

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.412/Bang/2022
Assessment Year : 2018-19

M/s. GMR Kamalanga Energy Ltd., No.25/1, Skip House, Museum Road, Bengaluru – 560 025. PAN : AADCG 0436 E	Vs.	DCIT, Central Circle – 2(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Sunil Jain, CA
Revenue by	:	Smt. Susan Dolores George, CIT(OSD)(ITAT), Bengaluru.

Date of hearing	:	20.07.2022
Date of Pronouncement	:	26.07.2022

ORDER

Per Padmavathy S, Accountant Member

This appeal is against the order of the CIT(A)-11, Bengaluru, dated 25.03.2022 for the Assessment Year 2018-19.

2. The only issue contended by the assessee through various grounds raised is the non-grant of interest under section 244A from the date of intimation u/s. 143(1) to the date of actual payment of the refund.

3. For the year under consideration, the assessee filed the return of income on 29.11.2018, declaring a loss of Rs.1,55,57,94,224/-. The return of income was processed by the DCIT, CPC, Bengaluru (AO) on 02.10.2019 assessing the loss of the assessee at Rs.1,32,11,26,193/- and granting a refund

of Rs.1,38,97,271/- comprising of tax of Rs.1,26,91,578/- and interest under section 244A of Rs.12,05,693/-. The interest under section 244A was calculated upto the date of intimation under section 143(1) which is dated 02.10.2019. The refund amount actually got credited in assessee's bank account on 10.06.2020 i.e., 8 months after the intimation was served vide order under section 237. The assessee filed an appeal before the CIT(A) raising the ground that there is a short credit of interest under section 244A to the tune of Rs.5,07,670/- which is pertaining to the interest from the date of intimation under section 143(1) i.e., 02.10.2019 to actual grant of interest as per order under section 237 i.e., 10.06.2020. The CIT(A) rejected the submissions of the assessee stating that the assessee has filed an appeal against the order under section 143(1) as per which the interest has been rightly calculated upto the date of the order which is 02.10.2019 and that the ground raised by the assessee for shortfall of interest is not arising out of 143(1) order. The CIT(A) did not accept the submission of the assessee that the appeal is filed against order under section 237 dated 10.06.2020 on the basis that in Form 35 the assessee has stated that the appeal is against the order under section 143(1). On this premise, the CIT(A) dismissed the appeal stating that the assessee should file appeal not against 143(1) but somewhere else. Aggrieved, the assessee is in appeal before the Tribunal.

4. The learned AR submitted that assessee has inadvertently mentioned in Form 35 that the appeal is against 143(1) whereas the appeal is actually against the order under section 237. In this regard, the learned AR drew our attention to clause 2(b) where the date of order is mentioned as 10.06.2020 which is the date of order under section 237 and not 143(1) which proves that the order mentioned as 143(1) in clause 2(a) is an inadvertent error. The

learned AR therefore prayed that the CIT(A) ought not to have dismissed the appeal and should have considered the merits of the case.

5. The learned DR supported the order of the CIT(A) submitting that the CIT(A) has rightly rejected the appeal which is filed against the order under section 143(1).

6. We heard the rival submissions and perused the materials on record. In the order under section 143(1) dated 02.10.2019 the interest is rightly calculated upto the date of the order. However, the assessee has actually received the refund in the bank account on 10.06.2020. The CBDT vide circular No.7/2013 dated 15.07.2013 has issued instruction to the effect that when the delay in granting the refund is not attributable to the assessee but due to the fault of the Revenue then the interest under section 244A should be paid for the period of delay. Therefore, in the given case, there cannot be any dispute that the assessee is entitled to the interest under section 244A upto the date on which refund is granted. However the CIT(A) has rightly dismissed the appeal stating that impugned interest is not arising out of order under section 143(1). The Id. AR during the course of proceedings submitted that the issue of non-granting interest upto the date of credit of refund is raised before the AO based on the refund order u/s. 237. Taking into consideration the submission of the Id. AR, in the interest of justice, we remit the issue back to the AO to consider the submission of the assessee. The AO is directed to take into account the instructions as per circular No.7/2013 while deciding the case after giving the assessee reasonable opportunity of being heard. It is ordered accordingly.

7. In the result, appeal of the assessee is allowed for statistical purposes.
Pronounced in the open court on this 26th day of July, 2022.

Sd/-

(N. V. VASUDEVAN)
Vice President

Sd/-

(PADMAVATHY S)
Accountant Member

Bangalore,
Dated: 26.07.2022.
/NS/* /Desai S Murthy/

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.