**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

**ITA No. 20 of 2019**
***Date of decision: 25.11.2019***

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*Pr. Commissioner of Income Tax* .....*Appellant*

*Versus*

*M/s Ambuja Darla Kashlog Mangoo Transport Co-operative Society* ...*Respondent*

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*Coram:*
**The Hon'ble Mr. Justice L. Narayana Swamy, Chief Justice**
**The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.**
*Whether approved for reporting?*[1]

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For the Appellant. : Mr. Vinay Kuthiala, Senior Advocate with Ms. Vandana Kuthiala, Advocate.

For the Respondent. Mr. Vishal Mohan, Advocate.

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**L. Narayana Swamy, Chief Justice** *(Oral)*

This appeal is directed by the appellant against the order dated 27.02.2019, passed in Miscellenous Application No. 13 Chd/2019 in ITA No. 280/Chd/2017, by the Income Tax Appellate Tribunal Division Bench, Chandigarh, (for short, 'the ITAT').

2. The case of the appellant is that the respondent Society-assessee filed return of income for the assessment year 1996-97 on 13.03.1997, which was processed under Section 143 (1) of the Income Tax Act, (for short 'the Act') on 22.12.1997. The further case of the appellant is that for the assessment years 1996-97 to 1999-2000, certain refunds arising out of excess TDS were

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[1] *Whether the reporters of Local Papers may be allowed to see the judgment?*

issued in favour of the assessee. However, interest under Section 244-A of the Act was not paid in respect of some of the refunds, while in the case of some other refunds, interest was paid for a shorter period than what was claimed by the assessee. It is averred in the appeal that the interest was refused on the ground that the delay in issuing refund was attributable to the assessee. Against the order of the Assessing Officer refusing to grant interest under Section 244-A of the Act, the assessee filed an appeal before the CIT(A) Solan . The CIT (A), Solan dismissed the appeal on the ground that the question as to whether any part of the delay was attributable to the assessee is a question to be decided by the Chief Commissioner or Commissioner of Income Tax under Section 244-A(2) of the Act. Then, the matter was referred to the Commissioner of Income Tax, Railway Board Building, the Mall, Shimla (hereinafter to be referred as 'the CIT'). The CIT vide its order dated 24.10.2008, dismissed the appeal while exercising its powers under Section 244 of the Act and the Assessing Officer was directed to pay interest to the assessee from 14.03.1997 to 22.12.1997 on refund of ₹2,76,363/-. Thereafter, the Assessing Officer issued refund of ₹41,545 on 31.01.2009. It is further averred in the appeal that subsequently, the assessee filed an application under Section 154 of the Act on 15.02.2010, requesting therein to allow interest on delayed interest on the

refund. The Assessing Officer vide its order dated 30.06.2011 (Annexure P-2) rejected the application of the assessee.

3. Being aggrieved by the aforesaid order of the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), (hereinafter to be referred as 'the CIT(A)', Faridabad, which was registered as IT/334/SML/2011-12. The CIT (A) vide its order dated 05.10.2016 (Annexure P-3) dismissed the appeal of the assessee, while relying upon the judgment of the Hon'ble Supreme Court in case titled as **Commissioner of Income Tax, Gujrat vs. Gujrat Fluoro Chemicals,** reported in ***(2014) 1 SCC 126.*** It is further averred that the aforesaid order of CIT(A) was again challenged by the assessee before the ITAT, by way of ITA No. 280/CHD/2017. The appeal of the assessee was allowed by the ITAT vide its order dated 30.10.2017 (Annexure P-4) directing the revenue to pay compensation in the shape of simple interest on the amount due at the rate at which the assessee otherwise would have been entitled to, on the delayed payment of excess tax paid.

4. Being aggrieved by the aforesaid order, Revenue challenged the same by way of Miscellaneous Application No. 13/Chd/2019 in ITA No. 280/CHD/2017, before the ITAT, Chandigarh. The ITAT vide its order dated 27.02.2019 (Annexure P-A) dismissed the Miscellenous Application being misconceived and

not maintainable and also on the ground that there is no error apparent on the record. Hence, by way of this appeal, the appellant/Revenue has approached this Court against the aforesaid order dated 27.02.2019, passed in M.A. No. 13/Chd/2019, as aforesaid.

5. The following substantial questions of law arise for consideration in this appeal:

i. ***Whether the impugned order of the Ld. ITAT for payment of compensation on delayed refund and interest paid is illegal and without jurisdiction since the statutory provisions do not provide for the same.***

ii. ***Whether the Ld. ITAT erred in holding that the issue cannot be decided under Section 254 (2) of the Act and the only remedy is to file appeal before the Hon'ble High Court.***

6. Learned Senior Counsel for the appellant submits that there is no provision under Section 244-A of the Act in respect of payment of interest on delayed refund. To substantiate his submission, he has placed reliance upon the judgment dated 18th September, 2013, passed by the Hon'ble Supreme Court in case titled as **Commissioner of Income Tax, Gujrat vs. Gujrat Fluoro Chemicals,** reported in ***(2014) 1 SCC 126,*** wherein it has been held that in a case of inordinate delay in the payment of compensation by way of interest, it is only that interest provided for under the

Statute which may be claimed by an assessee from the Revenue and no other interest on such statutory interest can be claimed. He further submits that the direction issued by the ITAT in the impugned order is contrary to the ratio laid down by the Hon'ble Supreme Court in the aforesaid judgment. He prays that the impugned order passed by the ITAT may be set aside.

7. On the other hand, learned Counsel for the respondent submits that the appeal deserves to be dismissed on the following three grounds. Firstly, the appellant has not challenged the original order dated 30.10.2017, passed by the ITAT in ITAs No. 280 to 283/Chd/2017, vide which a direction was issued to the Revenue to pay compensation in the shape of simple interest on the amount due at the rate at which the assessee otherwise would have been entitled to, on the delayed payment of excess tax paid, but has only challenged the order passed in Miscellaneous Application Nos. 13 to 16/Chd/2019. Secondly, monetary limit for filing appeals in income tax cases before High Courts is upto 1.00 crore. In support of his submission, the learned Counsel has referred to the Notification dated 8.8.2019, issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board Direct Taxes, Judicial Section. Thirdly, the learned Counsel submits that under the provisions of Section 244-A of the Act, the words used 'any amount' include the interest on

delayed payment of excess tax paid. In this regard, he relies upon the judgment dated 03.12.2009, rendered by the Hon'ble Supreme Court in case titled as **Commissioner of income Tax Vs. HEG Ltd.,** reported in (**2010) 324 ITR 331 (SC),** wherein the words 'any amount' have been interpreted.. The learned Counsel further submits that the judgment cited by the learned Senior Counsel for the appellant in the case, *supra,* has no application to the facts and circumstances of this case, as there is no specific provision regarding interest on delayed payment of excess tax paid. He also relies upon Notification dated 11th July, 2018, issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes. In para-4 of the said Notification, it has been mentioned that the tax will not include any interest , except where chargeability of interest itself is in dispute. Further, the learned Counsel Senior submits that the ITAT has rightly returned its findings in the impugned order. He has also placed reliance upon the judgment passed by the Hon'ble Supreme Court in case titled as **Sandvik Asia Ltd.** Vs. **Commission of Income Tax and others, reported in (2006) 280 ITS 643 (SC),** wherein it has been held that in the case of inordinate delay in the payment of interest, the Revenue may be directed to pay the same by way of interest. He prays that the appeal preferred by the appellant may be dismissed.

8. We have heard learned Counsel for both the parties and have carefully perused the entire record.

9. As far as the submission of the learned Senior Counsel for the appellant to the effect that there is no provision under Section 244-A of the Act in respect of payment of interest on delayed refund is concerned, the Hon'ble Supreme Court in judgment cited by the learned Counsel for the respondent in case titled as **Commissioner of income Tax Vs. HEG Ltd,** supra, has elaborated the words 'any amount'. It is apt to reproduce to reproduce the relevant portion of the aforesaid judgment herein:-

> *"The next question which we are required to answer is-what is the meaning of the words "refund of any amount becomes due to the assessee" in Section 244A? In the present case, as stated above, there are two components of the tax paid by the assessee for which the assessee was granted refund, namely TDS of Rs. 45,73,528 and tax paid after original assessment of Rs. 1,71,00,320. The Department contends that the works "any amount" will not include the interest which accrued to the respondent for not refunding Rs. 45,73,528 for 57 months. We see no merit in this argument. The interest component will partake the character of the "amount due' under Section 244A. It becomes an integral part of Rs. 45,73,528 which is not paid for 57 months after the said amount became due and payable. As*

*can be seen from the facts narrated above, this is the case of short payment by the Department and it is in this way that the assessee claims interest under Section 244A of the Income-tax Act. Therefore, on both the aforestated grounds, we are of the view that the assessee was entitled to interest for 57 months on Rs. 45,73,528. The principal amount of Rs. 45,73,528 has been paid on December 31, 1997 but net of interest which, as stated above partook the character of "amount due" under Section 244 A."*

10. In view of the ratio laid down by the Hon'ble Supreme Court in the judgment supra, the interest on the delayed refund becomes part of the principle amount and the delayed interest includes the interest for not refunding the principle amount. Accordingly, it also includes the interest on the delayed refund.

11. We find that the Revenue Authorities have been directed vide Notification dated 08.08.2019 to file appeals in income tax cases before the High Court where the monetary limit is less than ₹1.00 crore and where it is above the said amount, that shall not be a subject matter of appeal before the High Court. But in the Notification dated 11th July, 2018, there is an exception to the effect that in certain circumstances, an appeal should be contested on merits notwithstanding the fact that the tax effect

entailed is less than ₹1.00 crore. It is apt to reproduce para-10 of the said Notification herein, which reads as follows:

> *"10 Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect.*
>
> *(a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or*
>
> *(b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires or*
>
> *(c) Where Revenue Audit objection in the case has been accepted by the Department, or"*

12. In light of the above, it can be said that though, the monetary limit to prefer an appeal before High Court is less than ₹1.00 crore, but if there is a valid question, where an Order, Notification, Instruction or Circular is to be challenged as illegal or ultra vires, an appeal could be filed before the High Court. In the present case, no such exception is available to the appellant.

13. In view of the aforesaid observations, we find no merit in the appeal. Hence, the same is dismissed.

14. It is made clear that observations made herein above shall not be treated as a precedent. However, liberty is reserved to the appellant to seek appropriate remedy.

15. Pending application(s), if any, stands disposed of.

**(L. Narayana Swamy)**
**Chief Justice.**

**November 25, 2019** **(Jyotsna Rewal Dua)**
*(hemlata)* **Judge.**