

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH, AHMEDABAD**

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER &  
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 90/Ahd/2023

(निर्धारण वर्ष / Assessment Year : 2016-17)

<b>Torrent Solargen Limited</b> “Samanvay”, 600, Tapovan, Amabawadi, Ahmedabad, Gujarat, 380015	<b>बनाम/</b> Vs.	<b>DCIT</b> Circle- 4(1)(2), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCT0483G		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Vartik Chokshi, Advocate
प्रत्यर्थी की ओर से/Respondent by :	Shri Prasad Rao Waghe Annasaheb, Sr. DR

<b>Date of Hearing</b>	27/08/2024
<b>Date of Pronouncement</b>	30/08/2024

**ORDER**

**PER SHRI NARENDRA PRASAD SINHA, AM:**

This appeal is filed by the assessee (TSL) against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’) dated 08.09.2022 for the Assessment Year 2016-17.

2. There was a delay of 95 days in filing of this appeal. The assessee has filed an affidavit explaining the reason for delay. It

was submitted that the appeal order passed by NFAC was received vide registered mail on the email ID of Hemang Shah & Saurabh Mashruwala who were the authorized persons but due to oversight they did not bring this fact to the notice of the company in time. No physical copy of the order was received at the registered address of the company. An affidavit of Shri Saurav Mashruwala has also been filed in this regard. The Revenue also did not have any objection to the condonation of delay. Considering the reason as explained by the assessee, the delay in filing of the appeal is condoned.

3. The only ground taken by the assessee in this appeal is as under:

*“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in upholding the action of AO for not granting interest u/s 244A of the Income Tax Act, 1961.”*

4. The brief facts of the case are that the original return of income for A.Y. 2016-17 was filed by the assessee on 16.10.2016 showing total income of Rs.16,86,17,460/-. The assessee had claimed TDS credit of Rs.8,93,784/- and advance tax credit of Rs.13,50,00,000/- in its ITR. The said return was processed by the CPC on 04.12.2016 and refund of Rs.3,36,770/- as claimed in the ITR was issued.

5. By a Scheme of Amalgamation approved by Hon'ble High Court, Gujarat vide order dated 14.10.2016, Solar & Wind Energy undertaking of the assessee company were transferred to Torrent Power Limited (TPL). Pursuant to the same, assessee filed revised return on 16.10.2017 declaring Nil income and without claiming credit of any TDS or advance tax as claimed in the original return. The revised return was processed by the CPC on 30.03.2019 raising a demand of Rs.19.02 Crore. The assessee filed a rectification application under Section 154 of the Income Tax Act, 1961 (in short 'the Act') in this regard. Since the Solar & Wind Energy undertaking of the assessee was transferred to Torrent Power Ltd., the income tax return of TPL for A.Y. 2016-17 was also revised wherein the income and credit for tax as shown by the assessee in its original return was now claimed in the revised return of TPL pursuant to the Amalgamation. However, the credit for TDS and advance tax of the assessee company was not allowed in the hands of Torrent Power Ltd. Therefore, the assessee requested for refund for advance tax and TDS as reflected in its original return. The AO vide order u/s. 154 of the Act dated 29.05.2019 held that total income of the assessee during the year was Rs. Nil and, therefore, he ordered for refund of advance tax & TDS credit payment of Rs.13,58,93,784/-. However, no interest u/s.244A of the Act was allowed on the ground that delay in the proceedings resulting in refund was due to reasons attributable to the assessee.

6. Aggrieved with the order of the AO, the assessee had filed an appeal against the refusal to grant interest under Section 244A of the Act before the First Appellate Authority, which has been decided vide the impugned order. The Ld. CIT(A) upheld the order of the AO. Now the assessee is in appeal before us.

7. Shri Vartik Chokshi, Ld. AR appearing for the assessee explained that in the revised return the assessee had not claimed credit for any tax paid and no refund was claimed. Pursuant to transfer of Solar & Wind Energy undertaking of the company to Torrent Power Limited, the credit for the advance tax and TDS pertaining to the assessee was claimed by M/s. Torrent Power Limited in their revised return. However, the said credit was neither allowed in the hands of Torrent Power Limited nor in the hands of the assessee. Therefore, a rectification application was also filed by M/s. Torrent Power Ltd. in this regard, which was rejected by the AO of TPL vide order u/s. 154 of the Act dated 25.03.2019. It was only pursuant to that order dated 25.03.2019, the AO of the assessee had passed order under Section 154 of the Act dated 29.05.2019 allowing refund in the case of the assessee. Thus, the Ld. Counsel submitted that there was no delay on the part of the assessee and that the delay, if any, was attributable to the Revenue only. He, therefore, submitted that the assessee was entitled to interest u/s.244A of the Act.

8. Per contra, Shri Prasad Rao Waghe Annasaheb, Ld. Sr. DR submitted that the assessee did not claim the credit of any tax payment nor any refund was claimed in the revised return filed on 16.10.2017. He submitted that when no refund was claimed in the revised return by the assessee itself there was no question of allowing any interest u/s.244A of the Act. He further submitted that the delay in filing the revised return by the assessee cannot be attributed to the Department and in any case, no interest prior to that date was eligible to the assessee.

9. We have carefully considered the rival submissions. The undisputed facts of the case are that the refund as claimed by the assessee in the original return was issued to the assessee on processing of the return. Further, in the revised return filed by the assessee on 16.10.2017, no refund was claimed. The refund in the case of the assessee has arisen only because of denial of TDS and advance tax payment made by the assessee in the hands of Torrent Power Limited. In fact, the credit for advance tax payment and TDS of the assessee was claimed by the Torrent Power Limited in their revised return dated 22.11.2017. The CPC had raised a query in the case of Torrent Power Limited on 03.06.2018 and communicated that "ITR filed is defective/Incomplete". In response, M/s. Torrent Power Limited had given a clarification in this regard on 06.06.2018 explaining that as per the Scheme of slump sale (as approved by Hon'ble Gujarat High Court dated 14.10.2016), all the assets, liabilities,

income and expenses of Solar Energy & Wind Energy undertaking of Torrent Solargen Limited was transferred to TPL and the same was considered in the revised return filed by Torrent Power Limited. It was also clarified that TSL had not claimed any credit of advance tax and TDS pertaining to these undertaking in the revised return filed by it. In spite of this clarification, no action was taken by the CPC and the matter was apparently transferred to the Jurisdictional AO who vide order dated 25.03.2019 passed u/s. 154 of the Act denied credit of advance tax and TDS of TSL to Torrent Power Ltd. It was in pursuance of this order that the order u/s.154 of the Act dated 29.05.2019 was passed in the case of the assessee and refunding only Rs.13,58,93,784/- without applicable interest u/s.244A of the Act.

10. It is, thus, found from the above facts that no delay was attributable on the part of the assessee after filing of its revised return on 16.10.2017. The delay, if any, was on the part of the CPC and the Jurisdictional AO in not giving credit to advance tax and TDS of the assessee to Torrent Power Ltd. It is also relevant to consider that due to non-credit of advance tax and TDS in the case of Torrent Power Ltd., demand was raised in the case of Torrent Power Limited, which was liable for payment along with the interest. Thus, when the Revenue is collecting the demand along with the interest due to non-credit of advance tax and TDS of the assessee in the hands of TPL and denying interest u/s.244A of the Act to the assessee is highly arbitrary. Revenue is equally

liable to pay interest on the amount of refund being issued to the assessee. Accordingly, the Revenue is directed to grant interest u/s. 244A of the Act to the assessee from the date of filing of the revised return till the date of issue of refund.

11. In the result, appeal preferred by the assessee is allowed.

**This Order pronounced on 30/08/2024**

Sd/-  
(T.R. SENTHIL KUMAR)  
**JUDICIAL MEMBER**  
Ahmedabad; Dated 30/08/2024  
S. K. SINHA

Sd/-  
(NARENDRA PRASAD SINHA)  
**ACCOUNTANT MEMBER**

*True Copy*

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad