

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

**BEFORE SHRI B. R. R. KUMAR, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR US, JUDICIAL MEMBER**

I.T.A. No. 3739/DEL/2019 (A.Y 2003-04)

(THROUGH VIDEO CONFERENCING)

DCM Shriram Ltd. 1 st Floor, Kanchenjunga Building, 18, Barakhamba Road, New Delhi PAN No. AAACD0097R (APPELLANT)	Vs	Addl CIT(A) Special Range-3 C. R. Building , I. P. Estate New Delhi (RESPONDENT)
---	----	---

Appellant by	Sh. Pradeep Dinodia, CA, Sh. V.P. Gupta, Adv and Sh. Anunav Kumar, Adv
Respondent by	Sh. Kumar Parnav, Sr. DR

Date of Hearing	17.02.2022
Date of Pronouncement	07.03.2022

ORDER

PER YOGESH KUMAR U.S, JM

This appeal is filed by the assessee against the order dated 15/04/2019 passed by the CIT (A)-3, New Delhi for Assessment Year 2003-04.

2. The brief facts of the case that, the appellant had claimed refund of Rs. 3,78,20,187/- in the ITR filed and on completion of the assessment u/s 143(3) of the IT Act, a demand of Rs. 18,73,53,452/- was determined by the A.O. The Ld. CIT(A) partly allowed the appeal and after giving the appeal effect, the appellant was due for refund. However, the AO did not grant interest u/s 244A of the Act to the assessee on the refund amount for the period from 01.04.2003 to 24.03.2006. The assessee preferred an appeal before the Tribunal, the

Tribunal vide its order dated 19.12.2017 in ITA No.5172/Del/2014 directed the AO to grant Interest u/s 244A of Act to the appellant on the refund amount for the period from 01.04.2003 to 24.03.2006. By complying the directions of the Tribunal, the AO vide its order dated 04.05.2018, granted interest u/s 244 of the Act to the appellant for the period from 01.04.2003 to 24.03.2006 amounting to Rs. 93,44,160/-.

3. Aggrieved by the Order dated 04.05.2018 passed by the A.O., the assessee has filed an appeal before CIT (A) 3 New Delhi on the grounds that the Assessing Officer has erred in not granting interest on interest u/s 244A of the Act on the impugned of refund Rs. 93,44,160/- pursuant to the order of Hon'ble ITAT dated 29/12/2017 and contended that the Provisions of Section 244A of the Act clearly provide that the interest is allowable in respect of amount which was wrongly been deleted or upheld by the Assessing Officer for the period of delay in granting the refund. The Ld.CIT(A) after hearing the assessee, observed that the appeal has been filed against the order passed by A.O u/s 254 read with 143(3) of the IT Act giving appeal effect to the order of Hon'ble ITAT as per Section 246A of the Act, therefore the said order is not appealable before CIT(A). Further, on the merit by relying on the judgment of Hon'ble Supreme Court in the case of CIT Vs. Gujara Flluro Chemicals (2013) 358 ITR 291 (S.C) and also by quoting insertion of Section 244A to the Act, held that, there is no provision in the statute to provide interest on interest u/s 244A. Accordingly, dismissed the appeal by order impugned dated 15/4/2019.

4. Aggrieved by the CIT(A) dated 15/04/2019, the assessee has preferred the present appeal on following grounds.

“1. That the CIT(A) erred in holding that order passed by the Assessing Officer u/s 254 read with section 143(3) of the Act giving appeal effect to the order of Hon'ble ITAT is not appealable before CIT(A) as per section 246A of the Act, without giving any opportunity to the appellant.

2. *That the CIT(A) erred in passing the order dated 15.04.2019 in appeal of the appellant company without fully discussing the contentions and case law submitted by the company vide its written submissions and, therefore, order is bad in law as it has been passed with a prejudiced mind.*

3. *That the CIT(A) erred in holding that interest u/s 244A of the Act is not allowable on the delay in granting the interest amount of Rs.93,44,160/- which ought to have been allowed to the appellant on 10.06.2013 but was granted only on 04.05.2018 pursuant to order of ITAT dated 29.12.2017 without appreciating that in terms of section 244A interest is allowable on the amount of refund, including the interest, if same has remained with the Government*

4. *That the CIT(A) also erred in wrongly relying on the judgement of Hon'ble Supreme Court in the case of CIT v. Gujarat Fluoro Chemicals (2013) 358 ITR 291 (SC) without appreciating that as per the aforesaid judgement also interest was duly allowable as per statutory provisions and in accordance with provisions of section 244A of the Act interest was duly allowable on the amount of refund and this position has also been duly upheld by the Supreme Court and other appellate authorities vide judgments, which were duly relied upon before the CIT(A).*

5. As per the grounds of appeal, there are two issues emerges for consideration by us:-

(i) Whether appeal filed by the Assessee before the CIT(A) is maintainable or not?.

(ii) Whether assessee is entitled for interest for delayed payment of interest (Compensation/interest on interest) u/s 244A pursuant to the order of the Tribunal in ITA No.5172/Del/2014 dated 29/12/2017?.

6. We have heard the parties, examined the records and gave our thoughtful consideration.

7. In so far as issue No. (i) is concerned, the Ld. Counsel for the assessee contended that the appeal is very well maintainable before CIT(A), by relying on the decision of Hon'ble Supreme Court of Central Provisions Manganese Ore Co. Ltd. (1986) 1600 ITR 961 (S.C), argued that, the CIT (A) erred in finding the Appeal filed by the Assessee is not maintainable.

8. We find substance in the contention of the Ld. Counsel representing the assessee in so far as maintainability of the Appeal before the CIT (A) is concerned. The Order giving effect to the directions of the Tribunal is in the nature of order u/s 143(3) of the Act and any Order passed u/s 143(3) of the Act is appealable under Section 246(1) of the Act before the CIT (A). Thus we hold that the Appeal filed by the Assessee before the CIT (A) is maintainable.

9. In so far as Issue No.(ii) is concerned, the Ld. Sr. Counsel contended that, the AO has not granted the interest as per the directions of the Tribunal in ITA No. 5172/Del/2014, further contended that the Assessee is entitled for interest on the belated payment of interest as per section 244A of the Act and provided the calculation in following manners:

Amount of refund : Rs. 93,44,160/-

Period for which interest is allowable:01-06-2013 to 04-05-2018(60 months)

Rate at which interest is allowable : 0.5%

Amount of interest allowable : Rs. 28,03,248/-

10. Further contended that, the CBDT has also clarified on granting of interest u/s. 244A of the Act vide its circular No.549 dated 31.10.1989 explained in following manners:

“11.3. These provisions, apart from being complicated, left certain gaps for which interest was not paid by the Department to the assessee for money remaining with the Government. To remove this inequity, as also to simplify the provisions in this regard, the Amending Act, 1987, has inserted a new section 244A in the Income-tax Act, applicable from the assessment year 1989-90 and onwards which contains all the provisions for payment of interest by the department for delay in the grant of refunds. The rate of interest has been increased from the earlier 15 per cent per annum to 1.5% per month or part of a month comprised in the period of delay in the grant of refund. The Amending Act, 1987, has also amended sections 214, 243 and 244 to provide that the provisions of these sections shall not apply to the assessment year 1989-90 or any subsequent assessment years.”

11. The Ld. Counsel has also relied on the several judgments and orders including assessee's own case for the assessment years 2005-06 and 2009-10 in ITA No. 5221 and 5222/Del/2016 dated 30/10/2019 to substantiate the grounds urged in the appeal.

12. Per contra the Ld. Sr. DR contended that, AO has given effect to the direction of the Tribunal in strict sense by granted interest u/s 244A of the Act to the appellant for the period from 01.04.2003 to 24.03.2006 amounting to Rs. 93,44,160/-, further contended that the Tribunal vide its order dated 29/12/2017 in ITA No. 5172/Del/2014 has not directed to grant interest on the interest or compensation on account of payment of interest belatedly and moreover, the Section 244A of the Act does not provides for granting of interest on interest. Therefore, submitted that the Order of the AO and the CIT(A) requires no interference.

13. In so for issue No.(ii) is concerned, we find that, there is no dispute that the Assessee was due and entitled for grant of interest for the period 01/04/2003 to 24/03/2003 (36 months), which has been directed to be

granted to the Assessee by this Tribunal in ITA No. 5172/Del./2014 (AY 2003-4) by order dated 29-12-2017. The relevant portion of the direction is extracted as follows:

“In view of this, we are of the opinion that the assessee is eligible for interest w.e.f. 01/04/2003 to 24/03/2006 as for the above period there is no delay attributable on the part of the assessee. Therefore, we reverse the order of the Ld. CIT(Appeals) in directing the Ld. Assessing Officer to refer the matter to the Chief Commissioner of Income Tax for his opinion and direct the Ld. Assessing Officer to grant interest to the assessee under section 244A of the Income-tax Act w.e.f. 01/04/2003 to 24/03/2006, the period for which the Ld. Assessing Officer held that delay is attributable on the part of the assessee.

19. In the result, appeal of the assessee is allowed.”

The aforesaid Order of the Tribunal has attained finality since neither the Assessee nor the Revenue chose to challenge the said direction of the Tribunal.

14. In compliance with the above direction of the Tribunal, the AO has granted interest w.e.f 01/04/2003 to 24/03/2006 to the assessee on 04-05-2018 u/s. 244A at the rate of 6% p.a on 5,19,00,000/- amounting Rs. 93,44,160/-. The AO has fully complied with directions of the Tribunal issued in ITA No. 5172/Del/2014 dated 29/12/2017 and there was no direction to compute interest on the interest or to pay compensation on account of belated payment of the interest as claimed by the Assessee in the present Appeal. The Assessee, who had chosen not to challenge the order of the Tribunal made in ITA No. 5172/Del/2014 dated 29/12/2017 and the direction issued thereon, cannot challenge the order of giving effect of the

said order. The AO had complied with the direction of the Tribunal in toto, therefore we cannot find fault with the Order passed by the AO.

15. The learned Counsel appearing for the AR placed much reliance on the order of the Tribunal in Assessee's own case in ITA No. 5221 & 5222/Del/2016 dated 03-10-2019 and contended that the issue involved in the present appeal is fully covered with the said order. On going through the facts and circumstances of the case, we found that the said order of the Tribunal was delivered on different set of facts and footings, which have no bearing on the present case of the Assessee.

16. In the ITA No. 5221 & 5222/Del/2016, the facts are that, 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 had filed an 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 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 which has been rejected and the CIT(A) also did not allow the claim of the assessee. Aggrieved by the same, the assessee has filed an appeal before this Tribunal in ITA No. 5221 and 5222/Del/2016 wherein this Tribunal has allowed the appeal, wherein it has held as follows:

“ 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 slowed to the assessee for a period from the date of short allowed to thee 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.”

17. As seen from the above facts, the Tribunal vide Order dated 30-10-2019 in ITA No.5221 and 5222/Del/2016, specifically directed AO to compute the interest on late payment of the interest, but in the Order dated 29-12-2017 made in ITA No. 5172/Del/2014, the Tribunal has directed the AO to “grant interest to the Assessee under Section 244A of the Income Tax Act w.e.f. 01/04/2003 to 24/03/2006”. There was no direction to pay either interest on interest or to pay composition for late payment of interest and the said Order of the Tribunal dated 29/12/2017 in ITA No. 5172/Del/2014 reached finality. Therefore the Order of the Tribunal in Assessee’s own case in ITA No. 5221 & 5222/Del/2016 dated 03-10-2019 is not applicable to the facts and circumstances of the present Appeal.

18. For the above said reasons, we do not find merit in the appeal and in the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on this 07th Day of March, 2022

**Sd/-
(B. R. R. KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER**

Dated: 07/03/2022
*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI