

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.1246/Del/2022
Assessment Year: 2015-16

MUFG Bank Ltd. (Earlier known as the Bank of Tokyo Mitsubishi UFG Ltd.), 5 th Floor, Worldmark-2, Asset 8, Aerocity, NH-8, New Delhi	Vs.	ACIT, Circle-2(2)(1), Intl. Taxation, Delhi
PAN :AABCT3880D		
(Appellant)		(Respondent)

Appellant by	Sh. Hiten Chande, Advocate Sh. Akshit Gupta, CA
Respondent by	Ms. Rashmita Jha, CIT(DR)

Date of hearing	05.01.2023
Date of pronouncement	31.01.2023

ORDER

PER SAKTIJIT DEY, JM:

Captioned appeal has been filed by the assessee challenging the final assessment order dated 01.04.2022 passed under section 254/143(3) read with section 144C(3) of the Income-tax Act, 1961 (for short 'the Act') pertaining to assessment year 2015-

16, in pursuance to the directions of learned Dispute Resolution Panel (DRP).

2. Grounds raised by the assessee are as under:

1. Taxability of interest on income-tax refund of INR 6,83,72,179

1.1 *That on the facts and circumstances of the case and in law, the Ld. AO has erred in applying tax rate of 43.26% while computing the tax demand for interest on income-tax refund despite holding in the impugned order that interest on income-tax refund is to be taxed @ 10% under Article 11 of India-Japan tax treaty.*

1.2 *That on the facts and circumstances of the case and in law, the Ld. AO has failed to appreciate that interest on income-tax refund earned by the Appellant is taxable @ 10% under Article 11 of India-Japan tax treaty.*

2. Levy of interest under section 234D of the Act.

2.1 *That on the facts and circumstances of the case and in law, the Ld. AO has erred in charging interest under section 234D of the Act.*

2.2 *Without prejudice to the above ground at para 2.1, on the facts and circumstances of the case and in law, the Ld. AO has erred in charging excess interest under section 234D of the Act.*

3 Short grant of interest under section 244A of the Act.

3.1 *That on the facts and circumstances of the case and in law, the Ld. AO has erred in granting interest under section 244A of the Act on the income tax refund determined in the impugned order for a period of 2 months instead of 5 months.*

3.2 *That on the facts and circumstances of the case and in law, the Ld. AO has failed to appreciate that refund determined in the impugned order has been issued to the Appellant in April 2022 and thus, interest under section 244A of the Act on such refund ought to be granted till the date of issuance of refund to the Appellant.*

4 Initiation of penalty proceedings

That on the facts and in the circumstances of the case and in law, the ld. AO erred in initiating penalty proceedings under section 271(1)(c) of the Act, being against the provisions of the Act.

5 General

5.1 *Each of the above ground is independent and without prejudice to the other grounds of appeal preferred by the Appellant.*

5.2 The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable your Hon'ble to decide this appeal accordingly to law.

3. Insofar as ground no. 1 is concerned, briefly the facts are, the assessee, a banking company, is a tax resident of Japan. For the assessment year under dispute, the assessee had filed its return of income on 30.11.2015, declaring income of Rs.1110,37,09,068/-. In the return of income so filed, the assessee offered to tax interest on Income Tax refund amounting to Rs.6,83,72,179/- at the rate of 10% under Article 11(2) of India Japan Double Taxation Avoidance Agreement (DTAA). While framing the final assessment order in pursuance to the directions of learned DRP, the Assessing Officer taxed the interest on Income Tax refund by applying the rate of 43.26%, treating it as business income. The assessee contested the aforesaid decision of the Assessing Officer by filing appeal before the Tribunal. It was the say of the assessee before the Tribunal that as per Article 11(2) of the tax treaty, the interest received on Income Tax refund is taxable at the rate of 10%. In this context, the assessee relied upon the decision of the Special Bench of the Tribunal in case of Clough Engineering Ltd. Vs. ACIT, 130 ITD 137 (Del.) (SB) and the decision of Hon'ble Bombay High Court in case of DIT Vs. Credit

Agricole Indosuez, 377 ITR 102. Agreeing with the submissions of the assessee, the Tribunal, while deciding the appeal in ITA No. 7895/Del/2019, dated 16.10.2020, restored the issue to the Assessing Officer to decide the rate of tax on interest Income Tax refund by applying the above referred decisions and accordingly, allowed the ground. However, the Assessing Officer again taxed the interest income by applying the rate of 43.26 %. While deciding the objections of the assessee, learned DRP directed the Assessing Officer to follow the decision of ITAT, unless, the department has filed the appeal on the same issue in higher court and the matter has not attained finality. In pursuance to the aforesaid direction of learned DRP, the Assessing Officer passed the final assessment order.

4. Before us, learned counsel appearing for the assessee submitted, while computing the tax on interest income on Income Tax refund, the Assessing Officer has again applied the rate of 40% disregarding the directions of the Tribunal and the DRP. Whereas, learned Departmental Representative submitted, the Assessing Officer has implemented the direction of the DRP in letter and spirit and, in case, there is any computational error, the Assessee can approach the Assessing Officer.

5. Having considered rival submissions, we find that while disposing of assessee's objections on the issue learned DRP has directed as under:

"6.4 The assessee has relied upon the order all of the Hon'ble ITAT in its own case in the year under reference 29.08.2019. In view of the same the AO is directed to tax interest on refund in accordance with the order of Hon'ble ITAT, New Delhi, referred to above unless the Department has filed appeal on the same issue in the higher courts and the matter has not attained finality. The objection of the assessee is accordingly disposed off."

6. In pursuance to the aforesaid direction of learned DRP, the Assessing Officer, while framing the final assessment order, has held as under:

"13. On the ground no. 1, the DRP vide its direction dated 23.02.2022 at para 6.4 page no. 5 directed the AO to tax interest on refund in accordance with the order of the Hon'ble ITAT referred above unless the department has filed appeal on the same issue in higher courts and matter has not attain finality.

Hon'ble DRP referred to Hon'ble ITAT order in ITA No.7895/Del/2019 dated 16.10.2020. This issue of taxability of interest is not pending before higher courts, therefore, matter has not attained finality. Therefore, tax on interest charged @ 10% under the provision of the Article 11 of the India Japan DTAA."

7. As could be seen from the aforesaid observations of the Assessing Officer, in fact, he has followed the directions of the Tribunal as well as learned DRP and has charged tax on the interest income on Income Tax refund at 10% by applying the provisions of Article 11 of India – Japan tax treaty. In case, the

Assessing Officer has made any computational error while computing the tax rate, that can be a subject matter of rectification and not an issue to be decided by us in the present appeal. Since, the Assessing Officer has held that the interest income on Income Tax refund is to be taxed at 10%.

8. In view of the aforesaid, it is open to the assessee to seek rectification of the error in computation of tax rate, which, as stated by learned counsel for the assessee, has already been moved before the Assessing Officer. In case, such an application has been filed by the assessee, the Assessing Officer is directed to consider the application and decided it in accordance with law.

9. In ground no. 2, the assessee has raised the issue of levy of interest under section 234D of the Act, whereas, in ground no. 3, the assessee has raised the issue of short grant of interest under section 244A of the Act.

10. Having considered rival submissions, we direct the Assessing Officer to factually verify assessee's claim and decide the issues in accordance with law. Of course, the assessee must be provided due opportunity of being heard before deciding the issues.

11. Ground no. 4, being premature at this stage, is dismissed.

12. Ground no. 5, being a general ground, is dismissed.

13. In the result, the appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 31st January, 2023

Sd/-
(G.S. PANNU)
PRESIDENT

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 31st January, 2023.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi