

Ansal Housing & Construction Ltd. vs State Of U.P. And 2 Ors. on 19 September, 2014

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Bench: Surya Prakash Kesarwani

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Court No. - 4

Case :- WRIT - C No. - 40859 of 2014

Petitioner :- Ansal Housing & Construction Ltd.

Respondent :- State Of U.P. And 2 Ors.

Counsel for Petitioner :- Ashish Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Surya Prakash Kesarwani, J.

1. Heard Sri Ashish Mishra, learned counsel for the petitioner and Sri Nimai Das, assisted by Sri B.P. Kachhwah, learned Standing Counsel for the respondents.

2. Briefly stated facts of the present case are that on 22.11.1996 a memorandum of understanding was executed between the petitioner and the U.P.S.I.D.C. Ltd. in respect of 15761 square meter of land in village Gulistanpur, district Gautam Budh Nagar. Subsequently, on the basis of the report, a stamp case no. 419 of 2004-05 was registered and an order dated 25.11.2004 was passed by ADM (F/R) Gautam Budh Nagar creating the demand of stamp duty of Rs. 34,67,438/- equal amount of penalty was imposed and interest was also demanded under Section 33 read with Section 40 (1) (b) of the Indian Stamp Act, 1899 (hereinafter to the "Act"). The petitioner preferred revision/ appeal before the Chief Controlling Revenue Authority U.P., The petitioner submitted proof of deposit of Rs. 34,67,438/ being one- third amount for the purpose of grant of interim relief in terms of the provision of Section 56 (1A) of the Act. The appeal/revision was allowed vide order dated 07th

January, 2009 and the matter was remanded to the Collector, Gautam Budh Nagar to pass an order afresh in accordance with law. In compliance of the remand order, the Collector Gautam Budh Nagar passed an order dated 2nd April, 2011 in stamp case no. 94 of 2010-11 under Section 47A/33 of the Act and did not create any demand holding that the notice itself is barred by limitation. Since there was no demand against the petitioner and as such the petitioner prayed for refund of the amount of pre deposit of Rs. 34,67,438/- alongwith interest. When the amount was not refunded, the petitioner filed a Writ-C No. 52504 of 2013, which was disposed of by this Court vide order dated 24th September, 2013 directing the respondent concerned to decide the representation of the petitioner in accordance with law by a reasoned and speaking order preferably within a period of four weeks. Thereafter, the petitioner filed a representation dated 04th October, 2013 praying for refund of Rs. 34,67,438/- alongwith interest at the market rate w.e.f the date of deposit i.e. 15.12.2005. On 29th May, 2014, ADM (F/R) Gautam Budh Nagar, passed an order sanctioning the refund of Rs. 34,67,438/- pursuant to the sanction granted by the District Magistrate vide dated 23rd October, 2013. He, however, has not considered the claim of interest of the petitioner. Since no interest was paid on the amount of deposit and as such the petitioner has filed the present writ petition.

3. Learned counsel for the petitioner submits that in view provisions of Section 40 read with Section 47 A, Section 45 and Section 56 of the Act and also in view of principles of restitution and the law settled by Hon'ble Supreme Court in the case of Union of India through Director of Income Tax Vs. Tata Chemicals Ltd., 2014 (6) SCC 335 (para 38) and the division Bench judgment of this Court in the case of Hello Minerals Water (P) Ltd. Vs. Union of India, 2004 (174) ELT 422 (Para 15 and 16), the petitioner is entitled to interest on the deposits, which, he was compelled to make by the respondents which has been enjoyed by the respondents for more than 9 years.

4. Sri Nimai Das, learned Standing Counsel submits that there is no provision in the Act, which provides for payment of interest on refund of amount of pre deposit or amount recovered and as such no interest can be awarded to the petitioner. In the circumstances, there was no occasion before the District Magistrate or ADM (F/R) to consider the prayer of the petitioner for interest as made by him in his application dated 04th October, 2013. To support his submission he placed reliance on the judgment of Hon'ble Supreme Court in the case of Union of India and others Vs. Oriental Enterprises ETC, 1998 UPTC 927, in which it has been held that the claim for interest is in the nature of compensation for wrongful retention by the appellants of money, which was collected from the assessee by way of customs duty and in the absence of any provision under the Act for payment of interest, the writ petition is not maintainable.

5. I have carefully considered the submission of the learned counsel for the parties.

6. It is not in dispute that as a condition of pre-deposit for interim relief, the petitioner was compelled to deposit a sum of Rs. 34,67,438/- with the respondents while filing the appeal/revision before the Chief Controlling Revenue Authority U.P., against the order dated 25th November, 2004 passed by the ADM (F/R) Gautam Budh Nagar creating a demand of Rs. 69,34,876/- and interest. The aforesaid deposit was made by the petitioner on 15th December, 2005. The Chief Controlling Revenue Authority, U.P. allowed the appeal of the petitioner vide order dated 07th January, 2009

and set aside the order of the ADM (F/R) Gautam Budh Nagar dated 25th November, 2004. The matter was remanded to the Collector, Gautam Budh Nagar. However, the amount deposited by the petitioner was not refunded. In remand proceedings, no demand was created against the petitioner by the District Magistrate as per order dated 2nd April, 2011. The petitioner was continuously insisting for refund of the amount and when the amount was not refunded, he filed a Writ-C No. 52504 of 2013 before this Court, which was disposed of vide order dated 24th September, 2013 directing the District Magistrate, Gautam Budh Nagar to decide the representation of the petitioner and the petitioner was directed to make a representation. Pursuant to this order of this Court, the petitioner moved a representation dated 04th October, 2013 before the respondent no. 2 praying as under:

" Refund the amount of Rs. 34,67,438/- alongwith interest at the market rate prevailing thereon from the date of deposit i.e. 15.12.2005 till the actual date of payment without any further delay in terms"

7. Ultimately, respondent no. 3 issued an order dated 29th May, 2014 mentioning therein that as per sanction granted by the District Magistrate, Gautam Budh Nagar dated 23rd October, 2013, the amount of Rs. 34,67,438/- is being refunded. Since no interest was paid as demanded by the petitioner and as such the petitioner has filed the present writ petition.

8. The aforementioned undisputed facts clearly reveal that the deposit of Rs. 34,67,438/- was made by the petitioner on 15.12.2005 against the demand created by ADM (F/R) vide order dated 25.11.2004. The demand itself was set aside by the Chief Controlling Revenue Authority, U.P. vide order dated 07th January, 2009. The matter was remanded to the District Magistrate. However, the respondents did not refund the amount and continued to withhold unauthorisedly the amount deposited by the petitioner. The remand order was passed by respondent no. 2 on 2nd April, 2011 and no demand was created against the petitioner. Yet the respondents did not refund the amount to the petitioner.

9. Finding no way out, the petitioner filed a writ petition no. 52504 of 2013 before this Court, which was disposed of with a direction as mentioned above. Pursuant to the order of this Court, the petitioner filed a representation dated 04th October, 2013 and on which, as per order of the ADM (F/R) dated 29th May, 2014, the District Magistrate granted sanction for refund of only the principal amount on 23rd October, 2013. Despite sanction for refund of principal amount, the respondent did not refund the amount to the petitioner and continued to withhold it unauthorisedly. on or after 29th May, 2014 the principal amount was refunded without adjudicating or determining the claim of the petitioner for interest from the date of deposit. These facts clearly shows that aforesaid sum of deposit of Rs. 34,67,438/- was retained unauthorisedly by the respondents even after the demand was set aside by the Collector vide order dated 07th January, 2009.

10. Thus, it is wholly beyond dispute that the amount deposited by the petitioner was unauthorisedly retained and enjoyed by the respondents till the date of refund i.e. 29th May, 2014. Now, the question which arises for consideration is "whether as per provisions of the Act and the law

settled by Hon'ble Supreme Court in various judgements as well as principles of restitution, the petitioner is entitled for interest and if he is entitled for interest then from which date" ?

11. To answer the above framed question, certain provisions of the Act needs to be examined, particularly Section 40, 47A, 45 and 56 of The Indian stamp Act, 1899, which are reproduced below:

"Section 40. Collector's power to stamp instruments impounded :

(1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38; sub-section (2), not being an instrument chargeable 42[with a duty not exceeding ten naye paise] only or a bill of exchange or promissory note, he shall adopt the following procedure:

(a) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of the five rupees; or, if he thinks fit, 9[an amount not exceeding] ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:

PROVIDED that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14; the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(Provided further that no penalty shall be levied unless the party concerned has been given a reasonable opportunity of being heard.) Section 45. Power to Revenue authority to refund penalty or excise duty in certain cases (1) Where any penalty is paid under section 35 or section 40, the Chief Controlling Revenue-authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

(2) Where, in the opinion of the Chief Controlling Revenue-authority, stamp-duty in excess of that which is legally chargeable has been charged and paid under section 35 or section 40, such authority may, upon application in writing made within three months of the order charging the same, refund the excess.

Section 47 A Under Valuation of the instrument: (1) (a) If the market value of any property which is the subject of any instrument, on which duty is chargeable on the market value of the property as set forth in such instrument, is less than even the minimum value determined in accordance with the rules made under this Act, the registering officer appointed under the Registration Act, 1908 shall, notwithstanding anything contained in the said Act, immediately after presentation of such

instrument and before accepting it for registration and taking any action under Section 52 of the said Act, require the person liable to pay stamp duty under Section 29, to pay the deficit stamp duty as computed on the basis of the minimum value determined in accordance with the said rules and return the instrument for presenting again in accordance with Section 23 of the Registration Act, 1908.

Section 56. Control of, and statement of case to, Chief Controlling Revenue-authority (1) The power exercisable by a Collector under Chapter IV and Chapter V 55[and under clause (a) of the first proviso to section 26] shall in all cases be subject to the control of the Chief Controlling Revenue-authority.

(1-A) Notwithstanding anything contained in any other provisions of this Act, any person including the Government aggrieved by an order of the Collector under Chapter IV, Chapter V or under clause (a) of the first proviso to Section 26 may, within sixty days from the date of receipt of such order, prefer an appeal against such order to the Chief Controlling Revenue Authority, who shall, after giving the parties a reasonable opportunity of being heard consider the case and pass such order thereon as he thinks just and proper and the order so passed shall be final:

Provided that no application for stay or recovery of any disputed amount of stamp duty including interest thereon or penalty shall be entertained unless the applicant has furnished satisfactory proof of the payment of not less than one-third of such disputed amount:

Provided further that where the Chief Controlling Revenue Authority passes an order for the stay of recovery of any stamp duty, interest thereon or penalty or for the stay of the operation of any order appealed against and such order results in the stay of recovery of any stamp duty, interest thereon or penalty, such stay order shall not remain in force for more than thirty days unless the appellant furnishes adequate security to the satisfaction of the Collector concerned for the payment of the outstanding amount.

(2) If any Collector, acting under section 31, section 40 or section 41, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-authority.

(3) Such authority shall consider the case and a copy of its decision to the Collector who shall proceed to assess and charge the duty (if any) in conformity with such decision."

12. Section 3 of the Act provides for instruments chargeable with duty. Section 40(I) provides for Collector's power to stamp an instrument impounded under Section 33, or an instrument sent to him under Section 38 (2) not being an instrument chargeable with a duty not exceeding ten naye paise or a bill of exchange or promissory note. Sub sections (1-A), (1-B) (1-C) and (1-D) have been

inserted in Section 40 by U.P. Act 38 of 2001 w.e.f. 20.5.2002. Sub-section (1-A) empowers the Collector to require, alongwith the amount of deficit stamp duty or penalty required to be paid under clause (b) of sub-section (1), payment of a simple interest at the rate of one and half per cent per mensem on the amount of deficit stamp duty calculated from the date of the execution of the instrument till date of actual payment; provided that the amount of interest under sub section 1 shall be re-calculated if the amount of deficit amount duty is varied on appeal or revision or by any order of a competent court or the authority. Sub section (1- B) of Section 40 creates a legal fiction providing that the amount of interest payable under sub section (1 A) shall be added to the amount due and and be also deemed for all purposes to be part of the amount required to be paid. Sub-section (1- D) provides for adjustment of refundable amount. Similar provisions are contained in Section 47 A.

13. Section 45 provides that penalty or the stamp duty deposited in excess of legally chargeable amount under Section 35 or Section 40, shall be refunded by the competent authority upon application made in writing within three months of the order charging the same. The proviso to Section 56 (1-A) contains the condition of pre-deposit for entertaining an application for stay of recovery of any disputed amount of stamp duty including interest and penalty. Thus to obtain an interim order, the appellant is required to deposit one-third of the disputed amount of stamp duty, penalty and interest. If a person succeeds fully or partly in appeal/ revision under Section 56 of the Act, then he is entitled for refund of excess deposit of amount of stamp duty, penalty and interest in view of provisions of Sub section (4A), (4B) (4C) (4D) of Section 47 A and sub section (1-A) (1-B) (1-C) (1-D) of Section 40 read with Section 45 of the Act.

14. The respondents are entitled for stamp duty to the extent, it is payable by a person as per provisions of the Act. The respondents charge interest on delayed deposit of amount of stamp duty with effect from the date of execution of the instrument. The Act provides for payment of interest @ 18 per cent on the deficiency of stamp duty from the date of execution of the instrument. However no interest has been provided on refund of the amount found refundable as a result of an order in appeal or revision. Under the circumstances, in the light of the law laid down by Hon'ble Supreme Court and also by this Court in several judgments and following principles of restitution, it seems equitable and appropriate that the state may provide appropriate provisions in the statute itself for grant of interest on refund. Not providing for interest on refund to payers by the State and at the same time charging of interest by the State @ 18 per cent on the amount due under the Act, is discriminatory, which cannot be allowed to perpetuate. Therefore, it seems appropriate that till the State legislature enacts a provision for interest on refund, respondents should pay interest @ 8 % in all matters for the period from the date of deposit till the date of refund.

15. The mandate of proviso to sub section (1-A) of Section 40 as well as the proviso to sub section (4A) of Section 47- A providing that the amount of interest shall be recalculated, if the amount or deficit stamp duty is varied on appeal or revision or by any authority or competent court shall be equally applicable if such recalculation results in refund of stamp duty.

16. Before I proceed further to deal with the issues raised before me, it seems appropriate to refer to the concept of interest as under:

(i) As per Black's Law Dictionary (7th Edn.) "interest" is the compensation fixed by agreement or allowed by law for use or detention of money or for the loss of money of one who is entitled to its use, especially, the amount owned to a lender in return for the use of the borrowed money.

(ii) As per Stroud's Judicial Dictionary of Words and Phrases (5th edn.); interest means, inter alia compensation paid by the borrower to the lender for deprivation of the use of his money.

(iii) In the case of Secretary, Irrigation Department, Government of Orissa Vs. G.C. Roy, 1992,(1) SCC 508, the Constitution Bench of Hon'ble Supreme Court opined that a person deprived of use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name . It may be called interest, compensation or damages. This is also the principle of Section 34 of the Civil Procedure Code.

(iv) In the case of Sham Lal Narula (Dr.) Vs. CIT AIR 1964 SC 1878, Hon'ble Supreme Court held that interest is paid for the deprivation of the use of the money.

(v) The essence of interest as held in the case of Lord Right, in Riches Vs. Westminster Bank Ltd. 1947 (1) ALL ER 469 at page 472, is that it is a payment, which becomes due, because the creditor has not had his money at the due date. It may be recorded either as representing the profit, he might have made if he had use of the money, or conversely, the loss he suffered because he had not that use.

(vi) In the case of CIT Vs. Dr. Shyam Lal Narula AIR 1963 (Punjab) 411 (para 8), the division Bench of the High Court of Punjab articulated the concept of interest as under:

"8. The words 'interest' and 'compensation' are sometimes used interchangeably and on other occasions they have distinct connotation. 'Interest' in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, 'interest' is understood to mean the amount which one has contracted to pay for use of borrowed money

In whatever category "interest' in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money belonging to another, or for the delay in paying money after it has become payable."

"The appeal filed against aforesaid decision was dismissed by Hon'ble Supreme Court in Dr. Sham Lal Narula's AIR 1964 SC 1878."

(vii) In the case of Hello Minerals Water (P) Ltd. Vs. Union of India 2004 (174) ELT 422 (para 15 and 16), a Division Bench of this Court explained the concept of interest as under:

"15. We may mention that we are passing the direction for interest since interest is the normal accretion on capital.

Often there is misconception about interest. Interest is not a penalty or punishment at all, 16 For instance, if A had to pay a certain sum of money to B at a particular time, but he pays it after a delay of several years, the result will be that the money remained with A and he would have earned interest thereon by investing it somewhere. Had he paid that amount at the time when it was payable then B would have invested it somewhere and earned interest thereon. Hence, if a person has illegally retained some amount of money then he should ordinarily be directed to pay not only the principal amount but also the interest earned thereon.

Money doubles every six years (because of compound interest). Rs. hundred in the year 1990 would become Rs. two hundred in the year 1996 and it will become Rs. 400 in the year 2002. Hence, if A had to pay B a sum of rupees 100 in the year 1990 and he pays that amount only in the year 2002, the result will be that A has pocketed Rs. 300 with himself. This clearly cannot be justified because had he paid that amount to B in the year 1990, B would be having Rs. 400 in the year 2002 instead of having only Rs. 100/-. Hence, ordinarily interest should always be awarded whenever any amount is detained or realized by someone, otherwise the person receiving the amount after considerable delay would be losing the entire interest thereon which will be pocketed by the person who managed the delay, it is for this reason that we have ordered for payment of interest alongwith the amount realized as export pass fee."

(viii) Interest is normal accretion on capital.

(ix) If on facts of a case, the doctrine of restitution is attracted, interest is often the normal relief. Restitution in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order what has been lost to him in execution of decree or order of the Court or in direct consequence of a decree or order. The term 'restitution' is used in three senses, firstly, return or restoration of some specific thing to its rightful owner or status, secondly, the compensation for benefits derived from wrong done to another and, thirdly, compensation or reparation for the loss caused to another. Reference in this regard may be had to the judgment of the Hon'ble Supreme Court in the case of South Eastern CoalFields Ltd. Vs. State of M.P. and others, (2003) 8 SCC 648 (para 26, 28 and 29)

(x) In Hari Chand Vs. State of U.P. and others 2012 (1) AWC 316, this Court dealing with similar controversy in a stamp matter held that the payment of interest is a necessary corollary to the retention of the money to be returned under order of the appellate or revisional authority. This Court directed the state to pay interest @ 8 % for the period, the money was so retained i.e. from the

date of deposit till the date of actual repayment/ refund.

17. Thus the concept of interest is that when a person is deprived of the use of his money, to which, he is legitimately entitled, he has a right to be compensated for the deprivation, which may be called interest or compensation. Interest is paid for the deprivation of the use of money in general terms, which is return or compensation for the use or retention by a person of a sum of money belonging to another. It is a consideration paid either for the use of money or for forbearance in demanding it after it has fallen due and thus it is charged for the use or forbearance of the money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage for use of money belonging to another or for the delay in paying money after it has become payable. It is normal accretion on capital. Delayed payment normally attract interests.

18. The aforementioned principles are also supported by the judgment of Hon'ble Supreme Court in the case of Ghaziabad Development Authority Vs. Balbir Singh J.T. 2004 (5) SC 17 (para 15,16 and 23).

19. While dealing with a controversy involving refund of pre deposit under Section 35 F of the Central Excise Act, 1944, a division Bench of Bombay High Court in the case of Suvidhe Ltd. Vs. Union of India writ petition no. 5041 of 1995 vide order dated 3rd February, 1996 held that in respect of such deposit the doctrine of unjust enrichment will be inapplicable and directed to pay interest @ 15 % per annum from the date of order of Appellate Tribunal till payment.

20. In the case of Commissioner of Central Excise, Hyderabad Vs. ITC Ltd. (2005) 13 SCC 689, the controversy was raised as to whether, pre deposit made as a pre condition for hearing of appeal under the Central Excise Act, on the assessee being ultimately successful; shall be refundable to the assessee with interest ? On instruction of the Central Board of Excise and Customs proposing to issue a circular for payment of interest on refund of such pre deposit, the Hon'ble Supreme Court directed for payment of interest in terms of the draft circular and made it part of the order.

21. In the case of O.N.G.C. Ltd. Vs. Commissioner of Customs Mumbai, JT 2007 (10) SC 76 (para 6). The facts were that the assessment orders passed in the Customs Act creating huge demands were ultimately set aside by Hon'ble Supreme Court. However, during pendency of appeals, a sum of Rs. 54,72,87,536/- was realized by way of custom duties and interest thereon. Under the circumstances an application was filed before Hon'ble Supreme Court to direct respondent to pay interest on the aforesaid amount w.e.f date of recovery till date of payment. The appellants relied upon the judgment in the case of South Eastern CoalField Ltd. Vs. State of M.P. and others (2003) 8 SCC 648. Hon'ble Supreme Court explained the principles of restitution in the case of ONGC Ltd. (Supra) as under:

"Appellant is a public sector undertaking. Respondent is the Central Government. We agree that in principle as also in equity the appellant is entitled to interest on the amount deposited on application of principle of restitution. In the facts and circumstances of this case and particularly having regard to the fact that the amount paid by the appellant has already been refunded, we direct that the amount deposited

by the appellant shall carry interest at the rate of 6 % per annum. Reference in this connection may be made to Pure Helium Indian (P) Ltd. Vs. Oil & Natural Gas Commission, JT 2003 (Suppl. 2) SC 596 and Mcdermott International Inc. Vs. Burn Standard Co. Ltd. & Others, JT 2006 (11) SC 376"

23. In the case of South Eastern Coalfields Ltd. Vs. State of M.P. 2003 (8) SCC 648, Hon'ble Supreme Court held as under :

"28. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the "act of the court" embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the court being wrongful or a mistake or error committed by the court; the test is whether on account of an act of the party persuading the court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the court and the act of such party. The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what the party excluded would have made but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the court not intervened by its interim order when at the end of the proceedings the court pronounces its judicial verdict which does not match with the countenance its own interim verdict. Whenever called upon to adjudicate, the court would act in conjunction with what is real and substantial justice. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation.

29. Once the doctrine of restitution is attracted, the interest is often a normal relief given in restitution. Such interest is not controlled by the provisions of the Interest Act of 1839 or 1978."

24. In the case of Sandvik Asia Ltd. Vs. Commissioner of Income Tax-I, Pune and others, J.T. 2006 (2) SC 7 Hon'ble Supreme Court laid down law as under

"28. In our view, there is no question of the delay being 'justifiable' as is argued and in any event if the revenue takes an erroneous view of the law, that cannot mean that the withholding of monies is 'justifiable' or 'not wrongful'. There is no exception to the principle laid down for an allegedly 'justifiable' withholding, and even if there was, 17 (or 12) years delay has not been and cannot in the circumstances be justified.

