

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH, MUMBAI  
[Coram: Pramod Kumar AM and Pawan Singh JM]**

I.T.A. No. 4689/Mum/2010  
Assessment year: 2002-03

**DB S Bank Limited** .....**Appellant**  
*3<sup>rd</sup> floor, Fort House, 221 Dr D N Road  
Fort, Mumbai 400 002 [PAN: AAAC4652J]*

**Vs.**

**Dy. Director of Income Tax**  
**International Taxation 1(2), Mumbai** .....**Respondent**

**Appearances by:**

**P J Pardiwalla** for the appellant  
**Harshad Vengurlekar** for the respondent

Date of concluding the hearing : January 5, 2016  
Date of pronouncing the order : January 8, 2016

**O R D E R**

**Per Pramod Kumar, AM:**

1. By way of this appeal, the assessee has challenged correctness of the order dated 29<sup>th</sup> March 2010, passed by the CIT(A) in the matter of order under section 154 r.w.s. 143(3) of the Income Tax Act, 1961, for the assessment year 2009-10.
2. Although the assessee has raised as many as five grounds of appeal, and several sub grounds under these grounds of appeals, the short grievance of the assessee is that the CIT(A) ought to have, on the facts and in the circumstances of this case, cancelled the order under section 154 dated 27<sup>th</sup> June 2008 passed by the Assessing Officer.
3. The relevant material facts are in a narrow compass. The assessee before us is a non resident and its assessment under section 143(3) was completed on 28<sup>th</sup> March 2005 at an assessed income of Rs 24,18,54,060. Subsequently, however, the revenue audit party pointed out certain mistakes said to have crept in this assessment order. The mistakes so pointed out, on the basis of which the impugned rectification of mistakes under section 154 is said to have been carried out- as is started in the impugned order itself, were as follows:

**“It was observed by the audit as under:**

- 1. In cycle no. 44, it was observed that no tax was deducted at source on interest payment of Rs 78,27,840 to the head office, and hence deduction was not possible.**
- 2. In cycle no. 46, it was observed by the audit that on the basis of order under section 154 dated 13/12/2005, assessee was allowed claim of Rs 2,50,65,962 as exempt under section 10(23G). While allowing refund to the assessee on the basis of CIT(A)'s order, interest quantified under section 244A amounting to Rs 42,07,361 was not in order on account of delayed claim of Rs 2,50,65,962 under section 10(23G).**

**Accordingly, notice under section 154 was issued on 10/01/2008 followed by letter dated 13/5/2008 intimating the assessee with respect to the above.”**

4. As for the first point, while the Assessing Office noted that the correct figure of interest payment is Rs 7,827 but as no deduction of tax at source was made from this payment, he proceeded with disallowing the same under section 40(a)(i). As for the second point, the Assessing Officer was of the view that as the refund arose on account of delayed claim of Rs 2,50,65,962 under section 10(23G), the interest under section 244A ought to have been declined in respect of this delay which was “attributable to the assessee”. As against interest under section 244A as computed earlier at Rs 42,07,361, the interest admissible under section 244A was reduced to Rs 11,97,023. Aggrieved by the adjustments so carried out (i.e. declining the deduction of Rs 7,827 and reducing the interest claim under section 244A by Rs 30,10,338), the assessee carried the matter in appeal before the CIT(A) but without any success. As for the first point, learned CIT(A) noted the assessee's reliance on a special bench decision of this Tribunal in the case of **ABN Amro Bank NV Vs ADIT [(2005) 97 ITD SB 89 (Kol)]**, but simply brushed it aside and upheld the stand of the Assessing Officer. He did refer to the CBDT circular 740 and relied upon the same. As for the second point, learned CIT(A) was of the view that the amount of interest payable under section 244A has been wrongly calculated by the Assessing Officer and he was, therefore, justified in rectifying the said mistake in computation of interest. On the assessee's claim that refund determined vide order dated 20<sup>th</sup> November 2006, giving effect to the CIT(A)'s order and the order under section 154 dated 27<sup>th</sup> June 2008, has not been received, interest ought to have been determined upto the date of receipt of refund, the CIT(A) declined the same by holding that there is no such enabling provision under the Act. The assessee is aggrieved and is in appeal before us.

5. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

6. While dealing with rectification of mistakes under section 154, it is necessary to bear in mind inherently limited scope of this provision. This aspect of the matter has been beautifully explained by Hon'ble Supreme Court, in the landmark case of **ITO Vs Volkart Brothers [(1971) 82 ITR 50 (SC)]**, as follows:

**....A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions. As seen earlier, the High Court of Bombay opined that the original assessments were in accordance with law though in our opinion the High Court was not justified in going into that question.....an error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions cannot be said to be an error apparent on the face of the record. A decision on debatable point of law is not a mistake apparent from the record.....**

7. Let us, in this light, revert to the facts of this case.

8. As for the point as to whether the tax is required to be deducted tax at source from payments made by a foreign bank's Indian branch to its overseas head office, a Special Bench of this Tribunal, in the case of **ABN Amro Bank (supra)**, had decided the issue in favour of the assessee. It was held since, in such a situation, the payment is made by the non resident to himself, there is no obligation to deduct tax at source from such payments. Hon'ble Calcutta High Court, in the case of **ABN Amro Bank NV Vs CIT [(2012) 343 ITR 81 (Cal)]**, has held that there is tax deduction at source requirement, under section 195, from the payment of interest made by the Indian branch of a foreign bank to its offices abroad. It is thus clear that the impugned disallowance, even on merits, is unsustainable in law. Accordingly, the impugned disallowance, by way of rectification of mistake under section 154, is wholly unsustainable in law. The CIT(A) was indeed in error in upholding the impugned rectification order on this aspect of the matter.

9. As for the second point on which the impugned rectification order was passed, we have noted that the stand of the Assessing Officer is that interest under section 244A is not admissible in respect of delay in making claim of exemption under section 10(23G). In the assessment order, at page 6, there is a mention that the "assessee's letter dated 20.01.2005 has been considered and, accordingly, it is held that that Rs 2,50,65,961.57 will not form part of the income under section 10(23G) of the Act". The stand of the Assessing Officer, at

page 2 of the impugned rectification order, thus is that since the claim itself was made on 20.1.2005, "the period of delay in issuing refund from the period 1/4/2002 to 20/01/2005, being attributable to the assessee, is required to be excluded". The Assessing Officer has proceeded on the basis that mere making of belated claim under section 10(23G), even if that be so, is reason enough to hold that the delay in issuance of refund, to that extent, is attributable to the assessee. Section 244A(2) as it then stood, however, provided that **"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 Chief Commissioner or Commissioner whose decision thereon shall be final"**. In this light, when we revert to the facts of this case, we find that there is nothing more the fact of delayed claim under section 10(23G) which has been put against the assessee to deny the interest under section 244A, for the period of the beginning of the relevant assessment year till the date of making the claim by way of a letter, but then it is not the delay in claim but the delay in "the proceedings resulting in refund" which are crucial factor in declining in the interest under section 244A. There is nothing on record to suggest that the proceedings leading to the refund, i.e. assessment proceedings, are "delayed for reasons attributable to the assessee". That is not even the case of the Assessing Officer. Even assuming that the making of a delayed claim, by itself, can be reason enough for denial of interest under section 244A, there is nothing on record to even suggest that the delay in making of the claim was attributed to the assessee. The exemption under section 10(23G) is dependent on the approval of the Central Government, and, there can thus be many reasons, not in the control of the assessee, which could result in or trigger the delay in admissibility of claim. The delay in making of the claim by itself, without anything else, cannot lead to the conclusion that the delay is attributed to the assessee. Let us not forget that it is not a case of declining interest levy under section 244A on merits but it is a case in which not declining the interest under section 244A for this period has been treated as a mistake apparent on record, which, by implication, means that it is **"an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions"**. In our considered view, even if the interest under section 244A could be declined for this period on merits, not declining the interest under section 244A could not be treated as a mistake apparent on record within the inherently limited scope of Section 154. In any event, when a question arises as to the period for which such interest under section 244A is to be excluded, this is to be decided by the Commissioner or the Chief Commissioner. The law is

quite unambiguous on this aspect as it provides that “**where any question arises as to the period to be excluded, it shall be decided by Chief Commissioner or Commissioner whose decision thereon shall be final**”. Undoubtedly, such a decision by the Commissioner of the Chief Commissioner cannot be a subject matter of then the call about the period for exclusion of interest is to be determined by the Commissioner or the Chief Commissioner. Obviously, no such exercise was carried out at the assessment stage or even at the stage of the rectification proceedings, and it was, therefore, not open to the Assessing Officer, on his own, to decide the period for which interest under section 244A was to be declined. For this reason also, not declining the interest under section 244A for the period of 1.4.2002 to 20.1.2005, was not a mistake apparent on record. In view of the above discussions, and for more reasons than one, the Assessing Officer was in error in passing the impugned order under section 154 on this aspect of the matter as well.

10. In view of the above discussions, , we are of the considered view that the Assessing Officer was clearly in error in passing the impugned order under section 154. Learned Commissioner (Appeals), therefore, ought to have cancelled the impugned order passed by the Assessing Officer. We, therefore, reverse the action of the Commissioner (Appeals) and quash the impugned order under section 154. As the said order stands cancelled, all other issues raised by the assessee are rendered academic and do not call for any adjudication by us at this stage.

11. In the result, the appeal is allowed in the terms indicated above. Pronounced in the open court today on the 8th day of January, 2016.

**Sd/-**  
**Pawan Singh**  
(Judicial Member)

**Dated: 8<sup>th</sup> day of January, 2016.**

**Sd/-**  
**Pramod Kumar**  
(Accountant Member)

Copies to: (1) The appellant (2) The respondent  
(3) Commissioner (4) CIT(A)  
(5) Departmental Representative (6) Guard File

By order etc

Assistant Registrar  
Income Tax Appellate Tribunal  
Mumbai benches, Mumbai