

Interest granted on tax refund could be withdrawn by AO for giving effect to order passed by ITAT

Summary – The High Court of Punjab & Haryana in a recent case of Vipan Kumar Sudesh Kumar, HUF, (the Assessee) held that where interest on refund granted to assessee was reduced while giving effect to appellate order, same was to be recovered from assessee.

Facts

- The assessee-HUF filed return on income.
- The Assessing Officer made protective assessment and raised demand for Rs. 1.13 lakh.
- On appeal, the Commissioner (Appeals) upheld the protective assessment and reduced the quantum of income.
- Accordingly, the Assessing Officer gave effect to the order passed by the Commissioner (Appeals) which resulted in refund to the assessee. The assessee was granted interest on refund under section 244.
- On second appeal, the Tribunal directed that the assessment be framed in substantive capacity. Accordingly the Assessing Officer gave effect to the order of the Tribunal which led to withdrawal of interest on refund.
- The assessee filed appeal before the Deputy Commissioner against withdrawal of interest, which was dismissed.
- On further appeal, the Tribunal dismissed the appeal by relying upon a judgment of Supreme Court in *Modi Industries Ltd. v. CIT* [\[1995\] 216 ITR 759/82 Taxman 377 \(SC\)](#). It was held that interest allowed under section 244(1) can subsequently be withdrawn in view of creation /restoration of demand in subsequent appeal.
- On appeal:

Held

- Interest under section 244(1A) would be payable by taking into consideration result of any appellate order.
- The controversy, in the present appeal succinctly put, is whether the amount paid to the assessee as interest can be withdrawn under section 244, while giving effect to an appellate order which has led to variation of the amount? The Income Tax Appellate Tribunal has answered the question against the assessee after placing reliance upon a judgment of the Supreme Court in *Modi Industries Ltd. (supra)*, a judgment of the Calcutta High Court in *ANZ Grindlays Bank PLC. v. CIT* [\[2000\] 241 ITR 269/108 Taxman 328](#), a judgment of the Punjab & Haryana High Court in *CIT v. Hansa Agencies (P.) Ltd.* [\[1998\] 234 ITR 271](#), which hold that interest can be withdrawn. This view is to be accepted.
- In this view of the matter, the appeal cannot be accepted as no substantial question of law arises for adjudication.