

आयकर अपीलीय अधिकरण, मुंबई "ए" खंडपीठ

Income-tax Appellate Tribunal -"A" Bench Mumbai

सर्वश्री जोगिन्दरसिंह न्यायिक सदस्य एवं राजेन्द्र, लेखा सदस्य

Before S/Sh.JoginderSingh, Judicial Member and Rajendra, Accountant Member

4 आयकर अपील सं./I.T.A./6789/Mum/2012, निर्धारण वर्ष /Assessment Year: **2005-06**

M/s. Aristo Pharmaceuticals Pvt.Ltd. Mercantile chambers, 12 J N Heredia Marg,Bellard Estate Mumbai-400001 PAN:AAACA4495N	Vs.	Addl.CIT-Range 2(1) Aaykar Bhavan,Mumbai-20
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by:Sh.Rajesh Kumar Yadav

Assessee by:Sh.Ajit kumar Rastogi

सुनवाई की तारीख / **Date of Hearing: 19.04.2017**

घोषणा की तारीख / **Date of Pronouncement: 19.04.2017**

आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1) of the Income-tax Act, 1961 (Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order dated 23/08/2012, of the CIT (A)-4, Mumbai, the Assessee has filed the present appeal. Assessee-company, engaged in the business of manufacturing and sale of pharmaceutical products is, filed its return of income on 31/10/2005, declaring income of Rs. 81.16 crores. The Assessing Officer (AO) completed the assessment, u/s. 143 (3) of the Act, on 29/12/2007, determining its income At Rs. 84.50 crores.

2. Effective ground of appeal is about upholding the order of the AO, passed u/s. 154 of the Act, whereby interest u/s. 244, amounting two Rs. 34.11 lakhs granted earlier was withdrawn. While giving effect to the order of the First Appellate Authority (FAA) the AO allow interest of Rs. 34,11,771/- u/s. 244 of the Act. The AO issued a notice to rectify the mistake apparent from record, as he was of the opinion that the assessee was not entitled for any interests. He held that interest allowed to the assessee was to be withdrawn, that excess paid taxes were less than 10% of the tax determined. Accordingly, as stated earlier, the AO withdrew the interest allowed to the assessee.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the FAA. Before him, it was argued that there was no mistake in the order passed u/s. 250 on 23/07/2009 whereby the interest was enhanced from Rs. 33.71 lakhs to 34.11 lakhs, that there was reduction in the income shown by the assessee from Rs. 84.50 crores to Rs. 84.23 crores, that tax liability

had reduced from Rs. 30.92 crores to Rs. 30.82 crores, that it resulted in enhancement of refund, that the AO was under legal obligation to follow the procedure laid down in section 244 (3) and had no option but to increase the interest, that the rider contained in proviso below clause (a) of section (1) of section 244 was not applicable while giving effect to the appellate order and grant of interest percent to the appellate order was regulated by subsection (3) of section 244 to the effect that the interest would not be payable if the amount of refund was less than 10% of the tax, that the exercise of power u/s.154 was wholly illegal.

After considering the submission of the assessee and the assessment order, the FAA held that the AO had passed the order on the basis of facts on record, that excess prepaid taxes amounted to Rs.84,26,421/-,that the tax determined was at Rs. 30.82 crores, that excess repaid taxes were less than 10% of the tax determined,that no interest u/s.244 was payable to the assessee as per the proviso to section 244(1)(a) of the Act.Finally,he rejected the appeal filed by the assessee.

5.Before us, the AR argued that applicability of the proviso was limited up to the grant of refund as determined in order u/s.143(1)or on the regular assessment, that the proviso had no application once a refund along with interests was granted either in order u/s.143 (1) or on regular assessment,that the variation of interest as a result of order u/s.143(3)or section 250 was regulated by subsection 3 of section 244 of the Act, that no such restriction as imposed by the proviso found place in subsection 3, that the language of subsection 3 was plain and unambiguous, that it did not contain any restriction similar to the one imposed by the proviso, that the FAA was unjustified in relying on the proviso for upholding the order of the AO withdrawing interests.The DR relied upon the orders of the AO and the FAA.

6.We have heard the rival submissions and perused the material before us. We find that the assessee had filed its return of income declaring total income of Rs. 81,16,05,080/-, that by way of advance tax and tax deducted at source Rs.33,66,52,689/- were paid,that pursuant to the processing of return u/s.143(1)of the Act,refund of Rs.4,30,37,719/-was granted to the assessee, that the AO issued notice u/s.154 of the Act and withdrew the interest granted,that the FAA confirmed the order of the AO. We find that almost similar issue had arisen in the case of Motor Industries Co.Ltd.(314 ITR 29), delivered by the honourable Karnataka High Court.In that matter an appeal was preferred by the assessee against the order of assessment passed by the AO which was allowed in part by the FAA with a direction to revise the order of assessment. The AO

revised the order of assessment whereby a sum of Rs. 25,41,834 was added with interest u/s. 244A(3) of the Act. Pursuant to the order passed by the Tribunal, the earlier order was revised by invoking section 154 of the Act and interest was disallowed on the ground that the interest awardable was not applicable since the refund payable to the assessee was less than 10 % of the tax due. The FAA dismissed the appeal on the ground that the AO was justified in rectifying the order u/s. 154 of the Act. The Tribunal allowed the appeal in part by confirming the order granting relief u/s. 244A(1)(b) of the Act. On appeal the honorable High Court held that there were no reasons assigned by the AO that there was a mistake apparent on the face of the record to invoke section 154 of the Act. The order was to be set aside and the matter remanded to the AO with a direction to examine the contentions and to give a finding as to how section 154 of the Act would be attracted to the facts and circumstances of the case.

We find that in the case under consideration the AO has not given any finding as to how the mistakes were apparent from record to justify invocation of the provisions of section 154 of the Act. The FAA has also not dealt with the issue. Therefore, respectfully following the above judgment of the honorable Karnataka High Court (supra), in the interest of Justice, we restore back the issue to the file of the AO for fresh adjudication. He is directed to afford a reasonable opportunity of hearing to the assessee. The assessee would appear before the AO and extend full cooperation. Effective ground of appeal, raised by the assessee, is decided in its favour, in part.

As a result, appeal filed by the assessee stands partly allowed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील अंशतः मंजूर की जाती है.

Order pronounced in the open court on 19th April, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक 19 अप्रैल, 2017 को की गई।

Sd/-

(राजेन्द्र / **Rajendra**)

Sd/-

(जोगिन्दरसिंह / **JoginderSingh**)

लेखा सदस्य / ACCOUNTANT MEMBER न्यायिक सदस्य / **JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 19.04.2017.

Jv. Sr. PS.

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. Appellant /अपीलार्थी
2. Respondent /प्रत्यर्थी
3. The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4. The concerned CIT /संबद्ध आयकर आयुक्त
5. DR "A" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, ए खंडपीठ, आ.अ.न्याया. मुंबई
6. Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.