

आयकर अपीलिय अधिकरण
दिल्ली पीठ "डी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री नवीन चंद्र, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

आअसं. 6351/दिल्ली/2018 (नि. व. 2004-05)
ITA No.6351/DEL/2018 (A.Y.2004-05)

Additional Commissioner of Income Tax,
Special Range-7, R.No. 211, C.R Building,
New Delhi-110002.

..... अपीलार्थी / Appellant

बनाम Vs.

M/s. OCL India Ltd.,
7th Floor, Hansalaya Building,
15, Barakhamba Road, New Delhi 110001
PAN: AAACO-1354 -J

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा / Appellant by : Shri Amaninder Singh Dhindsa, Sr. DR
प्रतिवादीद्वारा / Respondent by : Ms. Alka Arren, CA
Shri Vijay Shah, CA

सुनवाई की तिथि / Date of hearing : 18/07/2024
घोषणा की तिथि / Date of pronouncement : 26/07/2024

आदेश / ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Department is directed against the order of Commissioner of Income Tax (Appeals)-38, New Delhi [in short 'the CIT(A)'] dated 25.07.2018, for assessment year 2004-05.

2. The solitary issue raised by the department in appeal is against allowing interest u/s. 244A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. Shri Amaninder Singh Dhindsa representing the department submitted that a perusal of the order dated 05.06.2018 passed u/s. 154 of the Act by the Assessing Officer (AO) would show that benefit of MAT credit amounting to Rs. 1,13,99,406/- was allowed to the assessee without any interest. The First Appellate Authority by placing reliance on certain decisions has allowed interest to the assessee u/s. 244A of the Act on refund arising on account of MAT credit. The Id. DR referring to the provisions of Section 115JAA of the Act submitted that proviso to sub-section (2) to Section 115JAA of the Act restricts payment of interest on tax credit allowed under sub section (1). As per the provision sub section (1) to section 115JA of the Act where any amount of tax is paid by the assessee company for any assessment year then, credit in respect of tax so paid shall be allowed to him, in accordance with the provisions of Section 115JAA of the Act. In light of the aforesaid provisions assessee is not eligible to claim interest on MAT credit.

4. Per contra, Ms. Alka Arren appearing on behalf of the assessee submits that the assessee has not claimed interest on MAT credit. The assessee has claimed interest on refund of advance tax paid. To substantiate his contention the Id. AR referred to the computation of income at page 6 of the paper book. She pointed that assessee has paid advance tax to the tune of Rs. 7,23,00,000/- for AY 2004-05, out of which tax amounting to Rs. 1,17,11,770/- has been refunded. The

CIT(A) has allowed interest u/s. 244A of the Act on refund of advance tax paid. The case laws on which the CIT(A) has placed reliance deals with the situation where interest has been claimed on refund of advance tax paid by the assessee.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. The short dispute before us is with regard to payment of interest u/s. 244A of the Act allowed by the CIT(A). The contention of the assessee is that the CIT(A) has allowed interest on refund of advance tax paid by the assessee for AY 2004-05, per contra stand of the department is that the CIT(A) has erred in allowing interest on MAT credit allowed by the AO in proceedings u/s. 154 of the Act.

6. A perusal of impugned order shows that the CIT(A) following the decisions rendered in the case of *CIT vs. Tulsyan NEC 330 ITR 223 (SC)*, the decision of Hon'ble Bombay High Court in the case of *CIT vs. Apar Industries 323 ITR 411* and the decision of Hon'ble Jurisdictional High Court in the case of *CIT vs. Bharat Aluminum 242 CTR 366* has directed the Assessing Officer (AO) to allow interest u/s. 244A of the Act on the refund arising from advanced tax paid by the assessee. However, in the last line of the order it appears that the CIT(A) inadvertently mentioned "refund arising on account of MAT credit". It is settled position that the department is liable to pay interest u/s. 244A of the Act on the refund arising from advance payment of tax by the assessee. Since, in the instant case there is some ambiguity in the findings of the CIT(A) in allowing interest. We deem it appropriate to restore this issue back to the file of AO for the limited purpose of verification. If refund has accrued to the assessee from advance payment of tax,

the AO shall allow interest to the assessee on such refund u/s. 244A of the Act, in accordance with the decision of Hon'ble Apex Court in the case of CIT vs. Tulsyan NEC (supra). However, if it is a case of refund on account of MAT credit no interest shall be allowable.

7. In the result, appeal of the department is partly allowed for statistical purpose, in the terms aforesaid.

Order pronounced in the open court on Friday the 26th day of July, 2024.

Sd/-

(NAVEEN CHANDRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 26/07/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI