IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.807/Mum./2019
(Assessment Year : 2012–13)

State Bank of India
Financial Reporting & Taxation Department
3rd Floor, Corporate Centre, Madam Cama Rd. ……. Appellant
Nariman Point, Mumbai 400 021
PAN – AAACS8577K

v/s

Asstt. Commissioner of Income Tax
Circle–2(2)(1), Mumbai ……. Respondent

Assessee by : Shri Ketan Ved
Revenue by : Shri Shekhar L. Gajbhiye, CIT–DR

Date of Hearing – 10.03.2022	Date of Order – 26/05/2022

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 03.12.2018, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals)–5, Mumbai [*"learned CIT(A)"*], for the assessment year 2012–13.

2. In this appeal, the assessee has raised following grounds:–

"The appellant objects to the order of the Commissioner of Income-

tax (Appeals) - 5, Mumbai [CIT(A)] dated 3 December 2018 for the aforesaid assessment year on the following among other grounds:

1. No mistake apparent from record

1.1. The learned CIT(A) erred in not appreciating that an alleged short-levy of interest under section 234D is not a mistake apparent from record and accordingly outside the purview of rectification of mistakes under section 154.

1.2. The learned CIT(A) erred in rejecting the claim of the appellant that two views are possible in this case and hence, it cannot be a case of rectification under section 154.

2. Excess levy of interest under section 234D of Rs. 4,00,73,87 2

2.1. The learned CIT(A) erred in confirming the levy of excess interest under section 234D of Rs.4,00,73,872 for the month of March 2014.

2.2. The learned CIT(A) erred in not appreciating that interest under section 234D is applicable only for 11 months (i.e. from 1 April 2014 to 27 February 2015) as against for 12 months considered by the assessing officer.

2.3. The learned CIT(A) erred in not appreciating that date of grant of refund is same as the date of receipt of refund order / cheque.

2.4. The learned CIT(A) erred in not following the judgement of the jurisdictional Bombay High Court in the case of CIT v. Pfizer Ltd (191 ITR 626) and jurisdiction Mumbai ITAT in the case of Rajashekhar Swaminathan Iyer v. DCIT (73 taxmann.com 228) which are in favour of the appellant taking into consideration the facts of the case.

2.5. Without prejudice to the above, the learned CIT(A) erred in not appreciating that 1 day cannot be treated as 1 month in view of the judgement of the Gujarat High Court in the case of CIT v. Arvind Mills Ltd (16 taxmann.com 291). The learned CIT(A) erred in not appreciating that even if the date of grant of refund is considered as 31 March 2014 i.e. the date of order under section 154, the period from 31 March 2014 to 27 February 2015 will be 11 months.

3. Short grant of credit for taxes of Rs. 24,77,010

3.1. The learned CIT(A) erred in not directing the assessing officer to grant credit for taxes deducted on income from foreign centres amounting to Rs. 24,77,010. .

3.2 The learned CIT(A) erred in not adjudicating this issue on the basis that this issue is not emanating from the rectification order under consideration.

3.3. The learned CIT(A) erred in not appreciating that the assessing

officer in the order dated 14 March 2017 under section 154 has himself mentioned to give credit for taxes and charge interest as per rule. Therefore, the issue arises out of the said order since appropriate credit for taxes is not given in the said order.

4. Short grant of interest under section 244A

4.1. The learned ACIT erred in not directing the assessing officer to recompute interest under section 244A and grant additional interest of Rs. 2,97,241.

4.2. The learned CIT(A) erred in not adjudicating this issue on the basis that this issue is not emanating from the rectification order under consideration.

4.3. The learned CIT(A) erred in not appreciating that the assessing officer in the 6rder dated 14 March 2017 under section 154 has himself mentioned to give credit for taxes and charge interest as per rule. Therefore, the issue arises out of the said order since appropriate interest is not computed in the said order.

5. The learned CIT(A) erred in not appreciating that the order dated 14 March 2017 under section 154 modifies order dated 27 February 2015 under section 143(3) r.w.s 144C(13). Therefore, order dated 27 February 2015 under section 143(3) r.w.s 144C(13) merges with order dated 14 March 2017 under section 154. Accordingly, the issues in ground 3 and 4 above arise out of the said order.

6. Each one of the above grounds of appeal is without prejudice to the other.

7. The appellant reserves the right to amend, alter or add to the grounds of appeal."

3. The first issue to be decided in present appeal is pertaining to validity of rectification order passed by the Assessing Officer under section 154 of the Act.

4. The brief facts of the case pertaining to this issue, as emanating from the record are: Assessment order under section 143(3) read with section 144C(13) of the Act was passed, in the case of the assessee, on 27/02/2015 determining total income at Rs. 17454,87,39,709. During the audit, it was observed that the assessee was granted refund of Rs.

8471,56,05,701 on 31/03/2014 after summary assessment. However, after scrutiny assessment, due to certain additions, refund to the tune of Rs. 801,47,74,461 was found to be made in excess. Assessing Officer vide rectification order dated 14/03/2017 passed under section 154 of the Act held that assessee was liable for interest under section 234D for a period of 12 months i.e. from March, 2014 to February, 2015. However, as interest under section 234D amounting to Rs. 44,08,12,595 was levied for 11 months only, therefore, there is a mistake which is apparent from the record. As a result, further interest of Rs. 4,00,73,872 under section 234D was levied vide rectification order passed under section 154 of the Act.

5. In appeal before the learned CIT(A), assessee submitted that whether the interest under section 234D of the Act has to be computed from the date of grant of refund or from the date of receipt of cheque of refund, is a debatable issue and thus same cannot be held to be a mistake apparent from the record and accordingly, is outside the purview of the provisions of section 154 of the Act. The assessee further submitted that the Assessing Officer vide rectification order has levied interest under section 234D from the date of order determining the refund i.e. 31/03/2014 as against the actual date of grant of refund vide cheque i.e. 01/04/2014. The assessee submitted that the refund was granted only on 01/04/2014 i.e. when the cheque was received and, therefore, no interest under section 234D should be levied for March, 2014. The learned CIT(A) vide impugned order dated 03/12/2018 held that there is no ambiguity in the provisions of section 234D of the Act and the claim made by any

assessee contrary to the provisions of the Act, which is otherwise clear and unambiguous, would not make the issue debatable. Accordingly, learned CIT(A) dismissed the appeal filed by the assessee on this issue. Being aggrieved, the assessee is in appeal before us.

6. During the course of hearing, learned Authorised Representative ("*learned AR*") submitted that the issue, whether interest under section 234D of the Act shall be computed from the date of order determining the refund or from the actual date of grant of refund, is a contentious issue. Learned AR submitted that the Co-ordinate Bench of Tribunal in DDIT v/s Development Bank of Singapore, [2013] 33 Taxmann.com 300 (Mumbai-Trib) held that interest under section 234D is chargeable from the date of grant of refund and not from date of actual receipt of said excess amount. Thus, learned AR submitted that as the issue is a debatable one, therefore, same is outside the scope of section 154 of the Act.

7. On the other hand, learned Departmental Representative vehemently relied upon the impugned order passed by the learned CIT(A).

8. We have considered the rival submissions and perused the material available on record. The proceedings resulting in the present appeal is pursuant to the order passed by the Assessing Officer under section 154 of the Act. After passing of the assessment order under section 143(3) read with section 144C(13) of the Act, Assessing Officer found that interest under section 234D in respect of the excess refund granted to the assessee was levied only for 11 months instead of 12 months i.e. from March, 2014

to February, 2015. As a result, vide rectification order dated 14/03/2017 passed under section 154 of the Act, Rs. 4,00,73,872 was charged as short levy of interest under section 234D of the Act. As noted above, assessee before the learned CIT(A) submitted that the issue, whether interest under section 234D of the Act will be levied from the date of grant of refund or from the date of receipt of cheque of refund, is a debatable issue and thus, is outside the purview of the provisions of section 154 of the Act. The learned AR placed reliance upon the decision of Co-ordinate Bench of Tribunal in Development Bank of Singapore (supra) to submit that the issue is contentious in nature. We find that in Development Bank of Singapore (supra), the Co-ordinate Bench of Tribunal, while holding that interest under section 234D of the Act shall be chargeable from the date of grant of refund, observed as under:

> *"17. The only other ground is against the charging of interest u/s 234D. Here also the challenge is not to the otherwise chargeability of interest but for the period from which interest should be charged. The learned AR contended that the interest u/s 234D should have been charged from 07.12.2004, being the date on which it actually received the interest instead of 29.10.2004, being the date on which refund was granted. In this context section 234D(1) is relevant, the relevant part of which is reproduced as under:-*
>
> > *"234D(1) Subject to the other provisions of this Act, where any refund is granted to the assessee under sub-section (1) of section 143, and –*
> >
> > *(a) no refund is due on regular assessment; or*
> >
> > *(b) the amount refunded under sub-section (1) of section 143 exceeds the amount refundable on regular assessment.*
> >
> > *the assessee shall be liable to pay simple interest at the rate of [one-half] per cent on the whole or the excess amount so refunded, for every month or part of a month comprised in the period from the date of grant of refund to the date of such regular assessment."*
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> *18. This section talks of interest on excess refund. The dates from and up to which such interest is to be charged have been set out at the end of the*

provision being "from the date of grant of refund to the date of such regular assessment". The dispute before us rotates only around the date from which interest should be charged. The learned AR contended that such date should be considered as the date on which the refund was actually received u/s 244A. On the other hand, the case of the Revenue is that the relevant date is the date on which the refund is issued by the department.

19. At this stage it is relevant to note that interest on refunds is granted under section 244A. Sub-section (1) of this section provides that where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the prescribed manner. Clause (a) stipulates that where the refund is out of any tax paid, inter alia paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the prescribed rate for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the 'date on which the refund is granted'. Similarly, clause (b) providing for interest in any other case, states that such interest shall be calculated at the specified rate for every month or part of a month comprised in the period or periods from the date of payment of the tax or penalty 'to the date on which the refund is granted'. Thus it is manifest that the terminating point for the calculation of interest u/s 244A is the date on which the refund is granted. It is axiomatic that invariably the actual date of receipt by the assessee will succeed the date of granting or issuance of refund. A cheque for refund with interest having been prepared is signed by the competent authority. After making due entries in the record, it goes for dispatch and only thereafter it is actually received by the assessee. On receipt, the assessee deposits such cheque in his bank account which further takes a few days in realization. So, there is bound to be some time gap between the date of granting of refund and the date of receipt of such refund. In such a situation, the assessee cannot come out with a claim that interest u/s 244A should be allowed up to the date of receipt of refund instead of date of grant of refund as provided for in the Act. If the contention of the ld. AR is accepted that the word 'grant' should be read as 'receipt', then in all cases of awarding interest, the Department will have to issue refund vouchers twice, viz., firstly up to the date of issuance of refund voucher and secondly, from such date to the date on which the assessee came in seisin of the money. This is clearly neither the intention nor the prescription of the provision.

20. It is of paramount importance to note that interest on refund is only a statutory right, which can be regulated strictly as per the prescribed provisions. There can be no question of granting any interest on refund de hors the relevant provisions in the Act. We want to accentuate on the proviso to section 244A(1)(a) which states that no interest shall be payable if the amount of refund is less than ten per cent of the tax as determined, inter alia under sub-section (1) of section 143 or on regular assessment. Thus, if the amount of refund falls short of such percentage, the assessee cannot claim interest as a matter of right. This lead us to the logical conclusion that the question of grant of refund u/s 244A and the ex consequenti charging of interest on refund u/s 234D can be determined strictly as per the statutory provisions. There can be no question of a claim of equity or fairness in this connection, at least before the tribunal, which is

bound to decipher the provisions of the Act as they exist. When the payment of interest u/s 244A is contemplated w.r.t the date of grant of refund, there can be no question of substituting similar expression - 'date of grant of refund' - employed u/s 234D with the 'date of receipt of refund' as has been argued on behalf of the assessee. It is axiomatic that one word cannot be understood differently in two related sections. When the word 'grant' cannot be read as 'receipt' in section 244A, the same cannot have a different meaning in section 234D.

21. The legislature cannot be considered as oblivious of the fine distinction between "the date of grant of refund" and "the date of receipt of refund". These two expressions have different connotations. Whereas the first refers to the date on which refund is issued, the second refers to the date on which it is actually received by the assessee. The legislature in its wisdom has employed the expression "date of receipt" in several sections, such as section 155(8A) before its omission and certain sections providing exemption under the head 'Capital gains'. To claim that the date of receipt of refund should be reckoned as a starting point instead of the date of grant of refund, in our considered opinion, would amount to doing violence to the unambiguous language of the provision. As it is the expression 'date of grant of refund' which has been employed u/s 234D, which in the present case is 29.10.2004, we hold that the interest has been rightly charged from this date. This ground is, therefore, not allowed."

9. Thus, while holding that interest under section 234D shall be charged from the date of grant of refund, the Co-ordinate Bench of Tribunal in the aforesaid decision, inter-alia, referred to the similar expression used in section 244A of the Act.

10. We further find that another Co-ordinate Bench of the Tribunal in M/s Small Industries Development Bank of India v/s DCIT, in ITA no. 3707/Mum/2012, vide order dated 15/09/2017, while holding that interest under section 244A shall be granted up to actual date of receipt of the refund by the assessee, observed as under:

"7. We have carefully considered the rival submissions. Notably, the only issue in dispute is the period for which assessee is entitled to interest u/s 244A of the Act. According to the assessee, the CIT(A) erred in granting interest upto the date of issuance of refund voucher, i.e. 29.3.2010 whereas as per the assessee, it is entitled to interest upto April, 2010 (i.e. upto the date of receipt of refund voucher on 6.4.2010). In this context, we find that the Hon'ble Bombay High Court in the case of Pfizer Limited, 191

ITR 626 (Bom) has held that assessee is entitled to interest upto the date of receipt of the refund order. Similarly, our coordinate bench in the case of M/s. Novartis India Limited, ITA No. 1249/Mum/2010 dated 18.3.2011 has decided a similar issue in favour of the assessee by referring to an unreported judgement of the Hon'ble Bombay High Court in the case of Citi Bank vs. CIT in ITA No. 6 of 2001 dated 17.7.2003, wherein the claim of the assessee for interest was upheld upto the date when the Pay Order is "actually received by the assessee pursuant to the order sanctioning the refund". Therefore, following the aforesaid precedents, in our view, the assessee is justified in seeking interest u/s 244A of the Act upto the date of receipt of the refund order, i.e. 6.4.2010. Thus, on this aspect, assessee succeeds."

11. Thus, we are of the considered view that the very fact that assessee objected to the levy of interest under section 234D of the Act from the date of grant of refund instead of date of receipt of cheque of refund, renders the issue to be debatable issue. Further, without commenting upon the merit of the issue, the fact that in Development Bank of Singapore (supra), the Co-ordinate Bench of Tribunal held that interest under section 234D of the Act shall be chargeable from the date of grant of refund and while interpreting similar expression in section 244A, another Co-ordinate Bench of the Tribunal in M/s Small Industries Development Bank of India (supra) held that interest under section 244A shall be granted up to actual date of receipt of the refund by the assessee, also renders this issue to be a contentious issue, which requires long-drawn process of reasoning and arguments from both the sides. The Hon'ble Supreme Court in T.S. Balaram, Income Tax Officer v/s Volkart Brothers, [1971] 82 ITR 50, held that for initiating proceedings under section 154 of the Act, the mistake apparent from record must be an obvious and patent mistake and not something which can be established by long drawn process of reasoning on points on which there may conceivably be two opinions. In view of the

above and as is evident from the facts available on record, the point on which rectification under section 154 of the Act was done by the Assessing Officer in the present case is capable of divergent views and since, this issue is not alleged to have been settled by any decision of Hon'ble Supreme Court, therefore, we are of the considered view that the present case clearly falls beyond the ambit of the expression '*mistake apparent from the record*', and thus, the rectification order dated 14/03/2017 passed under section 154 of the Act is set aside. As a result, ground Nos. 1.1 and 1.2 raised in assessee's appeal are allowed.

12. In view of the aforesaid findings, ground nos. 2.1 to 2.5 raised in assessee's appeal are rendered academic in nature and are accordingly dismissed.

13. As the scope of the present appeal is limited to the rectification order passed under section 154 on the aspect of short levy of interest under section 234D of the Act, therefore, issues raised in ground Nos. 3.1, 3.2 and 4.1 to 4.3 are not arising from the said order, which was upheld by the learned CIT(A) vide impugned order. However, the assessee shall have the liberty to raise these issues in the proceedings, which are submitted to be pending against assessment order dated 27/02/2015 passed under section 143(3) r.w.s. 144C(13) of the Act. As a result, ground Nos. 3.1, 3.2, 4.1 to 4.3 and 5 are dismissed as infructuous.

14. In the result, appeal by the assessee is partly allowed.

Order pronounced in the open court on 26/05/2022

Sd/-	**Sd/-**
PRASHANT MAHARISHI	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 26th May 2022

Copy of the order forwarded to:

(1) The Assessee;

(2) The Revenue;

(3) The CIT(A);

(4) The CIT, Mumbai City concerned;

(5) The DR, ITAT, Mumbai;

(6) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai