

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI
BEFORE SHRI SHRI PAWAN SINGH (JM) &
SHRI G MANJUNATHA (AM)

ITA No. 3450/Mum/2015(Assessment year: 2003-04)

M/s Small Industries Development Bank of India C-22, 'G' Block, MSME Development Centre, Bandra Kurla Complex, Bandra (E), Mumbai PAN : AABCS3480N	Vs	Pr. Commissioner of Income-tax-3, Mumbai
APPELLANT		RESPONDEDNT

Appellant by	Shri Rakesh Joshi
Respondent by	Shri Manjunatha Swamy CIT-DR & Sh.Nishant Samaiya- Sr. DR
Date of hearing	23-08-2019
Date of pronouncement	04-11-2019

ORDER

Per Pawan Singh, Judicial Member :

1. This appeal by assessee is directed against the order of learned Principal Commissioner of Income Tax-3 (ld. PCIT), Mumbai dated 27-03-2015 passed under section 263 of the Income-tax Act, 1961 for assessment year (AY) 2003-04. The assessee has raised the following grounds of appeal:-

“1.(a) On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax erred in initiating proceedings u/s.263 of the Income Tax Act, 1961 vide show-cause notice dated 20.03.2015 and passing the order u/s. 263 of the Income Tax Act, 1961 and the reasons assigned by him for doing so are

wrong and contrary to the facts of the case, the provisions of Income Tax Act, 1961, and the Rules made thereunder.

1.(b) On the facts and in the circumstances of the case and in law, the appellant prays that the order of the learned CIT passed u/s.263 of the Income Tax Act, 1961 may be cancelled being void ab-initio and bad in law.

1.(c) The Id. CIT erred in invoking provisions of revisional jurisdiction u/s 263 without appreciating that no such power can be exercised in terms of Explanation (c) to section 263(1) being an appeal lying before Income Tax Appellate Tribunal with regard to allowing of interest u/s 244A of IT Act, 1961.

1.(d) The Id. CIT erred in exercising revisional jurisdiction u/s 263 of the IT Act, 1961 without appreciating that the issue raised in regard to the interest on interest granted u/s 244A of IT Act, 1961 is consequential to CIT(A) order to determination of total income vide order dated 11.03.2013 giving effect to CIT(A) order, which does not involve any assessment and as such doing so is wrong and contrary to the facts of the case, the provisions of Income Tax Act, 1961, and the Rules made thereunder.

2.(a) On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax erred in holding that the learned AO without application of mind has incorrectly granted excess refund of Rs. 4,04,64,132/-being in the nature of interest on interest u/s 244A of the IT Act, 1961 and the reasons assigned by him for doing so are wrong and contrary to the facts of the case, the provisions of Income Tax Act, 1961, and the Rules made thereunder.

2.(b) The Id. Commissioner of Income Tax erred in not appreciating the fact that the Id. Assessing officer had correctly granted a refund of Rs. 15,81,19,323/- along with interest in terms of the provision of section 244A of the IT Act, 1961.

2.(c) On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax erred in setting aside the

order giving effect dated 11.03.2013 and directing the Id. Assessing Officer to make fresh assessment with regard to granting of excess refund of Rs. 4,04,64,132/- being in the nature of interest on interest u/s 244A of the IT Act, 1961 and the reasons assigned by him for doing so are wrong and contrary to the facts of the case, the provisions of Income Tax Act, 1961, and the Rules made thereunder.

2.(d) **On** the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax failed to appreciate that the Id. AO had granted refund of Rs. 15,81,19,323/- vide order dated 11.03.2013 giving effect to CIT(A) order which included interest u/s 244A as per ruling of Supreme Court in case of Sandvik Asia vs. CIT which was operative at that time.”

2. The facts in brief are that a summary assessment for AY 2003-04 under section (u/s) 143(1) was completed on 31-03-2014 granting refund of Rs. 53,86,52,675/- along with interest as on 31-03-2004. Subsequently, the case was selected for scrutiny and assessment u/s 143(3) was passed on 28-01-2005. The Assessing Officer (AO), while passing the assessment order made various additions / disallowance which was subject matter of appeal before CIT(A) and further to Tribunal and rectification order u/s 154, resulting into either demand or refund. The AO, while giving effect to the order of CIT(A) dated 24.12.2012, vide his order dated 11-03-2013 granted refund of Rs.15,81,19,323/- which includes refund of Rs.4,04,64,132/- being interest on interest. The order dated 11-03-2013 was revised by Ld. PCIT vide his order dated 27-03-2015 holding that the order giving

effect passed by AO dated 11-03-2013 is erroneous and prejudicial to the interest of revenue insofar as it relates to allowance of interest on interest u/s 244A. The AO was directed to pass the fresh order after detailed verification of facts after giving opportunity to the assessee. Before revising the order, the Ld. PCIT identified four issues, namely;

“i) The assessee's return of income was processed summarily vide order u/s.143(1) dated: 31.3.2004 and granted refund of Rs.53,86,52,675/- along with interest u/s 244A on 31.03.2004.

ii) Subsequently the income was assessed under scrutiny assessment passed u/s.143(3) of the I.T. Act on 28.01.2005. Later on series of effects were given to CIT(A)' order, ITAT's order and rectifications u/s. 154 resulting in either demand or refund. The details of which are tabulated below:

Order u/s	A.I	Demand	Refund along with interest	Refunded Date
143(1) dt:31.3.2004	2217800932		538652675	31.3.2004
143(3) dt: 28. 1.2005	4028950550			
154dt:22.2.2005	4028950550	768343023		
Effect to CIT(A)'s order, dt: 19.6.2006	4005894927		14229049	14.11.2006
154 dt.6.3.2007	4005855927			
143(3) rws 147 dt:31.10.2008	4027359915	12162750		
Effect to ITAT's order dt: 19.2.2010	2436883899		875852409	29.3.2010

Effect to CIT(A)'s order, dt: 8.3.2013	2436883899			
Effect to CIT(A)'s ¹ order dt:1. 3. 2013	2239383336		158119323	25.3.2013

iii) For the year under consideration, after giving effect to CIT(A)'s order dated 11.03.2013, refund of Rs.15,81,19,323/- was granted to assessee and it includes excess refund of Rs.4,04,64,132/- being in the nature of interest on interest.

iv) However, from the above table, it is amply clear that the department has not delayed the payment of refund to the assessee and hence interest on interest u/s.244A of the Act, is not allowable to the assessee.”

3. On identifying aforesaid four issues, the Ld. PCIT issued a show cause notice u/s 263 dated 20-03-2015 to the assessee. In response to the show cause notice the assessee filed its reply dated 26-03-2015. In the reply, the assessee stated that it is not fit for revision u/s 263 as various claims were allowed by AO after due application of mind to the facts of the case. The AO allowed various claims after due consideration of provisions of law and judicial decision on the grant of alleged refund, the substantial part of reply of the assessee is extracted as under:-

“Originally assessee has received refund of Rs. 87,58,52,409/- vide order dated 19.02.2010 after giving effect to ITAT order dated 15.07.2009. The said refund included interest of Rs. 22,94,72,710/-. Thereafter refund of Rs. 15,81,19,323/- was issued to the assessee pursuant to order dated 11.03.2013 being an order giving effect to CIT(A) order dated 24.12.2012. In this

order, revised total income was determined at Rs.223,93,83,336/- as against Rs. 243,68,83,899/- determined vide order dated 19.02.2010.

Accordingly vide order dated 11.03.2013 assessed income has been revised to a reduced figure of Rs. 19,75,00,563/- which has resulted into refund of tax plus interest on Rs. 11,74,25,616/-. Therefore, assessee has not received any interest on interest u/s 244A. The resultant refund due to an order giving effect to CIT(A) dated 11.03.2013 cannot be treated as excess refund granted by way of interest on interest of Rs. 4,06,60,132/- as that has been considered / goodself which is not correct.”

4. The assessee also stated that assessee has received a refund of Rs.15,81,19,323/- after giving effect to the order of CIT(A) dated 24.12.2012. The refund which was received by the assessee was adjusted against the interest amount first and balance, if any, was adjusted against tax amount. The assessee relied upon the decision of Hon’ ble Supreme Court in the case of Sandvik Asia Ltd vs CIT 150 Taxman 591 (SC). The assessee finally stated that there was no error in granting interest on interest leading to excess refund and hence, provisions of section 263 were not applicable in the present case. The assessee requested to drop the proceedings u/s 263.
5. The reply filed by assessee was not accepted by Ld. PCIT by taking view that excess refund of amount of Rs.4,04,64,132/- is granted in spite of the fact that nowhere department withheld / retained the

payment of interest wherein refund of tax was due. The refund of tax along with interest was granted after giving effect to the appellate order and rectification orders and the assessee was not eligible for any compensation in the form of interest on interest u/s 244A. The Ld. PCIT further held that as per provisions of section 244A of the Act, the statute provide the grant of simple interest on any excess payment of tax for the period starting from 01st April of the relevant assessment year up to the date of refund. There is no specific provision u/s 244A to grant interest on interest. Section 244A provided interest only on the amount of refund out of tax paid by the assessee or collected from the assessee and not on the amount due to the assessee including interest.

6. On the reliance of the assessee on the decision of Hon' ble Supreme Court in Sandvik Asia Ltd Vs CIT (supra), the Ld. PCIT distinguished the said case qua the facts of present case; in the said case, the interest was retained by the department for a period ranging up to 17 years and the assessee was deprived of an amount of interest for the period up to 17 years wherein the Hon' ble Supreme Court allowed interest as compensation. The Ld. PCIT further held that the ratio of law in Sandvik Asia Ltd Vs CIT (supra)

was discussed d by ITAT, Ahmedabad in Gujarat State Fertilizers & Chemicals Ltd Vs DCIT (ITA 2348-2349/Ahd/2004(Ay 1995-96) Dated 31-07-2006, wherein it was held that the Income tax Authorities cannot pay interest on interest unless statue provides and it cannot be granted on the ground of equity. The Ld. PCIT finally concluded that refund is to be given along with interest which is to be calculated as per section 244A of the Act and if the interest is paid on the excess tax, no further payment is to be made. It is only when excess amount of tax is refunded, but the interest is not refunded along therewith, the retention of interest amount would be unjustified and interest on interest would also become payable. Thus, the assessee has been erroneously allowed excess refund; thereby order giving effect dated 11-03-2013 is erroneous and prejudicial to the interest of revenue. Aggrieved by the order of PCIT dated 27-03-2015 passed u/s 263, the assessee filed the present appeal before us.

7. We have heard the submission of Ld. authorised representative (AR) of the assessee and Ld. departmental representative (DR) for the revenue and carefully gone through the orders of Ld. P CIT. The ld.AR of the assessee submits that the order dated 11-03-2013 passed by the AO is neither erroneous nor prejudicial to the interest

of the revenue. The AO passed the order after proper application of mind and verification of facts. The AO has granted refund in accordance with the decision of Hon' ble Supreme Court in the case of Sandvik Asia Ltd Vs CIT (supra). The decision rendered by Hon' ble Supreme Court is binding as per Article 141 of the Constitution of India. Therefore, the AO passed the order in accordance with the mandate of law determined by Hon' ble Apex Court, which cannot be considered as erroneous for revising the order. The twin condition as enunciated u/s 263, i.e. order is erroneous and insofar as it is prejudicial to the interest of revenue, must be satisfied for revising the order. The Ld.AR of the assessee has strongly relied upon the decision of Hon' ble Supreme Court in Sandvik Asia Ltd vs CIT (supra).

8. On the other hand, the Ld. DR for the revenue supported the order of Ld. PCIT. The Ld. DR has submitted that the order passed by AO dated 11-03-2013 is not only erroneously but also prejudicial to the interest of revenue. The Ld. DR for the revenue besides strongly relying upon the order of ld PCIT also relied on the full Bench decision of Hon' ble Apex Court in CIT Vs Gujarat Flouro Chemicals (2014) 42 taxmann.com 1. The Ld. DR for the revenue

further submits that in CIT Vs Gujarat Flouro Chemicals (supra), the full Bench of Hon' ble Apex Court clarified that in Sandvik Asia (supra) there was an inordinate delay of decades on the part of the revenue in refunding certain amount which included statutory interest, the Hon' ble Court directed the revenue has to pay compensation for same and not an interest on interest and that case was based on specific facts. However, in the instant case there is neither delay on the part of the revenue in making refund nor in passing the order of giving effect to the order of higher / appellate authority. Therefore, the ratio of decision in Sandvik Asia Ltd Vs CIT (supra) is not applicable. The AO granted excess refund of Rs.4.04 crores, the order is not only erroneous but also prejudicial to the interest of revenue.

9. We have considered the rival contentions of the parties and carefully deliberated on various case laws relied upon by learned representatives of the parties. In our view, the first question for our consideration is whether the order giving effect dated 11.03.2013 passed by AO in grant of refund of Rs.15,81,19,923/- which included refund of Rs.4,04,64,132/- being interest on interest is erroneous and prejudicial to the interest of revenue. There is no

dispute that the AO granted additional interest of Rs.4.04,64,132/- which is in addition to the interest u/s 244A, and the same is defended by Id AR for the assessee by taking benefit of decision of Sandvik Asia Ltd (supra). The other/ second question is whether there is inordinate delay or in an ordinary manner while granting refund. From the dates and events which is summarised by Ld. PCIT at para 2.1 of his order we find that the Tribunal passed the order on 19-02-2010 and refund was granted on 29-03-2010. Further, the CIT (A) passed the order on 24.12.2012 and order giving effect was passed by AO on 11-03-2013 and accordingly, the refund order was issued. Thus, there is no delay which could be said to be inordinate delay on the part of the revenue in granting refund.

10.The Full Bench of Hon' ble Supreme Court in CIT vs. Gujarat Flouro Chemicals (supra) while considering the correctness of decision in Sandvik Asia Ltd Vs CIT (supra) on the question whether interest is payable by the revenue to the assessee if aggregate instalment of advance-tax of TDS passed the following order. For completeness of the order and to understand the ratio of Sandvik Asia Ltd Vs CIT (supra) and the decision of Full Bench of

Hon' ble Supreme Court in Gujarat Flouro Chemicals (supra), the entire order of Full Bench of Hon' ble Apex Court is extracted below:-

“1. Doubting the correctness or otherwise of the decision of this Court in the case of *Sandvik Asia Ltd. v. CIT* [\[2006\] 280 ITR 643/150 Taxman 591](#), a bench of two learned Judges has referred the following question of law for our consideration and authoritative pronouncement by order dated 28.08.2012:

"The question which arises in this case is, whether interest is payable by the Revenue to the assessee if the aggregate of installments of Advance Tax OF TDS paid exceeds the assessed tax?"

2. In the aforesaid order of reference, this Court has briefly noticed the facts and the discussion in *Sandvik Asia Ltd.'s case (supra)* wherein, the main issue for consideration and determination by this Court was, whether the assessee is entitled to be compensated by the Revenue for delay in payment of the amount admittedly due to the assessee. This Court has noticed *inter alia* the provisions of Section 214 of the Income Tax Act, 1961 (for short 'the Act') and in light of the same has doubted the correctness of the decision in *Sandvik Asia Ltd.'s case (supra)*.

3. In order to answer the aforesaid issue before us, we have carefully gone through the judgment of this Court in *Sandvik Asia Ltd.'s case (supra)* and the order of reference. We have also considered the submissions made by the parties to the *lis*.

4. We would first throw light on the reasoning and the decision of this Court on the core issue in *Sandvik Asia Ltd.'s case (supra)*. The only issue formulated by this Court for its consideration and decision was whether an assessee is entitled to be compensated by the Income Tax Department for the delay in paying interest on the refunded amount admittedly due to the assessee. This Court in the facts of the said case

had noticed that there was delay of various periods, ranging from 12 to 17 years, in such payment by the Revenue. This Court had further referred to the several decisions which were brought to its notice and also referred to the relevant provisions of the Act which provide for refunds to be made by the Revenue when a superior forum directs refund of certain amounts to an assessee while disposing of an appeal, revision etc.

5. Since, there was an inordinate delay on the part of the Revenue in refunding the amount due to the assessee this Court had thought it fit that the assessee should be properly and adequately compensated and therefore in paragraph 51 of the judgment, the Court while compensating the assessee had directed the Revenue to pay a compensation by way of interest for two periods, namely; for the Assessment Years 1977-78, 1978-79, 1981-82, 1982-83 in a sum of Rs.40,84,906/- and interest @ 9% from 31.03.1986 to 27.03.1998 and in default, to pay the penal interest @ 15% per annum for the aforesaid period.

6. In our considered view, the aforesaid judgment has been misquoted and misinterpreted by the assesseees and also by the Revenue. They are of the view that in *Sandvik Asia Ltd.'s case (supra)*, this Court had directed the Revenue to pay interest on the statutory interest in case of delay in the payment. In other words, the interpretation placed is that the Revenue is obliged to pay an interest on interest in the event of its failure to refund the interest payable within the statutory period.

7. As we have already noticed, in *Sandvik Asia Ltd.'s case (supra)* this Court was considering the issue whether an assessee who is made to wait for refund of interest for decades be compensated for the great prejudice caused to it due to the delay in its payment after the lapse of statutory period. In the facts of that case, this Court had come to the conclusion that there was an inordinate delay on the part of the Revenue in refunding certain amount which included the statutory interest and therefore, directed the Revenue to pay compensation for the same not an interest on interest.

8. Further it is brought to our notice that the Legislature by the Act No. 4 of 1988 (w.e.f. 01.04.1989) has inserted Section 244A to the Act which provides for interest on refunds under various contingencies. We clarify that 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.

9. With the aforesaid clarification we now refer back all the matters before a Two Judge Bench of this Court to consider each case independently and take an appropriate decision one way or the other.”

11. In view of the aforesaid factual and legal discussion, we are of the view that the case law in Sandvik Asia Ltd (supra) is not helpful to the assessee. As we have already held that there was no inordinate delay on the part of the revenue in issuing the refund order, in our view the order giving effect dated 11-03-2013 is not only erroneous but also prejudicial to the interest of revenue. Accordingly, the order passed by Id. PCIT fulfils the twin condition of section 263 of the Act. Therefore, we do not find any merit in the appeal filed by the assessee, which is hereby dismissed.

12. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 04-11-2019.

Sd/-

Sd/-

(G.Manjunatha)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 4th November, 2019

Pk/-

- Copy to :
1. Appellant
 2. Respondent
 3. CIT(A)
 4. CIT
 5. DR

By order

Asstt. Registrar, ITAT, Mumbai