

आयकर अपीलिय अधिकरण, 'एस.एम.सी' 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' 'C' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष
Before Shri A. Mohan Alankamony, Accountant Member

आयकर अपील सं./I.T.A.No.2252/Mds/2016
(निर्धारण वर्ष / Assessment Year: 2004-05)

Shri V. Ramu, Plot No.17, MIG Flat, Housing Unit, Rajagopalapuram, Pudukottai – 622003.	Vs	The Income Tax Officer, Ward – 1(2), Pudukottai
PAN: AADPR0777J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri R.M. Siva Chockalingam, FCA
प्रत्यर्थीकीओरसे/Respondent by	:	Shri Supriyo Pal, JCIT

सुनवाईकीतारीख/Date of hearing	:	04.04.2017
घोषणाकीतारीख /Date of Pronouncement	:	11.04.2017

आदेश / ORDER

This appeal by the assessee is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-2, Tiruchirapalli dated 22.12.2015 in IT No.188/2014-15/CIT(A)/TRY for the assessment year 2004-05 passed U/s.154 of the Act.

2. There is a delay of 156 days in filing the appeal. The assessee has filed condonation petition wherein he has stated that the delay in filing the appeal had occurred since the Chartered Accountant of the assessee was reluctant to file the appeal as the claim of interest was meager. Further he is a senior

citizen staying in a remote place and ill advised. Hence it was pleaded that the delay in filing the appeal was not willful and therefore the same may be condoned. After hearing the Ld. AR, we are of the considered view that when merits of the case are in favour of the assessee, the appeal should not be dismissed merely on the ground of delay in filing the appeal, when the assessee has reasonable cause for delay in filing the appeal as held by the Hon'ble Apex court in the case "Collector Land acquisition vs. Mst. Katiji & Others reported in 167 ITR 471 and in the case of Maniben Devraj Shah vs. Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai reported in AIR 2012 (SC) 1629. Therefore, in the interest of justice, I hereby condone the delay in filing the appeal for 156 days and proceed to hear the appeal on merits.

3. The assessee has raised three grounds in his appeal, however the crux of the issue is that the Ld. CIT(A) has erred in upholding the order of the Ld.AO who had not granted interest on the tax deducted at source in accordance with the provisions of Section 244A(a) of the Act.

4. The brief facts of the case are that the assessee is an individual and erstwhile employee of ICICI bank availed early retirement option scheme, filed his return of income for the assessment year 2004-05 on 30.10.2004 and the return was processed U/s.143(1) of the Act on 05.04.2005 granting refund of Rs.48,180/- along with interest of Rs.2,940/- U/s.244A of the Act. Subsequently the assessee filed a writ petition before the Hon'ble Madras High Court (Madurai Bench). The Hon'ble Madras High Court (Madurai Bench) vide its order held that the assessee is eligible for exemption / deduction U/s.10(10C) of the Act for a sum of Rs.5 lakhs. The Ld. Assessing Officer gave effect to the order of the Hon'ble court and issued a total refund of Rs.1,71,778/- including Rs.9,720 towards interest U/s.244A of the Act for the period of 12 months from the date of pronouncement of order of the court. However the assessee contented in the proceedings U/s.154 that interest should be granted right from first April 2004 till the date of passing the order. The Ld.AO rejected the claim of the assessee since there was no claim of exemption U/s.10(10C) of the Act in the original return of income filed by the assessee.

5. On appeal the Ld.CIT(A) dismissed the appeal of the assessee by observing as under

“5.2 I too am in agreement with the Assessing Officer that the appellant is not eligible for interest u/s.244A of the Act from 01/04/2004 to 30/09/2012 for the following reasons:

(a) At the outset, the delay in making the claim of refund is attributable to the appellant, but not to the department. If he was keen on getting interest u/s.244A on the refund amount, he should, first of all, have made a claim for exemption u/s.10(10C) in his "original return" of income filed on 30.10.2004 or by filing a "revised return" within the time allowed u/s.139(5) of the Act. He did neither. The claim for such exemption u/s.10(10C) of the Act was made before the Assessing Officer for the first time sometime in October, 2012, by way of an application, enclosing therewith a copy of the order of the Hon'ble Madras High Court (Madurai Bench) dated 15/10/2012. Taking note of the findings given in such order of the Hon'ble Madras High Court (Madurai Bench), the Assessing Officer granted refund along with interest u/s.244A from October, 2012. Thus, the proceedings resulting in refund has been delayed due to reasons attributable to the appellant. Section 244A(2) of the Act provides that if there is delay in making a claim of refund on the part of the assessee, then interest u/s.244A need not be paid for such period. It is found that the appellant's case is covered under the provisions of sub-section (2) of section 244A of the Act, and not u/s.244A(1)(a) of the Act as the appellant claims it to be.

(b) Moreover, in case the appellant is aggrieved with regard to the period for which interest should be allowed u/s.244A, the remedy for such grievance should be sought by filing an application before the Principal Chief Commissioner of Incometax or Chief Commissioner of Incometax or Principal Commissioner of Incometax or Commissioner of Incometax (Administration). This is

evident from the language of sub-section (2) of section 244A, which is reproduced hereunder:

⁷⁵[Interest on refunds.

