

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 362/Bang/2022
Assessment Year : 2020-21

M/s. GMR Infrastructure Ltd., No. 25/1, Skip House, Museum Road, Bengaluru – 560 025. PAN: AABCG8889P	Vs.	The Assistant Director of Income Tax, CPC, Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Sunil Jain, CA
Revenue by	:	Shri Venudhar Godesi, JCIT DR

Date of Hearing	:	19-07-2022
Date of Pronouncement	:	19-07-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against order dated 22/04/2022 passed by Ld.CIT(A)-11, Bangalore for A.Y. 2020-21 on following grounds of appeal:

“Appeal before the Hon'ble Income Tax Appellate Tribunal, Bangalore against the order passed by the Commissioner of Income Tax (Appeals)-11, Bangalore f'‘CIT(A)’’} u/s. 250 of the Income Tax Act, 1961 (“the Act”)

Short grant of interest U/s 244A by Rs.23,19,590/-.

1. On the facts and circumstance of the case and in law the Learned CIT(A) has erred in dismissing the appeal of appellant by holding that the grounds of appeal filed before him are not arising out of order dated March 30. 2021 passed U/s 143(1) of the IT Act. 1961.

2. The CIT(A) has further erred in making the following irrelevant, incorrect and /or immaterial observations in the order passed U/s 250:

(1) The computation of interest under section 244A in the intimation order issued under section 143(1) of the Act is found correct as the same is up to the date of said intimation:

(2) Delay in issue of refund. does not make the order under section 143(1) of the Act faulty: and

(3) Solution is not in filing appeal against the order under section 143(1) of the Act but somewhere else

3. The CIT(A) failed to appreciate and ought to have held that:

(1) The appeal by the appellant was filed against intimation order issued u/s. 143(1) as well as tax refund order issued u/s. 237 and not merely against intimation order;

(2) The appeal by the appellant has been filed on August 16, 2021 i.e. after the date of receipt/ grant/ adjustment of tax refund amount as per NSDL portal on May 21, 2021:

(3) The tax refund determined in the intimation order dated March 30, 2021 has actually been granted to the appellant by way of manual refund cheque on March 29, 2022 pursuant to the order of Karnataka High Court and the same has been credited to Appellant's Bank account in the Month of April 2022;

(4) The tax refund amount pertaining to AY 2020-21 as claimed in the return of income is actually granted to the appellant in the month of April 2022 (i.e. on April 13th 2022); and

(5) The appeal by the appellant was filed against intimation order issued u/s. 143(1) as well as tax refund order issued u/s. 237

4. The appellant therefore prays that the Assessing Officer be directed to allow further interest of Rs.23,19,590/- on tax refund amount granted belatedly in accordance with the provisions of section 244A of the Income tax Act. 1961.

5. The appellant craves, leave to add, alter and / or amend all or any of the foregoing grounds of appeal.”

2. Brief facts undisputedly assessee filed its return of income on 15/02/2021 declaring loss of Rs. 31,44,56,14,063/-.

2.1 The assessee filed its return of income on 15/02/2021 declaring therein loss of Rs.3144,56,14,063/- and book profit u/s. 115JB was worked out in the negative of Rs.16,46,88,87,764/-. The tax payable were worked out at Rs.

Nil as against the amount of prepaid taxes of Rs. 3,56,85,862/- comprising of tax deduction at source of Rs.3,56,85,862/-. Accordingly, a tax refund of Rs.3,56,85,862/- was claimed in the return of income.

2.2 The return of income for the A.Y. 2020-21 was processed by the Assistant Director of Income Tax (CPC), Bangalore vide intimation order dated 30/03/2021 u/s. 143(1) of the Act assessing total loss at Rs.3144,56,14,063/- and determining a tax refund of Rs.3,78,27,000/- (income tax of Rs. 3,56,85,860/- plus interest u/s. 244A of Rs. 21,41,140/-). The tax refund granted was adjusted as per details given as follows:

- a) Rs. 3,10,60,818/- on 21/05/2021 towards tax demand outstanding as per system for AY 2009-10.
- b) Rs. 67,66,182/- on 21/05/2021 towards tax demand outstanding as per system for AY 2014-15.

2.3 It is submitted that while processing the return, the CPC granted interest on the tax refund amount under section 244A at Rs. 21,41,140/- as against the correct amount of interest allowable at Rs. 24,98,010/- u/s. 244A resulting in short grant of interest by Rs. 3,56,870/- on the tax refund amount which was granted / adjusted against the tax demand on 21/05/2021.

2.4 Further, it is also submitted that, pursuant to the order passed by the *Hon'ble Karnataka High Court* in the Writ Petition filed against adjustment of tax demand in excess of 20%, pending appeal before the CIT(A), by CPC the Jurisdictional Assessing Officer has passed an order dated 29/03/2022 and thus has issued manual refund cheque for AY 2020-21 which was adjusted by CPC over and above 20% of tax demand. Copy of

order dated 29/03/2022 and copy of manual refund cheque are placed in FPB Page No. 171-174 for your kind reference.

2.5 The Ld.AR submitted that, the tax refund amount determined in the intimation order dated 30/03/2021 was granted to the assessee by way of manual refund cheque dated 29/03/2022 and the same has been credited to assessee's bank account in April 2022. In other words, the tax refund amount for AY 2020-21 as claimed in the return of income is actually granted to the assessee in the month of April 2022 i.e. on 13/04/2022 after a period of 25 months.

2.6 It is the contention of the assessee that it would be entitled to interest u/s. 244A of Rs. 44,60,730/- as against which interest of Rs. 21,41,150/- is granted resulting in short grant of interest u/s. 244A by Rs. 23,19,580/-.

3. The Ld.CIT(A) considered assessee's submissions by observing as under:

"4.3 The submissions of the appellant have duly been considered. The undisputed fact is that the order under Section 143(1) of the Act was passed by the AO on 30.03.2021 and it is not denied by the appellant that the intimation under Section 143(1) of the Act was served upon it on 30.03.2021 itself. The argument of the appellant is that earlier the refund was adjusted against its demand for other years on 21.05.2021 and further in consequence of the order dt. 09.02.2022 of the High Court, the refund was issued to it on 29.03.2022. The argument of the appellant is thus that the interest should have been computed up to 29.03.2022. However, this argument of the appellant is found to be devoid of any merit. The reply of the appellant itself shows that the appellant is not aggrieved by the order under Section 143(1) of the Act, which was passed on 30.03.2021. Instead, it is aggrieved by a subsequent action of the AO in not issuing the refund timely. Firstly, there was delay up to 21.05.2021 in adjustment against demand and secondly the refund was issued on 29.03.2022 post order of the High Court. Now neither of these two issues arises out of the order under

Section 143(1) of the Act. Thus there isn't any ground of appeal which is arising out of the impugned order. The appeal is thus not in accordance with the provisions of Section 246A of the Act. The computation of interest under Section 244A of the Act in the intimation issued under Section 143(1) of the Act is found to be correct as the same is up to the date of said intimation i.e. 30.03.2021. Whatever has happened post the issue of said intimation i.e delay in issue of refund, does not make the order under Section 143(1) of the Act faulty. So the solution is not in filing appeal against the order under Section 143(1) of the Act but somewhere else. The case laws relied upon by the appellant are on different facts and thus not relevant.

4.4 Considering above, there isn't any merit in the arguments of the appellant and the appeal is dismissed as the issues raised in the grounds of appeal are not arising out of the impugned order but a subsequent action of the AO in not issuing the refund on time. The appellant is free to take suitable remedial action to get its grievance addressed as per law. The grounds of appeal are accordingly dismissed.”

4. Aggrieved by the order of Ld.CIT(A), assessee is in appeal before us.
5. We have perused the submissions advanced by both sides in the light of records placed before us.
6. This issue stands settled by *Hon'ble Supreme Court* in case of *Sandvik Asia Ltd. vs. CIT* reported in [2006] 280 ITR 643 wherein *Hon'ble Court* observed as under that in that case Sandvik Asia has refunded the principal, however interest was withheld for a long time.
7. The *Hon'ble Court* was of the view that refund being withheld without any reason, the assessee would be entitled to receive such amount with further interest. Subsequently, larger Bench of the *Hon'ble Supreme Court* considered the question whether the decision in case of [Sandik Asia Limited v. CIT \[Supra\]](#) lays down the principle that interest on interest is payable when the refund is delayed. The *Supreme Court* explained the decision in

case of Sandvik Asia Limited [Supra] observing that the Supreme Court in such case was considering the issue as to whether the assessee who was made to wait for refund of interest for decades should be compensated for great prejudice caused to it due to delay in its payment after the lapse of statutory period. It was in this background, the Court directed the Revenue to pay compensation which cannot be seen as a direction for payment of interest on interest. The Supreme Court held and observed as under :

"6. In our considered view, the aforesaid judgment has been misquoted and misinterpreted by the assesses and also by the Revenue. They are of the view that in Sandvik case [Supra] this Court had directed the Revenue to pay interest on the statutory interest in case of delay in the payment. In other words, the interpretation placed is that the Revenue is obliged to pay an interest on interest in the event of its failure to refund the interest payable within the statutory period.

7. As we have already noted, in Sandvik case [Supra] this Court was considering the issue whether an assessee who is made to wait for refund of interest for decades be compensated for the great prejudice cause to it due to the delay in its payment after the lapse of statutory period. In the ITA NOs. 5231, 5232 & 5233/MUM/2019 ITA NOs. 4892 & 4893/MUM/2019 M/s. Bharat Petroleum Corporation Ltd., facts of that case, this Court had come to the conclusion that there was an inordinate delay on the part of the Revenue in refunding certain amount which included the statutory interest and therefore, directed the Revenue to pay compensation for the same not an interest on interest."

8. We also note that *Coordinate Bench of this Tribunal* in case of *ACIT vs. Bharat Petroleum Corporation Ltd.* in ITA Nos. 5231,5232 & 5233/Mum/2019 by order dated 30.06.2021 in respect of additional interest that might be applicable to assessee u/s. 244(1A) has held to be available only after 01/06/2016 as observed by *Hon'ble Gujarat High Court* in case of *Gujarat*

Flourochemicals Ltd. vs. CIT reported in [2015] 377 ITR 307 (Guj.). In the present facts of the case, assessee is no doubt eligible for interest on the refund that was withheld till the date of issue of the refund order. Further, in the present facts, the assessee had already received interest on refund u/s. 244A of the Act though it was computed with a shortfall. Interest on interest as available to assessee under newly inserted sub-clause (1A) will have to be analysed in accordance with law. The year under consideration is Assessment Year 2020-21 and therefore interest on interest has to be computed for the shortfall amount that assessee is liable to receive. We therefore remand this issue to the Ld.AO to compute the actual refund along with the interest u/s. 244A and on the shortfall amount that assessee did not receive over and above that was computed by the CPC vide intimation dated 30/03/2021, assessee has to be granted interest on interest under sub-clause (1A) of section 244A of the Act.

Accordingly, the grounds raised by the assessee stands partly allowed for statistical purposes.

In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in open court on 19th July, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 19th July, 2022.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore