INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'E' BENCH, MUMBAI

[Coram: Pramod Kumar (Vice President)]
and Sandeep S Karhail (Judicial Member)]

ITA No.215/Mum/2022
Assessment Year: 2008-09

Grasim Industries Limited …….. Appellant
(As a Successor to Aditya Birla Nuvo Ltd..)
Aditya Birla Centre, A Wing, 2nd Floor, S.K Ahire Marg,
Worli, Mumbai400 030 [PAN: AAACI1747H]

Vs.

Deputy Commissioner of Income Tax, Central Circle-1(4)
Mumbai …….Respondent

Appearances:
Ronak Doshi *along with* **Ayushi Modani** *for the appellant*
Chetan M Kacha *for the respondent*

Date of concluding the hearing : 02.09.2022
Date of pronouncement the order : 18.10.2022

O R D E R

Per Pramod Kumar, VP

1. By way of this appeal, the assessee appellant has challenged the correctness of order dated 20th January 2022 passed by the learned CIT(A) in the matter of rectification of mistake under section 154 of the Income Tax Act 1961, for the assessment year 2008-09.

2. Grievances raised by the appellant are as follows:-

1. Ground No. 1

1.1 On the facts and the circumstances of the case and in law, the learned CIT(A) erred in confirming the order dated 17-07-2019 passed by the learned AO in contravention of the provisions of section 154 of the ITA.

1.2 The Appellant prays that the order dated 17-07-2019 passed u/s. 154 of the ITA be held as bad in law and therefore be quashed.

2. Ground No. 2

2.1 On the facts and the circumstances of the case and in law, the learned CIT(A) erred in confirming the order of the learned AO withdrawing interest correctly allowed to the Appellant as per the provisions of section 244A of the ITA and holding that the proceedings resulting in refund were delayed for the reasons attributable to the Appellant.

2.2 The learned CIT(A) failed to appreciate that the learned AO passed order dated 17-07-2019 ignoring the provisions of section 244A(2) of the ITA.

2.3 The Appellant prays that the learned AO be directed to delete the demand of Rs. 13,20,64,739/- and restore the interest granted u/s 244A vide order dated 16-05-2016.

3. Ground No.3

3.1 without prejudice, the learned CIT(A) ought to have directed the learned AO to correct the amount of interest to be withdrawn at Rs. 12,11,38,643/- instead of Rs. 13,20,64,739/-.

4. Ground No. 4

4.1 On the facts and the circumstances of the case and in law, the learned CIT(A) erred in confirming the order dated 17-07-2019 passed by the learned AO in the same of non-existent entity i.e. Aditya Birla Nuvo Limited.

4.2 The learned CIT(A) failed to appreciate that order passed in the name of non-existent entity is void ab inito and liable to be quashed.

3. On merits, the short issue that we are required to adjudicate in this appeal is whether learned CIT(A) was justified in upholding the Assessing Officer's stand in declining interest under section 244A on the ground that the delay in refund is attributed to the assessee.

4. To adjudicate on this appeal, only a few material facts need to be taken note of. On 17th July 2019, the Assessing Officer passed the impugned rectification order, and observed, *inter alia*, as follows:-

4. The relief accorded to the assessee company by the directions of the Hon'ble ITAT's order was not a disputed issue, either at the assessment stage or at the first appellate stage.The re-working of disallowance w/s 14A of the Income Tax Act, 1961, was raised by the assessee before the ITAT with regard to application of Rule 8D(2) (ill of the IT Rules, 1962, against the order of the CIT (A) which contained directions to follow precedence.

4.1. In other words, the original appeal of the assessee before the Hon'ble ITAT was relating to the CIT (Al's direction to re-compute the disallowance u/s 14A of the Income Tax Act, 1961, made by the Assessing Officer u/r 8D(2) (fir) of the IT Rules, 1962 and did not contain objection or agitation on the suo motto disallowance made by the assessee in the return of income and during the proceedings before the First appellate authority and also in the original grounds of appeal before the Hon'ble ITAT.

4.2. The Hon'ble ITAT, observing that the additional ground was a legal issue; not containing any additional or new facts, has admitted this additional ground and has clubbed this issue with that of the original ground of the assessee; being appeal against CIT (A)'s directions to rework based on earlier precedence, and has directed that this issue be restored to the Assessing Officer

to re-work the entire disallowance us 14A of the Income Tax Act, 1961, without applying Rule 8D of the IT Rules, 1962.

4.3. The Assessment Order, consequential to the directions of the Hon'ble ITAT'S order, u/s 143(3) r.w.s. 254 of the Income Tax Act, 1961, was passed on 16/05/2016, determining the assessee's income at Rs. 141,07,16,102/-and tax payable thereon at Rs. 47,48,47,040/-.

4.4 After giving credit to the prepaid tax, TDS and regular taxes, a refund of Rs. 54,52,12,250/- was determined payable to the assessee, which included interest us 244A of the Income Tax Act, 1961, of Rs. 21,25,91,553/-.

4.5. The working of interest granted us 244A of the Income Tax Act, 1961, on the above refund being Rs. 21,25,91,553/- is seen to have been worked out from 1st April of 2007.

5. From the facts discussed in the preceding paras, it is evident that the interest us 244A of the Income Tax Act, 1961, computed on the refund is engendered by the decision of the Hon'ble ITAT on the additional ground raised by the assessee before it.

6. Since the additional ground raised by the assessee before the Hon'ble ITAT with regard to its own suo motto disallowance made us 14A of the Income Tax Act, 1961, has resulted in substantial portion of refund, the corresponding interest u/s 244A of the Income Tax Act, 1961, relevant to this refund is attributable to the delay cause caused due to the assessee's raising additional ground of appeal in respect of its suo motto disallowance us 14A of the Income Tax Act, 1961, before the Hon'ble ITAT, Mumbai.

7. Therefore, the amount of interest us 244A of the Income Tax Act, 1961, in respect of the refund arising on the relief from the additional ground made by the assessee is totally attributable to the Assessee and therefore squarely falls within the ambit of the provisions of section 244A (2) of the Income Tax Act, 1961. The working of interest us 244A of the Income Tax Act, 1961, in respect of tax of Rs.26,18,52,126/- attributable to the relief of Rs.77,79,32,639/- is solely on account of delay on the part of the Assessee and therefore the interest allowed for the entire period commencing from 1st of April, 2007 is prima facie incorrect and in contravention to the provisions of section 244A(2) of the Income Tax Act, 1961.

8. The mistake being apparent from record, notice us 154 of the Income Tax Act, 1961, was issued to the assessee on 12/04/2019 explaining therein the above discussed facts in brief and proposing to rectify the order us 143(3) r.w.s 254 of the Income Tax Act, 1961, to recompute the interest us 244A of the Income Tax Act, 1961, in accordance with section 244A (2) of the Income Tax Act, 1961.

5. During the course of these proceedings, as evident from copies of submissions filed by the assessee-copies of which have been placed before us in the paper book, the assessee has taken the stand, supported by elaborate arguments, that the delay in refund was not attributable to the assessee. The assessee had also made references to various judgments of Hon'ble Courts above, such as *CIT vs South Indian Bank Ltd [(2012) 340 ITR 574 (Ker)]*, *Ajanta Mtg Ltd vs DCIT [(2017) 391 ITR 33 (Guj)]*, and *ITO vs Volkart Bros (1971) 82 ITR 50 (SC)]*. It was thus clearly a seriously contended issue as to whether or not the assessee was responsible for delay in refund of tax, and, as such, whether interest under section 244A could have been declined to the assessee at all. None of these submissions, however, had any impact on the Assessing Officer. He proceeded to withdraw the interest-as evident from the extracts of his rectification order,

reproduced above. Aggrieved assessee carried the matter in appeal before the learned CIT(A) but without any success. The assessee is not satisfied and is in further appeal before us.

6. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

7. Learend representative fairly agree that the issue is appeal is covered, in favour of the assessee, by a co-ordinate bench decision in the case of ***DBS Bank Ltd vs DDIT [(2016) 157 ITD 476 (Mum)]*** wherein, speaking through one of us (i.e. the Vice President) the co-ordinate bench has observed as follows:-

> *6. While dealing with rectification of mistakes under s. 154, it is necessary to bear in mind inherently limited scope of this provision. This aspect of the matter has been beautifully explained by Hon'ble Supreme Court, in the landmark case of ITO vs. Volkart Brothers (1971) 82 ITR 50 (SC), as follows:*
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> *"....A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may conceivably be two opinions. As seen earlier, the High Court of Bombay opined that the original assessments were in accordance with law though in our opinion the High Court was not justified in going into that question.....an error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions cannot be said to be an error apparent on the face of the record. A decision on debatable point of law is not a mistake apparent from the record....."*
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> *7. Let us, in this light, revert to the facts of this case.*
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> *8. As for the point as to whether the tax is required to be deducted at source from payments made by a foreign bank's Indian branch to its overseas head office, a Special Bench of this Tribunal, in the case of ABN Amro Bank (supra), had decided the issue in favour of the assessee. It was held since, in such a situation, the payment is made by the non-resident to himself, there is no obligation to deduct tax at source from such payments. Hon'ble Calcutta High Court, in the case of ABN Amro Bank NV vs. CIT (2011) 241 CTR (Cal) 552 : (2011) 57 DTR (Cal) 85 : (2012) 343 ITR 81 (Cal), has held that there is (sic—no) tax deduction at source requirement, under s. 195, from the payment of interest made by the Indian branch of a foreign bank to its offices abroad. It is thus clear that the impugned disallowance, even on merits, is unsustainable in law. Accordingly, the impugned disallowance, by way of rectification of mistake under s. 154, is wholly unsustainable in law. The CIT(A) was indeed in error in upholding the impugned rectification order on this aspect of the matter.*
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> *9. As for the second point on which the impugned rectification order was passed, we have noted that the stand of the AO is that interest under s. 244A is not admissible in respect of delay in making claim of exemption under s. 10(23G). In the assessment order, at p. 6, there is a mention that the "assessee's letter dt. 20th Jan., 2005 has been considered and, accordingly, it is held that Rs. 2,50,65,961.57 will not form part of the income under s. 10(23G) of the Act". The stand of the AO, at p. 2 of the impugned rectification order, thus is that since the claim itself was made on 20th Jan., 2005, "the period of delay in issuing refund from the period 1st April, 2002 to 20th Jan., 2005, being attributable to the assessee, is required to be excluded". The AO has proceeded on the basis that mere making of belated claim under s. 10(23G), even if that be so, is reason enough to hold that the delay in issuance of refund, to that extent, is attributable to the assessee.*

Sec. 244A(2) as it then stood, however, provided that "If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable, and where any question arises as to the period to be excluded, it shall be decided by Chief CIT or CIT whose decision thereon shall be final". In this light, when we revert to the facts of this case, we find that there is nothing more the fact of delayed claim under s. 10(23G) which has been put against the assessee to deny the interest under s. 244A, for the period of the beginning of the relevant assessment year till the date of making the claim by way of a letter, but then it is not the delay in claim but the delay in "the proceedings resulting in refund" which are crucial factor in declining in the interest under s. 244A. There is nothing on record to suggest that the proceedings leading to the refund, i.e., assessment proceedings, are "delayed for reasons attributable to the assessee". That is not even the case of the AO. Even assuming that the making of a delayed claim, by itself, can be reason enough for denial of interest under s. 244A, there is nothing on record to even suggest that the delay in making of the claim was attributed to the assessee. The exemption under s. 10(23G) is dependent on the approval of the Central Government, and, there can thus be many reasons, not in the control of the assessee, which could result in or trigger the delay in admissibility of claim. The delay in making of the claim by itself, without anything else, cannot lead to the conclusion that the delay is attributed to the assessee. Let us not forget that it is not a case of declining interest levy under s. 244A on merits but it is a case in which not declining the interest under s. 244A for this period has been treated as a mistake apparent on record, which, by implication, means that it is "an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may conceivably be two opinions". In our considered view, even if the interest under s. 244A could be declined for this period on merits, not declining the interest under s. 244A could not be treated as a mistake apparent on record within the inherently limited scope of s. 154. In any event, when a question arises as to the period for which such interest under s. 244A is to be excluded, this is to be decided by the CIT or the Chief CIT. Even if the interest under s. 244A could be declined for this period on merits, not declining the interest under s. 244A could not be treated as a mistake apparent on record within the inherently limited scope of s. 154. In any event, when a question arises as to the period for which such interest under s. 244A is to be excluded, this is to be decided by the CIT or the Chief CIT. In any event, when a question arises as to the period for which such interest under s. 244A is to be excluded, this is to be decided by the CIT or the Chief CIT. The law is quite unambiguous on this aspect as it provides that "where any question arises as to the period to be excluded, it shall be decided by Chief CIT or CIT whose decision thereon shall be final". Undoubtedly, such a decision by the CIT of the Chief CIT cannot be a subject-matter of then the call about the period for exclusion of interest is to be determined by the CIT or the Chief CIT. Obviously, no such exercise was carried out at the assessment stage or even at the stage of the rectification proceedings, and it was, therefore, not open to the AO, on his own, to decide the period for which interest under s. 244A was to be declined. For this reason also, not declining the interest under s. 244A for the period of 1st April, 2002 to 20th Jan., 2005, was not a mistake apparent on record. In view of the above discussions, and for more reasons than one, the AO was in error in passing the impugned order under s. 154 on this aspect of the matter as well.

10. In view of the above discussions, we are of the considered view that the AO was clearly in error in passing the impugned order under s. 154. Learned CIT(A), therefore, ought to have cancelled the impugned order passed by the AO. We, therefore, reverse the action of the CIT(A) and quash the impugned order under s. 154. As the said order stands cancelled, all other issues raised by the assessee are rendered academic and do not call for any adjudication by us at this stage.

8. Section 244A(2) categorically provides that, "if the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of delay so attributable to him shall be excluded from the period for which interest is payable, and where any question arises as to period to be excluded, it shall be decided by the Chief Commissioner or the Commissioner whose decision will be final". What is, therefore, essential for declining interest to the interest assessee under section 244A(2), is that the delay in refund must be on account of reasons attributable to the assessee, and when there is a dispute about the period for which interest is to be declined, Chief Commissioner or Commissioner must take a call, in favour of the Assessing Officer's stand, on the same. None of these conditions are satisfied on the facts of this case. Just because an assessee has raised a claim by way of an additional ground of appeal before the Tribunal, it does not necessarily mean that the delay is attributable to the assessee-this delayed claim could be on account of subsequent legislative or judicial developments, or on account of other factors beyond the control of the assessee. This exercise of ascertaining the reasons of delay is an inherently subjective exercise, and well beyond the limited scope of mistake apparent on record on which no two views are possible. In any case, there is not adjudication by the Chief Commissioner or the Commissioner on the period to be excluded-something hotly contested by the assessee. Unless that adjudication is done, the denial of interest under section 244A cannot reach finality, and, for this reasons also, the impugned order does not meet our approval.

9. In view of the above discussions, and bearing in mind the entirety of the case, we uphold the plea of the assessee and vacate the impugned rectification order. The assessee gets the relief accordingly.

10. Shri Doshi, learned counsel for the assessee, insists that, apart from the above issues, the impugned order is vitiated in law on other grounds as well. As a measure of abundant caution, he would not give up on other grounds-such as ground no 3. His point is noted, and, of course, if and when occasion arises, he can take up those points as well. As of now, these aspects are academic.

11. In the result, the appeal is allowed. Pronounced in the open court today on the 18th of October2022

Sd/-	Sd/-
Sandeep S Karhail	**Pramod Kumar**
(Judicial Member)	(Vice President)

Mumbai, dated the 18th day of October, 2022

Copies to:	*(1)*	*The Appellant*	*(2)*	*The respondent*
	(3)	*CIT*	*(4)*	*CIT(A)*
	(5)	*DR*	*(6)*	*Guard File*

By order

Assistant Registrar/Sr. PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai