

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 5172/Del./2014
(Assessment Year: 2003-04)

DCM Shriram Consolidated Ltd, (Now known as DCM Shriram ltd, 5 th Floor, Kanchenjunga Building, 18, Barakhamba Road, New Delhi PAN:AAACD0097R	Vs.	DCIT, Circle-10(1), CR Building, New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Pradeep Dinodia, CA Shri VP Gupta, Adv
Revenue by:	Shri Subhash Verma, Sr. DR
Date of Hearing	11/10/2017
Date of pronouncement	29/12/2017

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT (A)-XIII, New Delhi dated 03.07.2014 for the Assessment Year 2003-04.
2. The assessee has raised the following grounds of appeal:-
 - "1. *That the CIT(A) erred in not adjudicating the grounds raised by the appellant before him on merits in accordance with the facts and the legal position and in setting aside the impugned order issuing directions to the Assessing Officer to refer the matter to the Chief Commissioner of Income-tax or Commissioner of Income-tax, He ought to have annulled the order if the same was not in accordance with the law and should have directed the Assessing Officer to allow interest u/s 244A of the Act for the full period during which the tax amount, which has been refunded now as per order of ITAT, has remained with the Government.*
 2. *That the CIT(A) erred in not considering and deciding the issues on merits and holding that :*

- (a) *the appellant company was duly entitled to the interest u/s 244A of the Income-tax Act in respect of refund of Rs, 5,19,12,000./- for the period from 1.4.2003 to 24.3.2006 also ;*
 - (b) *there was no delay attributable to the appellant and interest u/s 244A of the Act was duly allowable for the full period, including the period from 1.4.2003 to 24.3.2006, during which period money has remained with the Govt. ;*
 - (c) *the Assessing Officer could not have taken a view at this late stage that the appellant company was not entitled to interest u/s 244A of the Act on the refund granted pursuant to the order of ITA1 for the period from 1.4.2003 to 24.3.2006; and*
 - (d) *the refund under reference was relating to the claim u/s dUIA of the Act which was not allowable as per the stand of the Department and, therefore, the Assessing Officer could not take a view while granting refund as per order of ITAT that there was any delay in granting the refund in respect to the claim, which is attributable to the appellant;*
3. *That the CIT(A) also erred in not adjudicating the matter considering the principles of natural justice and the language of section 244A of the Income-tax Act which clearly provides that if the amount of tax has remained with the Govt., interest in respect of the same was duly allowable and, therefore, he ought to have directed the Assessing Officer to grant the interest.*
4. *That the CIT(A) also erred in not giving a direction to the Assessing Officer to grant interest on interest as per provisions of section 244A of the Act in terms of decisions of Hon'ble Supreme Court in the cases of CIT Vs. Narendra Doshi 254 ITR 606 (SC) and Sandvik Asia Ltd. Vs. CIT and Others 280 ITR 643 (SC) for the reason that Assessing Officer had not given effect to the order of Tribunal dated 16.10.2009 within a reasonable period and had wrongly withheld the amount of refund, causing financial hardship and interest loss to the appellant.*
5. *That the CIT(A) also failed to appreciate that the interest is granted by the Govt, only @ 6% as against interest charged by the Govt. @ 12% and, therefore, for any period during which the money has remained with the Govt, interest should be duly allowed to the appellant and same should not be denied taking unjustified and unreasonable view."*
3. Though assessee has raised several grounds of appeal but the issue before us is whether assessee is entitled to interest U/s 244A of the act with respect to the period 1-4-2003 to 24/03/2006, i.e. the period which

according to the Id AO is on account of delay attributable on part of the assessee.

4. Brief facts of the case is that appellant is a company who filed its return of income on 2/12/2003 showing income of Rs. 302426810/- under the normal provisions of the income tax and tax payable thereon was determined at Rs. 111141853/-. As the company had paid the advance tax of Rs. 13.15 crore and TDS of Rs. 18899983, totaling to Rs. 150399983/- , refund of Rs. 3 7820187/- was claimed.
5. In the computation of total income, appellant had claimed a deduction under section 80 IA of the income tax act in respect of its two power plants amounting to Rs. 17312 3982/-. In respect of third power plant, the company had given in note in the statement of computation of taxable income that the deduction could not be quantified and it would be submitted later on. The Ld. assessing officer issued and intimation under section 143 (1) on 29/03/2004 determining the refund of Rs. 3348 7398/- along with interest under section 244A of the act of Rs. 2132156/- from 1-4-2003. Return of income was picked up for scrutiny under section 143 (2) of the act and during the course of assessment proceeding assessee submitted with respect to the claim of the deduction of Third power plant for which it gave the note in the computation wide letter dated 24/03/2006 computing the claim of Rs. 192119620/-. The Ld. assessing officer passed an assessment order under section 143 (3) of the act on 30/3/2006, without allowing deduction under section 80 IA of the income tax act in respect to the power plants for which original claim was made in the return of income as well as with respect to the claim of the assessee made by the computation note as well as details during the course of assessment proceedings. The Ld. assessing officer determined the taxable income of the assessee at Rs. 5 0980 5310/- and tax payable was determined at Rs. 1 8735 3452/-. The assessee paid the outstanding demand of Rs. 91430825/- because of the assessment order.
6. Against that order the assessee filed an appeal before the Ld. CIT (A) who passed an order dated 30/1/2009 wherein he has directed the Ld.

