IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.12786 OF 2023

Group M Media India Private Limited,)
a company incorporated in India, having)
registered office at 7th and 8th Floor, Wing A,)
The ORB Sahar, Village Marol, Andheri East,)
Mumbai – 400 099)
PAN : AACCM7365H) ….Petitioner

V/s.

1. Deputy Commissioner of Income Tax,)
International Tax, Circle – 1(1)(2), Mumbai,)
having office at 5th Floor, Air India Building,)
Nariman Point, Mumbai – 400 021)

2. Additional Commissioner of Income Tax,)
International Tax, Range 1(1), Mumbai,)
having office at 5th Floor, Air India Building,)
Nariman Point, Mumbai – 400 021)

3. Principal Commissioner of Income Tax,)
International Tax – 1, Mumbai, having office)
at Air India Building, Nariman Point,)
Mumbai – 400 021)

4. Assistant Director of Income Tax,)
Centralised Processing Centre, Bengaluru,)
Income Tax Department, Bengaluru – 560)
500)

5. The Central Board of Direct Taxes,)
Department of Revenue, Ministry of Finance,)
Government of India, North Block, New)
Delhi – 110 001)

6. The Union of India, Through the Secretary,)
Ministry of Finance, Government of India,)
North Block, New Delhi – 110 001) ….Respondents

Mr. Dharan V. Gandhi a/w. Ms. Aanchal Vyas for petitioner.
Mr. Devvrat Singh for respondents – Revenue.

CORAM : K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED : 18th DECEMBER 2023

ORAL JUDGMENT (PER K.R. SHRIRAM, J.) :

1 Since pleadings have been completed, we decided to hear the petition at the admission stage itself.

2 Therefore, Rule. Rule made returnable forthwith.

3 Petitioner has approached this Court alleging that there is failure on the part of respondents to release the undisputed refund due and determined by respondents themselves in the intimation/order issued under Section 168(1) of the Income Tax Act, 1961 (the Act) for Financial Year 2017-2018 corresponding to Assessment Year 2018-2019 despite reminders sent and for a direction to respondents to refund an admitted amount of Rs.4,23,60,940/- plus interest thereon.

4 Mr. Gandhi states that after the petition was filed, petitioner received an amount of Rs.4,23,60,940/- towards refund on 21st August 2023 but no interest has been paid.

5 Mr. Singh appearing for respondents states that the question of paying any interest does not arise because the Act does not provide for payment of any interest in cases of this nature.

6 Petitioner has been availing specified services as defined in clause (i) of Section 164 of the Finance Act, 2016 which came into force with effect from 1st April 2016. Section 164 of the Finance Act, 2016 provides in clause (i), unless the context otherwise requires – “specified

service" means online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement and includes any other service as may be notified by the Central Government on this behalf.

7 The equalisation levy under Chapter VIII of the Finance Act, 2016 came to be introduced due to exponential increase in digital economy, which due to digital presence, without any physical presence in India posed challenges in levy of tax under the Act. Due to absence of any physical presence, the Act was unable to bring within the ambit of tax all such transactions. The Organization for Economic Co-operation and Development (OECD) has recommended, in Base Erosion and Profit Shifting (BEPS) project under Action Plan 1, several options to tackle the direct tax challenges, including levy of a final withholding tax on certain payments for digital goods or services provided by a foreign e-commerce provider or imposition of a equalisation levy on consideration for certain digital transactions received by a non-resident from a resident or from a non-resident having permanent establishment in other contracting state. Accordingly, the Legislature introduced Equalisation Levy vide Finance Act, 2016. Some of the facets of such levy are as under :

(a) Equalisation Levy is a tax paid/deducted on specified services availed at the rate of 6% of the amount of consideration paid for such services as per Section 165 of the Act;

(b) Specified service has been defined in Section 164(i) of the Act to mean online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement and includes any other service as may be notified by the Central Government in this behalf;

(c) The charge of tax is on the recipient of the services and such person has to deduct tax from the amount of consideration as per Section 166 of the Act;

(d) Such tax is to be paid to the credit of the Central Government by the seventh day of the month immediately following the calendar month in which such amount is deducted;

(e) Assessee is required to furnish a statement under Section 167 of the Act to the Assessing Officer in such form, verified in such manner and setting forth such particulars as may be prescribed, in respect of all specified services during such financial year;

(f) Such statement furnished has to be processed under Section 168 of the Act, and after processing the sum payable or refundable shall be determined and intimated to the assessee;

(g) Refund, if any, determined has to be granted with the intimation;

(h) Similarly, there are provisions for rectification of mistakes, appeal, penalty and prosecution.

8 For Assessment Year 2018-2019, petitioner filed its statement of specified income originally on 26th June 2018 disclosing total consideration for specified services at Rs.3,99,41,76,889/- and equalisation levy thereon at Rs.23,96,50,668/-. After declaring total levy paid of Rs.23,96,50,670/-, refund of Rs.60/- was claimed which was later revised to Rs.4,23,60,940/-.

9 Since 2022 emails were sent for processing payment of refund which, for some inexplicable reasons, was never paid and as noted earlier, was finally paid after this petition was filed. The issue that remains to be decided in this petition is whether petitioner was entitled to interest on the amount refunded.

10 As noted earlier, the stand of the Revenue is interest is not provided for refund of amounts deposited under the equalisation levy and, therefore, the question of payment of any interest does not arise. Mr. Gandhi, at the outset, submitted that Section 170 of the Finance Act, 2016 provides for every assessee, who fails to credit the equalisation levy or any part thereof as required under Section 166 to the account of the Central Government within the period specified in that section, shall pay simple interest at the rate of one percent of such levy for every month or part of a month by which such crediting of the tax or any part thereof is delayed and, therefore, if the assessee has paid the amount in excess of what was due and liable to be paid should equally be compensated with interest.

Mr. Gandhi relied upon the judgment of the Apex Court in ***Union of India V/s. Tata Chemicals Ltd.***[1], ***Universal Cables Ltd. V/s. Commissioner of Income Tax, Jabalpur***[2] and also Circular No.11/2016 dated 26th April 2016 issued by CBDT accepting the view expressed by the Apex Court in *Tata Chemicals Ltd.* (Supra) and an order passed by this Court in ***UPS Freight Services India Pvt. Ltd. V/s. Deputy Commissioner of Income Tax, Central Circle – 3(2)***[3].

11 In *Tata Chemicals Ltd.* (Supra) the issue that arose for consideration was whether the Revenue is legally responsible under Section 244A of the Act for payment of interest on the refund of tax made to the resident/deductor under Section 240 of the Act. In that case, the resident/deductor had approached the Income Tax Officer under Section 195(2) of the Act requesting him to advise as to what percentage of tax should be withheld from the amounts payable to the foreign company. The Income Tax Officer directed the resident/deductor to deduct/withhold tax at the rate of 20% before remitting any amounts to the foreign company. Accordingly, resident/deductor deducted tax of Rs.1,98,878/- on the amounts paid to the foreign company and credited the same in favour of the Revenue. Subsequently, the Appellate Authority allowed the appeal filed by resident/deductor and concluded that the reimbursement of expenses was not a part of the income for deduction of tax at source under Section

1 (2014) 43 taxmann.com 240 (SC)
2 (2020) 113 taxmann.com 353 (SC)
3 Writ Petition (L) No.10314 of 2023 dated 28.08.2023

195 of the Act and accordingly, directed the refund of the tax that was deducted and paid over to the Revenue. After disposal of the appeal, the resident/deductor claimed the refund with interest thereon as provided under Section 244A(1) of the Act. The Assessing Officer declined the claim and observed that Section 244A provides for interest only on refunds due to the assessee under the Act and not to the deductor and since the refund in the instant case is in view of two circulars issued by CBDT and not under the statutory provisions of the Act, no interest would accrue. The Assessing Officer, while granting refund of the tax paid, refused to entertain the claim for interest. Appellant carried it to the Commissioner of Income Tax (Appeals) [CIT(A)] and later to Income Tax Appellate Tribunal (ITAT) and the matter finally reached the Apex Court. The Apex Court, after reproducing various provisions of the Act and recording the submissions of the parties, decided the question whether the resident/deductor is also entitled to interest on refund of excess deduction or erroneous deduction of tax at source under Section 195 of the Act.

12 We must keep in mind that even in that case, the stand of the Revenue was since there was no provision which provides for interest on refund of excess deduction or erroneous deduction of tax at source under Section 195 of the Act, no interest was payable. The same stand is taken before us also.

