Interest on IT refund not taxable at concessional rate of 10% as per Treaty if NR has PE in India

[DIRECTOR OF INCOME-TAX V. PRIDE FORAMER SAS (2013) 40 taxmann.com 100 (Uttarakhand)]

Interest earned by a non-resident on income-tax refund is not taxable in India at concessional rate of 10% as per India-France treaty if such non-resident has a PE in India.

In the instant appeal, appellant had sought interpretation of Article 12 of India-France treaty. It contented that interest earned in India on income-tax refund was taxable at 10% as per Article 12(2) of treaty.

The High Court held as under:

1) Plain reading of Article 12 of treaty would make it absolutely clear that Paras 1 and 2 of Article 12 will apply, inter alia, when the recipient of interest does not have a permanent establishment in the country, where he has received interest;
2) There was no dispute that the respondent-assessee had a permanent place of business in India and it had paid tax in India on its income, except income from interest;
3) The interest earned in India on the refund of income-tax was, therefore, not covered by Paras 1 and 2 of Article 12 of the said Treaty. To that extent, the judgment of the Tribunal was to be set aside and, accordingly, the appeal was to be allowed – **DIRECTOR OF INCOME-TAX V. PRIDE FORAMER SAS (2013) (Uttarakhand)**