

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

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

ITA No. 96/Coch/2022
(Assessment Year: 2005-06)

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| The Kerala Minerals and Metals Ltd. Sankaramangalam Chavara, Kollam 691001 [PAN:AAACT8118R] | vs. | Dy. Commissioner of Income Tax Circle - 1, Kollam |
| (Appellant) | | (Respondent) |

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| Appellant by: | Shri Rajeev R., CA |
| Respondent by: | Smt. J.M. Jamuna Devi, Sr. D.R. |

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| Date of Hearing: | 16.01.2024 |
| Date of Pronouncement: | 28.03.2024 |

ORDER

Per: Sanjay Arora, AM

This is an Appeal by the Assessee agitating the Order dated 24.12.2021 by the Commissioner of Income Tax (Appeals), Income Tax Department [CIT(A)], partly allowing the assessee's appeal contesting the rectification order u/s. 154 of Income Tax Act, 1961 (the Act) dated 02.09.2010 for Assessment Year (AY) 2005-06.

2. The brief facts of the case are that the assessee preferred a claim in the sum of Rs.20 crores per it's return of income for AY 2004-05 for arrears of salary and wages of it's employees for the four year period, i.e., 2001 to 2004, on the basis of a wage revision dated 08.10.2003, arrived at between the management and the employees of the assessee-company, a Public Sector Undertaking of the Government of Kerala (GoK). The same was disallowed in assessment as the approval to the wage settlement by GoK, i.e., the competent authority in the matter, was granted on

17.06.2004, i.e., after the close of the relevant previous year. The matter travelled to the Hon'ble High Court, which, vide it's appellate order dated 08.06.2009 (in ITA No. 97 of 2009), upheld the assessment on the basis that the liability had crystallized only on the approval by GoK during fy 2004-05, i.e., the previous year relevant to AY 2005-06. The same, it continued, was thus deductible for AY 2005-06, allowing the assessee the liberty to move a rectification for the purpose. The assessee, accordingly, sought rectification for the current year vide application in August, 2009, claiming Rs. 2017.75 lakhs on account of arrears of salary and wages, which was allowed vide order dated 02.09.2019. Interest u/s. 244A of the Act, on the amount of refund so arising, which is to be reckoned with reference to a month or part of the month, was, however, allowed to the assessee only for the period September, 2009 to August, 2010. This was as the refund dated 31.08.2010 was only in consequence to the order by the Hon'ble High Court. The assessee appealed there-against, claiming interest on the refund from the beginning of the AY, i.e., April, 2005 onwards, upto August, 2010. The same was disallowed with reference to s. 244A r/ws. 240, distinguishing the assessee's reliance on *Sanvik Asia Ltd. v. CIT* [2006] 280 ITR 643 (SC).

3. Of the three grounds raised by the assessee before us, Gd. 1 pertains to the applicability of s. 244A(3) of the Act; Gd. 2 relates to the applicability of s. 240, and Gd. 3 – which was not pressed before us, relates to the lack of opportunity by the ld. CIT(A). Ground 3 is, accordingly, dismissed as not pressed.

4. The issue, thus, arising before us is if the period, April, 2005 to August, 2009 stands rightly excluded by the Revenue in granting refund on the principal sum of Rs.915.24 lakhs to the assessee. In fact, the said sum includes Rs.232.65 lakhs appropriated by the Revenue from the refund arising to the assessee for AY 2007-08, which would therefore only be subsequent to April, 2005 and, accordingly, the claim

for interest on this sum can not possibly relate back to April, 2005, but only to the period following its appropriation.

5. We have heard the parties, and perused the material on record.

5.1 We begin by reproducing the relevant sections of the Act as under:

Refunds.

237. If any person satisfies the Assessing Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess.

Refund on appeal, etc.

240. Where, as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due to the assessee, the Assessing Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf:

Provided that where, by the order aforesaid,—

- (a) an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund, if any, shall become due only on the making of such fresh assessment;
- (b) the assessment is annulled, the refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee.

Interest on refunds.

244A. (1) Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely :—

- (a) where the refund is out of any tax collected at source under section 206C or paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted:

Provided that no interest shall be payable if the amount of refund is less than ten per cent of the tax as determined under sub-section (1) of section 143 or on regular assessment;

- (b) in any other case, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period or periods from the

date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted.

Explanation.—For the purposes of this clause, "date of payment of tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

(2) 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 the Chief Commissioner or Commissioner whose decision thereon shall be final.

(3) Where, as a result of an order under sub-section (3) of section 143 or section 144 or section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and in a case where the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the amount of the excess interest paid and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly.

(4) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years.

5.2 It is apparent that the Legislature did not intend the issue of interest on refund to be subject to litigation, i.e., to the extent possible, defining all possible circumstances under which a refund may arise, also providing a residual clause beginning with the words "In any other case....." in s. 244A(1), to cover any eventuality under which a refund may arise to an assessee/tax payer, as well as laying down the various parameters toward the same therein, viz. the principal sum; time period; rate of interest, etc. The reduction in the said period is only where the delay in granting the refund is attributable to the assessee [s. 244A(2)], *for which the issue, where disputed, is to be decided per the administrative channel.* The limited scope of the instant appeal proceedings before us is if the refund indeed arises as a result of the order u/s. 260A, in which case, keeping the period constant, the principal sum on which refund granted is increased or, as the case may be, decreased. This is as only where the instant case does not fall therein, could it be said to fall u/s. 244A(2), as

indeed the Revenue claims, restricting the assessee's claim on that basis, and which would operate to exclude our purview in the matter.

5.3 In our opinion, it is not a case of refund arising as a result of an order u/s. 260A of the Act. Section 244A(3) makes it clear that the same envisages an order for the relevant year, i.e., of the refund. The order by the Hon'ble High Court in the instant case is under its appellate jurisdiction, invoked by the assessee in respect of its assessment of AY 2004-05. The same stands disallowed by the Hon'ble High Court, finding the liability *qua* which the impugned deduction is being claimed as falling in another year, i.e., the previous year relevant to AY 2005-06, endorsing thus the stand of the Revenue. It, however, allowed the assessee liberty to move the Revenue under the rectification procedure, or any other remedy, for getting the claim for AY 2005-06 or a later year. This therefore is to be read and understood not as a direction by the Hon'ble High Court, either to the Revenue or to the assessee for that matter, as mistakenly understood by them, but as allowing the assessee to pursue the remedy under law inasmuch as it found the assessee's claim as valid for AY 2005-06. The Hon'ble High Court may well have stopped at holding the impugned claim as not admissible for the year under appeal, i.e., AY 2004-05, stating the reason/s, deciding thus the question of law raised before, and admitted by, it. The proceedings under the Act, there is no gainsaying, are with reference to an assessment year, which is the unit of assessment, and for which reference, for the sake of completeness of this order, may be made to *ITO vs. Murlidhar Bhagwan Das* [1964] 52 ITR 335 (SC); *Radhasoami Satsang v. CIT* [1992] 193 ITR 321 (SC); *Dy. CIT v. Ace-Multi Axes System Ltd.* [2018] 400 ITR 141 (SC). It was not incumbent on it to travel beyond the confines the issue before it, i.e., the admissibility of the assessee's claim for the relevant year, and by enabling the assessee to pursue the matter under law for the current year, it has only decided the matter in a more equitable manner. The same cannot be interpreted to mean that it has thereby held the assessment for AY 2005-06 as mistaken, and thus liable for rectification. Reference in this context be made to the

decision in *Muralidhar Bhagwan Das* (supra). The Hon'ble Court was seized of the issue as to what constitutes a 'finding' or 'direction' in a decision/order. It held as under:

'(v) That the expression "finding" and "direction", in the second *proviso* to section 34(3), meant respectively, a finding necessary for giving relief in respect of the assessment for the year in question, and a direction which appellate or revisional authority, as the case may be, was empowered to give under the sections mentioned in that proviso. A "finding", therefore, could only be that which was necessary for the disposal of an appeal in respect of an assessment of a particular year. The Appellate Assistant Commissioner might hold, on the evidence, that the income shown by the assessee was not the income for the relevant year and thereby exclude that income from the assessment of the year under appeal. *The finding in that context was that the income did not belong to the relevant year.* He might incidentally find that the *income belonged to another year*, but that was not a finding necessary for the disposal of an appeal in respect of the year of assessment in question.'

(emphasis, supplied)

This stands reiterated by it in *Rajinder Nath v. CIT* [1979] 120 ITR 14 (SC).

5.4 Now, this is precisely what transpires in the instant case; the Hon'ble Court finding as a fact that the approval and, thus, crystallization of the liability being claimed did not, even as contended by the Revenue, occur in the previous year relevant to AY 2004-05. Why, the assessee disputing the disallowance for AY 2004-05, despite the disallowance being for the reason that appealed to the Hon'ble Court, i.e., that the liability under reference did not crystallize in the year of claim, could not have possibly claimed non-deduction as a mistake apparent from record; it having in fact not made any claim for that year. Why, even as observed by the Bench during hearing, the assessee's rectification application in August, 2009 would be barred by time. Continuing further, even if, for the sake of argument, the assessee could have pressed for rectification, i.e., in view of the Revenue's stand as to the year of admissibility of the claim being for AY 2005-06, the delay in pressing the same is only attributable to the assessee, excluding the period of delay for reckoning interest. The assessee's claim for the refund arising to it u/s. 244A(3) does not, for the reasons afore-stated, find out approval and, rather, reinforces the Revenue's case with reference to s. 244A(2) of the Act.

5.5 We are, we may clarify, equally unimpressed with the Revenue's stand of the refund under reference arising to the assessee u/s. 240 of the Act. There has been no annulment of the assessment for AY 2005-06 nor, in consequence, any fresh assessment. Rather, as afore-noted, there are no appellate proceedings for that year.

5.6 In our opinion, the refund to the assessee in the instant case arises u/s. 237 of the Act. The assessee's application dated August, 2009 to the Assessing Officer (AO), i.e., consequent to the dismissal of its appeal for AY 2004-05 by the Hon'ble Court on 08.06.2009, is an application which is to be regarded as one u/s. 237 of the Act. The so called refund order dated 02.09.2010 is an expression of the satisfaction by the AO as contemplated by the provision. Sure, it would attract compensatory interest u/s. 244A, but the same shall necessarily be subject thereto. We are, in stating so, conscious of the AO noting beneath the refund order of the same being granted consequent to the Hon'ble High Court order dated 08.06.2009. That would, however, not make it necessarily so. As afore-stated, the injunction by the Hon'ble High Court per its said order (in ITA No. 97/2007, dated 08.06.2009) is only to allow the assessee the claim for AY 2005-06, the next year, or in fact in any other later year, following the process of law. It is the correct legal position that is relevant, and not the view that the parties may take of their rights in the matter: *CIT v. C. Parakh & Co. (India) Ltd.* [1956] 29 ITR 661 (SC) (also see: *Kedarnath Jute Mfg. Co. Ltd. v. CIT* [1971] 82 ITR 363 (SC)). No refund would have arisen to the assessee without it applying for the same upon accepting the dismissal of its claim for deduction for AY 2004-05 by the Hon'ble Court. That the AO's satisfaction is also, in part, on account of the observation by the Hon'ble High Court, is another matter. In fact, the Revenue having disallowed the assessee's claim on the ground of the accrual falling in the following year, ought to have, on such an application being moved by the assessee, irrespective of any intervention by the Hon'ble High Court, or assuming non-reference thereto by the assessee, been satisfied about the assessee's entitlement to refund. It cannot blow hot and cold at the same time. This is

particularly so as the assessee having made the claim for AY 2004-05, could not possibly have made the said claim, once again, for AY 2005-06. As it appears, it is precisely for such and like reasons that the law provides for grant of refund to an assessee u/s. 237 of the Act. This is as the Revenue is bound, and it is nobody's case that it is not so, by law, as well as the processes thereof. This is exactly what the order dated 08/6/2009 does, i.e., it precludes the Revenue to, acting unreasonably, not accept its claim for refund u/s. 237 for AY 2005-06, eschewing it moving the Hon'ble High Court under its writ jurisdiction for that year. We also draw support from the decision in *Wipro Ltd. v. CIT* [2021] 438 ITR 581 (Kar), holding that the Revenue is bound to refund the excess tax collected by it.

6. In our considered view, the curtailment of the period of refund by the Revenue in the instant case falls within the ambit of s. 244A(2). While the Revenue has, and in our view, supported by reasons, excluded, not incorrectly, the period of 41 months (April, 2005 to August, 2008), in the view of the assessee the same ought not to have been excluded. Whether the assessee is, or is not, responsible for the delay for any period comprised in this 41-month period, is a question that would stand to be decided by the administrative authority in appropriate proceedings, i.e., where invoked. For all we know, there may be no proceedings u/s. 143(3) for AY 2005-06. We decide accordingly.

7. In the result, the assessee's appeal is dismissed.

Order pronounced on March 28, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: March 28, 2024

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin