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CASE LAW UPDATE

Complied by : CA Hetal Keval Malde

**State Bank of India vs Chief Commissioner of Income-tax, Kerala
(Writ Petition No.: 19283 of 2007, Writ Appeal No. 1939 of 2018, Judgement
delivered by Hon'ble High Court of Kerala on March 31, 2022)**

❖ Summary

Interest on refund u/s 244A is not entitled to assessee for the time taken by him to cure defects in Income Tax return filed by him.

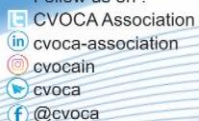
❖ Facts of the Case

- State Bank of India (Assessee) have filed Income Tax returns for the years 1992-93, 1993-94, 1995-96 and 2001-02.
- During the assessment of respective years, assessing officer pointed out defects in TDS certificates for which refund was claimed.
- Assessee remedied the defects at subsequent point of time and refund was issued. However, interest on refund for the related period taken for rectifying defects was not issued.
- Assessee claimed interest on refund u/s 244A of surplus TDS effected to the revenue in the years.
- Revenue did not accept the assessee's interest claim for the period taken by assessee for rectifying the defects and passed the order.
- Therefore assessee filed writ petition (c) no. 319283/2007 for quashing or setting aside the orders and for a further direction for payment of interest which was rejected with the orders impugned in the writ petition.

❖ Tax Payer's Argument

- Taxpayer's claim is for interest on refund of excess tax collected or deducted as advance tax, self-assessment tax paid, tax paid on regular assessment etc. The taxpayer has the right to claim interest along with a refund.

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- The delay in finalisation of return is on account of commission or omission caused in the issue of TDS certificates by the deductor/assessee-Bank. Taxpayer contends that section 244A(2) is not attracted as the delay is not on account of assessee's commission or omission.
- Emphasis laid on judgments where denial of interest claim on refund was unjustified :
 - a) *Larsen and Toubro Ltd; Commissioner of Income Tax-I, Chandigarh, 330 ITR 340*
 - b) *Commissioner of Income ax. Thiruvananthapuram v. State Bank of Travancore (2014) 42 Taxmann.com 572 (Kerala)*
 - c) *Commissioner of Income Tax – LIU v. Union Bank of India; ITA No 894/920 of 2016 dated 17.12.2018*
 - d) *Director of Income Tax v. Tata Chemicals Limited, (2014) 6 SCC 335*
 - e) *Sandvik Asia Ltd v. Commissioner of Income Tax and Others; 2 SCC 508.*
- Referring to the *Tata Chemicals Limited* case, taxpayer argues that the Supreme Court in *extenso* considered the scheme of refund, right of the assessee for interest, and the denial of interest claim as unjustified.
- The defects pointed by assessing officers were cured and the time taken does not result in denial of interest to the assessee.

❖ Tax Department's Arguments

- The right to receive interest u/s 244A stems out from an assessment order made by AO
- The taxpayer is expected to file the return fully compliant with the law requirements. The taxpayer admitted that defects were remedied at subsequent point in time.



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- The plain language of Section 244A(1) and (2) suggests that , during the period where omissions are noted in the returns filed, the assessee takes time for curing or rectifying the omissions; levy of interest during this period on the Department is unavailable . However, Section 244A(2) puts more emphasis and provides clarity in correlating with taxpayer situation.
- Decisions relied on by the taxpayer cannot be said as laying down a principle of law concerning Section 244A of the Act. He distinguishes the judgment relied on by the assessee and further contends that the decision of the Apex Court in the Tata Chemicals Limited case supports the construction of Section 244A sub-sections (1) and (2) for exclusion of time taken by the assessee to cure the defects.
- For inaction, commission or omission of the assessee in rectifying the defects and completing the assessment, the Department cannot be mulcted with the compensatory amount by way of interest.

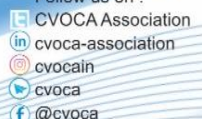
In support of the argument, following judgments were relied on:

- a) L. Madanlal Steels Ltd. v. Chief Commissioner of Income-Tax; 370 ITR 205 (T & AP)*
- b) Pala Marketing Co-operative Society Ltd. v. Commissioner of Income-Tax; 389 ITR 304 (Kar.)*
- c) Escorts Ltd. v. Commissioner of Income-Tax; 257 ITR 468 (Del.)*
- d) Kerala State Civil Supplies Corporation Ltd. v. Joint Commissioner of Income-Tax (Assessment); 282 ITR 647 (Ker.)*

❖ Authority's Finding

- If the defect is noticeable on receipt of the TDS certificates, it is for the deductee who makes a claim on the basis of the certificate to get the defects cured. Therefore, this is an instance where interest has been paid but denied only for certain period for reasons stated in the impugned orders, since the delay has been attributed to the assessee.

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- The Department would not be concerned as to at whose hands the default was occasioned since the obligation to submit the proper TDS form is on the assessee who claims such credit of the tax deducted at source in the return of income.
- No interest is payable on refund of excess tax received for the delayed period in finalisation of assessment on account of assessee's fault (wholly or partially). As per the construction principle of Section 244A (2), the period taken by the assessee to cure the defects in finalising the assessment is excluded for interest calculation.
- Hon'ble High Court has relied on the judgments of the Supreme Court in Tata Chemicals Limited and Sandvik Asia Ltd cases for the decision.

❖ **Author's Comment**

Section 244A clarifies issues regarding interest of income tax refund. Section very clearly states the conditions when the interest need not be issued. In the current case, Hon'ble High Court's decision is justifiable that interest on refund is not provided if the delay in refund is due to error on the part of assessee.

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