

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.2902/M/2024
Assessment Year: 2021-22**

Assistant Commissioner of Income Tax-3(4), 5 th Floor, Room No.559, Aayakar Bhavan, Mumbai, Maharashtra – 400 020	Vs.	M/s. Lupin Limited, 3 rd Floor Kalpataru Inspire, Off Western Express Highway, Santacruz (East), Mumbai Maharashtra- 400055 PAN: AAACL1069K
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Raghav Bajaj, A.R.
Revenue by : Shri Manoj Kumar Sinha, Sr. DR.

Date of Hearing : 23 . 07 . 2024
Date of Pronouncement : 31 . 07 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Revenue against the order dated 22.03.2024, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2021-22.

2. In the instant case, the Assessee had declared its total income at Rs.9,78,62,40,780/- as per the normal provisions of the Act and Rs.16,00,21,51,047/- as peak profit as per the provisions of section 115JB of the Act, by filing its return of income on 10.03.2022. As the tax on income under normal provisions was more than the tax on

deemed income under section 115JB of the Act and therefore the Assessee paid taxes as per the income computed under normal provisions of the Act and consequently claimed the refund of Rs.113,21,64,380/- in the return of income which was processed u/s 143(1) of the Act vide intimation dated 14.11.2022 by the CPC, determining the taxable income at Rs.1152,47,19,270/- and refund of Rs.57,71,10,660/- (inclusive of interest u/s 244A amounting to Rs.5,24,64,600/-).

2.1 In the intimation dated 14.11.2022 u/s 143(1) of the Act, the deduction u/s 10AA of the Act, amounting to Rs.173,84,78,489/- and TDS/TCS credit to the tune of Rs.24,393/- were short granted.

3. The Assessee therefore being aggrieved filed a rectification application on 24.11.2022 u/s 154 of the Act with the jurisdictional Assessing Officer (AO) i.e. Ld. Deputy/Assistant Commissioner of Income Tax, Circle-3(4) and sought rectification of the mistakes apparent on record in the intimation u/s 143(1) of the Act.

4. The Assessee also filed the first appeal on 09.12.2022 against the intimation dated 14.11.2022 u/s 143(1) of the Act before the Ld. Commissioner who by taking into consideration the fact *“that vide rectification order dated 05.09.2023 passed by the Ld. AO, DCIT, Circle-3(4), Mumbai has allowed the deduction claimed u/s 10AA of Rs.173,84,78,490/- over and above the deduction allowed in the intimation order dated 14.11.2022 u/s 143(1) of the Act”*, ordered that amount of interest u/s 244A of the Act is to be calculated by first adjusting the amount of refund and already granted towards the interest component and balance left if any shall be adjusted towards the tax component. Consequently, the AO is directed to recalculate the interest u/s 244A of the Act up to the date of actual receipt of refund by the Assessee.

5. The Revenue Department being aggrieved with the direction for recalculating the interest u/s 244A of the Act up to the date of actual receipt of refund is in appeal before us. The main contention of the Revenue Department that the Ld. Commissioner though while issuing the aforesaid directions, followed the decision in the case of Union Bank of India vs. ACIT by the Tribunal at Mumbai decided on 11.08.2016, 72 taxmann.com 348 wherein it was held as under:

"8. Accordingly, we direct the Id AO to compute the correct amount of interest allowable to the assessee as directed by the id. CIT(A) as on the date of giving effect to the Tribunal's order 16. 6-9-2013 We further hold that the refund granted on 6-9-2013 be first appropriated or adjusted against such correct amount of interest and consequently, the short fall of refund is to be regarded as shortfall of tax and that shortfall should then be considered for the purpose of computing further interest payable to the assessee u/s.244A of the Act till the date of grant of such refund. Accordingly, the grounds raised by the assessee in this regard are allowed for both the years."

5.1 However, it is a fact that the Revenue Department has contested the issue under consideration before the Hon'ble High Court and therefore the direction/order qua interest u/s 244A of the Act, issued by the Ld. Commissioner is liable to be set aside.

6. On the contrary, the Ld. A.R. refuted the claim of the Assessee by submitting that the AO itself in the Assessee's own case in the scrutiny proceedings u/s 143(3) of the Act, while passing the rectification order dated 18.04.2024 u/s 154 r.w.s. 143(3) of the Act has granted the interest u/s 244A of the Act up to the date of receipt of refund i.e. 2nd February 2024 and the Assessee's appeal against such order u/s 143(3) of the Act is pending before the Ld. Commissioner(Appeals), therefore this appeal has become infructuous, hence the same be dismissed.

7. Considering the peculiar facts and circumstances of the case, as the AO vide order dated 18.04.2024 u/s 154 of the Act has already granted the interest u/s 244A of the Act, as has also been ordered by the Ld. Commissioner, hence the instant appeal is liable to be dismissed being infructuous.

8. Consequently, the appeal filed by the Revenue Department stands dismissed being infructuous.

Order pronounced in the open court on 31.07.2024.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.