⁷⁶ 244A. ^{76a} (2) *If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable, and where any question arises as to the period to be excluded, it shall be decided by the ⁸⁶[Principal Chief Commissioner or] Chief Commissioner or ⁸⁶[Principal Commissioner or] Commissioner whose decision thereon shall be final. "*

A reading of the above provision would show that the remedy for the grievance of the appellant, if any, lies before the Administrative Commissioner of Incometax or Principal Commissioner of Incometax or Chief Commissioner of Incometax or Principal Chief Commissioner of Incometax, whose decision thereon shall be final. But instead of moving the application before any of those authorities, he has filed the appeal before the undersigned, which amounts to knocking at the wrong door. In my humble opinion, on this ground alone, in view of the specific provisions of section 244A(2), this appeal is not maintainable, as the undersigned has no jurisdiction over the matter.

(c) *It is a trite law that the remedial right of appeal is a creature of the statute and in the absence of specific mention of the right in a particular legislation, it can neither be claimed as an inherent right nor it be implied. Time and again such an issue has in the past come up before the various High Courts and the Supreme Court and it has invariably been held by every High Court that unless the right is expressly granted in the statute, the existence of the right of appeal cannot be implied. The Supreme Court in CIT v. Ashoka Engineering CO.(1992) 194 ITR 645(SC), reiterating the*

proposition, held that there is no inherent right of appeal to any assessee and that it has to be specifically spelt from the words of the statute, if any providing for an appeal.

(d) An argument can be taken from the appellant's side that since the appeal is against an order made u/s.154 of the Act, the same is an "appealable order" in term of section 246A(1)(c), which reads as under:

"Appealable orders before Commissioner(Appeals)

246A. (1) Any assessee ³⁹[or any deductor] ^{39a}[or any collector] aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against-

*(c)an order made under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections ⁵⁴[***] ⁵⁵[except on order referred to in sub-section (12) of section 144BA];"*

However, the provisions of section 246A(1)(c) have to be read along with section 244A(2). If both these provisions are read harmoniously, it is crystal clear that when the subject matter of order u/s. 154 relates to the period for which interest u/s.244A has to be denied to the appellant on account of the delay attributable to him, such order u/s.154 would not fall within the purview of an appealable order u/s.244A(2) as a "special provision" like section 244A(2) will have precedence over a "general provision" such as section 246A(1).

6. In the light of the above discussion, it is held that the appellant's appeal is devoid of any merit. Hence, the same is dismissed."

6. Before us the Ld. AR produced the circular No.11/2016 of the CBDT, wherein the Revenue authorities were directed to follow the decision of the Hon'ble Apex Court in the case Tata Chemicals Limited (2014)-LL-0226-164 NJRS citation. In that case it was categorically held that the Revenue has to grant interest on the amount of tax deducted from the first day of April of the assessment year till the date on which the refund is granted. The Ld.DR could not confront to the submission of the Ld.AR.

7. I have heard the rival submission and carefully perused the materials available on record. As pointed out by the Ld.AR, Circular No.11 of 2016 in F.No.279/Misc./M-140/2015-ITJ has directed the Revenue authorities that if assessee is entitled for refund of tax deposited U/s.195 of the Act; then it has to be refunded with interest U/s.244A of the Act. The circular No.11 of 2016 of the CBDT is reproduced herein below for reference:

Circular No. 11/2016

E.No.279/Misc./M-140/2015-ITJ

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, 26th April, 2016

Subject:- Payment of interest on refund under section 244A of excess TDS deposited under section 195 of the Income tax Act, 1961– reg.

The procedure for refund of tax deducted at source under section 195 of the Income tax Act, 1961, to the person deducting the tax is delineated in CBDT Circular No. 7/2007 dated 23.10.2007. Circular No. 7/2007 states that no interest under section 244A of the Act, is admissible on refunds to be granted in accordance with the circular or on the refunds already granted in accordance with Circular No. 769 or Circular 790 dated 20.4.2000.

2. The issue of eligibility for interest on refund of excess TDS to a tax deductor has been a subject matter of controversy and litigation. The Hon'ble Supreme Court of India in the case of Tata Chemical Limited¹, Civil Appeal No. 6301 of 2011 vide order dated 26.02.2014, held that, "*Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest.*"
3. In view of the above judgment of the Apex Court it is settled that if a resident deductor is entitled for the refund of tax deposited under Section 195 of the Act, then it has to be refunded with interest under section 244A of the Act, from the date of payment of such tax.
4. Accordingly, it is advised that no appeals may henceforth be filed on this ground by the officers of the department and appeals already filed on this issue may not be pressed upon.

¹ 2014-LL-0226-164 NJRS Citation

5. This may be brought to the notice of all concerned.

Sadhana
 (Sadhana Panwar)
 DCIT (OSD)(ITJ),
 CBDT, New Delhi.

Further Section 244A(1)(a) of the Act specifically provides that such interest shall be calculated at the prescribed rate for every month or part of a month comprised in the period from the first day of April of the assessment year to the date on which the refund is granted. Therefore, I hereby direct the Ld.AO to grant interest to the assessee from 1st April 2004 till the date on which the refund is granted and as per the other relevant provisions of the Act.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the court on the 11th April, 2017.

Sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 11th April, 2017

JR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |