

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 97/Ahd/2012
Assessment Year 2008-09**

Mehsana Dist. Co-op. Milk Producers Union Ltd. C/o. Ketan H. Shah, Advocate 903, Sapphire complex, C.G. Road, Navranpura, Ahmedabad PAN No:AAAAM0329F (Appellant)	Vs	Dy.Commissioner of Income Tax, Mehsana Circle, Mehsana (Respondent)
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**Appellant by : Shri Ketan Shah, A.R.
Respondent by : Shri V.K. Singh, Sr.D.R.**

Date of hearing : 20-07-2022
Date of pronouncement : 07-09-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

The present appeal has been filed by the Assessee against the order dated 02.11.2011 passed by the Commissioner of Income Tax (Appeals), Gandhinagar, Ahmedabad, as against the Assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2008-09.

2. The brief facts of the case is that the assessee is in the business of processing of Milk & Diary products and manufacturing of Cattle Feed. For the Assessment Year 2008-09, the assessee filed its Return of Income on 29/09/2008 declaring total income of Rs. 1,72,13,825/- before claiming deduction u/s. 80P. The case was selected for scrutiny assessment. On verification of records, it was noticed by the assessing officer that several appeal effects were given especially for the Assessment Years 2001-02 and 2002-03, the assessee was granted interest u/s. 244A of the Act along with such refunds. For the Assessment Year, 2001-02 Refund of Rs.1,65,00,000/-, which includes interest on Rs. 15,50,000/-. However this entire refund was adjusted against the demand for the assessment year 1998-99. For the Assessment Year 2002-03, a Refund of Rs. 1,36,24,392/- which is includes of interest of Rs. 14,99,742/-, the same is also adjusted against the demand for the Assessment Year 2000-01 & 2005-06. The above interest of Rs. 15,50,000/- was given to the assessee on 28.02.2008 and Rs. 14,99,742/- was given on 26.03.2008. However the assessee has not offered the interest income in the Return of Income filed by the assessee. Therefore a show cause notice was issued to the assessee, why not the same be added as the income for the Assessment Year 2008-09.

2.1. In reply thereto the assessee submitted that giving effect to ITAT's order, refunds due to the assessee were adjusted against old arrears. The assessee was never made know the interest

determined u/s. 244A by the Assessing Officer in his intimation passed u/s. 245 of the Act, without knowing the details of interest there is no question of disclosing the interest by the assessee in its Return of Income. It is seen from the intimation passed u/s. 245 adjusting the above refund, there is no break-up of the refund amount and the interest amount by the Assessing Officer. In fact as per Section 245 provides an opportunity of hearing to the assessee, which ought to have been given by the Assessing Officer before making such an adjustment of refund due to the assessee. Therefore the Assessing Officer is not correcting including this amount for the assessment year 2008-09. However during the assessment proceedings after the issuance of the show cause notice, the assessee has offered this interest income of Rs.30,49,742/- for the assessment year 2011-12 and filed a revised return on 26.09.2012. It is therefore requested not to make any addition on this account. The assessing officer has rejected the above claim and held that intimation u/s. 245 was being sent to the assessee before making such an adjustment. However the assessee has not offered the same as the income of the assessee for the relevant assessment year 2008-09 and therefore added as the income relevant to the Assessment Year 2008-09 and demanded tax thereon.

3. Aggrieved against the same, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) after hearing the assessee held as follows:

Having gone through the entire arguments on both sides, the issues to be decided are:-

- i) whether the income coming into knowledge of the assessee is a determining factor for its accrual?
- ii) When does the interest u/s 244A granted, accrues?

On the first issue the courts have decided that once the income has actually become receivable by the assessee, its knowledge to the assessee or otherwise is of no consequence. The following is the gist of the decision of Hon'ble Bombay High Court in the case of Gopal Ramnarayan Kasat reported at 328 ITR 556:-

"Interest under s.234B-Chargeability-Higher income determined on assessment-As profit earned by the assessee on receipt of the compensation was held as income chargeable to tax under the head "Profit from business" mere difficulty faced by the assessee in the matter of computation cannot defeat the liability for payment of advance tax-Interest under s.2348 was rightly charged-Contention that the interest payable on account of enhanced compensation was unknown to the assessee on the date of completion of assessment, therefore, the assessee could not have included the interest received on enhanced compensation in the assessment, year jvhile estimating his income for the purposes of calculation of advance tax was not sustainable-CIT vs Kotak Mahindra Finance Ltd (2003) 183 CTR (Bom) 491 relied on."

The chargeability of an income which has accrued cannot depend on the knowledge of the assessee, whatever be the circumstances. We are not on the mens rea, which can be the issue in penalty proceedings and whether the assessee is responsible for understatement of income. Once the income is proved to belong to the year in question, it has to be added as part of the total income. Here, I would like to refer to the decision of Mumbai ITAT, Special Bench in the case of Avada Trading Co., 100 ITD 131. In this case, it was decided that once a refund is granted to an assessee along with interest, the interest income accrues to the assessee even if the determination of interest has not become final. Therefore, the action of the AO of making addition of Rs. 30,49,742/- on account of interest on income Tax refund granted during the previous year relevant to assessment year under question is held justified. The first and second grounds of appeal are therefore, dismissed.

5. The next ground of appeal against charging of interest u/s, 234A, 234B and 234C of the Act. The charging of interest is mandatory and consequential to the determination of total income and as no relief has been granted in the computation of total income, the ground is dismissed.

4. Aggrieved against the appellate order, the assessee is in appeal before us.

4.1. Ld. Counsel Mr. Ketan Shah appearing for the assessee submitted before us a copy of the intimation passed u/s. 245 of the Act which is reproduced:

*Office of the
Assistant Commissioner of Income-Tax,
Mehsana Circle, Mehsana
2nd floor, Apollo enclave, Highway Mehsana-384002*

No. MHN/ACIT/U/s. 245/2007-08.

Dated: 28.02.2008

*To
Mehsana Dist. Co-op. Milk Producers
Union and Mehsana*

Dear Sir,

*Sub:- Adjustment of outstanding demand against the refund
In our case – limitation u/s. 245 of the I.T. Act, 1961.*

Please refer to the above

2. A demand of Rs. 1,60,38,262 & 2,70,558 & 2,41,180 is outstanding in your case for the assessment year 2000-01, 1998-99 & 2005-06 and refund of Rs. 1,65,50,000 has arisen as a result of processing for A.Y. 2001-02. I propose to adjust the refund against outstanding demand for the aforesaid year. Please treat this as intimation u/s. 245 of the I.T. Act.

Yours faithfully,

*(T.D. Shivnani)
Asst. Commissioner of Income-tax,
Mehsana Circle, Mehsana.*

4.2. The Ld. Counsel further submitted that the copy of the intimation itself is not eligible. The amount shown in this order does not disclose whether it is a refund alone and interest also included in that amount. In the absence of the same, the assessing officer cannot expect that the assessee has not offered the interest

received by it during the assessment year 2008-09. Mr. Ketan Shah further submitted that this issue came to the knowledge of the assessee after the receipt of the show cause notice on 19.10.2010 relevant to the assessment year 2011-12. The assessee filed a revised return offering the interest income of Rs. 30,49,744/- by filing the revised return on 26.03.2012, however after the present impugned order dated 02.11.2011 passed by the Ld. CIT(A). Thus the Ld. Counsel pleaded that there is no mala fide intention in not declaring the interest income by the assessee which is being a Cooperative Milk Producers Union.

4.3. The Ld. Counsel also submitted the rate of tax for both the Assessment Years 2008-09 & Assessment Year 2011-12 being the maximum rate of 30%. However if the assessee would have known this details of interest determined u/s. 244A paid by the Revenue and offer for taxation in the Assessment Year 2008-09 itself instead of Assessment Year 2010-11, there may be small differences in the calculation of interest u/s. 234B and 234C. However considering the bonafideness of the assessee, the above addition made by the assessee is to be deleted and allow the appeal filed by the assessee.

5. Per contra the Ld. D.R. appearing for the Revenue supported the order of the lower authorities and pleaded that there being the concurrent findings by lower authorities, the same does not require any interference and pleaded to uphold the penalty levied by the lower authorities.

6. We have heard both the sides and perused the materials available on record but including the Paper Book filed by the assessee. The short issue is to be decided in this case is whether assessee has been informed by the Assessing Officer while granting refund u/s. 245, the break-up of the details of the refund and interest determined u/s. 244A of the Act and how the same have been adjusted against the outstanding demand in assessee's case.

6.1. As it can be seen from Para 4.1 of this order, the intimation made u/s. 245 of the Act. This intimation states there are some tax arrears are due from the assessee relating to three assessment years. However, Rs. 1,65,50,000/- is the refund due from the assessment year 2001-02 and proposed to adjust this refund as against outstanding demand for the said three assessment years. The Assessing Officer has not given whether the refund of Rs. 1,65,50,000/-, which is inclusive interest u/s. 244A or not. In the absence of the same, the assessee cannot be expected to know from this intimation u/s. 245, the refund is inclusive of interest of 15,50,000/- determined u/s. 244A of the Act. It is further seen during the assessment proceedings for 2008-09, this issue was raised by the assessing officer in his show cause notice dated 19.10.2010. That the assessee also pleaded the no intimation of interest component in the 245 intimation by the assessing officer during the assessment proceedings and requested not to include the same in the assessment for the Assessment Year 2008-09. Having not been successful of this plea even before the Ld. CIT(A), the assessee has chosen to offer this income of Rs. 30,49,742/-

for the Assessment Year 2011-12 by filing the revised return on 26.09.2012.

6.2. In fact reading of Section 245 makes it very clear that a refund is found to be due, to any person then the Assessing Officer or the Commissioner Appeals or Principal Chief Commissioner as the case may be, may, in lieu of payment of refund, set off the amount be refunded or any part of the amount against the sum if any, remaining payable under this Act by the assessee to whom refund is due, after giving an intimation in writing to such assessee of the action proposed to be taken under this section. Similarly sub-section(3) of Section 244A reads as follows;

“Provides as a result of an order passed by an Appellate Authority the amount on which interest was payable under sub-section (1) has been increased or reduced as the case may be the interest shall be increased or reduced accordingly. By intimating to the assessee.”

6.3. It is seen on record that the Assessing Officer has not intimated what is the interest determined u/s. 244A of the Act relevant to the Assessment Year 2001-02. Similarly for the Assessment Year 2002-03 only during the assessment proceedings for the Assessment Year 2008-09 this break up was shown to the assessee by way of a show cause notice so the same cannot be treated as a proper disclosure by the Assessing Officer as required u/s. 245 of the Act. When the assessee have bonafidely has shown this interest income of Rs. 30,49,742/- and offered in the

Assessment year 2011-12 for taxation the same cannot be ignored. The Bombay High Court judgment referred by the Ld. CIT(A) is in the context of chargeability of interest u/s. 234B of the Act, the same is in no way relevant to the issue in hand before us. Therefore the addition made by the assessing officer without properly issuing intimating u/s. 245 is liable to be deleted. Thus, the grounds of appeals raised by the assessee is hereby allowed.

7. In the result, appeal filed by the Assessee is allowed.

Order pronounced in the open court on 07 -09-2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 07/09/2022

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद