referred to the decision in ***Commissioner of Income Tax v. Narendra Doshi: (2004) 2 SCC 801***. Learned counsel for the respondents has opposed this prayer with the submissions that there had not been any unnecessary delay on the part of the respondents in dealing with the delayed claim for refund by the petitioners and no case for award of any compensation is made out.

As noticed, there had been a considerable delay on the part of the petitioners themselves in making the claim for refund and then, in making the petition for condonation of delay. The CBDT yet took it to be a matter of genuine hardship and condoned the delay. Altogether denial of interest by the CBDT has already been disapproved hereinabove, but the question is as to whether the present one had been a case of wanton or intentional inaction on the part of the respondents to the extent that further compensation in the form of interest over interest be allowed? In our view, the answer is in the negative.

In *Sandvik Asia Ltd.* case (supra), the Hon'ble Supreme Court awarded interest over interest in the case where the assessee was made to wait for refund of interest for decades and it was found that the assessee had been greatly prejudice for inordinate delay on the part of the Revenue. In *Narendra Doshi* too, the Hon'ble Supreme Court did not interfere with the award of interest over interest with reference to the other decisions, that had not been challenged by the Revenue; and where it was held that Revenue was liable to pay interest on the amount of interest, which had unjustifiably been denied to the assessee.

The peculiar circumstances of the present case, as already noticed, had been that the initial long delay is attributable to the petitioners themselves. The other part of delay in ordering and making refund is adequately taken care of by the amount of interest, which the petitioners are held entitled to w.e.f. 26.02.2008. Though accepting the claim for refund in the assessment orders dated 30.12.2013 but issuing refund cheques in the month of May, 2014 cannot be appreciated but, in the overall circumstances of this case, we find no reason to award any further interest over the statutory interest to the petitioners. This part of the claim of the petitioners is, therefore, declined.

Accordingly and in view of the above, this writ petition stands partly allowed thus:

(a) The impugned orders dated 19.10.2011 (Annexure P-IX) and dated 25.01.2012 (Annexure P-XII), in so far the respondent No.1 had declined payment of interest over the refundable amount of tax

stand modified to the extent and in the manner that the petitioner-bank is held entitled to interest over the entire refundable amount of tax w.e.f. 26.02.2008 and until the date of payment.

(b) Denial of refund to the extent of Rs.11,44,821/- in the impugned assessment orders dated 31.12.2013 (Annexure-P XXIII A) on account for want of confirmation from the deductors is disapproved; and the petitioner is held entitled to the refund of this amount of Rs.11,44,821/- together with interest.

(c) However, the claim of the petitioner for compensation in the form of interest over interest is rejected and the prayer in that regard is declined.

(d) In view of the directions in this order, the impugned assessment orders dated 30.12.2013 in relation to the Assessment Years 2000-2001, 2001-2002, 2002-2003 and 2003-2004 on the claim of refund of the petitioners are required to be modified in the manner that the petitioners are to be allowed credit for the amount found payable in this order; and are also to be allowed interest on the refundable amount of tax w.e.f. 26.02.2008.

(e) In view of the above, the learned Assessing Officer shall make fresh assessment order/s in modification of the earlier assessment orders dated 30.12.2013 (Annexure-P XXIII A) in relation to the Assessment Years 2000-2001, 2001-2002, 2002-2003 and 2003-2004 on the petitioner's claim for refund within three months from the date of receipt of this order.

(f) The respondents shall ensure that the requisite payment is

received by the petitioners within two months from the date of fresh assessment order/s.

(g) No costs.

**JUDGE**

**CHIEF JUSTICE**

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Item No.1