

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'B': NEW DELHI)**

**BEFORE SHRI GS PANNU, VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No:- 330/Del/2023

&

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(Assessment Year: 2007-08 & 2008-09)

Everest Business Advisory India Pvt. Ltd., 1 st Floor, Spaze Platinum Tower, Sector 47, Gurgaon.	Vs.	Asst. Commissioner of Income Tax, Circle 7(1), Delhi.
PAN No: AABCE2871R		
APPELLANT		RESPONDENT

Assessee by : Ms. Vandana Bhandari, CA
Revenue by : Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing : 21.05.2024
Date of Pronouncement : 18 .06.2024

ORDER

PER ANUBHAV SHARMA, JM

The appeals are preferred by the Assessee against the order dated 12.12.2022 for AY 2007-08 and order dated 14.12.2022 for AY 2008-09 of National Faceless Appeal Centre (NFAC), Delhi

[hereinafter referred to as 'Ld. CIT(A)'/ NFAC] arising out of appeals before it against the order dated 17.09.2021 passed u/s 154 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, Circle-7(1), New Delhi (hereinafter referred as the Ld. AO) for the two assessment years under consideration. As issues are common, for avoiding cost of repetition, the two appeals are decided together and the facts of AY 2007-08 are considered for discussion. The findings shall apply mutatis mutandis to appeal for AY 2008-09.

2. The assessee has raised the following grounds in AY 2007-08;-

1. *The CIT-A has erred both in facts and in law in dismissing the appeal of assessee by holding that re-determination of interest u/s 244A on Refund is outside the scope of sec 154 as it involves investigation of facts*
2. *That the CIT-A failed to appreciate that Assessing Officer has admittedly passed order u/s 154 against application of assessee for re-determination of interest u/s 244A*
3. *Without prejudice, if jurisdiction of AO to re-determine interest u/s 244A requires examination of facts and not covered under "mistake apparent from record" u/s 154 then assessing officer should be directed to quash the order u/s 154 as it is void ab initio and assume re-determination of interest u/s 244A under appropriate provisions of the Act*

The above objections are without prejudice to each other.

The assessee craves leave to alter, amend or withdraw all or any objections herein or add any further grounds as may be considered necessary either before or during the hearing."

3. Heard and perused the record.

4. The assessee had filed its return of income declaring total income of Rs. 1,29,13,380/- on 31.10.2007. The return was processed u/s 143(1) on 20.02.2009 determining refund of Rs. 33,64,080/- including interest u/s 244A. The refund was issued to assessee however, not credited to the bank account of assessee as the assessee. AO claims that account of assessee stood blocked. The assessee has filed application before the AO and submitted that the assessee has not received the refund determined for the year under consideration. In the application, the assessee sought interest on refunds as refunds were against order u/s 143(1) which have been credited to assessee's account in the year 2021 without interest. The assessee also filed a CPGRAM in this respect earlier, which was disposed off by the AO with the remarks that there are different reasons for blockage of refund like bank account mismatch, bank name mismatch, PAN mismatch etc. Assessee had claimed that there was no such mismatch ever happened in assessee's case as refund was never credited to assessee prior to 2021. This is clear from NSDL summary attached with this grievance. Further, no refund cheque was ever sent by SBI banker this is also clear from NSDL summary which shows refund cheques sent also in reference section of refund status. Further, assessee has never received any refund cheque from department pertaining to AY 2007-08. The reasons for non payment of interest on refund given by AO are generic and not applicable to facts of the case. Moreover, the

reasons so quoted are not supported by any evidence by the department.

5. Now the admitted case of Revenue is that the return was processed on 20.02.2009 U/s 143(1) and refund of Rs. 3364080/- was determined. This refund includes interest of Rs. 346967/-. Thus, while determining the refund order interest U/s 244A was already allowed. In the order U/s 143(1) credit of TDS claimed of Rs. 735018/- was not allowed. However, the same was allowed U/s. 254 of IT Act, 1961. Thus, from the facts it is clear that refund was determined by allowing interest U/s 244A.

6. The AO while deciding this application has observed that;

“While deciding the writ petition W.P.(C) 3285/2020 & CM APPL. 11527/2020 dated 13.10.2020 in case of M/s. Denave India Pvt. Ltd. Vs. ACIT CIRCLE-7(1), New Delhi. It is held that " it is an admitted position that only issue that survives in the present writ petition is the interest payable by the Income Tax Department, in relation to payment of income tax refund, the petition is entitled to for the AY 2018-19. Whilst the petitioner states that it is entitled to interest from date of the order dated 13.11.2019, till the date of actual payment, it is the department's assertion that petitioner would be entitled to the same, only upto the date of order allowing income tax refund.

In view of the forgoing, whilst keeping the question of law stated herein above open for determination in an appropriate proceeding, the present writ petition is disposed off since the principle relief seeking income tax refund has been satisfied, whilst preserving the liberty to the petitioner to take appropriate steps, if any, in accordance with the law. No further directions are called for".

From the above finding of the Hon'ble jurisdictional High Court, it is clear that the issue was raised before the Hon'ble Court however, no direction was given by Hon'ble Court to allow interest from the date of determination of refund and upto the date of credit of refund in the bank account of the assessee. The

*refund determined has already been credited in bank account of the assessee along with interest U/s 244A. Considering the facts of the case and in view of finding of Hon'ble Delhi High Court mentioned Supra. The application filed by assessee dated 27.08.2021 through CPGRAM is hereby **rejected**.*

7. The CIT(A) has sustained the order of AO on the basis that as there was no mistake apparent on record, petition under 154 of the Act was not maintainable.

8. We are of considered view that CIT(A) has fallen in error in making observation that the assessee has sought rectification of the determination of interest under section 244A of the Act while in fact the question was the period for which the interest should have been paid. It was not the question of making a conclusion after a long process so as to be outside the purview of section 154 of the Act. But, merely rectification of a clerical nature arising out of mistake in calculation of period for which interest is payable to assessee. It is settled proposition of law that if interest is reduced by virtue of Sub-section (3) of Section 244A on account of assessment under Section 143(3), the interest granted in earlier year gets substituted and it is the reduced amount of interest that would form part of income of that year. Thus, it would amount to mistake rectifiable under Section 154 of the Act. Reliance can be placed on **Avada Trading Co. (P.) Ltd. vs Assistant Commissioner Of Income-Tax decided [2006]284ITR73(MUM)**. This certainly leads to conclusion that Section 154 proceedings can be held in matters of calculation of the interest component

payable u/s 244A of the Act. Admittedly, in the case in hand the refund has been credited on 25 February 2021 while the refund was determined on 20 February 2009. So assessee was entitled to interest up to 25/02/2021, which should have been rectified by the AO. Therefore we are inclined to allow the grounds raised.

9. Consequently the **appeals are allowed** and the assessing officer is directed allow the interest under section 244A of the Act up to the respective dates of credit of refunds in the account of assessee.

Order pronounced in the Court on 18.06.2024

Sd/-
(GS PANNU)
VICE PRESIDENT

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 18/06/2024.

Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	10.6.24
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	