

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI G.S. PANNU (HON'BLE PRESIDENT)
AND
SHRI SHAKTIJIT DEY (HON'BLE JUDICIAL MEMBER)

I.T.A. Nos. 1936 /Mum/2020 - Assessment year 2014-15
I.T.A. Nos. 1937 /Mum/2020 - Assessment year 2012-13

Grasim Industries Limited Aditya Birla Centre A-Wing, 2 nd Floor S.K. Ahire Marg, Worli, Mumbai-400 030 PAN : AAACG4464B	vs	The Commissioner of Income-tax, Central Circle-1(4), Mumbai
APPELLANT		RESPONDENT

Appellant by	Shri Ronak Doshi / Riddhi Maru / Hardik Nirmal, AR
Respondent by	Shri Rajneesh Yadav, DR

Date of hearing	21-10-2021
Date of pronouncement	16-12-2021

ORDER

Per Bench

Captioned appeals by the same assessee arise out of orders dated 09-10-2020 and 07-10-2020 of learned Commissioner of Income Tax (Appeals)-47, Mumbai for the assessment years 2014-15 and 2012-13, respectively.

ITA 1937/Mum/2020 (Assessee's appeal)

2. The dispute in the present appeal is confined to disallowance of deduction claimed under section 80IA of the Income Tax Act, 1961.

3. Briefly the facts are, the assessee is a resident company engaged in manufacturing of staple fibre, chemicals and textiles. For the assessment year under dispute, assessee filed its return of income on 28-11-2014 declaring loss of Rs.2,27,58,89,913/- under the normal provisions of the Act and book profit of Rs.7,93,49,65,128/- under section 115JB of the Act. Subsequently, the assessee filed a revised return of income on 15-04-2015 declaring loss at Rs.1,91,77,39,873/-. Assessment in case of the assessee was originally completed under section 143(3) r.w.s. 144C(13) of the Act vide order dated 30-12-2016 determining the total income at Rs.41,91,11,881/- under the normal provisions of the Act and book profit at Rs.7,93,49,65,128/-. The variation in total income was due to certain disallowances / additions made to the total income / loss returned by the assessee. Being aggrieved with the assessment order so passed, assessee preferred appeal before learned Commissioner (Appeals). While deciding assessee's appeal, learned Commissioner (Appeals) granted partial relief by deleting certain disallowances / addition. In pursuance to the order passed by learned Commissioner (Appeals), the assessing officer passed an order giving effect to the order of learned Commissioner (Appeals). Though, in the original assessment order the assessing officer had allowed deduction under section 80IA of the Act, however, while computing the income of the assessee in the order giving effect to, since the total income of the assessee resulted in loss, the assessing officer disallowed assessee's claim of deduction under section 80IA of the Act, referring to the provisions of section 80AB of the Act. Contesting the disallowance of deduction claimed under section 80IA of the Act, assessee preferred appeal before learned Commissioner (Appeals). However, learned Commissioner (Appeals) decided the issue in the following manner:-

“9.0 I have considered the facts of the case, submissions of the Appellant, the observations of the AO contained in the assessment order and the other materials on record on this issue. Since the issue has already been decided by my Ld. Predecessor order dated- 06.08.2018, the AO is directed to follow the directions of the Ld.CIT(A) and pass an appropriate order in this regard.”

4. The learned counsel for the assessee submitted, the issue is no more res integra in view of the decision of the Hon’ble Supreme Court in case of CIT vs Reliance Energy Ltd (2021) 127 taxmann.com 69 (SC). Proceeding further, he submitted, while deciding identical issue, the Hon’ble Supreme Court has held that deduction under section 80IA has to be allowed on the gross total income which includes income under all the heads. Further, he submitted, the assessing officer in the order passed giving effect to the order of learned Commissioner (Appeals) has allowed deduction under section 80IA of the Act against gross total income. Thus, he submitted, the assessing officer be directed to allow assessee’s claim following the decision of the Hon’ble Supreme Court.

5. The learned departmental representative relied upon the observations of the assessing officer and learned Commissioner (Appeals).

6. We have considered rival submissions and perused materials on record. The dispute arising in the appeal lies within a narrow compass as to whether assessee’s claim of deduction under section 80IA of the Act is to be allowed against gross total income or on the total income. In our view, the issue now stands squarely settled in favour of the assessee by virtue of the decision of the Hon’ble Supreme Court in case of CIT vs Reliance Energy Ltd (supra). While deciding identical issue, the Hon’ble Supreme Court has unequivocally accepted the view expressed by appellate authorities that deduction under section 80IA has to be allowed on the gross total income. In view of the aforesaid, we are inclined to restore the issue to the file of the assessing officer for deciding assessee’s claim

of deduction under section 80IA of the Act following the ratio laid down by the Hon'ble Supreme Court in the case referred to above. Needless to mention, the assessee must be afforded a reasonable opportunity of being heard in the matter. Grounds are allowed for statistical purpose.

7. In the result, appeal is allowed.

ITA No.1937/Mum/2020 (Assessment year 2012-13)

8. The effective grounds raised by the assessee in this appeal are as under:-

“1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the order of the learned AO of not granting interest u/s. 244A in accordance with the provisions of the Act.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the order of the learned AO in not allowing the interest u/s. 244A of the Act upto the date of issue of refund cheque in terms of binding CBDT circular No. 20D (XXII-22) dated 20.08.1968 wherein instructions have been given for calculating interest upto the date of issue of refund voucher.”

9. Briefly the facts are, against the assessment order passed for the impugned assessment year, the assessee had preferred an appeal before learned Commissioner (Appeals). While deciding the appeal, learned Commissioner (Appeals) granted partial relief to the assessee resulting in reduction of total income as determined by the assessing officer. While giving effect to the order of learned Commissioner (Appeals), a refund of Rs.2,84,49,350/- became due to the assessee, which comprised of tax component of Rs.22,13,80,055/- and interest computed under section 244A of the Act for an amount of Rs.3,70,60,29/-. The cheque for the refund issued through State Bank of India, Hyderabad was received by the assessee on 11-05-20018. Subsequently, the assessee moved an application under section 154 of the Act stating that there is short grant of TDS

and interest under section 244A of the Act. Insofar as short grant of interest under section 244A of the Act is concerned, the assessee submitted that interest under section 244A has been calculated upto the date of order dated 09-04-2018 giving effect to the order of the learned Commissioner (Appeals). Whereas, the cheque for refund was issued only on 11-05-2018. Thus, it was submitted by the assessee that interest under section 244A has to be calculated till the date of issue of cheque, i.e. 11-05-2018. In support of such contention, the assessee relied upon circular No. 20D (XXII-22) dated 20.08.1968 issued by Central Board of Direct Taxes (CBDT). The assessing officer, however, rejected the claim of the assessee. Against the order passed under section 154 of the Act, assessee preferred appeal before learned Commissioner (Appeals). After considering the submissions of the assessee, learned Commissioner (Appeals) agreed with the assessing officer. He observed, since the refund has to be issued through online refund banker scheme and the amount is directly credited to assessee's bank account, the process of issuing refund takes 10 to 15 days. Therefore, since there is no delay in issuing the refund from the date of the order, assessee is not entitled to interest till the date of issuance of refund cheque.

10. We have considered rival submissions and perused materials on record. Undisputedly, order granting refund was passed by assessing officer on 09-04-2018. Whereas, the cheque for refund was actually issued on 11-05-2018. Admittedly, there is a delay in issuing the refund cheque. A reading of section 244A(1) of the Act would make it clear that interest has to be allowed to the assessee till the date of grant of refund. Undisputedly, the refund was actually granted to the assessee with the issuance of refund cheque through State Bank of India. The delay in grant of refund cannot be attributed to the bank as it merely

acts as an agent of the department. Therefore, going by the plain language of the provision of section 244A of the Act, assessee is entitled for interest under section 244A of the Act till the issuance of refund cheque. In fact, Central Board of Direct Taxes in circular No. 20D (XXII-22) dated 20.08.1968 holds the same position. Thus, the assessee is entitled to interest under section 244A of the Act till the date of issuance of refund cheque. In this context, we may rely upon the following decisions cited by the assessee:-

1. *Indo Gulf Corporation Ltd vs ACIT ITA No.764 of 2015 dated January 20, 2017 (Mumbai Tribunal)*
2. *Indo Gulf Corporation Ltd vs DCIT ITA No.76 of 2015 dated September 18, 2019 (Mumbai Tribunal)*
3. *Indo Gulf Corporation Ltd vs DCIT ITA No. 396-397 of 2011 & Ors dated September 15, 2011 (Lucknow Tribunal)*
4. *Order of High Court in case of Indo Gulf Corporation Ltd ITA No.43 of 2011 (Allahabad H.C.)*
5. *M/s Small Industries Development Bank of India vs DCIT ITA No.3707/Mum/2021 (Mumbai Tribunal)*

11. In view of the aforesaid, we direct the assessing officer to grant interest under section 244A of the Act till the date of issue of refund cheque. Grounds are allowed.

12. To sum up, appeal in ITA No.1936/Mum/2020 is allowed for statistical purposes and appeal in ITA o.1937/Mum/2020 is allowed.

Order pronounced on 16/12/2021.

Sd/-

Sd/-

(G.S. PANNU)	(SAKTIJIT DEY)
PRESIDENT	JUDICIAL MEMBER

Mumbai, Dt : 16/12/2021

Pavanoan

Copy to :

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

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By Order

Asstt. Registrar, ITAT, Mumbai