



IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA no.1285/Mum./2013
(Assessment Year : 2004-05)

Tata Communications Limited
(Formerly Videsh Sanchar Nigam Ltd.)
Videsh Sanchar Bhavan, M.G. Road
Fort, Mumbai 400 001
PAN – AAACV2808C

..... Appellant

v/s

Dy. Commissioner of Income Tax
Rante-1(3), Aayakar Bhawan
101, M.K. Road, Mumbai 400 020

..... Respondent

Assessee by : Shri Dinesh Vyas
Revenue by : Shri Manjunatha Swamy

Date of Hearing – 15.02.2016

Date of Order – 29.02.2016

ORDER

PER SAKTIJIT DEY, J.M.

This is an appeal by the assessee against the order dated 26th December 2012, passed by the learned Commissioner (Appeals)-2, Mumbai, for the assessment year 2004-05. Grounds raised by the assessee as per additional supplementary grounds of appeal are as under:-

"1. On the facts and in the circumstances of the case and in law, the learned Commissioner (Appeals) erred in not directing the Assessing Officer to grant interest under section 244A on refund due in accordance with law and current legal position.

2. On the facts and in the circumstances of the case and in law, while computing interest under section 234D, the interest granted earlier under section 244A ought to have been excluded from the refund amount in accordance with law and the current legal position."

2. While completing the assessment in case of assessee for the impugned assessment year, the Assessing Officer granted interest under section 244A of the Income Tax Act, 1961 (for short "*the Act*") on the refund due. Alleging short grant of interest under section 244A, assessee preferred an appeal before the learned Commissioner (Appeals).

3. It was the case of the assessee before the learned Commissioner (Appeals) that interest under section 244A of the Act granted earlier should be excluded from the refund granted while computing interest under section 244A. Learned Commissioner (Appeals), however, did not find merit in the submissions of the assessee, as according to him, the Hon'ble Supreme Court in *Sandvik Asia Ltd. v/s CIT & Ors.*, [2006] 280 ITR 643 (SC), held that interest on refund was granted on the basis of equity and the

Hon'ble Supreme Court, subsequently, in CIT v/s Gujarat Flours Chemicals, did not agree with its earlier decision in Sandvik Asia Ltd. (supra) and referred the matter to the Hon'ble Chief Justice of India for appropriate order.

4. The learned Senior Counsel, Shri Dinesh Vyas, appearing for the assessee submitted that the issue in dispute is no more res integra as the Tribunal, Mumbai Bench, in assessee's own case has decided the issue in favour of the assessee following the order passed in case of another group company ACIT v/s Tata Power Co. Ltd., which was subsequently confirmed by the Hon'ble Jurisdictional High Court in CIT v/s Tata Power Co. Ltd., in judgment dated 7th July 2015, in ITA no.1560 of 2013. As far as the observation of the learned Commissioner (Appeals) with reference to the judgment of Sandvik Asia Ltd. (supra), the learned Sr. Counsel submitted such observation has become irrelevant considering the fact that assessee's claim of interest is not on equity but it is a statutory interest.

5. Learned Departmental Representative also agreed that the issue raised stands covered by the decision of the Tribunal in assessee's own case.

6. We have considered the submissions of the parties and perused the material available on record. It is observed that in case of Tata Power Co. Ltd., Department had filed an appeal being ITA no.6863/Mum./2011. It was submitted, the Tribunal, while deciding the issue vide order dated 6th March 2013, upheld the order of the learned Commissioner (Appeals) directing the Assessing Officer to exclude the interest element of refund earlier granted while computing interest on refund under section 244A. The aforesaid order of the Tribunal as rightly pointed out by the learned Counsel for the assessee was upheld by the Hon'ble Jurisdictional High Court while dismissing the appeal preferred by the Department. The observation of the High Court is reproduced as under:–

"5. Being aggrieved, the respondent assessee carried the issue in appeal. Both the Commissioner of Income Tax (Appeals) (the "CIT(A)") and the Tribunal have on examination of facts correctly held that when a refund of tax has to be reduced by refund already granted it is only the tax element which has to be adjusted and not the interest element paid on the delayed refund of the tax. This is so as the interest which is paid to the assessee is for the wrongful withholding of the assessee's refund by the revenue. It has no element of tax which would justify reducing the same from the refund by the revenue. It has no element of tax which would justify reducing the same from the refund due while computing the interest payable on the delayed payment of refund."

7. It is further relevant to note in assessee's own case for the assessment year 1990-91, the Tribunal, while deciding the issue in ITA no.4962/Mum./2013 dated 22nd October 2014, followed its order passed in case of Tata Power Co. Ltd., which was subsequently upheld by the Hon'ble Jurisdictional High Court and directed the Assessing Officer to re-calculate the interest in accordance with the direction of the Tribunal in case of Tata Power Co. Ltd. (supra). Therefore, respectfully following the decision of the co-ordinate bench of the Tribunal in assessee's own case as well as the decision of the Hon'ble Jurisdictional High Court in Tata Power Co. Ltd. (supra), we direct the Assessing Officer to re-calculate interest of refund under section 244A, after reducing the tax element only. As far as the decision of the Hon'ble Supreme Court in Sandvik Asia Ltd. (supra), in our considered opinion, it has no relevance to the present case as the interest claimed by the assessee is a statutory interest. Therefore, grounds no.1 and 2 raised are allowed.

8. In ground no.3, assessee has raised the issue of exclusion of interest granted on earlier refund while computing interest under section 234D.

9. At the outset, both learned Counsels both the parties agreed before us that the issue is covered by the decision of the Tribunal in assessee's own case for assessment year 2001-02 in ITA no.4221/Mum./2005 dated 8th July 2015. On a perusal of the order referred to above, it is observed that the co-ordinate bench of the Tribunal accepting assessee's claim directed the Assessing Officer to compute the interest under section 234D by excluding the interest under section 244A for the period beginning on 1st June 2003. In terms of the direction of the co-ordinate bench of the Tribunal as aforesaid, we direct the Assessing Officer to exclude the interest granted under section 244A earlier and re-compute the interest under section 234D of the Act accordingly. Thus, ground no.3, is allowed.

10. In the result, assessee's appeal is allowed.

Order pronounced in the open Court on 29.02.2016

Sd/-
RAMIT KOCHAR
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 29.02.2016

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai