IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 17TH DAY OF JUNE 2014

PRESENT

THE HON'BLE MR.JUSTICE N. KUMAR

AND

THE HON'BLE MR.JUSTICE B. MANOHAR

I.T.A. NO.164/2008

BETWEEN:

VENKATESH DUTT
NO.5, BRUNTON ROAD CROSS
BANGALORE-560 001. ... APPELLANT

(BY SMT.S.R.ANURADHA, ADV.)

AND:

COMMISSIONER OF INCOME TAX,
KARNATAKA-II,
CENTRAL REVENUE BUILDING,
QUEENS ROAD
BANGALORE - 1. ... RESPONDENT

(BY SRI.K.V.ARAVIND, ADV.)

THIS INCOME TAX APPEAL IS UNDER SEC. 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 21/09/2007 PASSED IN ITA NO.162/BANG/2007, FOR THE ASSESSMENT YEAR 2004-05. PRAYING THIS HON'BLE COURT TO:

I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND TO

II. ALLOW THE APPEAL AND SET ASIDE THE ORDER DATED 21-9-2007 PASSED BY THE ITAT, BANGALORE IN ITA NO.162/BANG/2007 FOR THE ASSESSMENT YEARS 2004-2005 AND THE

ORDER DATED 10/1/2007 PASSED IN ITAT NO.4/2-1(1)/CIT(A)I/06-07 BY THE COMMISSIONER OF INCOME TAX APPEALS AND ASSESSMENT ORDER DATED 24.3.2006 PASSED BY THE ITO, WARD-1(1).

THIS APPEAL COMING ON FOR FINAL HEARING, THIS DAY, ***N.KUMAR, J.,*** DELIVERED THE FOLLOWING:

J U D G M E N T

The assessee has preferred this appeal against the order passed by the Tribunal affirming the order of the Income Tax Appellate Authority who levied tax on the interest received by the assessee on account of refund.

2. The assessee is an individual. The assessee did not file any return of income for the assessment year 2004-2005. In response to a notice under Section 142(1) of the Income Tax Act, 1961 (for short 'the Act'), a return was filed on 4.2.2005 declaring an income of Rs.45,000/- and agricultural income of Rs.2,10,000/-. The Assessing Officer noted that the assessee had received interest of

Rs.87,81,443/- under Section 244A of the Act during the previous year relevant to the assessment year 2004-2005. The assessee had not included this income in the return of income. When this was pointed out, the asessee relied on a judgment of the Tribunal, where, it was held that interest under Section 244-A of the Act cannot be brought to tax till a finality is reached regarding the issue relating to the assessment of income. The Assessing Officer did not agree with the said stand. Therefore, he proceeded to include the amount of Rs.87,81,443/- in the total income of the assessee and determined the total income of Rs.90,36,440/-. The said order of the Tribunal was challenged before the Commissioner of Income Tax (Appeals). The Commissioner was also of the same view and held that the interest on refund under Section 244A(1) of the Act would be assessable in the year in which it was granted and not in the year in which

proceedings under Section 143(1)(a) attained finality. Following the judgment of the Special Bench of the Tribunal, the appeal came to be dismissed. Aggrieved by the said order, the assessee preferred an appeal to the Tribunal.

3. The Tribunal held that the interest granted to the assessee on account of excess tax paid to the Government has to be brought to tax in the year received by the assessee. The interest for the period had accrued to the assessee irrevocably insofar as the assessee had increased its bank coffers by the like amount. The assessee accepted the refund vouchers by crediting the same to its bank account. Therefore, the interest refund to the assessee on account of excess tax paid by it in the assessment years 1986-87 to 1988-89 was rightly brought to tax in the year it was received i.e., 2004-05 and neither of the parties thereto i.e., the income tax

department or the assessee could hold back the same pending the decisions of a higher forum.

4. Interest is certain over a period of time and cannot be said to be contingent which facts are not disputed. Sub-section (3) of Section 244A (1) of the Act also contains quantification in certain circumstances and not the right of interest. Therefore, the Tribunal did not find any infirmity in the order passed by the Commissioner of Income Tax (Appeals) as well as the order passed by the Assessing Officer and accordingly, dismissed the appeal. Against the said order, the assessee is before this Court.

5. This appeal came to be admitted on 23.10.2010 to consider the following substantial question of law:

> "*Whether or not the authorities below were correct in holding that the interest*

received by the assessee on account ITAT order is liable to tax?

6. The learned counsel for the assessee assailing the impugned order, contended that the proceedings under which the order for refund was passed had not attained finality on the day the notice under Section 142(1) of the Act was issued and therefore, there was no obligation cast on the assessee to file a return or mention in such return the interest received as his income. Even if an income is to be assessed under the Act, as the said income had accrued by virtue of the order passed by the Tribunal on 18.2.2003, it has to be accounted for in the previous year to that year namely 1.4.2003 to 31.3.2004 and not in the year 1.4.2004 to 31.3.2005. She further submitted that merely because the amount was received on 9.3.2004, it cannot be taxed for the assessment year 1.4.2003 to 31.3.2004. Further it was

contended that if the order of the Tribunal is upset and the assessee is directed to refund the amount received, the assessee would be compelled to return the amount received without taking into consideration the tax paid on the said amount. Section 154 of the Act on which reliance was placed by the authorities applies only in the case of error apparent on the face of the record and any corrections in the nature of levying the interest on refund under Section 244A(1) would be assessable in the year in which it is granted and not in the year in which the proceedings under Section 143(1)(a) attain finality. She also contended that the interest income has to be distributed for the period from 1986 till the date of receipt of the said amount. In support of her contentions, she relied on various decisions of this Court as well as the Apex Court. Therefore, she submits that seen from any angle, the impugned order needs to be interfered.

7. Per contra, the learned counsel for the revenue supporting the impugned order contended that in view of Section 4 of the Act, the interest income is liable to tax in the year in which it is received. There is no dispute that the tax is payable on the interest income accrued. Therefore, he contends that merely because an appeal is pending against the order, is not a justification for the assessee not to pay any tax when the assessee received the amount by way of interest. Therefore, he submits that no case for interference is made out. He also submitted that the judgments relied on by the learned counsel for the appellant, are all arising in the context of payments of compensation made under the Land Acquisition Act and also the price of sugar fixed by the Government and has no application to the facts of the case. Further, he relied on judgment of the Madras High Court in the case of ***Tamilnadu Industrial Investment Corporation Ltd. Vs. Deputy commissioner of***

Income Tax reported in **(2004) 192 CTR (Mad) 521** to support his contention that the interest under Section 214 of the Act is revenue in the nature of chargeable tax in the year of receipt.

7. From the aforesaid facts and the rival contentions, it is clear that the assessee did not file any returns for the assessment year 2004-05 as he had no taxable income. In response to notice under Section 142(1) of the Act, he filed return of 4.2.2005 declaring an income of Rs.45,000/- and agricultural income of Rs.2,10,000/- which again is within the taxable limit. It is also not in dispute that the Tribunal, by its order, allowed the appeal of the assessee, deleted certain additions and directed the department to pass consequential orders. In terms of the said order of the Tribunal, the department refunded a sum of Rs.1,50,43,489/- i.e., the excess tax collected and paid a sum of Rs.87,81,443/- interest on the said tax component. This payment

was made on 9.3.2004. The amount is duly received and acknowledged by the assessee. It is also not in dispute that aggrieved by the order dated 18.5.2003 passed by the Tribunal, revenue preferred an appeal to this Court. It is in this background, the Assessing Officer took exception to the assessee in not declaring the interest income of 87,81,443/-. The liability was denied by the assessee on the ground that the appeal is pending and the amount is not finally determined.

8. Section 244A of the Act provides, where refund of amount becomes due to the assessee under the Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the manner stipulated in the said Act. The said interest received by the assessee could be income in the hands of the assessee. Section 4 of the Act which is the charging section levies tax under the

Act on such interest. The income received on 9.3.2004 is to be assessed for the years 1.4.2003 to 31.3.2004 which is previous year as the assessment year being 1.4.2004 to 31.3.2005. When once the assessee receives the income by way of interest, the liability to pay tax under the Act arises. As that income is received prior to 31.3.2004, it has to be declared for the year commencing from 1.4.2003 to 31.3.2004 and it has to be assessed during the period from 1.4.2004 to 31.3.2005. The date on which the order of the Tribunal is passed, though determined the rights of the parties, on that day, no income is received by the assessee. It is on receipt of the income, the liability to file return under the Act would arise. Therefore, the contention that the said income should have been taken into consideration for the year from 1.4.2003 to 31.3.2004 is not correct. Similarly, the question of distributing the said amount from 1986 onwards till

the amount received also would not arise. Insofar as the contention that it is not a ascertainable liability, the appeal was pending and hence there is no liability to pay tax is concerned, when once the department has refunded the amount, notwithstanding the fact that the pendency of the appeal and the assessee has received the said amount, the liability to pay tax arises. If in the appeal the department were to succeed and consequently the assessee is directed to refund this amount, while refunding the said amount certainly the assessee could take into account the amount paid by way of tax. It would not be a case of double payment. Under these circumstances, we do not find any error in the orders passed by the three authorities. Insofar as the decisions relied on by the assessee is concerned, they are all cases arising under the Land Acquisition Act, where, after acquisition of the land the land acquisition officer

passed award making an offer of payment of compensation. The law provides for a reference to the civil court if the compensation awarded by the land acquisition officer, in the opinion of the land owner, is not sufficient and the reference court has jurisdiction to enhance the compensation and also to award interest on the said compensation. The said order is also subject to appeal and second appeal. In that context, it has been held that unless a competent court determines the liability to pay enhanced compensation and the compensation is paid in pursuance of such determination, the liability to pay tax on such compensation or the interest which is a component of interest would not arise. In the instant case, we are not dealing with any compensation. It is a simple case of payment of interest on the amount of refund which department found due to the assessee subject to the determination by the Appellate Authority.

Therefore, no fault can be found in the order passed by the authorities. Hence, the substantial question of law is answered in favour of the revenue and against the assesseee. The appeal is dismissed. Ordered Accordingly.

SD/-
JUDGE

SD/-
JUDGE

RS/*