

IN THE INCOME-TAX APPELLATE TRIBUNAL “C” BENCH MUMBAI

BEFORE SHRI G.S. PANNU, VICE-PRESIDENT AND

SHRI PAWAN SINGH JUDICIAL MEMBER

ITA No. 765/Mum/2015 (Assessment Year 1999-2000)

ITA No. 766/Mum/2015 (Assessment Year 2000-2001)

| | | |
|--|-----|---|
| Indo Gulf Corporation Ltd. (since amalgamated with Hindalco Industries Ltd.), Century Bhavan, 3 rd Floor, Dr. Annie Besant Road, Worli, Mumbai 400030 PAN – AAACI5791F | Vs. | Dy.CIT,Central Circle-1(4) Room No. 902, 9 th Floor, Old CGO Building (Annex), M.K. Road, Mumbai 400 020 |
|--|-----|---|

Appellant

Respondent

Appellant by : Shri Yogesh Thar (AR)

Respondent by : Shri R.A. Dhyani (DR)

Date of Hearing : 05.09.2019

Date of Pronouncement : 18.09.2019

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. These two appeals by assessee are directed against the order Id. Commissioner of Income Tax (Appeals)-12 [the Id. CIT(A), Mumbai dated 11.11.2014 & 12.11.2014 for Assessment Year 1999-2000 & 2000-01 respectively. In both the appeals, the assessee has raised certain common grounds of appeal, therefore, both the appeals were clubbed and heard together and decided by common order for the appreciation of facts. The facts in appeal for Assessment Year 1999-2000 is taken as lead case. The assessee has raised the following grounds of appeal:

1. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) has erred in confirming the order of the Ld. AO in not granting the Interest u/s 244A in accordance with the provision of the I.T. Act.
 2. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) has erred in confirming the order of the Ld. A.O in not allowing the interest u/s 244A of the Act upto the date of issue of the refund voucher i.e on 20.05.2011 in terms of the CBDT circular No. 20D(XXII-22) dated 20.08.1968 wherein the instructions have been given for calculating interest upto the date of issue of the refund voucher.
 3. On the facts and in the circumstances of the 'case and in law, the learned Commissioner of Income Tax (Appeals) has erred in not considering the submission of the appellant that
 - a. The above ground is covered by the decisions of Hon'ble Appellate Tribunal, Lucknow in appellant's own case in ITA No. 396 & 297/LKW/2009 for AY 1997-98 and ITA No. 419 & 420 ILKW/2011 for AY 2002-03.
 - b. The aforesaid decisions of Appellate Tribunal, Lucknow have been confirmed by the Hon'ble Allahabad High Court vide Order dated 16th July 2012 and 7th August 2012.
 4. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) has erred in confirming the order of the Ld. A.O in not allowing further interest u/s. 244A which is allowable to the appellant on the amount of interest withheld by the Department in view of the judgment of the Hon'ble Supreme Court in the case of Sandvik Asia Ltd. (280 ITR 643).
2. At the outset of hearing, the Id. Authorized Representative (AR) of the assessee submits that Ground No.1 to 3 of the appeal are covered in favour of assessee by the decision of Mumbai Tribunal in assessee own case in ITA No. 764 & 767/M/2015 for A.Y. 1999-2000 & 2000-2001 dated 20.01.2017 wherein the order of Lucknow Tribunal in Indo-Gulf

Corporation vs. DCIT in ITA No. 396 & 397/LKW/2011 dated 15.07.2011 was followed. The ld. AR further submits that decision of Lucknow Tribunal has been approved by Hon'ble Allahabad High Court as the appeal filed by the revenue has been dismissed vide order dated 16.07.2012 in ITA No. 43 of 2011. For Ground No.4, the ld. AR of the assessee submits that this ground of appeal is against the assessee by the decision of Hon'ble Delhi High Court in case of CIT vs. Engineers India Ltd. [373 ITR 377 (Del.)].

3. On the other hand, the ld. Departmental Representative (DR) for the revenue on Ground No.1 to 3 relied upon the order of lower authorities and on Ground No.4 submits that since the ld. AR of the assessee has already conceded that this ground of appeal is against the assessee. Thus, this ground of appeal may be dismissed.
4. We have considered the submission of both the parties and have gone through the orders of authorities below. Perusal of order of lower authority reveals that case was last revised on 31.12.2010 u/s 143(3)/154/251/254, resulted in refund of Rs. 9,14,54,599/-. The assessee filed an application u/s 154, *interalia* claiming that the interest has not been calculated in the order dated 31.12.2010, being calculated upto 31.12.2010, while it was payable upto the date of refund voucher i.e. on 20.05.2011, and further interest on interest. Thus, before us, there is two issues, firstly upto which date the assessee is entitled to interest

on refund, if till the order dated 31.12.2010 or upto 20.05.2011 (date of refund voucher) and Secondly, if the assessee is also entitled to interest on the interest as claimed by the assessee.

5. The Assessing Officer, repudiated both the claims of the assessee for first claim i.e. the upto date interest till the date of refund voucher was denied by taking view that the Rajasthan High Court in Rajasthan State Electricity Board vs. CIT (2006) 281 ITR 274 (Raj.) held that the refund is granted, the moment the officer signed the payment interest u/s 244A. The second contention of assessee for claiming interest on interest was declined on the ground that the decision of Sandvik Asia Ltd. (280 ITR 643), relied by assessee is based on a peculiar facts of said case and cannot be applied on the facts of the present case and that statutory provision do not provide for grant of interest on interest. The ld. CIT(A) concurred with the finding of Assessing Officer on both the issues/counts. We have n

6. We have noted that the Co-ordinate bench of Mumbai Tribunal in assessee's own case in Indo-Gulf Corporation Ltd. (ITA No. 764/Mum/2015 and 767/Mum/2015, while relying upon the decision of Lucknow Bench in assessee's own case cited (supra) decide the issue in favour of assessee holding that interest under section 244A has to be granted till date of issuance of refund voucher. The relevant part of order of Mumbai Tribunal is extracted below:

“7. We have considered the submissions of the parties and perused the material available on record. The short issue before us is, whether the assessee is entitled to receive interest u/s 244A of the Act till the date of issuance of refund voucher. We find, the Tribunal, Lucknow Bench in assessee’s own case cited supra, had decided the issue in favour of the assessee by holding that interest under section 244A of the Act has to be granted till the date of issuance of refund vouchers. The Hon’ble High Court has also approved the aforesaid decision of the Tribunal while dismissing the appeal preferred by the Department. In view of the aforesaid, we direct the Assessing Officer to allow interest on refund under section 244A of the Act till the date of issuance of refund voucher on 20th May 2011. The issue being identical in assessment year 2000-01, our aforesaid order will apply mutatis mutandis to the said assessment year and the Assessing Officer is directed to allow refund of interest accordingly. Grounds No. 1 and 2 for both the assessment years are allowed.

8. In Ground No.3, which is common in both the assessment years, the assessee has claimed interest on delayed payment of interest under section 244A of the Act.”

7. Considering the decision of Tribunal, we find that the issue/first contention raised in Ground No. 1 to 3 are squarely covered in favour of assessee. Hence, we direct the Assessing Officer to allow the refund of interest till the date of issuance of refund voucher i.e. 20th May 2011. In the result, Ground No.1 to 3 are allowed.
8. Ground No.4 relates to claiming interest on the interest. The Id. AR of the assessee has fairly conceded that this ground of appeal is covered against the assessee by the decision of Hon’ble Delhi High Court in CIT vs. Engineers India Ltd. (supra). Hence, this ground of appeal is dismissed.

ITA No. 766/Mum/2015 for A.Y. 2000-01

9. The assessee has raised identical ground of appeal as raised in appeal for A.Y. 1999-2000, which we have partly allowed. Therefore, this appeal is also partly allowed for similar direction.

10. In the result, both the appeals of the assessee are partly allowed.

Order pronounced in the open court on 18/09/2019.

Sd/-
G.S. PANNU
VICE-PRESIDENT

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Mumbai, Date: 18.09.2019

SK

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "C" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai