

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

BEFORE SHRI S. RIFAUR RAHMAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 4265/MUM/2018
Assessment Year: 2009-10**

OOCL Logistics (India) Private Limited, ICC Chambers, 5 th Floor, Saki Vihar Road, Powai, Opp, Santogen Silk Mills, Mumbai - 400072 PAN: AAACO7690K	Vs.	The Deputy Commissioner of Income Tax-7(1), Aayakar Bhavan, Mumbai - 400020
(Appellant)		(Respondent)

Assessee by : Shri Abhishek Tilak (AR)

Revenue by : Shri Kumar Padmapani Bora (DR)

Date of Hearing: 16/09/2019
Date of Pronouncement: 26/09/2019

ORDER

PER RAM LAL NEGI, JM

The assessee has filed the present appeal against the order dated 17.01.2017 passed by the Commissioner of Income Tax (Appeals)-13 (for short 'the CIT(A), Mumbai, pertaining to the assessment year 2009-10, whereby the Ld. CIT(A) has dismissed the application filed by the assessee u/s 154 of the Income Tax Act, 1961 (for short the 'Act') for rectification of appellate order passed by the Ld. CIT(A).

2. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

1. "Ground 1- Grant of refund

It is prayed that the learned AO be directed to refund INR 46,16,231 [inclusive of interest under section 244A of the Act computed in the intimation passed under section 143 (1) of the Act] which is in the nature of amount paid in excess over the tax liability duly determined by the AO since the same does not

partake the nature of income tax and is refundable to the Appellant along with applicable interest under the Act.

2. Ground 2- Mistake apparent from record.

On the facts and the circumstances of the case and in law, the learned CIT (A) has erred in not appreciating the fact that the rectification was sought on a mistake apparent from records in respect of tax refund of INR 46,16,231 not granted to the Appellant though determined to be refundable under section 143 (1) of the Act.

3. Ground 3- Non-receipt of refund by the Company

The learned AO erred in determining the refund amounting to INR 7,350 (inclusive of interest under section 244A of the Act) in the assessment order passed under section 143 (3) of the Act and not considering that the refund of INR 46,16,231 determined to be refundable under section 143 (1) of the Act, shown as refunded to the Appellant had never been refunded nor has the same been adjusted against demand of any other Assessment Year(s).

The Appellant prays that the learned DCIT be directed to verify the records and grant refund along with interest in accordance with the provisions of the Act and after considering due credit of taxes paid.

Ground 4- Short grant of interest under section 244A of the Act

The appellant prays that the AO be directed to grant interest under section 244A of the Act by considering the period for which refund has not been actually refunded.”

3. At the outset, the Ld. counsel for the assessee submitted that the present appeal has become academic and does not require adjudication on merits in view of the fact that the ITAT has allowed the assessee's appeal ITA No. 6028/Mum/2016 against the order dated 08.07.2016 passed by the Ld. CIT(A) in quantum appeal, vide which the Tribunal has directed the AO to re-

determine the correct refund amount as well as interest due to the assessee and refund the same.

4. The Ld. departmental representative did not controvert the facts stated by the Ld. counsel and further did not oppose the submissions aforesaid.

5. After hearing both the sides, we asked the Ld. counsel to make written submission in this regard. Accordingly, the Ld. counsel submitted written submissions dated 24.09.2019, duly signed by the Managing Director of the Company. The relevant portion of the written submissions made on behalf of the assessee company reads as under:-

“Your Honour may observe that both the Original Appeal and the captioned appeal were filed for non-receipt of refund of excess tax amount paid over tax liability as determined by the learned AO under section 143 (1)/ 143(3) of the Act.

Hon’ble Tribunal (Bench D) disposed the Original Appeal vide its order dated 25 July 2018 and remitted the matter back to the file of AO for re-determination of correct refund amount as well as interest due to the Company with a direction to grant legitimate refund as due to the Company.

The Appellant has also filed an application for giving effect to the aforesaid order of Mumbai Tribunal on 11 July 2019 which is pending to be processed by the Learned Assessing Officer. Copy of application is enclosed as Annexure 2.

The Appellant would like to submit that since the ground for non-receipt of refund along with interest has already been considered by Hon’ble Tribunal in the Original Appeal, the captioned appeal may e considered academic in nature.”

5. We have perused the material on record. As pointed out by the Ld. counsel, the present appeal of the assessee has become academic/infructuous as the coordinate Bench has allowed the appeal filed by the assessee against the quantum order passed by the Ld. CIT(A). In the light of the aforesaid facts this appeal does not require adjudication on merits. Accordingly, we dismiss the present appeal of the assessee being academic/infructuous.

In the result, appeal filed by the assessee for assessment year 2009-10 is dismissed.

Order pronounced in the open court on 26th.September, 2019.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 26/09/2019

Alindra, PS

आदेश 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