

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” Bench, Mumbai**

**Before Shri M. Balaganesh, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No.2495/Mum/2009
(Assessment Year: 2004-05)**

Tata Chemicals Limited
Bombay House, 24,
Homi Mody, Street, Fort,
Mumbai – 400 001

Commissioner of Income tax-2
384, Aayakar Bhavan, M.K. Road,
Vs. Mumbai – 400 020

PAN – AAAC4059M

(Appellant)

(Respondent)

Appellant by: Shri Nitesh Joshi &
Shri Atul Suraiya, A.Rs

Respondent by: Shri R. Manjunatha Swami, CIT D.R

Date of Hearing: 18.09.2019

Date of Pronouncement: 30.09.2019

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income Tax-2, Mumbai (for short 'CIT'), dated 23.02.2009 for A.Y. 2004-05 under Sec. 263 of the Income Tax Act, 1961 (for short 'Act'). The assessee has assailed the impugned order on the following grounds of appeal before us:

“Being aggrieved by the order dated 23rd January 2009 passed by the Commissioner of Income-tax- 2 (hereinafter referred to as 'the CIT'). Mumbai under section 263 of the Income-tax Act. 1961 (hereinafter referred to as 'the Act'), the Appellant begs to prefer the present appeal on following amongst other grounds which are in alternative and without prejudice to each other:

I. NOTICE UNDER SECTION 263 WITHOUT JURISDICTION:

1. The learned CIT erred in exercising jurisdiction u/s. 263 of the Act in the absence of any order or any order being erroneous and prejudicial to the interest of the revenue.
2. The learned CIT erred in initiating proceedings under section 263 of the Act for withdrawing refund of interest granted by invoking provisions of section 244A(2) of the Act. The Appellant submits that provisions of section 263 of the Act is not

applicable for withdrawal of interest granted and thereby not applicable to provisions of section 244A (2) of the Act.

3. The learned CIT erred in exercising jurisdiction under section 263 of the Act for withdrawal of interest granted without there being any "order" as contemplated under section 263 of the Act. The Appellant submits that refund cheque does not constitute order which can be revised under section 263 of the Act nor does the refund scheme contemplate passing of any refund order which could fall within provisions of section 263 of the Act.
4. The learned CIT erred in exercising jurisdiction under Section 263 of the Act for withdrawing interest granted under section 244A of the Act which interest was granted after his approval. The Appellant submits that this would amount to revising one's own order which is not provided by section 263 of the Act.
5. The learned CIT erred in exercising jurisdiction under Section 263 of the Act for withdrawing interest granted under section 244A of the Act which was granted and enquired by the Assessing officer in the course of proceedings under section 154 of the Act. The Appellant submits that refund granted after due application of mind by the Assessing officer cannot be a subject matter of revisional proceedings under section 263 of the Act.
6. The learned CIT erred in exercising jurisdiction under Section 263 of the Act without satisfying pre conditions specified therein for invoking the revisional proceedings. The Appellant submits that refund granted is neither erroneous nor prejudicial to the interest of revenue.

II. NON APPLICABILITY OF SECTION 244A (2) OF THE ACT:

1. The learned CIT erred in applying the provisions of Section 244A (2) in the absence of any delay in the proceeding attributable to the appellant.
2. The learned CIT erred in invoking provisions of section 244A (2) of the Act for withdrawing the interest granted. The Appellant submits that during the period 01.11.2004 to 29.03.2006 there were no proceedings pending so as to result into delay of the same and hence provisions of section 244A(2) of the Act are not applicable at all.
3. The learned CIT erred in directing the Assessing officer to exclude the period from 1-11-04 to 29-3-06 for withdrawing the interest granted on the ground that the delay for the said period is attributable to the Appellant. The Appellant submits that it had exercised the right for revising the return of income granted by the Act during the said period and hence there cannot be delay if the Act grants the time for revising the return.
4. The learned CIT erred in attributing the period from 1-11-04 to 29-03-06 as being delay period attributable to the Appellant for withdrawing the interest granted. The Appellant submits the delay, if any, is not attributable to the Appellant.

III. The Appellant , therefore, prays for following relief's :

1. The Hon'ble Tribunal be please to quash and set aside the notice under section 263 of the Act and the order passed pursuant thereto dated 23rd February 2009 as without jurisdiction, illegal and bad in law;
2. The Hon'ble Tribunal be please to direct the Assessing officer not to treat the period from 1-11-04 to 29-3-06 as delay attributable to the Appellant for the purpose of calculating interest under section 244A of the Act;
3. Any other relief which the Hon'ble Tribunal deems fit in the nature and circumstances of the case.

The appellant craves leave of the Hon'ble Tribunal to add, alter, amend or modify any of the above grounds of appeal."

2. Briefly stated, the assessee company had filed its return of income for A.Y. 2004-05 on 01.11.2004, declaring its total income at Rs. 349,71,39,843/-. On the basis of the aforesaid return of income, the assessee had claimed a refund of Rs. 11,25,63,849/-. In the return of income the assessee had raised a claim for deduction under Sec. 80IA (in principle) without quantifying the same, subject to two notes, which read as under :-

“Note 3 : The power plant started generating electricity from 11th May, 1995. However, the claim for deduction is made for the first time in A.Y 2001-02. As per Section 80IA(1) and 80IA(2), we are entitled to claim 100% deduction from A.Y 2001-02 for 5 years. For the current assessment year, the information for the claim is under compilation and we reserve our right to make the claim during the course of assessment.

Note 5 : 80IA claim for Haldia Plant will be claimed by filing a revised return or during the course of assessment proceedings.”

Subsequently, the assessee filed a revised return of income on 20.04.2005, declaring its total income at Rs. 371,48,26,981/-. As per the revised return of income, the assessee claimed a refund of Rs. 3,44,68,589/-. Once again, the assessee had in its revised return raised a claim for deduction under Sec. 80IA (in principle), subject to the qualifying ‘notes’ as were earlier mentioned in its ‘original’ return of income. The return of income filed by the assessee was processed u/s 143(1) on 12.05.2005 and a refund of Rs. 3,44,64,160/- was issued, vide a refund voucher dated 30.06.2005. As on 29.03.2006, the assessee filed a second revised return of income, declaring a total income of Rs. 320,13,93,148/-. On the basis of the second revised return the assessee had claimed a refund of Rs. 21,86,12,976/-. In this return, the assessee had claimed deduction under Sec. 80IA amounting to Rs. 48,46,94,833/- in respect of its Mithapur Power Plant, with all supporting material and certificates. Assessment under Sec. 143(3) was framed by the A.O on the basis of the second revised return of income after allowing the deduction claimed by the assessee under Sec. 80IA. On the basis of the assessment framed under Sec. 143(3) of the Act, dated 07.12.2006, a refund of Rs. 21,18,81,038/- (comprising of interest under Sec. 244A of Rs. 2,73,46,435/- for the period 01.04.2004 to 07.12.2006) was worked out by the A.O. As a refund of an amount of Rs. 3,44,64,160/- was already issued to the assessee on 30.06.2005, therefore, the balance amount of refund of Rs. 17,74,16,878/- was issued by the A.O, vide a refund voucher dated 09.01.2007.

3. After perusing the records of the assessee, the CIT observed that the major part of the refund of Rs. 18,45,34,603/- (principal amount) was attributable to the allowance of the claim of

deduction under Sec. 80IA of Rs. 48,46,94,833/- in respect of the Mithapur Power Plant of the assessee. The CIT was of the view that the aforesaid claim of deduction could have been allowed earlier at the time when the return of income of the assessee was processed u/s 143(1) of the Act, if the assessee would have quantified and claimed the deduction u/s 80IA, along with the supporting material and the certificate of the Chartered Accountant as was required per the mandate of law. Accordingly, the CIT held a conviction that as the assessee had effectively raised a claim of deduction under Sec. 80IA only in its second revised return, therefore, the proceedings resulting in the major part of the refund getting delayed was on account of reasons attributable to the assessee. On the basis of his aforesaid conviction, the CIT was of the view that the A.O while issuing the refund had erred in failing to exclude the period of delay that was attributable to the assessee in terms of Sec. 244A(2) of the Act. As such, the CIT backed by his aforesaid conviction issued a 'show cause' notice under Sec. 263 of the Act, therein calling upon the assessee to explain as to why the excess interest granted to it under Sec. 244A may not be withdrawn. The explanation of the assessee did not find favour with the CIT, who was of the view that the A.O by not invoking the provisions of Sec. 244A(2) of the Act, had erred, in not excluding the period of delay that was attributable to the assessee, which thus had resulted in payment of an excess amount of interest under Sec. 244A to the assessee. Accordingly, the CIT revised the order passed by the A.O, dated 07.12.2006, and therein attributing the delay from 01.11.2004 (i.e. the date on which the original return was filed) till 29.03.2006 (i.e the date on which the second revised return was filed) to the assessee, directed the A.O to re-determine the interest under Sec.244A after excluding the aforesaid period, by treating the said period as a period of delay attributable to the assessee under Sec. 244A(2) of the Act.

4. Aggrieved, the assessee has assailed the order passed by the CIT under Sec. 263 of the Act, dated 23.02.2009, in appeal before us. The Learned Authorized Representative (for short 'A.R') for the assessee took us through the assesses 'Paper book' (for short 'APB') comprising of 4 pages. The Ld. A.R drew our attention to the refund voucher, dated 09.01.2007 issued by the A.O. Also, our attention was drawn to the quantification of the refund by the A.O, pursuant to his order passed under Sec. 143(3), dated 07.12.2006. As is discernible from the computation sheet, a total refund of Rs. 21,18,81,038/- (comprising of interest under Sec. 244A of Rs. 2,73,46,435/-) was worked out in the hands of the assessee. As a refund of Rs.

3,44,64,160/- was already issued to the assessee, vide an intimation under Sec. 143(1), dated 12.05.2005, therefore, as per the aforesaid consequential order the balance refund of Rs. 17,74,16,878/- was issued to the assessee, vide a refund order dated 09.01.2007. The Ld. A.R took us through a letter dated 01.08.2007 that was issued by the Dy. CIT(HQ)-2, Mumbai, which was addressed to the A.O, wherein it was conveyed that the CIT-2, Mumbai had given his approval for the issuance of the balance amount of refund of Rs. 17,74,16,878/- to the assessee. On the basis of the aforesaid fact, it was averred by the Ld. A.R that as the refund had been issued after obtaining the approval of the CIT-2, Mumbai, therefore, the latter was divested of his jurisdiction to revise the order dated 07.12.2006 passed by the A.O, on the basis of which the aforesaid refund was issued to the assessee. In sum and substance, it was the claim of the Ld. A.R, that as the quantification of the interest element in the refund issued to the assessee had been vetted and approved by the CIT-2, Mumbai, therefore, he could not have revised an order which was earlier passed by the A.O at his instance. As regards the merits of the case, it was submitted by the Ld. A.R that a quantification of a refund at a later stage in the course of the assessment proceedings would have no bearing on the determination of the interest element therein involved. It was submitted by the Ld. A.R, that the quantification of the interest in the present case was regulated by sub-section (1) of Sec. 244A, as was available on the statute prior to the amendment that was made available, vide the Finance Act, 2016 (i.e. prior to 01.06.2016). It was averred by the Ld. A.R, that the refund had been worked out by the A.O on the basis of the assessee's second revised return of income which was filed within the stipulated time period as per mandate of law. Accordingly, it was the claim of the Ld. A.R that as there was no delay in issuance of refund for any reason attributable to the assessee, therefore, the provisions of sub-section (2) of Section 244A as had been sought to be invoked by the CIT were clearly ousted. In support of his aforesaid contention that the A.O had rightly quantified the interest element while issuing the refund, the Ld. A.R had relied on the judgment of the Hon'ble High Court of Kerala in the case of CIT Vs. South Indian Bank Ltd. (2012) 340 ITR 574. The Ld. A.R taking us through the aforesaid judgment submitted, that in the said case the High Court had observed that in the absence of any provision under Sec. 244A limiting interest payment only on the basis of the refund claimed in the original return, the assessee would be duly entitled to interest on the excess tax refunded in terms of Clause (a) and Clause (b) of Sec. 244A(1), subject to the limitation contained in sub-section (2). It was submitted by

the Ld. A.R, that the Hon'ble High Court had observed that the provisions of sub-section (2) of Sec. 244A would be invoked only if the assessee had caused any delay in completion of the assessment proceeding under which the refund is granted. Accordingly, drawing support from the aforesaid judicial pronouncement, it was submitted by the Ld. A.R that as the assessee in the present case had not caused any delay in the completion of the assessment proceedings, therefore, the A.O had rightly worked out the interest under Sec. 244A i.e. for the period 01.04.2004 till the respective dates on which the refund was issued. Also, the Ld. A.R in support of his aforesaid contention had drawn our attention to certain other judgments. Accordingly, in the backdrop of his aforesaid contentions, it was submitted by the Ld. A.R, that as the quantification of interest u/s 244A by the A.O was supported by judicial pronouncements, as were available at the relevant point of time, therefore, the plausible view arrived at by him clearly fell beyond the purview of the revisional jurisdiction of the CIT u/s 263 of the Act.

5. Per contra, the Ld. Departmental representative (for short 'D.R') supported the order passed by the CIT u/s 263 of the Act. It was averred by the Ld. D.R, that the CIT remaining well within the scope of his jurisdiction had rightly 'set aside' the order passed by the A.O and directed him to rework the interest u/s 244A after excluding the period of delay that was attributable to the assessee. It was submitted by the Ld. D.R, that as the assessee had delayed in filing the requisite documents to support its claim for deduction u/s 80IA, therefore, the CIT had rightly observed that as per the mandate of Sec. 244A(2) of the Act, the assessee would not be eligible for interest on the said period of delay. The Ld. D.R in support of his contention that the CIT had acted well within the scope of his jurisdiction, relied on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Amitabh Bachchan (2016) 384 ITR 200 (SC). It was thus submitted by the Ld. D.R, that as the appeal of the assessee was devoid of any merit, therefore, it was liable to be dismissed.

6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. Admittedly, a refund of Rs. 21,18,81,038/- (comprising of interest under Sec. 244A of Rs. 2,73,46,435/-) was worked out by the A.O on the basis of the assessee's second revised return of income that was filed on 29.03.2006, declaring a total income of Rs. 320,13,93,148/-. As observed by us hereinabove, the assessee had initially filed

its 'Original' return of income for A.Y. 2004-05 on 01.11.2004, wherein it had declared its total income at Rs. 349,71,39,843/- and had raised a claim for a refund of Rs. 11,25,63,849/-. In the return of income, the assessee had raised a claim for deduction under Sec. 80IA (in principle) without quantifying the same, subject to two notes. Subsequently, the assessee had filed a revised return of income on 20.04.2005, wherein it had shown its total income at Rs. 371,48,26,981/- and had revised its claim for refund at Rs. 3,44,68,589/-. Again, the assessee had in its revised return raised a claim for deduction under Sec. 80IA (in principle), subject to the qualifying 'notes' as were earlier mentioned in its original return of income. Now, the said revised return of income of the assessee was processed u/s 143(1) on 12.05.2005 and a refund of Rs. 3,44,64,160/- was issued, vide a refund voucher dated 30.06.2005. As on 29.03.2006, the assessee had filed a second revised return of income, wherein it had declared its total income at Rs. 320,13,93,148/- and had revised its claim of refund at Rs. 21,86,12,976/-. In this second revised return, the assessee had claimed deduction under Sec. 80IA amounting to Rs. 48,46,94,833/- in respect of its Mithapur Power Plant, alongwith all the supporting documents and certificates. Assessment under Sec. 143(3) was framed by the A.O on the basis of the second revised return of income, and its claim for deduction under Sec. 80IA in respect of Mithapur Power Plant was allowed. On the basis of the assessment framed under Sec. 143(3) of the Act, dated 07.12.2006, a refund of Rs. 21,18,81,038/- (comprising of interest under Sec. 244A of Rs. 2,73,46,435/- for the period 01.04.2004 to 07.12.2006) was worked out by the A.O. As a refund of an amount of Rs. 3,44,64,160/- was already issued to the assessee on 30.06.2005, therefore, the balance amount of refund of Rs. 17,74,16,878/- was issued by the A.O, vide a refund voucher dated 09.01.2007. As observed by us hereinabove, the CIT noticed that the major part of the refund of Rs. 18,45,34,603/- (principal amount) was attributable to the allowance of the claim of deduction under Sec. 80IA of Rs. 48,46,94,833/- that was raised by the assessee in respect of its Mithapur Power Plant. The CIT was of the view that the aforesaid claim of deduction could have been allowed earlier at the time when the return of income of the assessee was processed u/s 143(1) of the Act, if the assessee would have quantified its claim for deduction u/s 80IA as per the mandate of law. Accordingly, the CIT held a conviction that as the assessee had effectively raised a claim of deduction under Sec. 80IA only in its second revised return of income, therefore, the proceedings resulting in the major part of the refund getting delayed was on account of reasons attributable on its part. On the basis of his aforesaid

conviction, the CIT was of the view that the A.O while quantifying the interest u/s 244A, had erred, in failing to exclude the period of delay that was attributable to the assessee in terms of Sec. 244A(2) of the Act. As such, the CIT backed by his aforesaid observations had revised the order passed by the A.O, dated 07.12.2006, and therein attributing the delay for the period 01.11.2004 (i.e. the date on which the original return was filed) till 29.03.2006 (i.e the date on which the second revised return was filed) to the assessee, directed him to re-determine the interest under Sec.244A after excluding the aforesaid period.

7. We have deliberated at length on the issue under consideration in the backdrop of the contentions advanced by the authorised representatives for both the parties. On a perusal of Sec. 244A(2), it can safely be gathered, that it is only if the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, that the period of the delay so attributable to the assessee shall be excluded from the period for which the interest is payable. Accordingly, the provisions of Sec. 244A(2) are to be invoked where the proceedings resulting in the refund are delayed for reasons attributable to the assessee. In fact, there is nothing available on the statute which would jeopardise the entitlement of the assessee towards claim of interest u/s 244A(1), for the reason, that the same is based on a claim raised by the assessee on the basis of a revised return of income. A careful perusal of Sec. 244A(2) reveals, that only if the proceedings resulting in the refund are delayed for the reasons attributable to the assessee, it is only then that the period of delay attributable to the assessee shall be excluded from the period for which the interest is payable. Our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Kerala** in the case of **CIT Vs. South Indian Bank Ltd. (2012) 340 ITR 574 (Ker)**. In the case before the Hon'ble High Court, the assessee had for the first time raised a claim for deduction of provision for bad debts as on 10.01.2001 in the course of the assessment proceedings, which was rejected by the A.O. On appeal, the CIT(A) allowed the assessee's claim for deduction and remanded the matter to the file of the A.O. Refund was granted by the A.O on the basis of the order of the appellate authority. However, the A.O declined interest on refund on the ground that the same was attributable to the aforesaid claim for deduction which was allowed by the CIT(A). On further appeal, the CIT(A) concluded that the assessee would be entitled for interest u/s 244A from 10.01.2001 (i.e date on which additional claim for deduction of provision for bad debts was

raised by the assessee), and not from 01.04.1999, as was claimed by the assessee. The reason behind limiting the period of interest by the CIT(A) from 10.01.2001, was that as the assessee had not claimed any deduction for any provision for bad debt in its original return, but had raised such claim only in the course of the assessment on 10.01.2001, therefore, it was not entitled for any interest for the period prior to the date on which claim was made which had led to the issuance of refund. On further appeal by the assessee, it was held by the Tribunal that the assessee was entitled to interest from 01.04.1999, onwards. On further appeal by the revenue, it was observed by the Hon'ble High Court that the A.O had not established that the assessee had caused any delay in issuance of the refund. The High Court while concluding as hereinabove, had observed as under :

8. We notice a lacuna in the statute in the above provision because the situation that arose in this case is not contemplated therein. The Department could contend that if all claims of deduction were made in the original return and higher amount of refund was claimed in such return, the officer could have granted refund under s. 143(1) of the Act itself thereby avoiding interest on refund in regular assessment for longer period. Return was in fact processed under s. 143(1) and based on claims in the original return, refund was granted in terms of the claim made by the assessee. However, higher amount of refund and interest thereon are liable to be paid by the Department from the beginning of the assessment year only because assessee made belated claim for deduction leading to entitlement of higher amount of refund of tax paid which was allowed only by the appellate authority. Therefore, it could be provided in s. 244A(1)(a) that interest on refund is payable on the amount of refund claimed in the original return filed and not on excess refund later claimed or happened to be claimed based on belated claims of deduction, exemption etc. However, in the absence of any such provision under s. 244A limiting interest payment on the refund claim in the original return, the assessee is entitled to interest on excess tax refunded in terms of cls. (a) and (b) of s. 244A(1) of the Act subject to the limitation contained in sub-s. (2) discussed above.

Admittedly, in the case before us, there had been no delay in the proceedings resulting in the refund for any reason attributable to the assessee. As a matter of fact, the assessee had quantified its claim for deduction u/s 80IA in respect of its Mithapur Power Plant in its second revised return of income that was validly filed on 29.03.2006 u/s 139 (5) of the Act. In fact, the assessment framed by the A.O u/s 143(3), dated 07.12.2006 is in itself based on the second revised return of income filed by the assessee. In our considered view, the CIT had misconstrued the scope of Sec. 244A(2) of the Act, and had wrongly confined the entitlement of the assessee towards interest on refund u/s 244A(1) to the claims which were raised in the original return of income. We are unable to persuade ourselves to subscribe to the aforesaid

view so arrived at by the CIT. As the proceedings resulting in the refund had not been delayed for any reason attributable to the assessee, therefore, in our considered view, the interest allowed by the A.O u/s 244A, vide his order dated 07.12.2006, on the basis of the validly filed second revised return of income of the assessee was well in order. Be that as it may, as the view taken by the A.O, vide his order dated 07.12.2006 as regards the entitlement of the assessee towards interest u/s 244A(1), was a plausible view, which we find is supported by the judgment of the **Hon'ble High Court of Kerala** in the case of **CIT Vs. South Indian Bank Ltd. (2012) 340 ITR 574 (Ker)**, therefore, the CIT was clearly divested of his jurisdiction to dislodge the order passed by the A.O, dated 07.12.2006. Accordingly, the order passed by the CIT u/s 263, dated 23.02.2009 is 'set aside' and the order passed by the A.O, dated 07.12.2006 quantifying the interest u/s 244A is restored. Before parting, we may herein observe, that as we have quashed the order passed by the CIT u/s 263, in terms of our aforesaid observations, therefore, the contentions advanced by the Id. A.R as regards the validity of the jurisdiction assumed by the CIT u/s 263 are not being adverted to and are left open.

8. The appeal filed by the assessee is allowed.

Order pronounced in the open court on 30 /09/2019.

Sd/-
(M.Balaganesh)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 30.09.2019
PS. Rohit

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

