

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 305/Mum/2021 (A.Y. 2008-09)

West Cost Paper Mills Ltd.,

Shree Niwas House,
Hazarimal Somani Marg,
Fort, Mumbai - 400001.

PAN: AA ACT4179N

..... Appellant

Vs.

ITO-1(3) (4),
Aayakar Bhavan, M.K. Road,
Mumbai - 400020.

..... Respondent

Appellant/Assessee by : Sh. Alpesh Dharod &
Sh. Tarun Ashok Chopda, ARs
Respondent/Revenue by : Sh. Satyapal Kumar- Sr.DR
Date of hearing : 21/09/2022
Date of pronouncement : 19/12/2022

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of Commissioner of Income Tax (Appeals)-3, Mumbai [for short 'Ld. CIT(A)'] passed under section 244A(1A) of the Income Tax Act, 1961 [for short 'the Act'] vide order dated 29.01.2018 for Assessment Year (AY) 2008-09. The assessee has raised the following grounds of appeal:

“1. That on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) was not justified and grossly erred in not granting interest u/s 244(1A).

2. Brief facts of the case are that assessee is a Public Limited Company engaged in business of manufacturing and sale of paper and paper boards, telecommunication cables, generation of power, etc. The return of income for the assessment year under consideration was filed on 30-09-2008 showing Total Income at Rs. 14,25,08,686/- computed under the provisions of the Income Tax Act, 1961 (hereinafter referred to as the Act) other than Sec. 115JB and tax on total income was computed at Rs. 4,84,38,702/-. In the said return, Book Profit as per the provisions of Sec. 115JB was worked out at Rs. 88,51,62,000/- and tax thereon was computed at Rs. 10,02,88,855/-.

3. The return was selected for scrutiny and the Additional Commissioner of Income Tax, Range 1(3), Mumbai (here-in-after referred to as 'Addl. CIT') eventually passed the order u/s 143(3) on 31-12-2010 determining total income at Rs. 87,80,77,620/- computed under the provisions of the Act other than Sec. 115JB. In the said order, Book Profit u/s 115JB was determined at Re 92,14,72,444/-.

4. Meanwhile, the Deputy Commissioner of Income Tax, Circle 1(3), Mumbai (hereinafter referred to as DCIT) passed an order dated 29-03-2014 us 271(1)(c) of the Act wherein it was held that the assessee had concealed its income and furnished inaccurate particulars thereof and that it was a fit case for imposition of penalty. The DCIT determined income concealed at Rs. 7.44,77,000 and tax sought to be evaded at Rs. 2,23,43,100 Accordingly, he imposed penalty of Rs. 2,23,43,100/- u/s 271(1)(c) of the Act.

5. Aggrieved by the aforesaid, the assessee preferred an appeal before the Ld. Commissioner of Income Tax (Appeals)-3 (hereinafter referred to as the Ld. CIT (A)). The Ld. CIT (A) vide order dated 03-10-2017 held that imposition of penalty in the instant case was not sustainable. Accordingly, penalty imposed by DCIT was deleted.

6. An Order Giving Effect was passed by the Income Tax Officer 1(3)(4), Mumbai (here-in-after referred to as ('ITO') dated 29-01-2018 deleting the penalty and determining a refund of Rs. 3,09,29,553/-. In the abovementioned order giving effect passed by the ITO, refund has been granted to the tune of Rs. 3,09,29,553/- including interest u/s 244A of Rs. 25,53,816/-. The said refund is received by the appellant on 21-05-2018. On analysis of the order, it is found that the interest u/s 244A was calculated for 18 months only i.e. from 30-07-2016 being the date of payment of regular assessment tax till 29-01-2018, instead of calculating the interest on refund till 21-05-2018, being the date on which refund is granted. This has resulted in short grant of interest u/s 244A(1) of Rs. 7,09,393/- being interest for period commencing from 01-02-2018 till 21-05-2018. Assessee preferred an appeal against short payment of interest under section 244A amounting to Rs. 7,09,393/- and short payment of interest under section 244A(1A) of the Act @ 3 % per annum from the date of order giving effect (oge.). Ld. CIT(A) agreed with the contentions of the assessee and allowed short payment of interest under section 244A of the Act but rejected the claim of assessee under section 244A (1A). Against this rejection of interest under section 24A(1A) assessee is in appeal before us.

7. We have gone through the order of Ld. CIT (A) along with submissions of the assessee and found that interest under section 244A was allowed to the assessee but claim of assessee with reference to section 244A(1A) was not allowed both by AO and Ld. CIT (A). On the issue of non-granting interest under section 244A (1A) assessee is before us.

8. In this regard the appellant referred to the provisions of section 244A which is as follows:

“(1A) In a case where a refund arises as a result of giving effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264, wholly or partly, otherwise than by making a fresh assessment or reassessment, the assessee shall be entitled to receive, in addition to the interest payable under sub-section (1), an additional interest on such amount of refund calculated at the rate of three per cent per annum, for the period beginning from the date following the date of expiry of the time allowed under sub-section (5) of section 153 to the date on which the refund is granted”

9. Further, Section 153(5) prescribed the time limit to pass order giving effect as under:

“Where effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 is to be given by the Assessing Officer, wholly or partly, otherwise than by making a fresh assessment or reassessment, such effect shall be given within a period of three months from the end of the month in which order under section 250 or section 254 or section 260 or section 262 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner.”

10. Reference is also made to relevant extract of Notes on Clause to Finance Bill 2016 which reads as under:-

"Clause 90 of the Bill seeks to amend section 244A of the Income tax Act relating to interest on refunds.

.....

Sub-clause (B) of the said clause seeks to insert a new subsection (1A) so as to provide that that where a refund arising out of appeal effect is delayed beyond the time prescribed under subsection (5) of section 153, the assessee shall be entitled to receive, in addition to the interest payable under sub-section (1) of section 244A, an additional interest on such refund amount calculated at the rate of three per cent per annum, for the period beginning from the date following the date of expiry of the time allowed under sub-section (5) of section 153 to the date on which the refund is granted."

11. On perusal of above, it can be inferred that Section 244A(1A), which was inserted vide Finance Act, 2016 w.e.f. June 1, 2016, provides for additional interest of 3% p.a. over and above interest u/s 244A(1) in a case where a refund arises as a result of giving effect to an appellate or revisional order, for the period beginning from the date following the date of expiry of the time allowed under subsection (5) of section 153 to the date on which the refund is granted. Sec. 153(5) provides for giving effect to the order u/s 250 within the period of 3 months from the end of the month in which the order is received by the Department.

12. It is clear that section 244A (1A) would apply to cases covered under 153(5); thus where, in respect of certain issues, order giving effect to be passed under section 153(5), otherwise than by making a fresh assessment or reassessment is passed beyond the prescribed time-limit, interest under section 244A(1A) has to be granted in respect of refund arising on such issues that are concluded and that the pendency of consideration on remitted issues does not interdict the statutory accrual of interest.

13. If refund was granted immediately thereafter, the claim for additional interest in terms of section 244A (1A) would not have arisen, as rightly argued by the assessee. The vehement contention of the revenue essentially structured on the text of section 4 of the 1961 Act that any order giving effect to the order of the Tribunal will result in redetermination of the assessee's total income and therefore will constitute a fresh assessment, if accepted, would inexorably lead to the result that the Revenue can invariably retain the refund determined, without the liability to pay the additional interest in terms of section 244A(1A) for the delayed period; that would also lead to an absurd conclusion that every OGE has to be considered as a fresh assessment or reassessment and therefore would be outside the purview of section 153(5) and consequently any delay in granting actual refund would also be outside the ambit of section 244A(1A); this would defeat the very object for which this provision has been brought on the statute book. In the result of above discussion keeping in view the provisions of statute and Memorandum to the Finance Bill 2016, we accept the arguments of assessee, and ground no. 1 raised by assessee is allowed.

14. **In the result, appeal filed by the assessee is allowed.**

Order pronounced in the open court on 19th day of December, 2022.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER
Mumbai, दिनांक / Dated: 19/12/2022
SK, Sr.PS

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.

3. आयकर आयुक्त (अ) /The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy. /Asstt. Registrar)
ITAT, Mumbai