

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

BEFORE SHRI G. S. PANNU, VP AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. Nos.1128/Mum/2017 & 1093/Mum/2017
(निर्धारण वर्ष / Assessment Years: 2004-05 & 2008-09)

DCIT-2(1)(1) Room No. 561, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	बनाम/ Vs.	M/s. Bank of India Star House, C-5, G-Block Bandra-Kurla Complex Bandra (E), Mumbai- 400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACB0472C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Awunashi Gimson	
Assessee by:	Shri C. Naresh	

सुनवाई की तारीख / Date of Hearing: 21.08.2018
घोषणा की तारीख /Date of Pronouncement: 31.10.2018

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the above mentioned appeals against the different order passed by the Commissioner of Income Tax (Appeals)-3, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the AYs. 2004-05 & 2008-09.

ITA. NO. 1128/M/2017

The revenue has filed the present appeal against the order dated 15.11.2016 passed by the Commissioner of Income Tax (Appeals)-3,

Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the AY. 2004-05.

2. The revenue has raised the following grounds: -

“Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was correct in law in holding that the interest portion of the refund issued earlier has to be ignored for the purpose of calculating interest u/s 244A of the Income tax Act, 1961, payable to the assessee, on refund arising out of the order giving effect to order of appellate authority?.

2. "Whether on the facts and circumstances of the case the Tribunal was correct in law, in interpreting the provisions of section 244A of the Income tax Act, 1961, so as to ignore interest already granted u/s 244A. while calculating interest in order giving effect to the appellate authority."

3. For these and other grounds that may be urged at the time of hearing, the decision of the CIT(A) may be set aside and that of the AC be restored,”

3. The brief facts of the case are that the assessee filed its return of income on 30.10.2004 declaring total income to the tune of Rs.846,32,11,640/ under the normal provisions of the I.T. Act. Thereafter, the assessee revised the return of income on 29.04.2005 declaring an income of Rs.426,22,65,630/-. Thereafter, the assessment was selected for scrutiny and notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee has claimed the bad debts of Rs.508,90,28,469/- u/s 36(1)(vii) of the Act in the revised return of income. In the original return of income, the assessee claim of bad debts in sum of Rs.550,03,05,865/-, the same was reduced by Rs.41,12,77,396/-. The assessee has further claimed the deduction u/s 36(1)(viia) of the Act as under:

7.5% of total income of	Rs.60,20,39,885/-
10% of rural advances of	Rs.305,92,25,746/-
To the extent of profit on buy back	
Govt. Securities of	Rs.9,83,65,220/-
Total	Rs.375,96,30,845/-

The AO disallowed the claim of bad debts to the extent of Rs.375,96,30,845/-. After some more disallowance, the income of the assessee was assessed to the tune of Rs.1459,09,86,270/-. The assessee was not satisfied, therefore, filed an appeal before the CIT(A) who allowed the claim of the assessee partly but the revenue was not satisfied on the point of adjusting the interest portion of the refund issued earlier for the purpose of calculating the interest u/s 244A of the I.T. Act, 1961 payable to the assessee. Therefore, the revenue has filed the present appeal by us.

4. We have heard the argument and advanced by the Ld. Representative of the parties and perused the record. The issue relates to non-grant of interest while allowing the interest u/s 244A of the I.T. Act, 1961. The CIT(A) decided the matter of controversy on the basis of the decision of the Hon'ble ITAT in the assessee's own case for the A.Y. 2008-09. The relevant finding is hereby reproduced below: -

“6 Ground No. 1 relates to non-grant of interest on interest while allowing interest u/s 244A of the IT ACT This is an appeal of the appellant against the order of the AO passed u/s 254 dated 18.03.2014. This issue has been decided in the appellant's own

case for the AY 2008-09 and 2001-02 by ITAT 'B' Bench, Mumbai in which the Hon'ble ITAT has held that-

"6. We heard Ld. DR and perused the record. We notice that an identical issue was considered by this bench of Tribunal in the assesses own case referred supra and the same was decided as under:-

"5. The next issue contested by the assesses relates to granting of interest u/s 244A of the Act, The Ld. AR submitted that the assesses has been receiving refunds upon passing of orders by the appellate authorities or upon passing of orders u/s 154 of the Act. The Ld. AR submitted that the AO has made adjustment of refund (consisting of tax and interest) already granted against the refund of tax due in each of the successive orders. The Ld. AR submitted that the entire of refund (both tax and interest) granted be first against the interest portion that has become due and then the remaining amount, if any, should be adjusted against the tax portion of the refund the has become due. In support of hit, contention, the Ld. AR placed reliance on the decision rendered by the Tribunal in the assesses own case in ITA No- 5344 to 5446/Mum/2013 dated 22.12.2014 and also the decision rendered by the Tribunal in the case of Union Bank of India (ITA No. 571 & 574/M/2013 dated 23.06.2014).

6. We heard the parties on this issue. Since it is matter involving computation of eligible amount of interest u/s 244A of the Act, we are of the view that this issue requires fresh examination the end of the AO. in the relied upon by the assessee, the Tribunal has followed the decision rendered by the Hon'ble Delhi High Court in the case of India Trade Promotion Organization Vs. CIT (361 ITR 646] and accordingly given direction to the AO to fallout the said decision. Consisted with the view taken by the Tribunal, restore this issue to the with the direction to examine the issue afresh by following the decision rendered in the case of India Trade Promotion Organization (supra)"

Consistent with the view taken in the above said appeal, we restore this issue to the file of the AO in both the years with similar directions.

6.2 In view of the above facts and circumstances of the case, the AO is directed to recomputed the interest as directed by the Hon'ble Tribunal in the appellant's own case and allow refund as per the provisions of section 244A of the IT Act. Therefore, Ground No- 1 is partly allowed."

5. On appraisal of the above mentioned finding, we notice that the Hon'ble ITAT remanded the issue before the AO to decide the matter of controversy afresh on the decision of the Hon'ble Delhi High Court in case of **India Trade Promotion Organisation Vs. CIT (361 ITR 646)** and accordingly, allow the refund in view of the provision 244A of the Act. The facts are not distinguishable at this stage. No distinguishable material has been produced before us to which it can be assumed that the finding of the CIT(A) is wrong against law and facts. Taking into account, all the facts and circumstances, we are of the view that the finding of the CIT(A) is quite correct which is not liable to be interfere with at this appellate stage.

ITA. NO. 1093/M/2017

The revenue has filed the present appeal against the order dated 15.11.2016 passed by the Commissioner of Income Tax (Appeals)-3, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the AY. 2008-09.

6. The revenue has raised the following grounds: -

- “1. "On the facts and in the circumstances of the case and in law, the Ld, CIT(A) has erred in holding chat the expenses of Rs,28,41,01, 133/-represent auditor's travel expenses without realizing that the assessee itself categorized these expenses as 'Hotel, Boarding & Lodging expenses",

2. "The Ld CIT(A) erred in taking the expenses out of FBT ambit without appreciating the assessee itself has offered FBT @ 5% on these expenses."
3. "The Ld CIT(A) erred in deleting the levy of FBT without providing the AO an opportunity to examine the new contention of the assessee that these expenses are auditor's Travel expenses."
4. For these and other grounds that may be urged at the time of hearing the decision of the CIT(A) may be set aside and that of the AO restored."

7. The facts of the present case are that quite similar to the facts of the case as narrated above in the appeal bearing no. 1128/M/2017. However, the figure is different.

ISSUE Nos. 1 to 3:-

8. Issue nos. 1 to 3 are in connection with the allowance of expenses of Rs.28,41,01,133/- on account of auditor's travel expenses. The assessee nowhere took the plea that auditor's travel expenses are not liable to be FBT in view of the Circular no. 8/2005. The AO declined the claim. On the other hand, the CIT(A) has allowed the claim on the ground of that the plea was not taken before the AO. Taking into account, all the facts and circumstances, we are of the view that the facts are liable to be considered at the end of the AO and to be adjudicated in accordance with law by giving an opportunity of being heard to the assessee. Accordingly, the finding of the CIT(A) is hereby ordered to be set aside and the issue is restored before the AO to decide the matter afresh in view of the plea taken before the

CIT(A). Accordingly, these issues are decided in favour of the revenue against the assessee.

9. In the result, the appeal filed by the revenue is hereby ordered to be partly allowed.

Order pronounced in the open court on 31.10.2018.

Sd/-

(G. S. PANNU)
VICE PRESIDENT

Sd/-

(AMARJIT SINGH)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31.10.2018.

Vijay

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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