Does the Act provide for payment of compensation for delayed payment of amounts due to an assessee in a case where these amounts include interest? In our view, the Act recognizes the principle that a person should only be taxed in accordance with law and hence where excess amounts of tax are collected from an assessee or any amounts are wrongfully withheld from an assessee without authority of law the revenue must compensate the assessee.

29. In our view. the Act recognize the principle that a person should only taxed in accordance with law and hence where excess amounts of tax are collected from an assessee or any amounts are wrongfully withheld from an assessee without authority of law the revenue must compensate the assessee 40 In the present appeal, the respondents have argued that the compensation claimed by the appellant is for delay by the revenue in paying of interest, and this does fall within the meaning of refund as set out in Section 237 of the Act. The relevant provision is Section 240 of the Act which clearly lays down that what is relevant is whether any amount has become due to an assessee, and further the phrase any amount will also encompass interest. This view has been accepted by various High Courts such as the Delhi, Madras, Kerala High Court etc. Whether on general principles the assessee ought to have been compensated for the inordinate delay in receiving monies properly due to it?

42. In the impugned order, the Bombay High Court has held that no compensation is required to be paid since" there was a serious dispute between the parties, which was ultimately ordered to be paid pursuant to the order passed by this Court on 30.04.1997. Undisputedly, the amount pursuant thereto was paid on 27.03.1998.....". The Court further held that since the amount was paid once the controversy was resolved there was no wrongful retention of monies. No authority can ever accept an obligation to make payment and simply refuse to pay. In each and every case an authority must at least claim to act in accordance with law and hence claim it has no obligation to pay for some reason or another. When the claims of the authority are found to be unsustainable or erroneous by the Courts it follows that the authority has acted wrongfully in the sense of not in accordance with law and compensation to the

party deprived must follow. If the decision of the High Court is upheld it would mean that there can never be any wrongful retention by an authority until this Court holds that their stand is not in accordance with law. Therefore, that on this issue as well, the impugned judgment cannot be sustained and ought to be reversed.

45. The facts and the law referred to in paragraph (supra) would clearly go to show that the appellant was undisputably entitled to interest under Sections 214 and 244 of the Act as held by the various High Courts and also of this Court. In the instant case, the appellant's money had been unjustifiably withheld by the Department for 17 years without any rhyme or reason. The interest was paid only at the instance and the intervention of this Court in Civil Appeal No. 1887 of 1992 dated 30.04.1997. Interest on delayed payment of refund was not paid to the appellant on 27.03.1981 and 30.04.1986 due to the erroneous view that had been taken by the officials of the respondents. Interest on refund was granted to the appellant after a substantial lapse of time and hence it should be entitled to compensation for this period of delay. The High Court has failed to appreciate that while charging interest from the assesses, the Department first adjusts the amount paid towards interest so that the principle amount of tax payable remain outstanding and they are entitled to charge interest till the entire outstanding is paid. But when it comes to granting of interest on refund of taxes, the refunds are first adjusted towards the taxes and then the balance towards interest. Hence as per the stand that the Department takes they are liable to pay interest only upto the date of refund of tax while they take the benefit of assesses funds by delaying the payment of interest on refunds without incurring any further liability to pay interest. This stand taken by the respondents is discriminatory in nature and thereby causing great prejudice to the lakhs and lakhs of assesses. Very large number of assesses are adversely affected inasmuch as the Income Tax Department can now simply refuse to pay to the assesses amounts of interest lawfully and admittedly due to that as has happened in the instant case. It is a case of the appellant as set out above in the instant case for the assessment year 1978-79, it has been deprived of an amount of Rs.40 lakhs for no fault of its own and exclusively because of the admittedly unlawful actions of the Income Tax Department for periods ranging up to 17 years without any compensation whatsoever from the Department. Such actions and consequences, in our opinion, seriously affected the administration of justice and the rule of law.