assessing officer to allow deduction under section 80 IA of Rs. 173123982/- for two power plants. The Ld. CIT (A) did not allow the deduction claimed with respect to the third power plant for which the claim was made during the course of assessment proceedings. .

7. Against the order of the Ld. CIT (A), The assessee as well as revenue filed an appeal before the coordinate bench who vide order dated 16/10/2009 directed the Ld. AO to allow deduction under section 80 IA of the act in respect of the third power plant also which was claimed during the course of assessment proceedings. Moreover, certain other disallowances paid by the Ld. AO confirmed by the Ld. CIT (A) were also allowed. The appeal of the revenue was also dismissed by the coordinate bench. The revenue challenged the order of the coordinate bench before the Hon'ble high court, which was dismissed.
8. After passing of the order of the coordinate bench on 16/10/2009 to give effect to the order and grant the consequential refund the assessee was requesting to the Ld. assessing officer. However, after 3 & ½ years, the refund was granted to the assessee of Rs. 89850574/- vide order dated 10/6/2013 and the refund was given on 18/6/2013. In the income tax computation form, the Ld. assessing officer mentioned that the interest under section 244A is not allowable from date of filing of return to 24/3/2006 i.e.e date on which claim of deduction under section 80 IA was made which caused delay in furnishing returns and making the claim is directly attributable to the assessee.
9. The assessee was aggrieved as it did not get interest under that particular section on refund of Rs. 4870 8141 from 1/4/2003 to 24/3/2006 and also was not granted interest on interest for 3 years and 8 months.
10. Against this order, the assessee preferred an appeal before the Ld. CIT (A), who held that if the delay in furnishing the return and making the claim are directly attributable to the assessee, and then assessee is not entitled for interest. He further relied upon the provisions of subsection (2) of section 244A and held that assessing officer is not vested with the

power to decide the question of the period to be excluded, which should be referred according to him to the Chief Commissioner or the Commissioner as stipulated in the statute. Therefore, he directed the Ld. assessing officer to refer the issue to the Chief Commissioner or the Commissioner as stipulated in the statute. He allowed the appeal of the assessee for statistical purposes.

11. The assessee aggrieved with the order of the Ld. assessing officer as well as the Commissioner of income tax appeals preferred appeal before us.
12. The Ld. authorized representative submitted that interest under section 244A (1) is duly allowable from 1st April of assessment year to the date of the granting of the refund in case the refund is out of advance tax or tax deducted at source. He stated that the assessing officer has not given full effect to the order and cannot reduce the amount of refund. He submitted that there has been no delay attributable to the appellant company because the claim of deduction under section 80 IA had been duly made in the return of income, computation of the claim was submitted during the course of assessment proceedings. He further stated that tribunal had specifically held that the computation and audit report were submitted in respect of the claim during the course of assessment proceedings, which has been confirmed by the Hon'ble high court and the Supreme Court. Therefore, the Ld. assessing officer could not reject the claim for allowability of interest in respect of the period under reference. He further stated that the Ld. CIT (A) has erred in stating that delay, which is attributable to the assessee, has to be determined only by the Chief Commissioner of income tax, he submitted that in case the delay is not attributable to the assessee but is attributable to the Ld. assessing officer. He stated that the Ld. assessing officer has determined the tax payable/refundable on various occasions and has also given interest for the full period in past, but now he has reduced the same for the reasons mentioned in that particular income tax computation sheet. He further submitted that Ld. CIT (A) should not have directed the Ld. assessing officer to refer the matter to the Chief

Commissioner of income tax but should have decided the issue on the merits because the delay was not attributable to the assessee. He further submitted a date chart to show the delay is not attributable to the assessee. In the end, he submitted that the assessee must be granted interest under section 244A of the income tax act in accordance with the law.

13. The Ld. Departmental representative vehemently contested the arguments of the assessee and submitted that the delay is attributable to the assessee because merely stating in the computation of total income without quantifying it, does not result in to a claim. The above deduction under section 80 IA of the act does not amount to claim of the assessee unless it is submitted along with the return of income and duly audited by the chartered accountant. He stated that the claim of the assessee was not made in the return of income and submitted subsequently and therefore the delay was attributable to the assessee and therefore the order of the Ld. CIT (A) is correct.
14. We have carefully considered the rival contentions and perused the orders of the lower authorities. Succinctly stated the facts shows that due date of filing of the return of income as per section 139 (1) of the act for the assessment year 2003 – 04 was 31/10/2003. Above due date was further extended up to 2/12/2003. The assessee filed its return of income on 2/12/2003, wherein claim in respect of deduction under section 80 IA of the act in respect of 2 power plants were made. However, claim with respect to the Bharuch (Third) power plant has been made by way of notes on computation of taxable income attached with the return of income. The assessee mentioned vide note No. 6 in that computation that during the year 94- 95, the company had commission a 30 MW power plant at its SFC unit at Kota. Further, during the financial year 1999 – 2000, the company had commission a 10.3 MW power plant at its SMC unit at Kota. The aforesaid flower plants are new industrial undertaking under section 80 IA of the Income Tax Act and are eligible for deduction under section 80 IA. Accordingly, the deduction under section 80 IA is

claimed in respect of above undertakings of Rs. 11, 07, 93, 211/- and Rs. 6 233 0771/- respectively. The above figures were given as per the accounts duly audited for these undertakings. The working were further certified by chartered accountants vide their reports in form No. 10 CCB and 3 CD which were also submitted along with the return of income. It was further stated that the company has one more power plant of 18 MW, which was commissioned in 1995 - 96 at Bharuch. The plant was also eligible as new industrial undertaking under section 80 IA of the income tax act. The company has not been able to prepare its separate accounts

For these undertakings and workout the deduction under section 80 IA of the act. Therefore, the deduction in respect of this power plant is not being claimed for the time being the same will be claimed subsequently. Consequently, on 29/3/2004 intimation under section 143 (1) of the income tax act was passed and refund was allowed by the Ld. AO on 31/3/2004 wherein interest under section 244A (1) of the act was granted from 01/04/2003 date of intimation vide refund voucher. Further, the assessee during the course of assessment proceedings, on 24/3/2006 submitted audit report in the prescribed form in respect of Bharuch power plant wherein the computation of the claim was provided. Consequently, the assessment order under section 143 (3) was passed by the Ld. assessing officer wherein deduction claimed under section 80 IA of the income tax act all the 3 power plants were disallowed. In consequence, thereto, while computing the tax payable by the assessee, The Ld. assessing officer withdrew the interest already allowed under section 244A of the act. Subsequently, on appeal by assessee before the Ld. CIT (A) the deduction claimed by the assessee and disallowed by the Ld. assessing officer with respect to 2 industrial undertaking producing power were allowed but on Bharuch (3rd) power plant disallowance was confirmed vide order dated 30/01/2009. Consequent to that the Ld. assessing officer passed an order giving effect to the order of the Ld. CIT (A) and refund was allowed along with the interest under section 244A

(1) of the income tax act on 6/2/2009. The Ld. assessing officer further passed an order under section 154/250/143 (3) on 16/2/2010 in response to the application filed by the assessee on 15/4/2009 under section 154 of the income tax act stating that the error has been committed, while granting interest under section 244A of the act and excess refund has been adjusted of Rs. 3 795/-. The Ld. assessing officer in 154 order stated that there is an error in calculation of interest under section 244A for the period from 01/08/2006 to 28/2/2009 for 31 months at the rate of 6% per annum. Subsequently against the order of the Ld. CIT (A) both the parties preferred an appeal before the coordinate bench where the assessee was contesting that the deduction under section 80 IA with respect to Bharuch plant should be allowed to it and revenue contesting the order of the Ld. CIT (Appeal) in granting deduction with respect to other 2 power plants. The coordinate bench passed the order on 16/10/2009 wherein it allowed the deduction in respect of all plants to the assessee and dismissed the appeal of the revenue. Consequent to that assessee made several request to the Ld. assessing officer to grant consequent refund. Subsequently on 10/06/2013, The Ld. assessing officer passed an order giving effect to the order of the coordinate bench determining the refund and interest allowable to the assessee wherein he had mentioned that the interest under section 244A is not allowable from the date of filing of return to 24/03/2006 the date on which assessee submitted the audit report in the prescribed form in respect of that power plant to the assessing officer during the course of assessment proceedings giving computation of the claim made by the assessee. The Ld. assessing officer was of the view that the about delay is attributed to the assessee and therefore, interest is not allowable to the assessee for that period. Therefore, the only issue required to be adjudicated in the appeal is whether the delay for the period from 1/4/2003 to 24/03/2006 is required to be excluded for working out interest under section 244A of the income tax act, treating it as delay attributable on part of the assessee.

