

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
(Conducted through E-Court, Rajkot)

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER,

आयकर अपील सं./ITA No. 235/Rjt/2019
निर्धारण वर्ष/Asstt. Years: 2008-2009

M/s Rupam Impex, B-8 GIDC, Udyognagar Shanker Tekri, Jamnagar-361004. PAN: AAJFR3639M	Vs.	A.C.I.T., Circle-3, Jamnagar.
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Assessee by :	Shri Vimal Desai, A.R
Revenue by :	Shri B.D. Gupta, Sr. D.R

सुनवाई की तारीख / **Date of Hearing** : **08/09/2022**
घोषणा की तारीख / **Date of Pronouncement**: **12/10/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), Jamnagar, dated 29/08/2019 arising in the matter of assessment order passed under s. 154 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2008-09.

2. The only issue raised by the assessee is that the learned CIT-A erred in not granting interest on the refund of income tax.

3. The necessary facts arising from the order of the authorities below are that the assessee in the present case is a partnership firm and engaged in the business of export trading of brass parts. The assessee for the year under consideration filed its return of income declaring income of ₹ 3,29,28,010.00 which was accepted in the assessment framed under section 143(3) of the Act dated 26 July 2010. Subsequently, the assessee moved a rectification application under section 154 of the Act dated 1st April 2013 contending that the correct taxable income stands at Rs. 2,97,08,010.00 against the income declared in the return of income at ₹ 3,29,08,010.00 but the AO rejected the claim of the assessee vide order dated 31 October 2013. However, the assessee succeeded in the appeal filed before the learned CIT-A vide order dated 23 May 2014. Accordingly, the assessee was granted refund of the excess income tax paid by it dated 30th November 2015 amounting to Rs. 11,57,970.00. However, the assessee was not granted the interest under the provisions of section 244A of the Act on the amount of income tax refund of Rs. 11,57,970.00. The assessee again moves a rectification application before the AO claiming the interest on the refund of Rs. 11,57,970.00 but the same was denied by the AO and subsequently the order of the AO was also upheld by the learned CIT-A by observing as under:

As per the appellant the AO has refused to grant interest u/s. 244A of the Act on this refund of Rs. 11,57,967/- as per hit order u/s. 154 dated 24/04/2018 on the ground that the delay in issuing refund was not attributable to the department but the same¹ was attributable to the appellant. In my opinion the AO has correctly refused to grant interest u/s. 244A of the Act on this refund of Rs. 11,57,967/- in view of the fact that it was the appellant who had shown her return of income of Rs. 3,29,28,010/- incorrectly and subsequently such return of income has been accepted as it is by the department. This is not the case of the appellant that any addition was made by the AO and subsequently such addition was deleted by the appellate authority and hence as a result of which the appellant got refund and because of this he was also liable to get interest u/s. 244A of the Act on such refund. Here in the case of the appellant the fault was not lying with the department but the same was[^] lying with the appellant who had incorrectly returned its income and thus the delay of issuing refund was not attributable to the department but was attributable to the appellant only. Considering this fact the action of the AO with regard to refusal to grant interest u/s. 244A on refund is hereby confirmed. Thus the ground of appeal of the appellant is dismissed.

4. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

5. The learned AR before us filed a paper book running from pages 1 to 67 and contended that the assessee is entitled for the interest on the amount of income tax return. The learned AR to buttress his argument has relied on various judgments as recorded in the written submission available on record.

6. On the other hand, the learned DR contended that there was no reason attributable to the revenue in the delay of income tax refund. Therefore the assessee is not entitled for the interest on the income tax refund under the provisions of section 244A of the Act. The learned DR vehemently supported the order of the authorities below.

7. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the issue relates whether the delay in the amount of refund of income tax to be paid to the assessee is attributable to the revenue in the given facts and circumstances. In this regard, we note that the Hon'ble Gujarat High Court involving identical facts and circumstances in the case of Ajanta Manufacturing Ltd. v. Deputy Commissioner of Income-tax reported in 72 Taxmann.com 148 has decided the issue in favour of the assessee. The relevant extract of the judgement is reproduced as under:

16. We would also examine the order of the Commissioner on merits. As noted, according to the Commissioner the assessee had raised a belated claim during the course of the assessment proceedings which resulted into delay in granting of refund and therefore, the assessee was not entitled to interest for the entire period from the first date of assessment year till the order giving effect to the appellate order was passed. We cannot uphold the view of the Commissioner. First and foremost requirement of sub-section (2) of Section 244A is that the proceedings resulting into refund should have been delayed for the reasons attributable to the assessee, whether wholly or in part. If such requirement is satisfied, to the extent of the period of delay so attributable to the assessee, he would be disentitled to claim interest on refund. The act of revising a return or raising a claim during the course of the assessment proceedings cannot be said to be the reasons for delaying the proceedings which can be attributable to the assessee. Mere fact that the claim came to be granted by the Appellate Commissioner, would not change this position. In essence, what the Commissioner (Appeals) was to allow a claim which in law, in his opinion, was allowable by

the Assessing Officer. In other words, by passing order in appeal, he merely recognized a legal position whereby, the assessee was entitled to claim certain benefits of reduced tax. Surely, the fact that the assessee had filed the appeal which ultimately came to be allowed by the Commissioner, cannot be a reason for delaying the proceedings which can be attributed to the assessee.

17. The Department does not contend that the assessee had needlessly or frivolously delayed the assessment proceedings at the original or appellate stage. In absence of any such foundation, mere fact that the assessee made a claim during the course of the assessment proceedings which was allowed at the appellate stage would not ipso facto imply that the assessee was responsible for causing the delay in the proceedings resulting into refund.

7.1 The issue involved in the case on hand is identical to the issue as discussed above, therefore the principles laid down by the Hon'ble Jurisdictional High Court are binding on us. Thus, we set aside the finding of the learned CIT-A and direct the AO to grant the interest on the amount of income tax refund in pursuance to the provisions of section 244A of the Act. At the time of hearing, the learned DR has not brought anything on record suggesting the inapplicability of the principles laid down by the Hon'ble Jurisdictional High Court in the case cited above to the facts of the case on hand. Hence the ground of appeal of the assessee is hereby allowed.

8. In the result, the appeal of the assessee is **allowed**.

Order pronounced in the Court on 12/10/2022 at Ahmedabad.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER
(True Copy)

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 12/10/2022
Manish