

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER

I.T.A. No. 2743/Mum/2024
Assessment Year: 2006-07

Atos Information Technology HK Limited C/o Eviden India Private Limited (formerly known as 'Atos India Private Limited) Unit No. 1402 and 1403 Supremus, E Wing I Think Techno Campus Knjurmarg (East) Mumbai -400042 [PAN: AAKCS8702L]	Vs	Deputy Commissioner of Income Tax (International Taxation)-1(1)(2), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Ms. Chandi Shah, Ms. Tejal Saraf, Shri Yogesh Nalpani, A/Rs
Revenue by :	Shri Anil Sant, Addl. CIT, D/R

सुनवाई की तारीख/**Date of Hearing** : 08/08/2024
घोषणा की तारीख/**Date of Pronouncement** : 14/08/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM :

This appeal by the assessee is preferred against the order of the Id. CIT(A)-55, Mumbai, dt. 19/03/2023 pertaining to Assessment Year 2006-07.

2. The sum and substance of the grievance of the assessee is that, the Id. CIT(A) erred in confirming the order by which the AO has withdrawn the interest on refund u/s 244A of the Act.

3. Representatives of both the sides were heard at length, case records carefully perused and relevant documentary evidence brought on record, duly considered in the light of Rule 18(6) of the ITAT Rules, 1963.

4. Briefly stated the facts of the case are that, for the AY under consideration, the assessee filed its return of income on 08/01/2008, when the due date for filing the return was 30/09/2006. The returned income was Nil and the tax deducted at source by the payer was claimed as refund. The returned income was not accepted by the AO who made additions and the quarrel travelled up to the Tribunal and the Tribunal decided the issue in favour of the assessee and against the revenue.

5. While giving the appeal effect of ITAT's order dt. 24/07/2017, interest u/s 244A of the Act was granted to the assessee from 01/04/2006 to 31/07/2017.

6. Assuming the powers conferred upon him by the provisions of Section 154 of the Act, the AO was of the opinion that interest u/s 244A of the Act should not be granted to the assessee for the period from April, 2006 to January, 2008, as interest u/s 244A of the Act is not allowable to the assessee as per the provision of Section 244A(2) of the Act, where it is mentioned that interest is not payable to the assessee if there is any delay for the reasons attributable to the assessee.

6.1. The assessee carried the matter before the Id. CIT(A) but without any success.

7. Before us, the Id. Counsel for the assessee vehemently stated that both the lower authorities have grossly erred in invoking the provisions of Section 244A(2) of the Act. The Id. Counsel drew our attention to the Finance Bill, 2016 and pointed out that the impugned amendment is applicable from 01/06/2016, whereas the assessee had filed its return of income on 08/01/2008. The Id. Counsel placed strong reliance on the decisions of the Co-ordinate Bench in the cases of *Otis Elevator Company (India) Ltd. vs. DCIT in [2022] 141 taxmann.com 391 (Mumbai ITAT)*, *Grasim Industries Ltd. vs. DCIT in [2022] 143 taxmann.com 261 (Mumbai ITAT)* and *DBS Bank Ltd. vs. DDIT [2016] 66 taxmann.com 173 (Mumbai ITAT)*, for the proposition that interest granted earlier cannot be withdrawn by order u/s 154 of the Act as the same does not tantamount to mistake apparent from record.

Per contra the Id. D/R strongly supported the findings of the lower authorities. It is the say of the Id. D/R that since the return was a belated return, the AO has rightly withdrawn the interest from the due date of filing of the return till the date of return filed.

8. We have given a thoughtful consideration to the orders of the authorities below. It is not in dispute that the assessee filed its return of income on 08/01/2008 when the due date was 30/09/2006. The returned income was Nil but the payment received from Standard Chartered Bank were considered as payments for royalty and fees for technical services. These additions were deleted by the Tribunal vide its order dt. 09/02/2017 and while giving effect to this order of the Tribunal, interest u/s 244A of the Act was granted to the assessee.

8.1. Subsequently, assuming jurisdiction u/s 154 of the Act, the AO was of the opinion that a mistake has crept on record while giving effect to the order of the Tribunal, by which erroneously excess interest on refund u/s 244A of the Act was granted to the assessee for the 22 months period from April, 2006 to January, 2008.

8.2. The Finance Bill, 2016 has proposed the following amendments:-

“ **Payment of interest on refund**

Section 244A inter alia provides that an assessee is entitled to interest on refund arising out of excess payment of advance tax, tax deducted or collected at source. It also provides that the period for which the interest is paid on such excess payment of tax begins from the 1st April of the assessment year and ends on the date on which refund is granted.

In order to ensure filing of return within the due date it is proposed to amend section 244A to provide that in cases where the return is filed after the due date, the period for grant of interest on refund may begin from the date of filing of return.

In the interest of fairness and equity, it is further proposed to provide that an assessee shall be eligible to interest on refund of self-assessment tax for the period beginning from the date of payment of tax or filing of return, whichever is later, to the date on which the refund is granted. For the purpose of determining the order of adjustment of payments received against the taxes due, the prepaid taxes i.e. the TDS, TCS and advance tax shall be adjusted first.

It is also proposed to provide that where a refund arises out of appeal effect being delayed beyond the time prescribed under sub-section (5) of section 153, the assessee shall be entitled to receive, in addition to the interest payable under sub-section (1) of section 244A, an additional interest on such refund amount 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. It is clarified that in cases where extension is granted by the Principal Commissioner or Commissioner by invoking proviso to sub-section (5) of section 153, the period of additional interest, if any, shall begin from the expiry of such extended period.

These amendments will take effect from 1st day of June, 2016.

[Clause 90]”

8.2.1. The proposed amendment is to take effect from 01/06/2016 whereas the return of income has been filed by the assessee on 08/01/2008.

9. Even otherwise, the payer Standard Chartered Bank has deducted tax at source on the impugned payments which was in the credit of the revenue from the date of deduction of the tax at source, irrespective of the date of filing of the return of income, which means that the revenue was benefitting with the tax payment when there was no liability of the assessee. The assessee claimed the refund of tax after filing the return of income and because of the appeal effect, the refund was granted with interest subsequently.

10. We are of the considered view that such mistake cannot be rectified u/s 154 of the Act as held by the Co-ordinate Bench in the cases mentioned elsewhere.

11. Considering the facts of the case in totality, we direct the AO to allow the interest which has been taken back by way of rectification order u/s 154 of the Act.

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

Order pronounced in the Court on 14th August, 2024 at Mumbai.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 14/08/2024

SC S.P.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai