

आयकर अपीलिय अधिकरण, दिल्ली न्यायपीठ "बी", नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B', NEW DELHI**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं डॉ. बी. आर. आर. कुमार, लेखा सदस्य के समक्ष

**BEFORE MS. SUSHMA CHOWLA, JUDICIAL MEMBER &  
DR. B.R.R.KUMAR, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA Nos. 5221 & 5222/Del/2016  
निर्धारण वर्ष / Assessment Years: 2005-06 & 2009-10

DCM Shriram Ltd.,  
5<sup>th</sup> Floor, Kanchenjunga Building,  
18, Barakhamba Road,  
New Delhi-110001.

PAN-AAACD0097R

.....अपीलार्थी / Appellant

vs

DCIT,  
Circle-7(1),  
C.R.Building, New Delhi.

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Pradeep Dinodia, CA,  
Sh. V.P.Gupta, Adv. & Sh. Anunav Kumar, Adv.

प्रत्यर्थी की ओर से / Respondent by : Ms. Ashima Neb, Sr.DR

सुनवाई की तारीख / Date of Hearing : 03.10.2019	घोषणा की तारीख / Date of Pronouncement: 30.10.2019
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

Both the appeals filed by assessee are against separate orders of CIT(A)-37, New Delhi, dated 16.09.2016 & 22.08.2016 passed u/s 154/143(3) of the Income Tax Act, 1961 relating to assessment years 2005-06 & 2009-10 respectively.

2. The assessee has raised following grounds in these appeals:-

**ITA No. 5221/Del/2016 [Assessment Year: 2005-06]**

1. *“That the CIT(A) erred in not appreciating the claim and contentions of the Appellant company and also clear provisions of Sections 240 and 244A of the Income Tax Act. She failed to appreciate that amount of refund of Rs. 2,14,64,710/- allowed by the Assessing Officer as per her order u/s 154 of the Act dated 22.06.2015 vide refund voucher dated 20.07.2015 ought to have been granted in June, 2010 and, therefore, interest was duly allowable for delay in granting the amount of refund.*

2. *That the CIT(A) also erred in not correctly appreciating the decisions of Hon'ble Delhi High Court and of Supreme Court in regard to the matter and failed to appreciate that as per the decisions interest is duly allowable on amount of refund for delay in granting the same and since granting of refund of Rs. 2,14,64,710/- was delayed for the period June, 2010 to July, 2015, interest for the delayed period was duly allowable to the appellant company.*

3. *That the CIT(A) also failed to appreciate that it is not a question of allowing interest on interest but the issue is of allowing interest on the amount of refund allowable to the appellant company and in terms of provisions of Section 240 of the Act amount refundable consist of tax as well as interest allowable to an assessee.*

4. *That the CIT(A) also failed to appreciate that since the refund allowable to the appellant company had been wrongly withheld by the Department for the period of more than 5 years, the Department was liable to pay interest thereon for the period of delay as the Department cannot take advantage of its own wrong and cause undue loss to the appellant.”*

**ITA No.5222/Del/2016 [Assessment Year: 2009-10]**

1. *“That the CIT(A) erred in not appreciating that provisions of section 154 of the Act were not applicable in the facts and circumstances of the appeal and, accordingly, order passed by the A.O. u/s 154/143(3) of the Income-tax Act dated 16.02.2016 was beyond the provisions of section 154 of the Act and, therefore, same ought to have been quashed.*
2. *That the CIT(A) erred in holding that adjustment was required to be made in respect of provision for diminution in value of fertilizer bonds of Rs.7.21 crores in computation of book profit u/s 115JB of the Act in terms of clause (i) to Explanation- 1 to the aforesaid section without appreciating that it was not a provision but it was the actual loss suffered by the company on valuation of fertilizer bonds as on 31.03.2009 and the loss has already been held as accrued liability in assessment year 2008-09 and also in assessment year 2009-10 by CIT(A), ITAT and Hon’ble Delhi High Court and allowable in computation of taxable income.*
3. *That the Hon’ble CIT(A) also failed to appreciate that the amount under reference was not a provision for diminution in value of asset but the same was actual write off in the valuation of fertilizer bonds as the appellant company had shown in its Balance Sheet as on 31.03.2009 the reduced value of fertilizer bonds and, accordingly, in view of decision of Hon’ble Supreme Court in the case of Vijaya Bank v. CIT (2010) 323 ITR 166 (SC) it was to be considered as actual write off and not the provision and, therefore, no adjustment in computation of book profit u/s 115JB of the Act was warranted and in any case no rectification u/s 154 of the Act could be made on the ground that it was a provision.”*

3. Both appeals of the assessee relating to Assessment Years 2005-06 & 2009-10 were heard together and are being disposed of by this consolidated order for the sake of convenience.

4. First we shall take up appeal of the assessee relating to Assessment Year 2005-06 wherein the issue raised is against the non-granting of interest to the assessee for the period starting from the date of determination of the refund to date of issue of refund.

5. Briefly in the facts and circumstances of the case the Assessing Officer had issued the intimation u/s 143(1) of the Act on 28.03.2016. The assessee had paid advance tax of Rs.25 crore and TDS of Rs.71,40,120/-. The refund of Rs.4,28,50,269/- was adjusted against the demand of Assessment Year 2003-04 on 31.07.2006. In the intimation issued u/s 143(1) of the Act, the period for which interest was allowed, started on 01.04.2005 to 31.03.2006. The assessee was aggrieved by non-grant of interest for the period 01.04.2006 to 30.06.2006 i.e. till the date of adjustment of the refund and moved an application u/s 154 in this regard. The said interest was granted to the assessee totaling to Rs.6,42,754/- on 20.07.2015 against non-granting of the interest for the period within which the interest due to the assessee was withheld. Another refund was determined by the second intimation issued dated 13.10.2007, after the assessee had filed revised return of income on 13.10.2007. The total refund due was Rs.8,20,15,357/- comprising of Rs.8,16,64,925/- determined vide order dated 13.10.2007 &

Rs.3,50,434/- determined by order passed u/s 154 of the Act dated 10.05.2010. The refund of Rs.8.20 crore was granted on 15.06.2010. Against which the assessee made a claim that interest for the period i.e. the date of issue of intimation and the date of grant of the refund should be allowed to the assessee. The said interest was determined by the Assessing Officer at Rs.2,01,18,293/- vide order dated 20.07.2015. The assessee is in appeal for non-granting of the interest from the date it was due to the date it was granted i.e. the period during which refund amount was withheld by the Assessing Officer. The last plea of the assessee was vis-à-vis the refund arising consequent to the appeal effect order passed u/s 250/143(3) of the Act dated 03.06.2010, against which the refund was allowed on 15.06.2010 and the interest was finally allowed to the assessee on 20.07.2015. The assessee moved an application for rectification in this regard which was rejected and even the CIT(A) did not allow the claim of the assessee. The CIT(A) was of the view that the relief which is asked for was compensation, which could not be allowed to masquerade as interest on interest in appellate proceedings and also placed reliance in the decision of Hon'ble Delhi High Court in the case of CIT vs Indian Farmer Fertilizer Co-operative Ltd. [2015] 374 ITR 56 (Del.).

6. The assessee is in appeal against the order of CIT(A).

7. The Ld.AR for the assessee pointed out that it was not a case of interest on interest, but a case where though refund was determined in the hands of the assessee but the same was not issued alongwith the

order determining the refund. The department has agreed to the plea of the assessee that such interest is due to the assessee vide order passed dated 20.07.2015. The Ld.AR for the assessee pointed out that the assessee was seeking the interest on the amount which was sought to be allowed in 2010 and was allowed to the assessee only in July 2015. The assessee is claiming the aforesaid interest on total refund of Rs.2,14,65,400/- from June, 2010 to 20.07.2015. In this regard, our attention was drawn to section 244A(1)(b) of the Act. He further placed reliance on the decision of Hon'ble Apex Court in the cases of HEG Ltd. [2010] 324 ITR 331 (SC) and K.Lakshmanya & Co. vs CIT [2017] 399 ITR 657 (SC). He stated that the decision in the case of K.Lakshmanya & Co. vs CIT (supra) is dated 01.11.2017 on the issue. Referring to the order of the CIT(A), he pointed out that the reliance was placed by him on the order of Hon'ble Delhi High Court in the case of CIT vs Indian Farmer Fertilizer Co-operative Ltd.(supra) which in turn applied the ratio laid down in the case of CIT vs Gujarat Fluoro Chemicals [2013] 358 ITR 291 (SC) on the ground that it was a decision of Larger Bench. The Ld.AR for the assessee stressed that even the decision in the case of CIT vs HEG Ltd. (supra) is a decision of Larger Bench and the said decision was not before the Hon'ble Apex Court in the case of CIT vs Gujarat Fluoro Chemicals (supra). He also referred to the instruction of the CBDT and pointed out that the Assessing Officer have been directed that while granting refund to the assessee, care should be taken to ensure that any

interest payable u/s 244A of the Act, should be granted simultaneously with the grant of refund.

8. The Ld.DR for the Revenue pointed out that the claim of interest made by the assessee on the refund granted to the assessee, was not correct. Referring to the provisions of section 244A(a) of the Act, she pointed out that the said section does not talk of interest on interest. He also pointed out that the decision of Hon'ble Supreme Court in the case of Sandvik Asia Limited vs CIT & Ors. [2006] 280 ITR 643 (SC) was referred by the Hon'ble Apex Court in CIT vs Gujarat Fluoro Chemicals (supra). In this regard, he pointed out that the Hon'ble Apex Court in CIT vs Gujarat Fluoro Chemicals (supra) have laid down the ratio that no interest is to be allowed on delayed refunds. Referring to the departmental Circular which has been referred by the Ld.AR for the assessee, it was pointed out that the said circular does not have any direction for allowing interest on interest.

9. We have heard rival contentions and perused the record. The issue which arises in the present appeal is against the claim of interest on amounts which were not allowed by the Assessing Officer while issuing the refund to the assessee. Admittedly in the case of the assessee, the date of intimation u/s 143(1) of the Act, for the original return of income and for the revised return of income and the date of issue of refund is different. The assessee had raised its claim before the authorities below and the claim of the assessee had been found to be correct. The

Assessing Officer then had issued the said interest to the assessee vide order dated 20.07.2015. The first instance is the intimation issued against the original return of income where the shortfall was for the period from 01.04.2006 to 30.06.2006 i.e. the period of 6 months and interest of Rs.6,42,754/- was determined vide order dated 20.07.2015. Further another intimation was issued to the assessee, after the assessee furnished revised return of income which was dated 30.10.2007 and the refund was issued/adjusted on 15.06.2010. The assessee agitated the said claim and interest of about Rs.2 crore was allowed to the assessee vide order dated 20.07.2015. Another claim was of period of one month i.e. refund due to the assessee consequent to the appeal effect given and the refund issued and sum of the Rs.7,04,353/- was issued on 30.07.2015. The total amount of interest which was further allowed to the assessee thus was Rs.2,40,65,400/-.

10. The case of the assessee before us is that all this interest was due to the assessee in month of June 2006 to June 2010 and 30.06.2010 i.e. the original interest allowable to the assessee u/s 244A (1)(a) of the Act. The assessee claims that in case the refund was issued on respective dates i.e. on account of interest due, then it had no grievance. But it was not so; interest for certain periods was issued on 20.07.2015. For this period during which interest due to the assessee was withheld by the Department, the present appeal has been filed by the assessee seeking

grant of interest on the aforesaid refund determined on account of interest of Rs.2.14 crores.

11. The provisions of section 244A(1)(a) of the Act talks of interest due to the assessee on account of any tax collected at source or paid by advance during the Financial Year. Sub-clause (aa) talks of refund arising on account of tax paid u/s 140A of the Act and clause (b) of 'any other case'. The assessee claims that its case falls in sub-clause (b) of section 244A(1) of the Act. The grievance is that incase the amount was paid to the assessee, when it was due then no interest was to be further paid; but since it was not paid on the due dates, the assessee is entitled to claim the interest on such late payment of interest due to it. The issue which needs to be adjudicated is whether such interest is interest on interest, to be allowed to the assessee.

12. The Hon'ble Supreme Court in Sandvik Asia Limited vs CIT & Ors. (supra) had laid down the proposition that interest u/s 244(i) of the Act is to be granted to the assessee i.e. interest on interest payable on refund on compensatory ground as the disputed amount was wrongfully and unjustifiably withheld by the Department.

13. The Hon'ble Supreme Court in the case of CIT vs HEG Ltd. (supra) deliberated upon the meaning of the words "refund of any amount becomes due to the assessee" u/s 244A of the Act. In the facts of the said case, no interest was paid by the Department on the refund of

Rs.45,73,582/- for 57 months. The Hon'ble Supreme Court held as under:-

7. "The next question which we are required to answer is - What is the meaning of the words "refund of any amount becomes due to the Assessee" in Section 244A? In the present case, as stated above, there are two components of the tax paid by the Assessee for which the Assessee was granted Refund, namely TDS of Rs. 45,73,528 and Tax paid after Original assessment of Rs. 1,71,00,320. The Department contends that the words "any amount" will not include the Interest which accrued to the Respondent for not refunding Rs.45,73,528 for 57 months. We see no merit in this- argument. *The interest component will partake of the character of the "amount due" under Section 244A. It becomes an integral part of Rs.45,73,528 which is not paid for 57 months after the said amount became due and payable.* As can be seen from the facts narrated above, this is the case of short payment by the Department and it is in this way that the Assessee claims interest under Section 244A of the Income-tax Act. Therefore, on both the aforestated grounds, we are of the view that the Assessee was entitled to interest for 57 months on Rs. 45,73,528. The principal amount of Rs.45,73,528 has been paid on 31-12-1997 but net of interest which, as stated above, partook the character of "amount due" under Section 244A."

14. Further the authorities below and the Ld.DR before us had relied upon the decision of the Hon'ble Apex Court in the case of CIT vs Gujarat Fluoro Chemicals (supra) wherein it has been held that the Revenue is not obliged to pay any interest on interest in the event of its failure to refund, the amount due within statutory period.

15. The Hon'ble Apex Court also referred to the insertion of section 244A of the Act w.e.f 01.04.1989 and held that it was only the interest provided for under the statute which may be claimed by an assessee from the Revenue and no other interest on such statutory interest, was to be allowed.

16. Both decisions of the Hon'ble Supreme Court are of three judges' Bench. In the latest decision, the Hon'ble Supreme Court in the case of K.Lakshmanya & Co. vs CIT (supra) had held as under:-

*9. "When it comes to interest on refund, section 244, which applied to assessment years up to and including assessment year 1989-90, made it clear that it would apply where a refund is due to the Assessee in pursuance of an order referred to in Section 240. It is only if the Assessing Officer does not grant the refund within three months from the end of the month in which such order is passed, that the Central Government shall pay to the assessee simple interest on the amount of refund due."*

17. The Hon'ble Apex Court in the case of K.Lakshmanya & Co. vs CIT (supra) referred to the provisions of section 244A of the Act and observed that the section was wider in scope than section 244 and it covered cases where refund became due under the Income Tax Act, 1961, in which case *"the assessee shall, subject to the provisions of this Section, be entitled to receive simple interest."*

18. The Hon'ble Apex Court concluded by holding as under:-

12. *“The present case would fall outside sub-clause (a) and (aa) of this provision and, therefore, fall within the residuary clause, namely sub-clause (b) of section 244(A).”*

19. The Hon’ble Apex Court also made reference to the earlier decision of Hon’ble Apex Court in the case of CIT vs HEG Ltd. (supra) in para 17 and other decisions and held as under:-

17. *“In Commissioner of Income Tax, Bhopal v H.E.G. Limited MANU/Hon’ble Supreme Court/2094/2009: 2010 (15) SCC 349, this Court was squarely confronted with the meaning of the expression “where refund of any amount become due to the Assessee” in section 244(A)(1). This question was answered as follows:-*

*5. In the present case, as stated above, there are two components of the tax paid by the Assessee for which the Assessee was granted refund, namely TDS of Rs. 45,73,528 and tax paid after original assessment of Rs. 1,71,00,320. The Department contends that the words "any amount" will not include the interest which accrued to the Respondent for not refunding Rs.45,73,528 for 57 months. We see no merit in this argument. The interest component will partake of the character of the "amount due" Under Section 244-A. It becomes an integral part of Rs. 45,73,528 which is not paid for 57 months after the said amount became due and payable. As can be seen from the facts narrated above, this is the case of short payment by the Department and it is in this way that the Assessee claims interest Under Section 244-A of the Income Tax Act. Therefore, on both the aforestated grounds, we are of the view that the Assessee was entitled to interest for 57 months on Rs. 45,73,5289. The principal amount of Rs.*

*45,73,528 has been paid on 31.12.1997 but not of interest which, as stated above, partook the character of 'amount due' Under Section 244-A.*

*18. In Union of India v. Tata Chemicals Ltd. MANU/SC/0213/2014 : 2014 (6) SCC 335, this Court after going into the object for the enactment of Section 244(A), held:*

*Interest payment is a statutory obligation and non-discretionary in nature to the Assessee. In tune with the aforesaid general principle, Section 244A is drafted and enacted. The language employed in Section 244A of the Act is clear and plain. It grants substantive right of interest and is not procedural. The principles for grant of interest are the same as under the provisions of Section 244 applicable to assessments before 01.04.1989, albeit with clarity of application as contained in Section 244A.*

*31. The Department has also issued a Circular clarifying the purpose and object of introducing Section 244A of the Act to replace Sections 214, 243 and 244 of the Act. It is clarified therein, that, since there was some lacunae in the earlier provisions with regard to non-payment of interest by the Revenue to the Assessee for the money remaining with the Government, the said Section is introduced for payment of interest by the Department for delay in grant of refunds. A general right exists in the State to refund any tax collected for its purpose, and a corresponding right exists to refund to individuals any sum paid by them as taxes which are found to have been wrongfully exacted or are believed to be, for any reason, inequitable. The statutory obligation to refund*

*carried with it the right to interest also, This is true in the case of Assessee under the Act.*

19. *“The above extract would clearly show that a corresponding right exists, to refund to individuals any sum paid by them as taxes which are found to have been wrongfully existed or believed to be, for any reason, inequitable. The statutory obligation to refund, being non discretionary, carries with it the right to interest, also making it clear that the right to interest is parasitical. The right to claim refund is automatic once the statutory provisions have been complied with.”*

20. This decision of the Hon’ble Apex Court is of two Judges’ Bench but has considered the issue in earlier decisions.

21. In such a scenario, we find merit in the plea of the assessee. The decision in the case of CIT vs Gujarat Fluoro Chemicals (supra) is contrary to the earlier three judges’ Bench decision in CIT vs HEG Ltd. (supra) and it may be pointed out that the said decision was not referred to before the Bench. Hence, there is no merit in the order of the CIT(A) in relying on the said decision. Applying the proposition laid down by the Hon’ble Apex Court in the case of CIT vs HEG Ltd. (supra) and K.Lakshmanya & Co. vs CIT (supra), we hold that even on account of interest withheld by the Assessing Officer and not issued on time, for part of the refund, the delay is from June 2006 to July 2015 and for the next refund of Rs.2.01 crores, the delay is from 15.06.2010 to 20.07.2015, the assessee is entitled to the interest. Accordingly, we hold that the assessee is entitled to claim the interest for withholding the refund due to the

assessee on account of interest ultimately allowed to the assessee for a period from the date of short allowed to the date of refund on 20.07.2015. Accordingly, we direct the Assessing Officer to compute the interest in this regard after verifying the calculation of the assessee for the aforesaid interest due to the assessee. Thus, grounds raised by the assessee in this appeal are allowed.

22. Now coming to the appeal of the assessee in Assessment Year 2009-10 wherein the issue is with regard to the claim of loss on diminution in value of fertilizer bonds issued to the assessee. The Ld.AR for the assessee has raised two aspects of the said issue before us. He pointed out that the claim made by the assessee was withdrawn by an order passed u/s 154 of the Act. He stressed that it was not a mistake apparent from record, since the issue was debatable, as the matter was before the Hon'ble High Court and hence, the Assessing Officer could not exercise his power u/s 154 of the Act. He pointed out even on merits, the Assessing Officer had erred in not allowing the aforesaid deduction to the assessee. He stated that the issue now stands covered by the order of the Hon'ble High Court in assessee's own case in ITA No.939 & 940/2015 vide order dated 04.12.2015. The Hon'ble High Court held that the bonds which were held under the head "current investments assets, within the diminution value of the bonds was in the nature of revenue loss and could be claimed by the assessee". Since the bonds was held in stock in trade, the same could be valued at market value or cost, whichever was

less. Following the said decision of the Hon'ble High Court in assessee's own case, we hold that the assessee is entitled to claim the loss for the diminution in value of fertilizer bonds, since the bonds were held in stock in trade and the same had to be valued either on market rate or cost, whichever was less. Thus, grounds of appeal raised by the assessee in this appeal are allowed.

24. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 30<sup>th</sup> day of October, 2019.

**Sd/-**

**(B.R.R.KUMAR)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

दिल्ली / दिनांक Dated : 30<sup>th</sup> October, 2019.

\* Amit Kumar \*

**Sd/-**

**(SUSHMA CHOWLA)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

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

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

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार,  
आयकर अपीलीय अधिकरण ,दिल्ली  
Assistant Registrar, ITAT, Delhi