

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “B” BENCH

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)**

**ITA. Nos: 1165 & 1166/AHD/2018
(Assessment Years: 2003-04 & 2009-10)**

Dy. Commissioner of Income-tax (Exemptions), Circle-2, Ahmedabad	V/S	M/s. Kandla Port Trust A.O Building Tagore Road, P.O. Box No. 50, Gandhidham
(Appellant)		(Respondent)

PAN:AAALK0046N

**Appellant by : Shri Mudit Nagpal, Sr. D.R.
Respondent by : Shri J.P. Shah, A.R.**

(आदेश)/ORDER

Date of hearing : 29 -07-2019

Date of Pronouncement : 30 -07-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. These appeals filed by the Revenue are directed against the order of the Ld. CIT(A)-3, Rajkot dated 29.01.2018 pertaining to A.Ys. 2003-04 & 2009-10 and solely grounds have been taken in both the appeals that ld. CIT(A) has erred in

law and on facts in directing the A.O. to compute the interest u/s. 244A of the Act on self assessment tax without appreciating the fact that no interest u/s. 244A of the Act is allowable on the refund due to the assessee on the self-assessment tax.

2. Since facts and circumstances and issues are common in both the appeals only figures and assessment years are different, therefore, for the sake of convenience, we would like to dispose of both the appeals by way of a common order.
3. The facts of the case are as emanates from the A.O. Order:

In this case, the assessee has filed rectification application dated 18/06/2016 by stating that there is refund of Rs,4,35,55,33,105/- with interest u/s 244A of the Act pending. On verification of the case records of the assessee, it was noticed that the assessee has been granted entire credits of prepaid taxes in the latest order of Hon'ble ITAT set aside order, taxable income was re-determined to the tune of Rs.1,52,21,90,610/-, thus credit of pre paid taxes allowable come to Rs.59,45,32,257/- and tax demand raised come to Rs.59,45,32,257/-, hence net tax payable or refundable come to Nil.

Therefore, this office has issued letter on 26/07/2016 giving due opportunity to the assessee by stating that as per this office records, there is no refund or interest pending to be issued for this respective assessment year, if any objection on this issue, furnish your reply on or before 02/08/2016.

In response to the afore said letter dated 26/06/2016 that the assessee has filed reply on 02/08/2016, the assessee has furnished written reply without supporting documents which read as under: -

"ITAT vide order dated 28/05/2015 issued the direction to AO to examine the claim of deduction u/s 11 to 13 of IT Act in view of the retrospective

grant of registration in June 2008 by CIT-Rajkot. The AO has to give the appeal effect of the order of the ITAT which is already delayed as KPT has already submitted the Form No. 10 and Audit report in Form No. WB and other details to justify the deduction u/s 11 to 13. As the tax payable is NIL in view of the above entire amount of advance tax, TDS, self assessment tax and demand of tax paid becomes refundable along with interest as per the calculation already submitted."

The submission of the assessee is duly verified and found incorrect, Hon'ble ITAT's order effect already granted on 17/07/2015 and revised taxable income re-determined to the tune of Rs.1,15,21,90,610/-. The said appeal effect also duly served upon the assessee on 31/07/2015. Therefore, rectification application filed is hereby rejected and treated as filed for the following grounds:-

- > The assessee has not furnished any specific credits which are pending to be granted*
- > The Hon'ble ITAT's order effect already granted and copy of order served upon the assessee on 31/07/2015.*
- > There is no pre-paid taxes or TDS pending to be granted*
- > Applicable interest u/s 244A of the Act already granted in the order appeal effect dated 27/12/2004.*
- > The assessee has been granted reasonable opportunity to furnish evidences in support of this rectification application.*

As such, there is no apparent mistake on records to rectify, therefore application for rectification filed is hereby rejected and treated as filed.

4. Against the order of the ld. A.O., assessee preferred first statutory appeal before the ld. CIT(A) who allowed the appeal of the assessee.
5. Now by way of second statutory appeal, revenue has come before us.
6. The question is before us is whether assessee is liable to get refund on interest of self-assessment tax u/s. 244A of Income Tax Act is or not. Section 244 is

speaks about interest on refund wherein it is mentioned that *“where refund of any amount become due to the assessee under this Act, he shall, subject to the provision of Section, be entitled to receive, in addition to said amount simple interest thereon.”*

7. Several High Courts and the Hon’ble Supreme Court had decided these kind of matter in favour of assessee:

a) *CIT vs HEG Ltd 324 Taxman 331 (SC)*

Section 244A of the Income-tax Act, 1961 - Refunds - Interest on -Assessment year 1993-94 - During assessment year 1993-94 amount paid by assessee towards TDS was Rs. 45,73,528 - Tax paid after original assessment was Rs. 1,70,00,320 - Assessee was entitled to refund of Rs. 2,16,73,848 (consisting of Rs. 1,71,00,320 and Rs. 45,73,528) which payment was made after 57 months - It claimed statutory interest for delayed refund of Rs. 45,73,528 for 57 months between 1-4-1993 and 31-12-1997 in terms of section 244A - Department contended that words 'any amount' would not include interest which accrued to respondent for non-refunding of Rs.45,73,528 for 57 months - Whether argument of department could not be accepted, as interest component partakes of character of 'amount due' under section 244A - Held, yes - Whether, therefore, assessee would be entitled to interest for 57 months on Rs.45,73,528 - Held, yes

b) *HIGH COURT OF GUJARAT*

Ajanta Manufacturing Ltd. Vs. The Deputy Commissioner of Income - Tax, [2016] 72 taxmann.com 148 (Gujarat) JULY 27, 2016

IT: Where issue of refund order was not delayed for any period attributable to assessee, assessee would be entitled to interest in terms of section 244A(1)(a)

Section 244A, read with section 154, of the Income-tax Act, 1961 - Refunds - Interest on (Illustration) - Assessment year 2008-09 - During relevant year

assessee received incentive subsidy which was erroneously offered to tax in its return -Commissioner (Appeals), however, deleted such receipt from assessee's total income resulting in refund claim - Subsequently, under rectification proceedings, Assessing Officer withdrew interest on refund under section 244A(2) on ground that assessee raised a belated claim during assessment proceedings, and such action was further affirmed by Commissioner - Whether interest on refund could be withheld in terms of sub-section (2) of section 244A, only if it was found that assessee was responsible for causing any delay in proceedings which resulted into refund - Held, yes - Whether mere fact that assessee made a claim during course of assessment proceedings which was allowed at appellate stage would not ipso facto imply that assessee was responsible for causing delay in proceedings resulting into refund - Held, yes - Whether since issue of refund order was not delayed for any period attributable to assessee, he would be entitled to interest in terms of section 244A(1)(a) - Held, yes [Paras 16 & 17]

[In favour of assessee]

8. As matters are squarely covered by the orders of the Hon'ble Supreme Court and Hon'ble different High Courts as well as Income Tax Act provisions are also in favour of assessee. In our considered opinion, Id. CIT(A) has passed reasoned order and same does not require any kind of interference at our end.

9. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced in Open Court on	30 - 07- 2019
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Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER **True Copy**
Ahmedabad: Dated 30/07/2019

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER