IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "L", MUMBAI

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER

ITA NO. 2619/MUM/2008 : (A.Y : 2003-04)

Pfizer Corporation, Panama C/o Pfizer Limited, Pfizer Centre 5, Patel Estate, S.V. Road, Jogeshwari (W), Mumbai 400 102. **PAN : AAACP0512H** (Appellant)	Vs.	DDIT(IT)-2(1), Mumbai (Respondent)

Assessee by : Shri Girish Dave
Revenue by : Shri Samir Tekriwal

Date of Hearing : 04/07/2016
Date of Pronouncement : 22/07/2016

O R D E R

PER G.S. PANNU, AM :

The captioned appeal by the assessee is directed against the order of CIT(A)-33, Mumbai dated 14.02.2008, pertaining to the Assessment Year 2003-04, which in turn has arisen from the order passed by the Assessing Officer dated 10.01.2006 under section 154 of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, although the assessee has raised multiple Grounds of appeal but the sum and substance of the dispute is assessee's claim for interest on delayed grant of refund in terms of section 244A(1) of

the Act for the period from the first day of the assessment year 2003-04 to the date on which the refund was granted.

3. Briefly put, the relevant facts can be summarized as follows. The appellant is a foreign company who is a tax resident of Panama. The appellant-company owned technical information and know-how pertaining to manufacture of products called Protinex and Dumex, which was sold to a Denmark based concern, EAC Nutrition A/s during the year. The said Denmark based concern had deducted tax at source and deposited the same in the Government account, but the plea of the assessee was that such income is not taxable in India as the sale had taken place outside India. Be that as it may, the said issue is not the subject matter of controversy before us. It would suffice for us to notice that on 28.11.2003 the assessee-company filed a return of income claiming a refund of Rs.5,06,40,450/-. The claim of refund was based on original Tax Deducted at Source (TDS) certificates of Rs.6,04,75,905/- (Rs.98,44,905/- + Rs. 5,06,31,000/-) filed alongwith the return of income. On 1.4.2004, Assessing Officer issued an intimation u/s 143(1) of the Act raising a demand of Rs.1,17,87,064/- and no credit for the TDS of Rs.6,04,75,905/- was granted. On 14.5.2004, assessee approached the Assessing Officer seeking rectification of the intimation by way of grant of credit for the TDS. On 27.10.2005, Assessing Officer passed an order u/s 143(3) of the Act whereby credit for the TDS was granted for Rs.98,44,905/- and a refund of Rs.9,450/- was determined. At the time of hearing, learned representative for the assessee explained that the credit for the TDS of Rs.5,06,31,000/- was not granted on the ground that the relevant TDS certificate did not bear the stamp of the company issuing such certificate. On 11.11.2005, assessee

filed an Indemnity Bond in response to requirement of the Assessing Officer with respect to the credit for TDS of Rs.5,06,31,000/-. On 10.1.2006, Assessing Officer passed an order u/s 154 of the Act granting credit for TDS of Rs.5,06,31,000/- and interest u/s 244A of the Act of Rs.7,59,607/- for the period 1.11.2005 (being the month in which Indemnity Bond was filed) to January, 2006 (being the month in which order u/s 154 was passed). On 20.7.2006, a refund order of Rs.5,10,96,214/-, net of TDS was granted to the assessee.

4. In the aforesaid background, the grievance of the assessee is that the Assessing Officer has allowed interest for delay in grant of refund only for the period 1.11.2005 to 10.1.2006 whereas the interest on delayed grant of refund in terms of Sec. 244A(1) of the Act accrues to the assessee from 1.4.2003 up to the date of grant of refund, i.e., 20.7.2006.

5. *Per contra,* the stand of the Revenue is that the proceedings resulting in the refund were delayed for reasons attributable to the assessee up to the date of filing of Indemnity Bond by the assessee and, therefore, the interest for delay in grant of refund has been allowed by the Assessing Officer correctly from November, 2005 to January, 2006.

6. Before us, the learned representative for the assessee vehemently pointed out that there was no delay on the part of the assessee inasmuch as the TDS certificates were duly annexed with the return of income. By referring to the copy of TDS certificate, which is placed in the Paper Book, it was sought to be pointed out that it clearly

reflects that the deductor had duly deducted and thereafter deposited the amount of tax into the Central Government account on 5.12.2002. It was, therefore, sought to be canvassed that the monies were indeed credited to the account of the Government within the stipulated period. It was also pointed out that ultimately the Assessing Officer has granted credit for the TDS based on the very same TDS certificate and, therefore, the interest for delay in grant of refund is allowable to the assessee for the period prescribed in Sec. 244A(1) of the Act, i.e., from 1.4.2003 up to the date of grant of refund. The learned representative relied upon the judgment of the Hon'ble Bombay High Court in the case of *Larsen & Toubro Ltd., 330 ITR 340* to point out that even in a case where TDS certificates were not furnished with the return of income but were filed during assessment proceedings, the Hon'ble High Court upheld the plea of the assessee for grant of interest on delayed refund from the first day of the assessment year up to the date of refund. The learned representative pointed out that the Hon'ble High Court noted that where tax was deducted and deposited with the exchequer in time, Sec. 244A(2) of the Act cannot be invoked to deny interest to the assessee. The judgment of the Hon'ble Kerala High court in the case of *State Bank of Travancore, 42 taxmann.com 572 (Kerala)* was also relied upon to justify grant of interest on delayed refund up to July, 2006 in the present case.

7. On the other hand, the ld. DR appearing for the Revenue has relied upon the order of CIT(A) by pointing out that in the present case delay was partly attributable to the assessee and, therefore, it is a case where the dispute relates to the determination of period of such delay,

which is an issue requiring to be dealt with by the concerned Principal Chief Commissioner or Chief Commissioner as required in section 244A(2) of the Act, and the CIT(A) has rightly dismissed the appeal of the assessee.

8. We have carefully considered the rival submissions. Notably, sub-section (1) of Sec. 244A of the Act prescribes that where refund of any amount becomes due to the assessee, interest shall be payable to the assessee from the first day of April of the assessment year to the date on which the refund is granted. In the present case, the claim set-up by the assessee is that it has been found that assessee was entitled to the refund of the TDS and, therefore, it is entitled to interest from the first day of the assessment year, i.e., from 1.4.2003 and up to the date on which the refund has been granted, which is 20.7.2006. We find that the Assessing Officer has allowed interest partly, i.e., for the period 1.11.2005 up to 10.1.2006. Therefore, the aforesaid fact-situation shows that entitlement of the assessee for interest on delayed refund is established though the difference between the assessee and the Revenue is with regard to the period for which such interest is to be allowed.

9. For such situations, sub-section (2) of Sec. 244A of the Act prescribes that where the proceedings resulting in refund are delayed for reasons attributable to the assessee, the period of delay so attributable to assessee shall be excluded from the period for which the interest is payable. In this case, the first point made by the Revenue is that the TDS certificate for Rs.5,06,31,000/- issued by the tax deductor did not bear the stamp of the company issuing such certificate.

Assessee had pointed out before the CIT(A) that for such reason Assessing Officer required it to furnish Indemnity Bond, which was done on 11.11.2005, and thereafter credit for TDS certificate of Rs.5,06,31,000/- was granted vide rectification order u/s 154 dated 10.1.2006. In our considered opinion, in such a situation the proceedings resulting in refund could not be said to have been delayed for reasons attributable to the assessee. Notably, the tax deductor had duly deposited the requisite tax into Government exchequer and also issued requisite Form No. 16A. Non-affixing of stamp on the TDS certificate by the issuing concern, in our considered opinion, does not distract from the fact that the tax was deducted and deposited in the account of the Government exchequer within the period prescribed. Moreover, once the Assessing Officer allows credit for the TDS based on the same certificate, the credit is understood to have been granted with respect to the tax that was deposited in the State exchequer; and,such tax stood deposited within the period prescribed. In fact, in the case of Larsen & Toubro Ltd. (*supra*), the Hon'ble High Court was considering a situation where the TDS certificates were not furnished with the return of income but were furnished to the Assessing Officer only during the assessment proceedings. Interest u/s 244A(1) was sought to be denied for a part of the period on the ground that proceedings resulting in the refund had been delayed for the reasons attributable to the assessee on account of non-filing of TDS certificates with the return of income. The Hon'ble High Court noticed that once the benefit of TDS has been allowed to the assessee, interest u/s 244A could not be denied keeping in mind that the tax was deducted and deposited with the exchequer in time, and that Sec. 244A(2) of the Act was not attracted.

10. In our considered opinion, the fact-situation in the present case stands on a much better footing than what was before the Hon'ble High Court in the case of Larsen & Toubro Ltd. (*supra*) inasmuch as in the present case the relevant TDS certificates were furnished alongwith the return of income and it is also irrefutable that the tax was deducted and deposited in the account of the Central Government within the stipulated period. Therefore, in our view, income-tax authorities have erred in construing that the proceedings resulting in the refund are delayed for reasons attributable to the assessee within the meaning of Sec. 244A(2) of the Act.

11. Apart therefrom, CIT(A) has made a reference to the fact that assessee had earned certain income from transaction with EAC Nutrition, Denmark for which assessee was claiming non-taxability in India and its application in this regard was pending with the Authority for Advance Ruling (AAR). The CIT(A) further noticed that the AAR, vide its ruling dated 18.10.2004, held that such income was not chargeable to tax. According to the CIT(A), since assessee had filed an application before the AAR, it was not possible for the Assessing Officer either to include such income in the total income or not to include it in the total income and, therefore, the Assessing Officer was not in a position to adjust the TDS to tax or refund it to the assessee. According to the CIT(A), assessee's application pending before the AAR prevented the Assessing Officer from giving credit for such TDS and, therefore, such delay in grant of refund is for reasons attributable to the assessee. In this manner, the CIT(A) has sought to justify invoking Sec. 244A(2) of

the Act to that extent. In our considered opinion, the aforesaid stand of the CIT(A) is untenable as our following discussion would show. Firstly, the parity of reasoning enunciated by the Hon'ble Bombay High Court in the case of Larsen & Toubro Ltd. (*supra*) clearly militates against the stand of the CIT(A) in the present case because there is no dispute that the tax was deducted and deposited in the Government exchequer within the stipulated period and ultimately credit for the same has been allowed by the Assessing Officer. Be that as it may, there is no statutory provision to support the plea of the CIT(A) on this aspect. In this context, one may peruse Chapter XIXB of the Act dealing with AAR. Section 245RR prescribes that no income-tax authority or the Appellate Tribunal shall proceed to decide any issue in respect to which an application has been made to the AAR, so however, such a restriction is placed only for an assessee-applicant who is a resident of India as per the Act, whereas the appellant-assessee before us is a non-resident. Apart therefrom, we do not find any provision which places restrictions on any income-tax authority to proceed to decide any issue before it, in case an application is pending before the AAR. Be that as it may, in our view, if the proceedings resulting in refund are delayed on account of pendency of an application before the AAR, the same cannot be construed as 'reasons attributable to the assessee' within the meaning of Sec. 244A(2) of the Act. Therefore, the aforesaid stand of CIT(A), in our view, is untenable in law.

12. In this view of the matter, in our considered opinion, in the present case, the provisions of Sec. 244A(2) of the Act cannot be invoked by the Assessing Officer to deny interest u/s 244A(1) of the Act

on account of delay in grant of refund from the period 1.4.2003 up to the date of grant of such refund, i.e., 20.7.2006. We direct accordingly.

13. Before parting, we may also refer to the decision of CIT(A) in refusing to decide the issue on merits on the ground that the proceedings resulting in refund are delayed for reasons attributable to the assessee and, therefore, the issue regarding determination of such period of delay is required to be referred to the Chief Commissioner or Commissioner of Income-tax in terms of Sec. 244A(2) of the Act. In our view, the aforesaid decision of the CIT(A) is also based on a wrong footing inasmuch as it has been found by us in the earlier paragraphs that the proceedings resulting in refund in the present case cannot be considered as delayed for reasons attributable to the assessee, and thus, Sec. 244(2) of the Act is inapplicable. Thus, the aforesaid stand of the CIT(A) is also not justified.

14. In conclusion, we set-aside the order of CIT(A) and direct the Assessing Officer to re-determine the interest due to the assessee on the impugned refund in terms of Sec. 244A(1) of the Act from the first day of April of the assessment year under consideration upto the date on which the refund has granted.

15. In the result, appeal of the assessee is allowed, as above.

Order pronounced in the open court on 22nd July, 2016.

Sd/-	Sd/-
(AMARJIT SINGH)	**(G.S. PANNU)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Date : 22nd July, 2016
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Copy to :

1) The Appellant
2) The Respondent
3) The CIT(A) concerned
4) The CIT concerned
5) The D.R, “L” Bench, Mumbai
6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai