

आयकर अपीलीय अधिकरण “जी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI

माननीय श्री विकास अवस्थी, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI VIKAS AWASTHY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.6271/Mum/2016
(निर्धारण वर्ष / Assessment Year: 1995-96)

DCIT Circle-2(2)(1) R. No. 545, Aaykar Bhavan M. K. Road, Mumbai-400 021	बनाम/ Vs.	State Bank of India Financial Reporting & Tax. Deptt. 3 rd floor, Corporate Centre State Bank Bhavan, Madam Cama Rd. Nariman Point, Mumbai-400 021.
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAACS-8577-K		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Shri Vijay Jaiswal– Ld. CIT-DR
Assessee by	:	Shri C. Naresh– Ld. AR

सुनवाई की तारीख/ Date of Hearing	:	25/08/2021
घोषणा की तारीख / Date of Pronouncement	:	08/10/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year 1995-96 arises out of the order of learned Commissioner of Income-Tax (Appeals)-5, Mumbai [CIT(A)], dated 01/07/2016 in the matter of rectification order passed by Ld. Assessing Officer u/s 154 on 30/10/2014. The revenue has revised first ground of appeal vide letter dated 15/04/2021 which have been taken on record. The final grounds read as under:-

1. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in directing the AO to grant interest u/s 244A in respect of DITR from 1st Day of April of Assessment Year not appreciating the fact that the delay is attributable to the assessee's part.
2. On the facts and in the circumstances of the case, the CIT(A) has erred in directing the Assessing Officer to adjust the refund granted, first towards interest amount refundable and thereafter consider the balance against tax amount refundable which will lead to excess grant of interest, contrary to the practice followed by the department and the intention of the legislation.

The Ld. AR, at the outset, submitted that both the grounds are covered in assessee's favor by the decision of Tribunal in assessee's own case. The attention has been drawn to the fact that Ld. CIT(A) has followed earlier appellate orders and therefore, the order would not require any interference on our part. The Ld. CIT-DR, on the other hand, supported the computations made by Ld. AO. However, the fact that both the grounds are covered remains uncontroverted before us. No change in fact or law could be demonstrated before us. In the above background, our adjudication to the appeal would be as given in succeeding paragraphs. The assessee is a Public Sector Banking Company.

G.No.1 : Correct computation of interest u/s 244A

2.1 Upon perusal of impugned order, it could be gathered that an assessment was framed for the year u/s 143(3) on 20/03/1998 which was rectified by Ld.AO u/s 154 on 30/10/2014. The grievance of the assessee was that Ld. AO did not grant correct amount of interest u/s 244A in the rectification order passed u/s 154 and accordingly, the assessee preferred further appeal before Ld. CIT(A).

2.2 The relevant facts are that in the original return of income filed on 28/11/1995, the assessee did not claim DIT relief but claimed in the same in the revised return filed on 21/03/1997. Though the same was allowed, however, Ld. AO held that the assessee would not be eligible

for interest u/s 244A on this relief up-to March, 1997 since the delay was attributable to the assessee.

2.3 The Ld. CIT(A), following order of Tribunal in assessee's own case for AYs 2001-02 & 2002-03 (ITA Nos.6817 & 6823/Mum/2012; 31/08/2015), directed Ld. AO to grant interest from 01st day of relevant Assessment Year. Aggrieved, the revenue is in further appeal before us.

2.4 Upon perusal of impugned order, it could be gathered that Ld. CIT(A) has merely followed the cited order of Tribunal while adjudicating the issue in assessee's favor. The Ld. AR submitted that the revenue assailed the cited order of Tribunal for AY 2001-02, on this issue, before Hon'ble Bombay High Court vide ITA No.1218 of 2016, dated 04/01/2019 wherein the appeal was dismissed with following observations: -

3. Section 244A of the Act pertains to interest on refunds. Sub-section 1 of Section 244A recognizes grant of interest to an assessee who is found entitled to refund under certain circumstances. Sub-section 2 of Section 244A of the Act, however, provides as under:

"(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee [or the deductor, as the case may be,] whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable [under sub-section (1) or (1A)] [or (1B)], and where any question arises as to the period to be excluded, it shall be decided by the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner whose decision thereon shall be final."

As per sub-section (2) of Section 244A, if the proceedings resulting in refund are delayed for the reasons attributable to the assessee, whether wholly or in part, the period of delay so attributable shall be excluded from the period for which the interest is payable.

4. In the present case, the assessing officer was wholly incorrect in invoking sub-section (2) of Section 244A of the Act, since we do not find any reasons attributable to the assessee which delayed his refund claim. During the assessment proceedings itself, relying on the note to the return filed, the assessee had argued that certain interest income had not accrued and therefore, not chargeable to the tax. The assessing officer did not accept this stand. The CIT(A), however, allowed the claim of the assessee which resulted in the refund claim of the assessee. In plain terms, the assessing officer was

incorrect in holding that the assessee was responsible for delay in the refund claim.

5. Learned counsel for the assessee correctly pointed out certain decisions of this Court and other Courts elaborating this aspect of the matter, e.g. in a Division Bench judgment of Gujrat High Court in the case of **Ajanta Manufacturing Ltd Vs. Deputy CIT(Guj)**, it was observed that the act of the assessee revising the return or the fact that the claim was allowed by the Commissioner in Appeal would not be a ground for holding that it was for the reasons attributable to the assessee that the refund was delayed. Relying upon the decision of the Kerala High Court in case of **CIT Vs. South Indian Bank Ltd (Ker)**, following observations were made:-

“The Department does not contend that the assessee had needlessly or frivolously delayed the assessment proceedings at the original or appellate stage. In the absence of any such foundation, the mere fact that the assessee made a claim during the course of the assessment proceedings which was allowed at the appellate stage would not ipso facto imply that the assessee was responsible for causing the delay in the proceedings resulting into refund. We may refer the decision of the Kerala High Court in the case of CIT Vs. South Indian Bank Ltd., reported in (2012) 340 ITR 574 (Ker) in which the assessee had raised a belated claim for deduction which was allowed by the Commissioner (Appeals). The Revenue, therefore, contended that for such delay, interest should be declined under Section 244A of the Act. In the said case also, the assessee had not made any claim for deduction of provision of bad debts in the original return. But before completion of the assessment, the assessee had made such a claim which was rejected by the Assessing Officer. The Commissioner allowed the claim and remanded the matter to the Assessing Officer. Pursuant to which, the assessee became entitled to refund. Revenue argued that the assessee would not be entitled to interest in view of Section 244A(2). In this context, the Court held in Para. 6 as under (page 578 of 340 ITR):

'6. Sub-section (2) of section 244A provides that the assessee shall not be entitled to interest for the period of delay in issuing the proceedings leading to the refund that is attributable to the assessee. In other words, if the issue of the refund order is delayed for any period attributable to the assessee, then the assessee shall not be entitled to interest for such period. This is of course an exception to clauses (a) and (b) of section 244A(1) of the Act. In other words, if the issue of the proceedings, that is, refund order, is delayed for any period attributable to the assessee, then the assessee is not entitled to interest of such period. Further, what is clear from subsection (2) is that, if the officer feels that delay in refund for any period is attributable to the assessee, the matter should be referred to the Commissioner or Chief Commissioner or any other notified person for deciding the issue and ordering exclusion of such periods for the purpose of granting interest to the assessee under section 244A(1) of the Act. In this case, there was no decision by the Commissioner or Chief Commissioner on this issue and so much so, we do not think the Assessing Officer made out the case of delay in refund for any period attributable to the assessee disentitling for interest. So much

so, in our view, the officer has no escape from granting interest to the assessee in terms of section 244A(1) (a) of the Act."

6. This Court in the case of **Chetan N. Shah Vs. M.K. Moghe, Commissioner of Income-tax 1, Mumbai**, also had occasion to interpret sub-section (2) of Section 244A. The facts were that in revision proceedings, the assessee took a stand that in the return, there was an erroneous declaration of an amount of income chargeable to the tax. The Commissioner accepted the assessee's contention. Even in such a situation, the Court held that sub-section (2) of Section 244A would have no applicability. Following observations were made:-

"13. The Assessing Officer has been given no discretion in the matter of granting interest. The amount of interest has to be paid to an assessee in terms of Section 244A of the Act. The only limitation provided therein under Section 244A of the Act is under sub-section 2 thereof which mandates that where any refund results to an assessee, while computing the interest payable thereon, the delay which is attributable to the assessee, in obtaining the refund would be excluded. The Act itself does not provide for rejecting the claim for interest on account of a mistake committed by an assessee. If such a proposition is to be accepted then all excess amounts of tax paid by the assessee on account of a mistake would stand rejected rendering Section 244A of the Act otiose. Section 244A of the Act provides for interest on refunds in respect of any amount which has been paid in excess to that otherwise payable under the law. In most cases the excess amount paid as tax would originate on account of some mistake either on fact or of law on the part of the assessee. Advisedly the Act does not empower the authorities to reject a claim for interest on account of a mistake committed by the assessee.

14 The impugned order does not seek to deny any part of interest on account of delay attributed to the Petitioner in disposal of the proceedings. The Petitioner has averred in the petition that though the application for refund was filed on 3 October 1997 the same was disposed of on 9 February 2005 only on account of the file not being located by Revenue. The aforesaid averment has not been challenged / denied by Respondent-Revenue in it's affidavit in reply or even at the hearing before us."

7. We are not unmindful of the admission of the tax appeals by this Court in case of M/s. ACC Limited on which the reliance has been placed by the Tribunal. However, we have given independent reasons to confirm the view of the Tribunal. We have, therefore, not travelled into the territory of the pending appeals. No question of law arises. The tax appeal is dismissed.

2.5 We find that the facts are similar in the present case. The assessee had appended note no.14 with the original computation of income that details of claim for DIT relief are being collected. Accordingly, the relief has been claimed in the revised return of income. Therefore, the issue

being covered in assessee's favor, would not require any interference on our part. Ground No.1 stand dismissed.

G.No.2 : Adjustment of Refund

3.1 During appellate proceedings, the assessee submitted that Ld. AO ought to have adjusted refund first against interest refund due and balance against tax refund due instead of adjusting the same in the reverse manner. Finding that the issue was recurring one and stood covered in assessee's favor by earlier first appellate order, Ld. CIT(A) allowed the assessee's plea. Aggrieved, the revenue is in further appeal before us.

3.2 We find that this issue is covered in assessee's favor by the decision of Tribunal in assessee's own case for AY 1996-97, ITA No.6273/Mum/2016 order dated 21/10/2020 wherein it was held as under: -

6.1. We have heard rival submissions. We find that there is absolutely no discussion regarding this aspect in the assessment order, whereas, the Id. CIT(A) had granted relief to the assessee by placing reliance on the order of his predecessor in assessee's own case for A.Y.1995-96 wherein reliance had been placed on the decision of the Hon'ble Supreme Court in the case of CIT vs. HEG Limited reported in 324 ITR 331 and decision of the Hon'ble Delhi High Court in the case of India Trade Promotion Organisation vs. CIT reported in 361 ITR 646. We find that the Id. DR fairly agreed that this issue is covered in favour of the assessee by the decision of this Tribunal rendered in the case of State Bank of Indore in ITA No.2972/Mum/2011. We also find that this Tribunal had also held in the case of Bank of Baroda in ITA No.1646/Mum/2017 dated 20/12/2018 (authored by the undersigned) wherein it was held that the refund granted by the revenue should be first adjusted against the interest portion of refund due and balance, if any, is to be adjusted against the tax portion of refund due and interest for the subsequent period shall be calculated on such tax portion of refund due. It was also held that this would not tantamount to interest on interest claimed by the assessee and the assessee was right in claiming interest on such portion. Respectfully following the aforesaid decisions, the ground No.4 raised by the revenue is dismissed.

No contrary decision on record. Therefore, finding no reason to deviate from the earlier stand of Tribunal, we dismiss ground no.2 of the appeal.

4. The appeal stand dismissed.

Order pronounced on 08.10.2021.

Sd/-

(Vikas Awasthy)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated :08/10/2021
Sr.PS, Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.