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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5293/2007

PASUPATI ACRYLON LIMITED Petitioner
Through: Mr. M.S. Syali, Senior Advocate
with Mr. Satyen Sethi with
Mr. Arta Trana Panda,
Ms. Husnal Syali and
Mr. Mayank Nagi, Advocates

versus

CENTRAL BOARD OF DIRECT
TAXES AND ORS. Respondents
Through: Mr. Abhishek Maratha, Advocate
for R-1 to 3.
Mr. Sanjay Bhatt with
Mr. Arvind Kumar, Advocates
for R-4.

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Date of Decision: December 09, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No. |
| 2. To be referred to the Reporter or not? | Yes. |
| 3. Whether the judgment should be reported in the Digest? | Yes. |

J U D G M E N T

MANMOHAN, J :

1. Present writ petition has been filed by the petitioner-assessee under Articles 226 and 227 of the Constitution of India praying for the following reliefs:-

(i) A writ of Certiorari or writ, order or direction in the nature of

Certiorari or any other appropriate writ, order or direction under Article 226/227 of the Constitution of India, calling for the records of the case, quash impugned order dated 23.02.2007 passed by Respondent No. 3, read with intimation dated 09.05.2007 issued by Respondent No. 1 refusing to refund the tax of Rs. 40,65,917/- and Rs. 51,59,393/- paid by petitioner by way of TDS for assessment years 2002-03 and 2003-04.

(ii) A writ of mandamus or writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction under Article 226/227 of the Constitution of India, directing Respondents particularly Respondent No. 1 and 2 to refund the tax of Rs. 40,65,917/- and Rs. 51,59,393/- paid by petitioner by way of TDS for assessment years 2002-03 and 2003-04.

(iii) Grant petitioner such further or other relief as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2. The issue that arises for consideration in the present case is whether tax admittedly paid by the petitioner-assessee by way of TDS in respect of the alleged interest payable to IDBI, which interest had, in fact, never accrued to IDBI and hence, was not its income liable to tax, could be refunded to petitioner-assessee.

3. When the matter was taken up for hearing on 25th October, 2010, Mr. M.S. Syali, learned senior counsel for the petitioner-assessee relied on Income Tax Circular No. 285 dated 21st October, 1980. The said circular reads as under :-

*“From
S.R. Wadhwa,
Director*

To,

All Commissioner of Income-tax.

Subject : Deduction of tax at source – Payment in excess of the amount actually deducted or deductible from salaries and other types of payments under sections 192 to 194D of the Income-tax Act – Refund/adjustment of.

Si,

The Board have been considering the manner of refunding the amount paid in excess of the tax deducted and/or deductible (whichever is more) under sections 192 to 194D of the Income-tax Act, 1961. The Board are advised that such excess payment can be refunded, independently of the Income-tax Act, to the person responsible for making such payment subject to necessary administrative safeguards.

2. In supersession of the earlier instruction on the subject, the following procedure is laid down to regulate the refund of such excess payments.

3. The excess payment would be the difference between the actual payment made by the deductor and the tax deducted at source or that deductible, whichever is more. This amount should be adjusted against the existing tax liability under any of the Direct Tax Acts. After meeting such liability the balance amount, if any, should be refunded to the assessee.

4. Where the tax is deducted at source and paid by the branch office of the assessee and the quarterly statement/annual return (in case of salaries) of tax deduction at source is filed by the branch, such branch office would be treated as a separate unit independent of the head office. After meeting any existing tax liability of such a branch, which would normally be in relation to the deduction of tax at source, the balance amount may be refunded to the said branch office. The Income-tax Officer, who will refund the amount, would be the one who receives the quarterly statement/annual return (in case of salaries) of tax deduction at source from that branch office and keeps record of the payments of TDS made by that branch.

5. The adjustment of refund against the existing tax liability should be made in accordance with the present procedure on the subject. A separate refund voucher to the extent of such liability under each of the direct taxes should be prepared by the Income-tax Officer in favour of the “income-tax department” and sent to the bank along with the challan of the appropriate type. The amount adjusted and the balance, if any, refunded would be debitible under the sub-head “Other refunds” below the minor head “Income-tax on

companies”—major head “020—Corporation tax” OR below the minor head “Income-tax other than union emoluments”—major head “021—Taxes on incomes other than Corporation Tax” according as the payment has originally credited to the major head “020—Corporation Tax” or the major head “021—Taxes on incomes other than Corporation Tax”.

6. Since the adjustment/refund of the amount paid in excess would arise in relation to the deduction of tax at source, the recording of the particulars of adjustment/refund should be done in the quarterly statement of TDS/annual return (in case of salaries) under the signatures of the ITO at the end of the statement, i.e., below the signatures of the person furnishing the statement.

7. This may please be brought to the notice of all officers under your charge.

8. A copy of this circular is also being endorsed to the Chambers of Commerce, etc., for information of the taxpayers.

Yours faithfully,

(Sd.) S.R. Wadhwa,

Director, Central Board of Direct Taxes.

[F. No. 275/77/79-IT(B)]”

4. Mr. Abhishek Maratha, learned counsel for respondent nos. 1 to 3 did not dispute that the TDS amount was refundable but submitted that the refund could be claimed only by the deductee, namely, IDBI, respondent no. 4 herein. He also pointed out that he needed to take instruction as to whether the aforesaid circular was still valid and subsisting.

5. Mr. Sanjay Bhatt, learned counsel appearing for IDBI, on the last date of hearing, confirmed that interest had never accrued to IDBI. He further stated that IDBI had no objection if the TDS amount deposited by petitioner-assessee was refunded to it.

6. Consequently, this Court on 25th October, 2010 passed the following order:-

“ Heard Mr. M.S. Syali, Senior Advocate along with Mr. Satyen Sethi, learned counsel for the petitioner, Mr. Abhishek Maratha, learned counsel for the revenue and Mr. Sanjay Bhatt, learned counsel for the fourth respondent, IDBI.

In Course of hearing, Mr. Bhatt, learned counsel appearing for the IDBI fairly stated that he has no objection if the amount that was deducted at source by the petitioner for payment of interest to IDBI and has been deposited with the department is refunded to the assessee. Mr. Bhatt further submitted that he is making such a statement as the said interest component was never treated as an income at the hands of IDBI.

Mr. Syali, learned senior counsel has invited our attention to the Circular No. 285 dated 21st October, 1980 to show that refund can be paid under these circumstances. Learned counsel has invited our attention to the decision in **Universal Cables Ltd. Vs. Commissioner of Income Tax, 191 Taxman 370** especially paragraph 2 whereby the revenue had invoked the Circular No. 285 and granted refund. Mr. Maratha is requested to apprise the authority and obtain instructions in this regard.

Be it noted, Mr. Syali fairly stated that he is only interested in getting the amount refunded and not concerned with claiming interest thereon.

Matter be listed for further hearing on 9th December, 2010.

Order dasti.”

7. Today, in the course of hearing, Mr. Maratha has confirmed that the aforesaid Circular No. 285 is still valid and subsisting.

8. Keeping in view the statement of Mr. Bhatt that the interest had never accrued in IDBI's favour and further that the IDBI has no objection to the return of interest to petitioner-assessee, we are of the opinion that in view of the aforesaid circular as well as the judgment in **Universal Cables Ltd.** (supra), the impugned orders dated 23rd February, 2007 and 9th May, 2007 deserve to be set aside. Ordered accordingly. Consequently, respondent Nos. 1 and 2 are directed to

refund the tax of ₹ 40,65,917/- and ₹ 51,59,393/- paid by way of TDS for the Assessment Years 2002-03 and 2003-04 respectively to the petitioner-assessee. With the aforesaid directions, the present writ petition stands allowed. There shall be no order as to costs.

MANMOHAN, J

DECEMBER 09, 2010

CHIEF JUSTICE

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