COMPENSATION:

46. The word 'Compensation' has been defined in P. Ramanatha Aiyar's Advanced Law Lexicon 3rd Edition 2005 page 918 as follows:

"An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price of a privilege purchased;

some thing given or obtained as an equivalent; the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value; a recompense given for a thing received recompense for the whole injury suffered; remuneration or satisfaction for injury or damage of every description; remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or wages given to an employee or officer."

25. In the case of Union of India through Director of Income Tax Vs. Tata Chemicals Ltd. 2014, (6) SCC 335, Hon'ble Supreme Court held that when the collection is illegal, the Revenue is obliged to refund such amount with interest as money so deposited was retained and enjoyed by it. No discrimination can be shown between the assessee and Revenue in payment interest on refund of tax. Money received and retained without right, carries with it right to interest. 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 accrued interest for the period of undue retention of such monies. Obligation to refund money received and retained without right implies and carries with it the right to interest. In paragraph 38 of this judgment Hon'ble Supreme Court laid down the law as under :

"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."

26. In the light of the above discussions and the law laid down by Hon'ble Supreme Court and also by this court, the Court is of the view that the Collector must have considered the claim of the petitioner for interest, which was made by him vide representation/ application dated 04th October, 2013, wherein specific prayer was made to refund the amount alongwith interest at the market rate from the date of deposit i.e. 15.12.2005 till the date of actual payment. This representation was moved by the petitioner pursuant to the order dated 24th September, 2013 passed by this Court in Writ C No. 52504 of 2013, which was filed by the petitioner in the circumstances that despite demand, the respondent failed to refund the amount of deposit of Rs. 34,67,438/- with interest.

However, vide order dated 29th May, 2014, respondent merely refunded the principal amount. There is no whisper in this order with regard to the payment of interest.

27. Under the circumstances, the writ petition is allowed. The respondents are directed to pay simple interest to the petitioner on deposited amount of Rs. 34,67,438/- @ 8 per cent w.e.f. 15.12.2005 till 29.05.2014 within two months from today.

28. Since, it is a regular feature that when demand is not paid by an assessee, the State Government recovers it with interest. However, when such a demand is ultimately set aside or modified and in the meantime recovery has been made in full or in part, the State Government/authorities including the appellate and revisional authority, do not award any interest on the amount of excess deposit. The State Government should have considered the matter to remove the discrimination in view of the judgment in the case of Wig Brothers (Builders and Engineers) (P) Ltd. and another Vs. Union of India and others (2003) 6 AWC 5331 (para 31 and 32) passed by the Division Bench of this Court recommending the state Government to consider to provide for payment of interest whenever there is delay in payment for whatever reasons.

29. Hon'ble Supreme Court has also held in the case of Sandvic Asia Ltd. (Supra) that such a situation is discriminatory in nature and causes great prejudice to the lacs and lacs of the assesseees. In the case of Tata Chemicals Ltd. (Supra) Hon'ble Supreme Court observed that 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 money with 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 the like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. In the case of Hari Chandra (Supra), this Court held in similar circumstances in stamp matter that payment of interest on the money retained by the State Government is necessary when the money is to be returned under the orders of the appellate or the revisional authority. It has not been shown by the respondents that the law laid down in this judgement has been reversed or modified. In this judgement, this Court directed for payment of interest @ 8 per cent per annum from the date of deposit of money till the date of actual payment.

30. In view of the above discussions, a general mandamus is also issued to the State Government and all concerned authorities to pay within three months simple interest @ 8 per cent annum on all amounts of refund of stamp duty etc. under the Act to the concerned person, for the period from the date of deposit till the date of refund.

31. In result, writ petition succeeds and is allowed as indicated above.

32. Let a copy of this order be sent by the Registrar General of this Court to the Chief Secretary, Principal Secretary Law and Principal Secretary, Tax and Registration for compliance.

Order Date :- 19.9.2014 Sanjeev