

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, ई, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री एन. के. प्रधान, लेखा सदस्य, के समक्ष**

**Before Shri Joginder Singh, Judicial Member, and
Shri N.K. Pradhan, Accountant Member**

**ITA NO.3699/Mum/2012
Assessment Year: 2002-03**

M/s. Small Industries Development Bank of India SIDBI, 4th floor, Corporate Accounts Dept., MSME Development Centre, C-11, G Block, Bandra Kurla Complex, Bandra (E), Mumbai 400 051,	बनाम/ Vs.	DCIT, Central Circle-3(3), Mumbai
(निर्धारिती / Assessee)		(राजस्व / Revenue)
P.A. No. AABCS3480N		

निर्धारिती की ओर से / Assessee by	Shri Gaurav Kabra
राजस्व की ओर से / Revenue by	Shri Manjunath Swamy-DR

सुनवाई की तारीख / Date of Hearing :	30/05/2018
आदेश की तारीख /Date of Order:	30/05/2018

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The assessee is aggrieved by the impugned order dated 24/02/2012 of the Ld. First Appellate Authority, Mumbai, allowing the interest u/s 244A on the refund amount up to the date of refund voucher i.e. 31/05/2010 and not till the actual date of receipt of refund by the assessee, i.e. 14/06/2010.

2. During hearing, Shri Gaurav Kabra, Ld. counsel for the assessee, claimed that the impugned issue is covered in the case of assessee itself for Assessment Year 2003-04 (ITA No.3707/Mum/2012), order dated 15/09/2017. On the other hand, Shri Manjunath Swamy, Ld. CIT-DR, defended the impugned order but did not controvert the assertion of the assessee that the impugned issue is covered by the aforesaid order of the Tribunal dated 15/09/2017.

2.1. We have considered the rival submissions and perused the material available on record. In view of the above, we are reproducing hereunder the relevant portion from the

aforesaid order of the Tribunal dated 15/09/2017 for ready reference and analysis:-

“The captioned appeal by the assessee is directed against the order of CIT(A)-7, Mumbai dated 24.02.2012, pertaining to the Assessment Year 2003-04, which in turn has arisen from the order passed by the DCIT-3(3), Mumbai dated 19.02.2010 under section 143(3) r.w.s. 254 of the Income Tax Act, 1961 (in short ‘the Act’).

2. In its appeal, assessee has raised the following Grounds of appeal:-

“1(a). On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in allowing interest u/s. 244A on the refund amount only upto the date of refund voucher i.e. 29.03.2010 and not till the actual date of receipt of refund by the appellant i.e. 06.04.2010 and the reasons assigned by him for doing so are wrong and contrary to the facts and circumstances of the case, the provisions of the Income Tax Act, 1961, and the Rules made thereunder.

1(b) On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) ought to have allowed interest under section 244A of the Income tax Act, 1961 on the interest amount not determined and paid (i.e. wrongly withheld) for the month of April 2010, though the appellant was entitled to receive such interest amount under section 244A of the Income tax Act, 1961 and not doing so is wrong and contrary to the facts and circumstances of the case, the provisions of the Income Tax Act, 1961, and the Rules made thereunder.

2(a) On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) ought to have allowed interest under section 244A of the Income tax Act, 1961 on interest amount of Rs.22,94,72,711/- determined and wrongly withheld upto the date of refund

received by the appellant i.e. 06.04.2010 and not doing so is wrong and contrary to the facts and circumstances of the case, the provisions of the Income Tax Act, 1961, and the Rules made thereunder.

2(b) On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) ought to have allowed interest under section 244A of the Income tax Act, 1961 on the interest amount of Rs.1,06,37,053/- wrongly not determined and not paid (i.e. wrongly withheld) for the period April 2003 to April 2010 i.e. till the date refund is received by the appellant i.e. 06.04.2010, though the appellant was entitled to receive such interest amount (i.e. Rs.1,06,37,053/-) under section 244A of the Income tax Act, 1961 and not doing so is wrong and contrary to the facts and circumstances of the case, the provisions of the Income Tax Act, 1961, and the Rules made thereunder.”

3. Although the assessee has raised multiple Grounds of appeal, but the principal issue, as manifested in Ground no. 1(a) above, revolves around the period for which the interest is allowable to the assessee in terms of Sec. 244A of the Act on the refund due to the assessee as a consequence of the Assessing Officer giving effect to the order of the Tribunal.

4. In brief, the relevant facts are that the Assessing Officer passed an order u/s 143(3) r.w.s. 254 of the Act dated 19.2.2010 for the Assessment Year 2003-04 giving effect to the order of the Tribunal. At this stage, the Assessing Officer determined the refund amount of Rs.87,58,52,409/- inclusive of interest due u/s 244A of the Act. The assessee was not satisfied with the interest granted as per Sec. 244A of the Act as according to him the interest on refund was granted only upto the date of the order giving effect, i.e. 19.2.2010 and not upto 6.4.2010, which was the actual date of receipt of the refund by the assessee. Before the CIT(A), assessee pointed out that though the order granting refund was passed on 19.2.2010, but the refund voucher itself was dated 29.3.2010 and the refund was actually received by the assessee on

6.4.2010. Before the CIT(A), the assessee canvassed on the basis of Sec. 244A of the Act that interest is to be allowed upto the date on which “the refund is granted”, which would imply the date on which the assessee actually receives the refund. The CIT(A) was of the view that assessee was entitled for interest u/s 244A of the Act till the date of issuance of the refund voucher, i.e. 29.3.2010 and not upto the date of actual receipt of the refund voucher in the hands of the assessee. According to the CIT(A), ‘refund granted’ in the context of Sec. 244A of the Act is to be understood with reference to the date of issuance of refund voucher consequent to the refund order, and not the date of actual receipt of the refund voucher by the assessee. Therefore, while holding that the assessee was entitled for interest upto the date of refund voucher, i.e. 29.3.2010, the CIT(A) rejected the claim of the assessee for interest upto the month of April, 2010 when assessee had actually received the refund voucher. Not being satisfied with the decision of the CIT(A), assessee is in further appeal before us.

5. Before us, the learned representative for the assessee has canvassed that there is no dispute so far as the grant of refund is concerned, but the assessee is entitled to receive interest on the refund upto the date when the refund voucher is actually received by the assessee. In support of the proposition, he has relied on the following decisions :-

i) M/s. Novartis India Limited vs ACIT, ITA No. 1249 of 2010 dated 18.3.2011 (Mumbai ITAT)

ii) Deutsche Bank A.G vs DDIT, ITA No. 3791 of 2010 dated 10.4.2013 (Mumbai ITAT)

iii) CIT vs Pfizer Limited, 191 ITR 626 (Bombay) HC

iv) CIT vs H.E.G. Ltd., 324 ITR 331 (2010) SC

6. On the other hand, the Id. CIT-DR appearing for the Revenue has defended the order of the CIT(A) by reiterating the reasoning contained therein, which we have already noted in

the above paras and is not being repeated for the sake of brevity. Apart therefrom, the Id. CIT-DR pointed out that after the issuance of refund voucher on 29.3.2010, there is no inordinate delay inasmuch as the refund voucher has been received by the assessee on 6.4.2010 itself and, therefore, the CIT(A) was justified in allowing interest upto the date of the refund voucher.

7. We have carefully considered the rival submissions. Notably, the only issue in dispute is the period for which assessee is entitled to interest u/s 244A of the Act. According to the assessee, the CIT(A) erred in granting interest upto the date of issuance of refund voucher, i.e. 29.3.2010 whereas as per the assessee, it is entitled to interest upto April, 2010 (i.e. upto the date of receipt of refund voucher on 6.4.2010). In this context, we find that the Hon'ble Bombay High Court in the case of Pfizer Limited, 191 ITR 626 (Bom) has held that assessee is entitled to interest upto the date of receipt of the refund order. Similarly, our coordinate bench in the case of M/s. Novartis India Limited, ITA No. 1249/Mum/2010 dated 18.3.2011 has decided a similar issue in favour of the assessee by referring to an unreported judgement of the Hon'ble Bombay High Court in the case of Citi Bank vs. CIT in ITA No. 6 of 2001 dated 17.7.2003, wherein the claim of the assessee for interest was upheld upto the date when the Pay Order is "actually received by the assessee pursuant to the order sanctioning the refund". Therefore, following the aforesaid precedents, in our view, the assessee is justified in seeking interest u/s 244A of the Act upto the date of receipt of the refund order, i.e. 6.4.2010. Thus, on this aspect, assessee succeeds. 6 ITA No. 3707/Mum/2012

8. Before parting, we may refer to the various Grounds raised by the assessee. At the time of hearing, it was a common point between the parties that consequent to the decision on Ground no. 1(a), which we have already decided in the earlier paras, the issues raised in balance of the Ground nos. 1(b) to 2(b) are consequential. Therefore, the Assessing Officer is

directed to re-compute the interest due to the assessee u/s 244A of the Act in compliance with our aforesaid decision.

9. In the result, appeal of the assessee is allowed, as above.”

2.2. We find that in the aforesaid order, the Tribunal duly considered various decisions like M/s. Novartis India Limited vs ACIT, ITA No. 1249 of 2010 dated 18.3.2011 (Mumbai ITAT), Deutsche Bank A.G vs DDIT, ITA No. 3791 of 2010 dated 10.4.2013 (Mumbai ITAT), CIT vs Pfizer Limited, 191 ITR 626 (Bombay) and CIT vs H.E.G. Ltd., 324 ITR 331 (2010) Supreme Court. It is noted that Hon'ble jurisdictional High Court in the case of Pfizer Limited, 191 ITR 626 (Bom) has held that assessee is entitled to interest upto the date of receipt of the refund order. Similarly, our coordinate bench in the case of M/s. Novartis India Limited, ITA No. 1249/Mum/2010 dated 18.3.2011 has decided a similar issue in favour of the assessee by referring to an unreported judgement of the Hon'ble Bombay High Court in the case of Citi Bank vs. CIT in ITA No. 6 of 2001 dated 17.7.2003, wherein the claim of the assessee for interest was upheld upto the date when the Pay Order is “actually received by the assessee pursuant to the order sanctioning the refund”.

Therefore, following the aforesaid decision of the Tribunal and also from Hon'ble Bombay High Court including Hon'ble Apex Court, we find merit in the claim of the assessee by holding that the interest u/s 244A of the Act is to be allowed upto the date of receipt of refund order. Thus, the appeal of the assessee is allowed.

Finally, the appeal of the assessee is allowed.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 30/05/2018.

Sd/-

(N.K. Pradhan)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 30/05/2018

Shekhar. P.S/निजी सचिव

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,

ITAT, Mumbai

6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai,**