13 The Apex Court, in *Tata Chemicals Ltd.* (Supra), observed that the Tribunal and the High Court granted interest on the amount of tax deducted by the resident/deductor from the date of payment on the grounds that the Revenue for having retained the sum by way of tax has to compensate the person who had deposited the tax. The Court also held that a tax refund is a refund of taxes when the tax liability is less than the tax paid. The deductor/assessee having paid taxes pursuant to a special order passed by the Assessing Officer/Income Tax Officer, when the amount is refunded it should carry interest in the matter of course.

In the case before us also the deductor/assessee has paid taxes pursuant to Section 165 of the Finance Act, 2016 and, therefore, when the said amount is refunded it should carry interest in the matter of course.

The Apex Court went on to hold, as held by the Courts while awarding interest, that it is a kind of compensation for use and retention of the money collected unauthorizedly by the Department.

14 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.

15 In *Tata Chemicals Ltd.* (Supra) the Apex Court also held that 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. Paragraph 32 to 39 of *Tata Chemicals Ltd.* (Supra) read as under :

> *32. The question before us is, whether the resident/deductor is also entitled to interest on refund of excess deduction or erroneous deduction of tax at source under Section 195 of the Act.*
>
> *33. We would begin our discussion by referring to circular No. 790, dated 20.04.2000, issued by the Board. Omitting what is not necessary, the material portion of the circular is extracted :*
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> > *"……*
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> > *6. Refund to the person making payment under Section 195 is being allowed as income does not accrue to the non-resident. The amount paid into the Government account in such cases, is no longer 'tax'. In view of this, no interest under section 244A is admissible on refunds to be granted in accordance with this Circular or on the refunds already granted in accordance with Circular No. 769."*
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> *34. What the deductor/ resident primarily contend is that, what has been deposited by him is a tax, may be for and on behalf of non-resident/ foreign company and when the beneficial circular provides for refund of tax to the deductor under certain circumstances, the refund of tax should carry interest.*

35. The circular issued by Central Board of Direct Taxes ("the Board" for short) is binding on the department. Binding nature of the circular is explained by this Court in the case of UCO Bank v. CIT 237 ITR 889, wherein this Court has observed that the circulars issued by the Board in exercise of its powers under Section 119 of the Act would be binding on the income tax authorities even if they deviate from the provisions of the Act, so long as they seek to mitigate the rigour of a particular Section for the benefit of the assessee. Therefore, we cannot be taking exception to the reasoning and conclusion reached by the authorities under the Act. However, the Tribunal and the High Court, have granted interest on the amount of tax deposited by the resident/ deductor from the date of payment on the ground, firstly, the refund of tax is directed by the first appellate authority in the appeal filed by the deductor/ resident under Section 240 of the Act and secondly, the Revenue for having retained the sum by way of tax has to compensate the person who had deposited the tax.

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.

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, 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.

39. In the present case, it is not in doubt that the payment of tax made by resident/ depositor is in excess and the department chooses to refund the excess payment of tax to the depositor. We have held the interest requires to be paid on such refunds. The catechize is from what date interest is payable, since the present case does not fall either under clause (a) or (b) of Section 244A of the Act. In the absence of an express provision as contained in clause (a), it cannot be said that the interest is payable from the 1st of April of the assessment year. Simultaneously, since the said payment is not made pursuant to a notice issued under Section 156 of the Act, Explanation to clause (b) has no application. In such cases, as the opening words of clause (b) specifically referred to "as in any other case", the interest is payable from the date of payment of tax. The sequel of our discussion is the resident/deductor is entitled not only the refund of tax deposited under Section 195(2) of the Act, but has to be refunded with interest from the date of payment of such tax.

16 In *Universal Cables Ltd.* (Supra), the Apex Court followed Tata Chemicals Ltd. and held that there is no reason to deny payment of interest to the deductor who had deducted tax at source and deposited the same

with the Treasury. Paragraphs 2 to 4 of the said judgment read as under :

> *2. The limited issue that needs to be considered in the present appeal is whether the appellant would be entitled to interest on the amount refunded by the Department. The appellant relies on the decision of this Court in the Union of India Vs. Tata Chemicals Ltd. reported in (2014) 6 SCC 335, in particular, paragraph 37 of the said decision. The same reads thus : -*
>
> > *"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 Signature Not Verified issued by the appellate authority to refund the Digitally signed by RAJNI MUKHI 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 inasmuch as they have retained and enjoyed the money deposited. Even the Department has understood the object behind insertion of Section 244-A, 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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> *3. From the dictum in this judgment, it is clear that there is no reason to deny payment of interest to the deductor who had deducted tax at source and deposited the same with the Treasury. In our opinion, this observation squarely applies to the appellant.*
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> *4. As a result, we allow this appeal and direct the Department to pay interest as prescribed under Section 244-A of the Income Tax Act as applicable at the relevant time at the earliest.*

17 In *UPS Freight Services India Pvt. Ltd.* (Supra) also the stand taken was the DTVSV Act does not provide for any interest on excess amount under Section 244A of the Act. The Court, while rejecting the stand of the Revenue, held that simple interest at 6% has to be paid which is the rate prescribed under Section 244A of the Act. Paragraphs 6 to 9 of the said order read as under :

> *6. Mr Bajpayee submits, relying upon the affidavit in reply, that DTVSV Act does not provide for any interest on excess amount under Section 244A of the Income Tax Act, 1961 (the Act). In response, Mr. Gandhi relies on the judgment of the Hon'ble Delhi High Court in Mrs. Anjul v. Office of Principal Commissioner of Income-tax to submit that the Hon'ble Delhi High Court relying upon the judgment of the Hon'ble Apex Court in Union of India v. Tata Chemicals Ltd. has held, 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. Mr. Gandhi submits that in that case, Petitioner was an individual and the Court granted 5% simple interest. In the case at hand, Petitioner is a corporate entity, which has to borrow amount at very high rate of interest for paying these amounts and, therefore, this Court should grant at least the rate of interest which is provided for in Section 244A of the Act.*
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> *7. It will be useful to reproduce paragraph 2 of the circular 11/2016 (F.No.279/MISC./M-140/2015-ITJ] dated 26.4.2016 that Mr Gandhi tendered. It reads as under:*
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> > *"2. The issue of eligibility for interest on refund of excess TDS to a tax deductor has been a subject matter of controversy and litigation. The Hon'ble Supreme Court of India in the case of Tata Chemicals Limited, Civil Appeal No.6301 of 2011 vide order dated 26.2.2014, held that "Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there being no 2 [2014] 43 taxmann.com 240 Shivgan 403-oswpl-10314-2023.doc 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. "*
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> *8. It will be apposite to re-produce paragraphs 37 and 38 of Tata Chemicals Ltd. (Supra) and the same reads as under :*
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> *xxxxxxxxxxxxxxxxxxxxxx*
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> *9. In the present case, it is not in doubt that Petitioner was entitled to refund of Rs.62,81,983/- which ought to have been processed and paid latest by 31st July 2021. The amount as stated in the affidavit-in-reply has been paid only on 26th May 2023. Consequently, we are of the view that Petitioner is entitled to interest on this amount of Rs.62,81,983/- from 1st August 2021 upto 26th May 2023 at the rate of 6% p.a. which is the rate prescribed under Section 244A of the Act.*

Since the Circular No.11 of 2016 relied upon by Mr. Gandhi has already been reproduced in *UPS Freight Services India Pvt. Ltd.* (Supra), we are not reproducing the same here again.

18 In the present case, it is not in doubt that petitioner was entitled to refund of Rs.4,23,60,940/- because the amount has been paid after the petition was filed. Since the excess amount has been paid over by petitioer on various dates during Financial Year 2017-2018, in our view, the refund ought to have been processed and paid latest by 31st July 2018. The interest, therefore, of course, will become payable from 1st April 2018 if we apply the principles prescribed in Section 244A of the Act. The amount, as noted earlier, has been paid only on 21st August 2023. Consequently, we are of the view that petitioner is entitled to interest on this amount of Rs.4,23,60,940/- from 1st April 2018 upto 21st August 2023 at the rate of

6% p.a. which is the rate prescribed under Section 244A of the Act.

19 Mr. Gandhi is pressing for costs. Since we have awarded simple interest at 6%, we are not granting any cost in this case.

20 Rule made absolute.

21 This order shall be given effect to and the interest shall be paid over on or before 15th February 2024. If not paid, with effect from 16th February 2024, the rate of interest payable will be at 9% p.a. until the date of payment.

This will be in addition to other proceedings to hold the department and concerned officers to be in willful disobedience of the orders passed by this Court. The difference of 3% (9% - 6%) will be recovered from the Officer who will be responsible to have the interest paid.

(DR. NEELA GOKHALE, J.) **(K. R. SHRIRAM, J.)**