Father Fincap And Management Services vs S. K. Gupta

ID: F2J-C-2420 **Court:** Bombay High Court
Case: WRIT PETITION NO. 44 OF 2005 **Date:** 2025-11-20

Bombay High Court Father Fincap And Management Services ... vs S. K. Gupta on 20 November, 2025 Author: B. P. Colabawalla Bench: B. P. Colabawalla 2025:BHC-OS:22120-DB

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Digitally IN THE HIGH COURT OF JUDICATURE AT BOMBAY signed by VINA VINA ARVIND ORDINARY ORIGINAL CIVIL JURISDICTION ARVIND KHADPE KHADPE Date: 2025.11.25 WRIT PETITION NO. 44 OF 2005 11:32:28 +0530

Panther Fincap and Management Services Pvt. Ltd. .. Petitioner

Versus

S. K. Gupta and anr. .. Respondents

Mr.Atul K. Jasani, Advocate for the Petitioner.

Mr.Suresh Kumar, Advocate for the Respondents.

CORAM: B. P. COLABAWALLA & AMIT S. JAMSANDEKAR, JJ.

DATE: NOVEMBER 20, 2025

P. C.

1. Rule. Respondents waive service. With the consent of the parties, Rule made returnable forthwith and heard finally.

2. The petitioner is impugning an order dated 14 th September 2004 passed under Section 244A(2) of the Income Tax Act 1961 ("the Act") passed by Respondent No.1. Respondent No.1, in the said order, has upheld the view of the Assessing Officer that the delay in refund processing occurred due to the petitioner not furnishing the original advance tax challans, and therefore, Page 1 of 6 NOVEMBER 20, 2025 Vina Khadpe,PS ::: Uploaded on - 25/11/2025 ::: Downloaded on - 28/11/2025 22:00:49 ::: 3.os.wp.44.2005.doc the period of delay so attributable to petitioner shall be excluded from the period for which interest was payable.

3. The facts of the case are this. The Petitioner filed its return of income A.Y.2001-2002 on 31st October 2001 declaring a loss of Rs.1826, 29,23,360/-. The Petitioner received a notice on 24th January 2002 under Section 142(1) of the Act requiring Petitioner to furnish a return of income for A.Y. 2001- 2002 on or before 6 th February 2002. The Petitioner replied to this vide its letter dated 5th February 2002 stating that the return of income was already filed on 31st October 2001. Thereafter, on 19 th February 2002, the Petitioner filed another letter enclosing the advance tax challans in original for a sum of Rs.7,00,00,000/-. On 26th March, 2002 and 3rd April 2002 notices under Section 143(2) of the Act were issued. By another letter dated 21 st August 2002, the Petitioner also filed 24 TDS certificates for Rs.44,611/-.

4. On 28th March 2003, the Petitioner received an intimation under Section 143(1)(a) of the Act accepting the returned loss and granting a refund of Rs.7,56,70,000/-, of this Rs.7,00,00,000/- was towards advance tax that had been paid and Rs.56,70,000/- was towards interest. From the calculation of interest in the intimation, it appears that interest on the advance tax has been computed from 1st March 2002 and no interest was granted for the Page 2 of 6 NOVEMBER 20, 2025 Vina Khadpe,PS ::: Uploaded on - 25/11/2025 ::: Downloaded on - 28/11/2025 22:00:49 ::: 3.os.wp.44.2005.doc period 1st April 2001 to 28th February 2002. Refund of TDS and interest thereon also was not granted.

5. Thereafter, the assessment order came to be passed on 30th March 2004 completing the assessment for A.Y. 2001-2002 under Section 143(3) determining the total loss of Rs.21,30,63,970/-.

6. As the Petitioner was not granted interest for the period 1st April 2001 to 28th February 2002, it filed an application before Respondent No.1 praying for allowing of interest under Section 244A of the Act on the advance tax payment of Rs.7,00,00,000/- for the period 1 st April 2001 to 28th February 2002 and for grant of refund of TDS of Rs.44,611/- together with interest thereon.

7. On 14th September 2004, the impugned order was passed on the grounds that because Petitioner did not file the original receipts of the advance tax challan for payment of Rs.7,00,00,000/- and as these were submitted only on 19th February 2002, interest was not payable for the period 1st April 2001 to 28th February 2002. Further, since no claim of TDS was made in the return of income and no TDS certificates were attached, the Page 3 of 6 NOVEMBER 20, 2025 Vina Khadpe,PS ::: Uploaded on - 25/11/2025 ::: Downloaded on - 28/11/2025 22:00:49 ::: 3.os.wp.44.2005.doc claim was rightly disallowed. Aggrieved by this order, the Petitioner has approached this Court.

8. Under Section 237 of the Act, if any person satisfies the Assessing Officer that the amount of tax paid by him or on his behalf, or treated as paid by him or on his behalf for any assessment year, exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess. Section 244A provides that where the refund of any amount becomes due to the assessee under this 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 provided in the Sub Section (1) of Section 244 of the Act. Section 244A(2) provides that in the event the proceeding resulting in refund has been delayed for reasons attributable to the assessee, the said period of delay shall be excluded from the period for which the interest is payable.

9. In this case, the proceeding resulting in the refund cannot be stated to be delayed for reasons attributable to Petitioner. In any event, there is no finding that there was delay in the proceeding resulting in the refund and that delay was attributable to Petitioner. It is true that Petitioner submitted the original advance tax challans for Rs.7,00,00,000/- on 19 th February 2002 Page 4 of 6 NOVEMBER 20, 2025 Vina Khadpe,PS ::: Uploaded on - 25/11/2025 ::: Downloaded on - 28/11/2025 22:00:49 ::: 3.os.wp.44.2005.doc after filing the return of income and not with the return of income filed

on 31st October 2001. However, the Petitioner has received intimation accepting the returned loss and granting refund on 28 th March 2003, and the assessment order itself came to be passed on 30 th March 2004. Therefore, the benefit of advance tax has already been allowed to the assessee, i.e. Petitioner. In any event, there is no finding either by the Assessing Officer or Respondent No.1 that there was a delay and how the Petitioner was responsible for that delay.

10. We must also mention that in identical facts a co-ordinate Bench of this Court in the case of V. N. Parekh Securities Pvt. Ltd. Vs. S. K. Gupta [W.P. No.3460 of 2004 decided on 10/01/2021] has, inter alia, held that the aforesaid delay cannot be attributable to the Assessee. We fully agree with this decision.

11. In view of the foregoing discussion, we allow the above Petition, in terms of prayer clauses (a) and (b) which read as under:

"(a) that this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or Direction under Article 226 of the Constitution of India, calling for the records of the Petitioner's case insofar as they relate to the impugned order dated 14/9/2004 passed under section 244A of the Act being Exhibit "P" hereto, and, after going through the same and examining the question of the legality thereof, to quash, cancel and set aside the same; "(b) that this Hon'ble Court may be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction under Article 226 of the Constitution of India, ordering and directing Respondent No.1 to grant interest on refund of advance tax of Rs. 7,00,00,000/- to the Petitioner under section 244A of the Act for the period 1/4/2001 to 28/2/2002 of Rs.61,25,000/- and also to grant refund of amount of tax deducted at source of Rs.44,611/- along with interest thereon under section 244A of the Act from 1/4/2001 till the date of refund.

12. We, of course, clarify that we are not endorsing the interest calculated by Petitioner and that the department may independently calculate the same and either pay or give credit to Petitioner.

13. Rule is made absolue in the aforesaid terms, and the Writ Petition is also disposed of in terms thereof. No order as to costs.

14. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order. [AMIT S. JAMSANDEKAR , J.] [B. P. COLABAWALLA, J.]