IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 21110 of 2017

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI Sd/-

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Approved for Reporting	Yes	No
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MAHARASHTRA BORDER CHECK POST NETWORK LTD THROUGH DIRECTOR SHASHIN VISHNUBHAI PATEL
Versus
C.B.D.T. & ANR.

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Appearance:
MR DHINAL A SHAH(12077) for the Petitioner(s) No. 1
MR NIKUNT K RAVAL(5558) for the Respondent(s) No. 2
MS MAITHILI D MEHTA(3206) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 16/09/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. By way of the present writ petition, the petitioner is claiming interest at the rate of 6% and additional interest at the rate of 3% on the refund claim of Rs.2,50,00,000/- under the provision of Section 244A of the Income Tax Act, 1961 (for short, “the Act”).

2. The petitioner is engaged in the business of development of infrastructure facilities and is regularly filing its income tax returns and complying with the provisions relating to Tax Deducted at Source (TDS).

3. In the month of February 2011, the Assessing Officer issued a show-cause notice calling upon the petitioner to explain as to why tax had not been deducted at source from

the payment of Rs.70,00,00,000/- made by it to MSRDC and also to show cause as to why the company should not be treated as an assessee-in-default under Section 201(1) of the Act. The petitioner filed its written explanation, justifying that the payment in question did not attract the provisions relating to TDS.

4. Thereafter, the petitioner was issued a show-cause notice dated 18.03.2015 for alleged non-deduction of TDS at source, to which the petitioner objected and filed its response.

5. Ultimately, the Assessing Officer passed an order dated 23.04.2015 under Sections 201(1) and 201(1A) of the Act, treating the petitioner as an assessee-in-default for its failure to deduct tax at source amounting to Rs.6,70,80,235/-.

6. A sum of Rs.5,89,25,714/- was also charged towards interest under Section 201(1A) of the Act and thus, a demand of Rs.12,60,65,949/- was raised.

7. The petitioner, being aggrieved by the said action, filed a writ petition being Special Civil Application No.10232 of 2015.

8. By order dated 23.02.2016, the impugned notices dated 10.01.2013 and 18.03.2015 and the order dated 23.04.2015 were quashed and set aside in light of the decision of this Court in the case of Tata Teleservices Vs. Union of India [dated 05.02.2016 in Special Civil Application No.1623 of 2015].

9. The petitioner had also filed an appeal before the Commissioner of Income Tax (Appeals) [CIT (Appeals)] against the order passed under Sections 201 and 201(1A) of the Act, which was allowed by the CIT (Appeals) vide order dated

23.06.2016 in light of the decision of this Court dated 23.02.2016.

10. Thereafter, the petitioner raised the issue of interest on refund and filed a grievance petition and an application under Section 154 of the Act on 22.03.2017, claiming interest. The same was rejected by the respondents on 26.09.2017, as reflected in grievance status on portal.

11. The claim for interest on refund has been rejected in view of the Finance Act, 2017, by which the provision of Section 244A(1B) of the Act was introduced with effect from 01.04.2017, which has given rise to the present writ petition.

12. Learned advocate Mr. Dhinal A. Shah, appearing for the petitioner, has submitted that the petitioner is entitled to interest on the refund of the amount of Rs.2,50,00,000/-, which the petitioner had deposited under protest pursuant to the demand that was raised. Ultimately, when the action of the respondents was set aside by this Court and by the CIT (Appeals), the respondent authorities ought to have immediately processed the refund and paid the same along with interest in light of the provisions of Section 244A(1)(b) of the Act.

13. It is further submitted that the provision of Section 244A(1B) of the Act will not apply to the case of the petitioner, as the same were introduced with effect from 01.04.2017 and would have prospective effect. The petitioner is entitled to interest as per the decision of the Supreme Court in the case of Union of India Vs. Tata Chemical Limited, 2014 (43) taxmann.com 240 as well as Circular No.11 of 2016 dated

26.04.2016, which was issued after the decision of the Supreme Court. Thus, it is urged that the respondents may be directed to grant interest on the refund.

14. Opposing the foregoing submissions and the present writ petition, learned Senior Standing Counsel Ms. Maithili D. Mehta has submitted that the petitioner would not be entitled to interest on the refund in view of the specific provisions of Section 244A(1B) of the Act, which were inserted with effect from 01.04.2017 by the Finance Act, 2017. As far as the provision of Section 244A(1B) of the Act are concerned, since the order giving effect to the grant of refund was passed by the CIT (Appeals) on 23.06.2016, the petitioner is not entitled to interest on the refund.

15. We have heard the learned counsel for the respective parties at length.

16. The facts, which are established from the record and pleadings, are that pursuant to the demand raised by the Revenue of Rs.12,60,65,949/-, the petitioner deposited an amount of Rs.2,50,00,000/- in installments starting from 30.09.2015 and ending on 03.02.2017 under protest.

17. Simultaneously, the petitioner challenged the action of the Revenue in raising the demand on TDS by filing a writ petition being Special Civil Application No.10232 of 2015. By order dated 23.02.2016, this Court, while placing reliance on the decision of the Division Bench in the case of ***Tata Teleservices (supra)***, allowed the writ petition and quashed and set aside the impugned notices and the order dated 23.04.2015. Thus, the status of the petitioner as an assessee-

in-default for the alleged failure to deduct tax at source was set aside by this Court while setting aside the order dated 23.04.2015.

18. It appears that thereafter the Revenue challenged the said decision of this Court before the Supreme Court by filing a Petition for Special Leave to Appeal (C)......CC No.15936 of 2016, which was dismissed vide order dated 23.09.2016, after condoning the delay.

19. Thus, in our opinion, after this Court, vide judgment dated 23.02.2016, had quashed and set aside the order dated 23.04.2015, the Revenue was supposed to refund the amount which was paid by the petitioner, as his status as an assessee-in-default had been set aside by this Court. Be that as it may, since the appeal filed by the petitioner was pending, on production of the said order passed by this Court, the CIT (Appeals), vide order dated 23.06.2016 passed under Section 250(6) of the Act, also set aside the action of the respondents, and directed the autority to implement the orer passed by this Court. Despite the aforesaid orders passed by this Court as well as the CIT (Appeals), nothing was done for almost eight months, and the petitioner was granted an online refund on 03.02.2017 of Rs.2,50,00,000/- without any interest.

20. Interestingly, while granting the refund on 03.02.2017, though no interest was granted as per the provisions of Section 244A of the Act, the claim for interest has been rejected on the basis of the provisions of Section 244A(1B) of the Finance Act, 2017, which was inserted with effect from 01.04.2017.

21. On the online portal, in response to the application filed by the petitioner seeking interest on the refund, it has been recorded that since the provisions of Section 244A(1B) of the Act were introduced with effect from 01.04.2017 and the refund had been processed prior to that date, the petitioner was not entitled to refund.

22. It appears that the Revenue has overlooked the provisions of Section 244A(1)(b) of the Act, which read as under:

> “***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 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,—*
>
> *(i) from the 1st day of April of the assessment year to the date on which the refund is granted, if the return of income has been furnished on or before the due date specified under sub-section (1) of section 139; or*
>
> *(ii) from the date of furnishing of return of income to the date on which the refund is granted, in a case not covered under sub-clause (i);*
>
> *(aa) where the refund is out of any tax paid under section 140A, 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 date of furnishing of return of income or payment of tax, whichever is later, to the date on which the refund is granted:*
>
> ***Provided*** *that no interest under clause (a) or clause (aa) 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 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.

[(1A) In a case where a refund arises as a result of giving effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264, wholly or partly, otherwise than by making a fresh assessment or reassessment, the assessee shall be entitled to receive, in addition to the interest payable under sub-section (1), an additional interest on such amount of refund calculated at the rate of three per cent per annum, for the period beginning from the date following the date of expiry of the time allowed under sub-section (5) of section 153 to the date on which the refund is granted.]

[(1B) Where refund of any amount becomes due to the deductor in respect of any amount paid to the credit of the Central Government under Chapter XVII-B, such deductor shall be entitled to receive, in addition to the said amount, simple interest thereon calculated at the rate of one-half per cent for every month or part of a month comprised in the period, from the date on which—

(a) claim for refund is made in the prescribed form; or

(b) tax is paid, where refund arises on account of giving effect to an order under section 250 or section 254 or section 260 or section 262, to the date on which the refund is granted.]”

23. The grant of interest on refund already finds place in the statute under the provisions of clause (b) of Section 244A(1) of the Act. The petitioner, who had successfully challenged the action of the respondents in treating him as an assessee-in-default, is entitled to interest under the provisions of clause (b) of Section 244A(1) of the Act, and he cannot be denied interest by resorting to the provisions of Section 244A(1B) of the

Finance Act, which was inserted with effect from 01.04.2017. The provisions of Section 244A(1B)(b) of the Act stipulates of granting interest if the refund is ordered to be paid under the provisions mentioned therein. Thus, prior to insertion of Section 244(1B) of the Act, the grant of interest in “any other case” is governed by Section 244(A)(1)(b) of the Act, which takes care of the situation as presented in the present case.

24. At this stage, it would be apposite to refer to the decision of the Supreme Court in the case of ***Tata Chemicals Limited (supra)***, which reads as under:

> *“25. Before the insertion of Section 244A as a composite Section by the Direct Tax Laws (Amendment) Act, 1987, the liability to pay interest on refund of pre-paid taxes was contained in Sections 214, 243 read with Section 244 (1A) of the Act. The Parliament has introduced a new Section in the place of Sections 214, 243 and 244 in respect of assessment for the assessment year 1989-90 and onwards.*
> *26. The language of the Section is precise, clear and unambiguous. Sub-Section (1) of Section 244A speaks of interest on refund of the amounts due to an assessee under the Act. The assessee is entitled for the said amount of refund with interest thereon as calculated in accordance with clause (a) & (b) of sub-Section (1) of Section 244A. In calculating the interest payable, the section provides for different dates from which the interest is to be calculated.*
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> *27. Clause(a) of sub-Section(1) of Section 244A talks of payment of interest on the amount of tax paid under Section 155WJ, tax collected at source under section 206C, taxes paid by way of advance tax, taxes treated as paid under Section 199 during the financial year immediately preceding the assessment year. Under this clause, the interest shall be payable for the period starting from the first day of the assessment year to the date of the grant of refund. No interest is payable if the excess payment is less than 10% of the tax determined under Section 143(1) of the Act or on regular assessment. Clause(b) of Sub-Section(1) of Section 244A opens with the words "in any other case" that means in any case other than the amounts paid under Clause(a) of Sub-*

section(1) of Section 244A. Under this clause, the rate of interest is to be calculated at the rate of one and a half per cent per month or a part of a month comprised in the period or the periods from the date or, as the case may be, either the dates of payment of the tax or the penalty to the date on which the refund is granted. An explanation is appended to clause(b) of the aforesaid sub-Section to explain the meaning of the expression "date of payment of tax or penalty". It clarifies that the "date of payment of tax or penalty" would mean 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.

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36. Section 240 of the Act provides for refund of any amount that becomes due to an assessee as a result of an order in appeal or any other proceedings under the Act. The phrase "other proceedings under the Act" is of wide amplitude. This Court has observed, that, the other proceedings under the Act would include orders passed under Section 154 (rectification proceedings), orders passed by the High Court or Supreme Court under Section 260 (in reference), or order passed by the Commissioner in revision applications under Section 263 or in an application under Section 273A.

37. A "tax refund" is a refund of taxes when the tax liability is less than the tax paid. As per the old section an assessee was entitled for payment of interest on the amount of taxes refunded pursuant to an order passed under the Act, including the order passed in an appeal. In the present fact scenario, the deductor/assessee had paid taxes pursuant to a special order passed by the assessing officer/Income Tax Officer. In the appeal filed against the said order the assessee has succeeded and a direction is issued by the appellate authority to refund the tax paid. The amount paid by the resident/ deductor was retained by the Government till a direction was issued by the appellate authority to refund the same. When the said amount is refunded it should carry interest in the matter of course. As held by the Courts while awarding interest, it is a kind of compensation of use and retention of the money collected unauthorizedly by the Department. When the collection is illegal, there is corresponding obligation on the revenue to refund such amount with interest in as much as they have retained and enjoyed the money deposited. Even the Department has understood the object behind insertion of Section 244A, as that, an assessee is entitled to payment of interest for money remaining with the Government which would be refunded. There is no reason to restrict the same to

> *an assessee only without extending the similar benefit to a resident/ deductor who has deducted tax at source and deposited the same before remitting the amount payable to a non-resident/ foreign company.*
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> *38. Providing for payment of interest in case of refund of amounts paid as tax or deemed 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, therebeing 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.*

25. The Supreme Court has categorically observed that 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, and that the obligation to refund money received and retained without right implies and carries with it the right to interest. Thus, as per the decision of the Supreme Court, the petitioner is entitled to interest on the refund of the amount of Rs.2,50,00,000/-.

26. In the present case, despite having succeeded before the High Court and the CIT (Appeals), the petitioner was constrained to further file an application/petition claiming interest on the refund amount, and the same has been denied on the basis of a provision of law which was subsequently

inserted in the statute book, without applying due consideration to the existing provisions of Section 244A(1)(b) of the Act.

27. Thus, the writ petition succeeds and is allowed accordingly. The respondents are directed to grant interest on the refund amount of Rs.2,50,00,000/- as prescribed under the provisions of Section 244A(1)(b) of the Act, within a period of four weeks, failing which the said amount shall further carry interest at the rate of 9% per annum. We also direct the respondents to pay costs of Rs.10,000/- to the petitioner for embroiling him in the present litigation. Rule is made absolute to the aforesaid extent.

28. At this stage, learned advocate Mr. Dhinal A. Shah, appearing for the petitioner, has submitted that the amount of costs may be ordered to be deposited with the High Court Legal Services Authority.

29. We agree to the said request made by him.

30. Accordingly, we direct that an amount of Rs.10,000/- shall be deposited by the Revenue before the High Court Legal Services Authority within a period of two weeks from today.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(VAIBHAVI D. NANAVATI,J)

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