15. The identical situation arose in case of CIT versus South India bank Ltd 340 ITR 574 (Ker) wherein the claim was made during the course of assessment proceedings by the assessee with respect to the deduction of provision for bad and doubtful debts, the tribunal in that particular case held that assessee is entitled for the interest w.e.f. 01/04/1999 onwards. The above order of the coordinate bench was challenged before the Hon'ble Kerala High Court, who vide para No. 6 upheld the finding of the coordinate bench holding that assessing officer does not have any escape for granting interest to the assessee in terms of section 244A (1) (a) of the act. Therefore, the Hon'ble Kerala High Court held that even if the claim is made during the course of assessment proceedings and if the AO does not make out any case of delay attributable to the assessee that AO is duty bound to grant interest w.e.f. the 1st day of April.
16. The coordinate bench in case of ACIT versus Tata Power company in ITA No. 3035/MUM/2009 for assessment year 2002 – 03 vide order dated 20/4/2012, while deciding the issue of interest under section 244 wherein the TDS certificates were filed by the assessee belatedly held that assessee is entitled to interest w.e.f. 1st day of April of the assessment year. It was further held in that particular decision that if the Ld. assessing officer wanted to exclude any period for which the interest is payable under section 244A (1) of the act then he has to seek the opinion of the Chief Commissioner of the income tax. In that particular case, no such opinion was taken and therefore it was held that the interest is allowed to the assessee from the 1st day of the appeal of the assessment year. Similar view has also been taken by the Hon'ble Bombay High Court in CIT versus Larsen & Tubro Ltd in ITA No. 3013 of 2009 dated 21/06/2010
17. Further, the Hon'ble Gujarat High Court in case of Ajanta manufacturing Ltd versus Deputy Commissioner of Income Tax in SCA No. 6830 and 6832 of 2016 dated 27/7/2016 has held that the act of revising a return raising a claim during the course of the assessment proceedings cannot

be said to be the reasons for delaying the proceedings, which can be attributable to the assessee.

18. In the present case before us, the assessee has made the claim by way of noting in the original return of income filed and merely the computation and audit report have been filed during the course of the assessment proceedings. This itself proves that the assessee has made the claim during the course of the assessment proceedings. The claim made by the assessee in the original return of income and further quantified during the assessment proceedings cannot be said that there is any delay on part of the assessee. Ld AO could not say that there is any delay in any of the proceedings of the Income tax Act. We do not find that there is any delay on part of the assessee. Therefore, based on the above-cited judicial precedent, it is apparent that there is no delay, which can be attributed on the part of the assessee. In the present case, the Ld. CIT (A) has directed the Ld. assessing officer to refer the matter to the Chief Commissioner of income tax. The order of the Commissioner of Income Tax was passed on 03/07/2014, the revenue till to date could not show us any evidence that the Ld. Assessing Officer has made any reference for the opinion of the Chief Commissioner of the Income Tax. The Ld. assessing officer has not done so before rejecting the application for the refund of the assessee for a particular period for which he is not empowered to. In view of the above startling facts before us, we do not find that there is any delay attributable on part of the assessee. Above view is also supported by the decision of the Hon'ble Gujarat High Court in Ajanta manufacturing Ltd versus deputy CIT (supra) as well as the decision of the Kerala High Court in case of CIT versus South Indian bank Ltd., (supra) . The issue of reference to the Ld. Commissioner of income tax is also covered in favour of the assessee by the decision of the coordinate bench in case of Tata Power Company (supra). In view of this we are of the opinion that the assessee is eligible for interest w.e.f. 01/04/2003 to 24/03/2006 as for the above period there is no delay attributable on the part of the assessee. Therefore we reverse the order

of the Ld. CIT (Appeal) in directing the Ld. Assessing Officer to refer the matter to the Chief Commissioner of Income Tax for his opinion and direct the Ld. Assessing Officer to grant interest to the assessee under section 244A of the income tax act w.e.f. 01/04/2003 to 24/03/2006, the period for which the Ld. assessing officer held that delay is attributable on part of the assessee.

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

Order pronounced in the open court on 29/12/2017.

-Sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:29/12/2017
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi