

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE: DR. S. SEETHALAKSHMI, JM
&
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

**ITA Nos. 203/Jodh/2019
(ASSESSMENT YEAR- 2008-09)**

Bhagwati Lal Madrecha Old Post Office Ki Gali Rajnagar, Rajsamand.	Vs	Income Tax Officer, Ward-1, Rajsamand.
(Appellant)		(Respondent)
PAN NO. ACLPM 9942 L		

(Virtual hearing)

Assessee By	Shri Rajendra Jain-Adv.
Revenue By	Shri S.M. Joshi, JCIT-DR
Date of hearing	14/07/2023
Date of Pronouncement	12/09/2023

ORDER

PER: Dr. S. Seethalakshmi, JM

The assessee has filed an appeal against the order of the Learned Commissioner of Income Tax-1, Udaipur [herein after “Ld.CIT(A)”] dated 15.02.2019 for the assessment year 2008-09.

2. The assessee has raised the following grounds of appeal:-

“1. That on the facts and circumstances of the case the learned commissioner of income tax (appeal) -1, Udaipur has grossly erred in confirming that the learned assessing officer, Rajsamand has justified in denying the claim of interest on refund which arouse out of self assessment tax paid u/s.244 of

the Act which was claimed by the assessee through an application made under section 154 of the act dated 27.03.2017 which is bad in law, unjustified and contrary to the provisions of section 244A of the act hence direction to be given to the assessing officer to provide interest on refund arising out of self assessment tax paid from the date of payment of self assessment tax till the date of refund granted.

2. That the appellant reserves his right to alter, add and modify any ground of appeal before hearing.”

3. Brief facts of the case are that the assessee is engaged in sale and purchase of Petrol and Diesel & is a dealer of Indian Oil Corporation. The assessee filed his return of income on 01.10.2014 declaring total income at Rs. 3,20,830/-. The case was selected for scrutiny under CASS and notice u/s 143(2) of the Act was issued on 28.08.2015. The AO completed the assessment u/s 143(3) of the Act on 01.11.2016 determining the total income at Rs. 5,29,510/-. Subsequently, the assessee filed rectification application on 27.03.2017, the AO passed rectification order u/s 154 of the Act on 03.08.2017. The assessee requested before the AO to allow interest u/s 244(1)(aa) in the order u/s 154 dated 03.08.2017 which was rejected.

4. Aggrieved, from the said order of assessment the assessee has filed an appeal before the ld. CIT(A). The ld. CIT(A) after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

“As regards the various judicial precedents cited by the appellant, it is observed that neither of these decisions deal with section 244A(1A) of the Act. In the case of Sandvik Asia Ltd. (supra), the Hon'ble Apex Court admittedly was dealing with facts prior to the insertion of Section 244A. In other decisions cited by the appellant, the Courts have considered the allowability of interest on refund on self assessment u/s. 244A(1)(b) and the applicability of sec. 244A(1A), hence, these are not directly applicable to the facts of the present case.

In view of legal position discussed above and judicial precedents cited supra, it is held that the AO is justified in rejecting the assessee's claim of allowing interest on refund as per section 244A(1)(aa) i.e. from the date of payment of self assessment tax u/s. 140A to the date of issue of refund. The AO's order dated 03-08-2017 passed u/s. 154 of the Act requires no modification. The grounds of appeal raised by the appellant regarding this issue are dismissed.”

5. Per contra, the ld. DR relied upon the orders of the ld. CIT(A).

6. We have heard the both parties and perused the materials available on record. The assessee vide application contended for interest u/s 244(1)(aa) of the Act on the amount of self assessment tax paid. We observed the assessee's application is being rejected while giving effect to appellate order or 154 thereon is covered for allowance of interest u/s 244(1)(1A) and not u/s 244(1)(aa) as contended by the assessee. The AO as well ld. CIT(A) has

rejected the assessee's claim for interest u/s 244(1)(aa) of the Act. From the facts we note that the assessee has furnished the return of income for the above said assessment year on 20.12.2011 against the notice issued u/s 148 of the Act and declared total income of Rs. 4,75,220/-. We noted that the assessee has paid self assessment tax u/s 140A of Rs. 1,39,910/- on 20.12.2011. On 29.12.2011 the Assessing Officer has completed the assessment for the assessment year 2008-09 u/s 143(3) of the Act and the Assessing Officer has determined the total income of the assessee at Rs. 4,88,820/- and agricultural income at Rs. 15,000/- consequent to the demand notice u/s 156 of the Act was issued to the assessee raising a demand of Rs. 13,970/- along with interest of Rs. 30.00 u/s 220(2) of the Act total amounting to Rs.14,000/- was paid by the assessee on 25.02.2012. During the assessment proceeding, on 26.03.2014, the Assessing Officer has again issued notice u/s 148 of the Act considering claim of the assessee in respect of indexed cost of improvement Rs. 16,15,121/- incurred in respect of land as bogus expenses and where he has completed assessment under section 144 of the Act on 26.09.2014. In the said assessment order the Assessing Officer has determined total income at Rs.21,03,940/- and raised demand of Rs.6,48,406/- after allowing credit of self assessment tax paid Rs. 1,39,910/-. On 20.10.2014 the assessee has moved rectification application u/s 155 (15)

of the Act to Income Tax Officer Ward- 1, Rajsamand to give effect to order of collector stamps, Udaipur, who vide his order dated 27.11.2013 revised the valuation of land sold at Rs. 8,01,250/- in place of Rs.21,11,127/- originally valued by the Registrar of stamp duty. The Assessing Officer has given due cognizance to the above facts and passed rectification order w/s. 154 r.w.s.144/147 of the Income Tax Act on 28.10.2014 and determined the total income of the assessee at Rs.7,94,060/- and tax demand raised at Rs.49,130/- after allowing tax credit of Rs. 1,39,910/- paid in respect of self assessment tax and Rs.14,000/- paid against tax demand. The Assessing Officer has passed rectification order under section 154 of the Act on 03.08.2017 to give appeal effect and to rectify the other mistakes apparent on record. Consequent to this rectification order of the assessing officer total income of the assessee remained at Rs. 13,600/- and tax demand reduced at Rs.NIL. Therefore, in view of the above the assessee has claimed refund u/s 240 of I.T.Act in respect of self assessment tax paid Rs.1,39,910.00 on 20.12.2011 and regular tax Rs. 14,000.00 paid on 25.02.2012. The assessee has further claimed interest u/s 244 of the Act in respect of self assessment tax paid and regular tax deposited against tax demand. The Assessing Officer after applying has granted refund in respect of self assessment tax paid of Rs. 1,39,910/- and tax demand deposited Rs. 14,000/- along with interest u/s 244

of the Act but he has not granted interest on refund that arose on account of self assessment tax.

7. Further, we observed that during the appellant proceedings, ld. AR for the assessee has filed written submission along with number of judgments to support his relief. The ld. CIT(A) has erred in upholding the findings of the AO , where the ld. CIT(A) failed to consider the written submission satisfactorily. We have considered the facts of the case order u/s 154 of the Act assessee's submission and case law relied by him, the issue in the present appeal is regarding, whether the AO and ld. CIT(A) is justified in rejecting the assessee's claim allowing interest on refund as per section 244A(1)(aa) i.e. from the date of payment of self assessment u/s 140A to the date of issue of refund. The ld. CIT(A) in his order has elaborately discussed the amendment of section 244A of the Act and various decision of the Hon'ble High Courts and Apex Court filed by the assessee but not satisfied with the submissions. The questions arises whether the ld. CIT(A) observed that these are not directly applicable to the facts of the assessee's case. The ld. CIT(A) failed to note that it is settled proposition of law with interest on refund has to be granted up to the date of issue of refund of vouchers. Section 244A of the Act provides for interest on refund. Clause (a) of sub-section (1) of section 244A talks of allowing interest on refund arising out of any tax

collected at source u/s.206C or Advance tax or Tax deducted at source. This clause does not specifically mention interest on self-assessment tax. Clause (b) of section 244A(1) directs the granting of interest 'in any other case' at the specified rate and the period. The expression "in any other case" used in clause (b), ergo, encompasses the granting of interest on refund in all cases except those specifically covered in sub-clause (a), viz., tax collected at source u/s.206C or advance tax or TDS. It, therefore, becomes palpable that if refund arises because of self-assessment tax, which falls in the realm of the expression 'any other case', the same gets covered within the purview of clause (b) of section 244A(1), thereby entitling the assessee to interest thereon. Clause (b) of section 244A(1) containing the expression "in any other case", amply deciphers the entitlement to interest on refund due to any payment of tax by the assessee except those specifically covered under clause (a). Payment of self assessment tax is one of the modes of payment of tax by the assessee. The 2016 amendment has the effect of expressly covering interest on refund due to payment of self assessment tax under clause (aa), which was impliedly included earlier in clause (b). Even otherwise, there can be no unjust enrichment by the exchequer. If an assessee has been deprived of the amount lawfully due to him, the refund has to go with interest only unless there is an express statutory embargo. Finally we come to the

conclusion that the Id. CIT(A) has erred in confirming that the Assessing Officer has justified in denying the claim of the interest on refund which arose out of self assessment paid u/s 244(1)(aa) which was claimed by the assessee through application dated 27.03.2017 which is bad in law, unjustified and contrary to the provisions of Section 244A of the Act. Hence, we direct the Assessing Officer to provide interest on refund arose out of self assessment tax paid from the date of payment of self assessment tax till the date on refund is granted.

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

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-

Sd/-

(RATHOD KAMLESH JAYANTBHAI)
ACCOUNTANT MEMBER

(DR. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Dated : 12/09/2023

**Santosh*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench