

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, KOLKATA
BEFORE**

**Shri Rajpal Yadav, Vice President
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No.1157/Kol/2023
Assessment Year: 2017-18**

Srei Infrastructure Finance Ltd. ***Appellant***
(PAN: AAACS1425L)

Vs.

ACIT, Circle-11(1), Kolkata ***Respondent***

Appearances by:

Shri S. K. Tulsiyan, Advocate & Sm. Lata Goyal, ACA appeared for Appellant

Shri S. Datta, CIT, DR appeared for Respondent

Date of hearing : 07.02.2024

Date of pronouncing the order : 29.04.2024

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short “AY”) 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the “Act”) by Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short Ld. “CIT(A)”] dated 05.09.2023 arising out of the Assessment order u/s. 154 r,w,s, 143(3) of the Act by ACIT, Circle-11(1), Kolkata dated 12.07.2022.

2. Grounds of appeal raised by the assessee are reproduced as under:

“1. That on the facts and in the circumstances of the case, the Learned Commissioner of Income Tax (Appeal), [here- in- after referred to as Ld. CIT(A)] was not justified and grossly erred in not granting the interest u/s. 244A of the Income Tax Act, 1961 (‘the Act’).

2. *That on the facts and in the circumstances of the case, the Ld CIT(A) has erred in holding that ground for interest 244A of the Act is not arising out of the rectification application dated 06-06-2022 filed by the appellant before the assessing officer.*

3. *On the facts and in the circumstances of the case, the Ld CIT(A) erred in rejecting the claim of the Appellant Company of granting interest on Income Tax refund under Section 244A(2) of the Income- tax Act, 1961 ('the Act') without properly addressing the ground raised by the Appellant Company.*

4. *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in interpreting the provisions of section 244A of the Income-tax Act, 1961 and the fact of the case.*

5. *The Appellant submits that the learned AO be directed to re-compute and grant interest under section 244A of the Act, up to the date of issue of refund cheque and in accordance with law.*

6. *That the appellant craves leave to add, to amend, modify, rescind, supplement or alter any of the Grounds stated here-in-above, either before or at the time of hearing of this appeal."*

3. Though assessee has raised as many as six grounds of appeal but the sole grievance of the assessee revolves around the correctness of interest u/s. 244A of the Act.

4. Facts in brief are that the assessee a limited company furnished its return of income for AY 2017-18 u/s. 139(1) of the Act on 29.11.2017 which was further revised on two occasions on 28.09.2018 and 30.03.2019 respectively. The case of the assessee scrutinized by issuing notice u/s. 143(2) of the Act and assessment order passed on 29.05.2021. Thereafter, rectification petition was filed on 06.06.2022 for correcting the MAT computation after giving MAT credit available for set off u/s. 115JJAA of the Act. Ld. AO passed rectification order on 12.07.2022 and issued a refund of Rs.25,72,14,141/- which comprised of the tax component of Rs.25,06,86,616/- and interest component of Rs.65,27,525/-. So far as the refund of tax component is concerned, there is no dispute before us. The matter relates only to the interest component. As per the Ld. Counsel for the assessee, Ld. AO has given the refund of only for five months but the assessee is entitled to the interest of 70 months starting from 1st April, 2017.

5. The assessee challenged the rectification order before the Ld. CIT(A) but he declined to deal with the issues observing that assessee had not raised this issue in the rectification application and, therefore, there is no need for adjudication of the issue relating to interest u/s. 244A. Aggrieved, assessee is now in appeal before this Tribunal.

6. Ld. Sr. counsel for the assessee apart from referred the detailed written submission containing plethora of judgments also referred to the paper book of case laws running into 102 pages and also took us through the list of events starting from 29.11.2017 till the date of grant of refund in January, 2023. The crux of the arguments are that firstly, in the rectification application filed u/s. 154 of the Act, assessee had specifically raised the issue in para 6 and, therefore, Ld. CIT(A) erred in observing that assessee had not raised this issue. As far as the calculation of interest u/s. 244A of the Act is concerned, he stated that this refund is arising out of TDS credit available with the assessee. He stated that as per revised return finally furnished on 30.03.2019 the TDS credit was Rs.75,14,12,726/- and the refund granted by the AO vide rectification order dated 12.07.2022 is out of the prepaid tax in the form of TDS. He thus, submitted that assessee is entitled to refund as per section 244A(1)(a)(i) of the Act i.e. from the 01.04.2017 relevant to AY 2017-18 and necessary directions may be given for giving correct amount of interest.

7. On the other hand, ld. DR vehemently argued supporting the orders of the lower authorities and stated that the assessee has revised a return on multiple occasions. There had been reference to TPO, and also in the revised return furnished on 30.03.2019 the assessee had claimed refund of only Rs.2,89,36,036/- and it was only on account of set off of MAT credit u/s. 115JJAA of the Act that the claim of refund has increased and such claim for set off of MAT credit u/s. 115JJAA

of the act was made on 06.06.2022 and, therefore, the AO has given the refund for five months.

8. We have heard rival contentions and perused the records placed before us. We note that the assessee originally filed the return on 29.11.2017 and in this return TDS credit of Rs.81,86,10,024/- was claimed and this amount was finally revised in the revised return on 30.03.2019 claiming TDS on Rs.75,14,12,726/-. In the final revised return the refund claimed by the assessee is only Rs.,289,36,036/-. Thereafter, the assessee's case has been scrutinized by issuing of notice u/s. 143(2) and the reference was given to the TPO on 18.10.2019 and finally assessment order was framed on 29.05.2021 and in the computation sheet attached with the assessment order amount payable to assessee was only Rs.3,31,49,723/-. No interest u/s. 244A of the Act was given because the TDS was less than 10% of the total tax liability. Thereafter, on 06.06.2022, assessee moved a rectification application and one of the point of its application was that the assessee is entitled to substantial MAT credit brought forward from earlier years. The details of such MAT credit of Rs.33,08,57,877/- is mentioned below:

Assessment Year	MAT credit (Rs.)	Reference of Order	Annexure reference
2010-11	1,22,91,471	Order u/s 154/245D(4) dated 07-05-2012	Annexure - 2
2012-13	8,19,13,001	Order u/s 147 dated 29-12-2017	Annexure - 3
2013-14	5,69,57,651	Order u/s 263/143(3) dated 24-12-2019	Annexure - 4
2014-15	60,33,929	Order u/s 154 dated 13-04-2018	Annexure - 5
2015-16	17,36,61,825	Order u/s 154 dated 11-07-2019	Annexure - 6
Total	33,08,57,877		

9. On going through the above details of MAT credit, we note that major amount that except for AY 2010-11 all the other amounts of MAT credit are either after the filing of original return of income or during the course of assessment proceedings for the year under

appeal. It seems that assessee was not aware of the eligible MAT credit which it was entitled prior to the date of filing the final revised return on 30.03.2019. However, the correctness of the MAT credit of Rs.33,08,57,877/- is not in dispute and has been accepted by the AO. Since the MAT credit available for set off is from preceding assessment years is available to the assessee and has been accepted by the AO in the computation sheet and has given the revised tax component of Rs.25,06,86,616/-, the only point to be examined is for how many months the assessee is entitled to the interest u/s. 244A. For better understanding, we reproduce section 244A below:

“ [244A. Interest on refunds.—

(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,—

(i) from the 1st day of April of the assessment year to the date on which the refund is granted, if the return of income has been furnished on or before the due date specified under sub-section (1) of section 139; or

(ii) from the date of furnishing of return of income to the date on which the refund is granted, in a case not covered under sub-clause (i);

(aa) where the refund is out of any tax paid under section 140A, such interest shall be calculated at the rate of 5 [one-half per cent.] for every month or part of a month comprised in the period, from the date of furnishing of return of income or payment of tax, whichever is later, to the date on which the refund is granted:

Provided that no interest under clause (a) or clause (aa) 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 5 [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.

[(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.]

[(1B) Where refund of any amount becomes due to the deductor in respect of any amount paid to the credit of the Central Government under Chapter XVII-B, such deductor shall be entitled to receive, in addition to the said amount, simple interest thereon calculated at the rate of one-half per cent for every month or part of a month comprised in the period, from the date on which—

(a) claim for refund is made in the prescribed form; or

(b) tax is paid, where refund arises on account of giving effect to an order under section 250 or section 254 or section 260 or section 262,

to the date on which the refund is granted.]

(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee 1 [or the deductor, as the case may be,] 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 2 [under sub-section (1) or (1A)] 1 [or (1B)], and where any question arises as to the period to be excluded, it shall be decided by the 3 [Principal Chief Commissioner or Chief Commissioner] or 4 [Principal Commissioner or Commissioner] whose decision thereon shall be final.

(3) Where, as a result of an order under sub-section (3) of section 115WE or section 115WF or section 115WG or] 6 [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:] 7 [Provided that in respect of assessment of fringe benefits, the

provisions of this sub-section shall have effect as if for the figures "1989", the figures "2006" had been substituted.]”

10. Now, from perusal of the above section, we notice that assessee's case falls under the category of sec. 244A(1)(a)(i) of the Act because the refund order to the assessee is out of the tax deducted at source upto 31.03.2017 and the assessee had furnished its original return u/s 139(1) of the Act. Even though the assessee has revised the return but for the purpose of calculating interest, assessee's return shall always be treated to be filed u/s. 139(1) of the Act. Though the refund in the present case has been awarded in the order u/s. 154 of the Act but even section 154 is also forming part of the fleet of other sections mentioned in sec. 244A(3) of the Act and that comes into action when a refund has already been granted but subsequent to the rectification order, the refund is increased or decreased then the interest given earlier also needs to be increased or decreased. However, in the instant case when the assessee was originally granted the refund no interest was given because the refund was less than 10% of the total tax liability. It was only in the rectification order dated 12.07.2022 that the refund of tax component of Rs.25,06,86,616/- was given. After considering the facts and circumstances of the case, and also considering the set off of MAT credit available with the assessee as on the beginning of the assessment year, we find sufficient merit in the contentions of Ld. Counsel for the assessee that the interest u/s. 244A of the Act in the case of the for AY 2017018 needs to be computed from 01.04.2017 to the date of grant of refund. Accordingly, the effective issue raised in the instant appeal is allowed.

11. Our view is further supported by various judgment referred by the Ld. Counsel for the assessee including that of –

(i) UOI Vs. Tata Chemicals ltd. [2014] 43 taxmann.com 240 (SC);

- (ii) CIT Vs. Birla Corporation ltd. [2016] 66 taxmann.com 276 (Cal);
- (iii) CIT Vs. Cholamandalam Investment & Finance Co. Ltd. [2008] Taxman 132 (Madras);
- (iv) CIT Vs. Ashok Leyland Ltd. [2002] 125 Taxman 1031 (Madras);
- (v) Pr. CIT Vs. Bank of India [2018] 100 taxmann.com 105 (Bom.) &
- (vi) ADIT (IT) Vs. Royal bank of Scotland N. V [2011] 130 ITD 305 (Kol).

Respectfully following the aforesaid decision on the impugned issue, we hold that the assessee indeed is entitled for interest on unpaid interest and accordingly all the grounds raised by the assessee in this regard are allowed.

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

Order is pronounced in the open court on 29th April, 2024.

Sd/-

(Rajpal Yadav
Vice President

Sd/-

(Dr. Manish Borad)
Accountant Member

Dated: 29th April, 2024

J.D. Sr. PS.

Copy of the order forwarded to:

1. **Appellant - Srei Infrastructure Finance Ltd., 86C, Vishwakarma, Topsia Road (South), Topsia, Kolkata-700046.**
2. **Respondent - ACIT, Circle 11(1), Kolkata.**
3. CIT(A)- NFAC, Delhi
4. CIT
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata,