

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

BEFORE MS. KAVITHA RAJAGOPAL, JM AND
SHRI GIRISH AGRAWAL, AM

ITA No. 3305/Mum/2024 (Assessment Year: 1999-2000)

ITA No. 3306/Mum/2024 (Assessment Year: 2000-2001)

Glaxosmithkline Pharmaceuticals Limited 252, GSK House, Dr. Annie Besant Road, Worli, Mumbai-400 030	Vs.	Dy. CIT, Circle 7(1)(1) Aayakar Bhavan, Mumbai-400 020.
PAN/GIR No. AAACG 4414 B		
(Assessee)	:	(Respondent)

Assessee by	:	Shri Anish Thacker & Shri Pranay Gandhi
Respondent by	:	Shri. Ram Krishn Kedia (Sr. DR.)

Date of Hearing	:	06.12.2024
Date of Pronouncement	:	09.12.2024

ORDER

Per Kavitha Rajagopal, J M:

These appeals have been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals)('ld.CIT(A) for short),National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Years ('A.Y.' for short) 1999-2000 and 2000-01.

2. As the facts and grounds are identical, we hereby dispose of this appeal by passing a consolidated order by taking ITA No. 3305/Mum/2024 as a lead case.

ITA No. 3305/Mum/2024 (A.Y. 1999-2000)

3. The assessee has challenged the present appeal on the following grounds:

On the facts and in circumstances of the case and in law, the learned CIT(A):

- 1 ought to have directed the learned AO to compute interest under section 244A of the Act in respect of tax relief on account of DPEA interest liability and interest on price differentials in respect of Betnelan product from first day of AY till the date of grant/adjustment of refund,*
- 2. erred in upholding the learned AO's action of not granting interest under section 244A of the Act from first day of AY by holding that in absence of an order from the Chief Commissioner of Income-Tax or the Commissioner of Income-Tax under section 244A(2) of the Act, the learned AO could not have decided whether the delay was attributable to the Appellant or not,*
- 3 ought to have followed the order of learned Commissioner of Income-tax (Appeals)-13, Mumbai for AY 1997-98 and 1998-99 wherein the interest under section 244A of the Act in respect of tax relief on account of DPEA interest liability and interest on price differentials on Betnelan product was allowed from first day of AY till the date of grant/adjustment of refund considering the fact that the Department has accepted the order passed by learned Commissioner of Income-tax (Appeals)-13, Mumbai for AY 1997-98 and 1998-99 by not agitating the issue before the Hon'ble Tribunal;*
4. Brief facts of the case are that the assessee company is engaged in the business of manufacturing of pharmaceuticals, bulk drugs and chemicals and had filed its return of income on 31.12.1999, declaring total income at Rs.91,38,48,920/- and the same was processed u/s. 143(1) of the Act and the assessee's case was selected for scrutiny. The learned Assessing Officer ('ld. A.O.' for short) had passed the assessment order u/s. 143(3) of the Act on 31.01.2002, determining total income at Rs.95,06,51,615/-, where the ld. A.O. disallowed the interest claimed by the assessee on Drug Pricing Equalization Account ('DPEA') in respect of Drug Price Equalization of Betamethasone and formulations. The assessee's contention that if in case the said demand by the Government of India becomes enforceable, then the assessee will be eligible for claiming deduction in respect of the said interest liability was also rejected.
5. Aggrieved the assessee was in appeal before the first appellate authority, challenging the order of the ld. A.O. and the ld. CIT(A) vide order dated 22.03.2003 upheld the order of the ld. A.O., rejecting the said claim of the assessee.

6. The assessee was in further appeal before the Tribunal along with Revenue who had filed cross appeals in ITA Nos. 6159/Mum/2003 and 7026/Mum/2003 respectively. The assessee filed a rectification application u/s. 154 of the Act against the order of the Id. CIT(A) on the ground that some of the grounds were not adjudicated and the Id. CIT(A) passed an order u/s. 154 of the Act which was in appeal before the Tribunal by the Department in ITA No. 7207/Mum/2003. The co-ordinate bench vide order dated 12.06.2013 partly allowed the appeal of the assessee along with the additional ground of appeal raised by the assessee, claiming interest liability amounting to Rs.18,06,887/- in respect of 'Betnelan Tabs', which was decided in favour of the assessee company. The Id. A.O. then passed the order giving effect dated 27.02.2015 u/s. 143(3) r.w.s. 254 of the Act, determining a refund of Rs.3,42,41,943/-, including interest u/. 244A of the Act amounting to Rs.84,54,472/-. It is also observed that the Id. A.O. had granted deduction in respect of interest on DPEA Liability of the drug Betamethasone and formulation amounting to Rs.8,87,39,000/- along with the interest on price differential on 'Betnelan Tabs' amounting to Rs.18,06,887/-. The Id. A.O. granted interest u/s. 244A of the Act on the aggregate relief of Rs.9,05,45,887/- from 01.07.2013 which is the month following the year of the order of Tribunal dated 12.06.2013. The assessee is aggrieved by the calculation of interest which according to the assessee ought to have been calculated from first day of the assessment year which is 01.04.1999 until the date of grant/adjustment of refund.

7. The assessee was in appeal before the Id. CIT(A) against the order of the Id. A.O. and the Id. CIT(A) dated 26.04.2024 has failed to adjudicate the issue and had stated that

the Id. Chief Commissioner /Commissioner of Income Tax should decide whether the delay is attributable to the assessee or not u/s. 244A(2) of the Act and had stated that the Id. CIT(A) does not have the jurisdiction to adjudicate the impugned ground.

8. The assessee is in appeal before us, challenging the order of the Id. CIT(A).

9. We have heard the rival submissions and perused the materials available on record. The only moot question to be decided in this appeal is whether interest u/s. 244 of the Act with regard to tax relief on account of DPEA interest liability and interest on price differential in respect of Betnelan is to be computed from 01.07.2013, i.e., the date of order of the tribunal or from the first day of the assessment year, i.e., 01.04.1999. It is observed that the assessee had got substantial relief pertaining to the interest on DPEL liability in respect of the product Betnelan and its formulation amounting to Rs.8,87,39,000/- which claim the assessee is said to have made while filing its original return of income and further the same was reiterated during the course of the assessment proceeding vide its letter dated 13.08.2002. As this issue travelled upto the Tribunal, challenging the order of the Id. CIT(A) where it was decided in favour of the assessee following the earlier assessment years order vide order dated 12.06.2013. The assessee by way of additional ground vide letter dated 14.01.2009 sought for interest on price differential in respect of Betnelan for which the Tribunal vide order dated 12.06.2013 restored the said issue for *denova* adjudication to the Id. A.O., in accordance with the earlier years order of the Tribunal. The assessee claims that the interest on DPEA liability u/s. 244A of the Act is to be granted from the first day of the assessment year /date of payment of taxes and prayed that no period is to be excluded while computing interest

u/s. 244A(2) of the Act and with regard to the price differential in Betnelan, the demand for interest was raised by the Department of Chemical and Petrochemical (DCP) vide government order dated 18.05.2004 after the order of the Hon'ble High Court for which reason the assessee was prevented from making the said claim for deduction earlier and had for the first time raised a claim before the Tribunal by way of additional ground. Though the Id. A.O. had allowed the deduction in respect of the interest on DPEA liability and the interest on price differential as per the order giving effect of the Tribunal, the Id. A.O. had computed the interest u/s. 244A of the Act only from 12.06.2013, i.e., from the next month after the date of the Tribunal's order on the ground that the refund became due to the assessee only from the date of the Tribunal's order as no claim was made by the assessee in its return of income. The assessee had relied on the decision of the Id. CIT(A) in its own case on this issue for A.Ys. 1997-98 and 1998-99, the decision of the co-ordinate bench in the case of *DBS Bank Ltd.* (ITA No. 4869/M/2010), *Ramnath Exports Pvt. Ltd.* (ITA No. 3118/Del/2009), *State Bank of India* (ITA No. 6817/ & 6823/M/2012), *South India Bank Ltd.* 237 CTR 74 (Kerala HC), *Videocon International Ltd.* 6 SOT 227 (ITAT, Mumbai), *Artist Tree Pvt. Ltd.* (93 ITD 603)(ITAT Mumbai).

10. In an appeal before the Id. CIT(A), it was held that as per the provisions of section 244A(2) of the Act, whether the delay in the claim is attributable to the assessee or the Id. A.O., was to be decided by the Chief Commissioner or the Commissioner as the case may be and further held that the Id. CIT(A) did not have the jurisdiction to adjudicate upon this issue. The Id. AR for the assessee relied on the decision of Hon'ble Jurisdictional High Court in the case of *CIT vs. Melstar Information Technologies Ltd.*

[2019] 106 taxmann.com 142 (Bom), wherein on identical facts, this issue was decided in favour of the assessee. The relevant extract of the said decision is cited herein under for ease of reference:

8. *We may notice that in the case of Ajanta Manufacturing Ltd. v. Dy. CIT [2016] 72 taxmann.com 148/391 ITR 33 (Guj.) the Division Bench of Gujarat High Court had occasion to consider a similar issue. The assessee had made a belated claim during assessment of filing revised return. According to the Revenue, this would entitle the assessee for claim of interest to the extent of delay. Provisions of sub-rule (2) of Section 244A of the Act were sought to be pressed in service. The Court made following observations:*

'16. We would also examine the order of the Commissioner on merits. As noted, according to the Commissioner the assessee had raised a belated claim during the course of the assessment proceedings which resulted into delay in granting of refund and therefore, the assessee was not entitled to interest for the entire period from the first date of assessment year till the order giving effect to the appellate order was passed. We cannot uphold the view of the Commissioner. First and foremost requirement of sub-section (2) of Section 244A is that the proceedings resulting into refund should have been delayed for the reasons attributable to the assessee, whether wholly or in part. If such requirement is satisfied, to the extent of the period of delay so attributable to the assessee, he would be disentitled to claim interest on refund. The act of revising a return or raising a claim during the course of the assessment proceedings cannot be said to be the reasons for delaying the proceedings which can be attributable to the assessee. Mere fact that the claim came to be granted by the Appellate Commissioner, would not change this position. In essence, what the Commissioner (Appeals) did was to allow a claim which in law, in his opinion, was allowable by the Assessing Officer. In other words, by passing order in appeal, he merely recognized a legal position whereby, the assessee was entitled to claim certain benefits of reduced tax. Surely, the fact that the assessee had filed the appeal which ultimately came to be allowed by the Commissioner, cannot be a reason for delaying the proceedings which can be attributed to the assessee

17. The Department does not contend that the assessee had needlessly or frivolously delayed the assessment proceedings at the original or appellate stage. In absence of any such foundation, mere fact that the assessee made a claim during the course of the assessment proceedings which was allowed at the appellate stage would not ipso facto imply that the assessee was responsible for causing the delay in the proceedings resulting into refund. We may refer the decision of the Kerala High Court in case of CIT v. South Indian Bank Ltd. [2012] 340 ITR 574 in which the assessee had raised a belated claim for deduction which was allowed by the Commissioner (Appeals). The Revenue, therefore, contended that for such delay, interest should be declined under Section 244A of the Act. In the said case also, the assessee had not made any claim for deduction of provision of bad debts in the original return. But before completion of the assessment, the assessee had made such a claim which was rejected by the Assessing Officer. The Commissioner allowed the claim and remanded the matter to the Assessing Officer. Pursuant to which, the assessee became entitled to refund. Revenue argued that the assessee would not be entitled to interest in view of Section 244A(2), In this context, the Court held in Para. 6 as under (page 578 of 340 ITR):

“6. Sub-section (2) of section 244A provides that the assessee shall not attributable to the asse for persubo delay in issuing the proceedings leading to the

refund that is the period of delir the issue of the refund order is delayed for any period attributable to the assessee, then the assessee shall not be entitled to interest for such period. This is of course an exception to clauses (a) and (b) of section 244A(1) of the Act. In other words, if the issue of the proceedings, that is, refund order, is delayed for any period attributable to the assessee, then the assessee is not entitled to interest of such period. Further, what is clear from sub-section (2) is that, if the officer feels that delay in refund for any period is attributable to the assessee, the matter should be referred to the Commissioner or Chief Commissioner or any other notified person for deciding the issue and ordering exclusion of such periods for the purpose of granting interest to the assessee under section 244A(1) of the Act. In this case, there was no decision by the Commissioner or Chief Commissioner on this issue and so much so, we do not think the Assessing Officer made out the case of delay in refund for any period attributable to the assessee disentitling for interest. So much so, in our view, the officer has no escape from granting interest to the assessee in terms of section 244A(1) (a) of the Act."

11. From the above observation, it is evident that merely because the assessee has raised a claim for the first time before the Tribunal it was held that the delay is not attributable to the assessee and the assessee was entitled to the payment of interest. Further, it was held that it was not the Revenue's case that the proceeding was delayed for the reasons attributable to the assessee and in failure of the same, the assessee was entitled to interest as per section 244A(1) of the Act.

12. Having said that, the next issue is, when such interest would accrue which has already been decided in the assessee's case for A.Ys. 1997-98 and 1998-99 by the Id. CIT(A) that it has to be granted from the first day of the assessment year /date of the payment without excluding any period u/s. 244A(2) of the Act. For this, we would place our reliance on the decision of the Hon'ble Jurisdictional High Court in the case of *Pr. CIT vs. State Bank of India* [2019] 102 taxmann.com 339 (Bom) wherein it was held that unless the delay is attributable to the assessee, then interest should be reckoned from the beginning of the assessment year as per section 244A of the Act. The said proposition is

also supported by the decision of the Hon'ble Kerala High Court in the case of *CIT vs. South Indian Bank Ltd.* [2012] 340 ITR 574 (Ker).

13. By respectfully following the above said observation, we deem it fit to allow the grounds of appeal raised by the assessee. Ground nos. 1 to 3 is hereby allowed.

ITA No. 3306/Mum/2024 for A.Y. 2000-01

14. The findings applied in ITA No. 3305/Mum/2024 for A.Y. 1999-2000 will apply *mutatis mutandis* to this appeal also.

15. In the result, both the appeals filed by the assessee for A.Ys. 1999-2000 and 2000-01 are allowed.

Order pronounced in the open court on 09.12.2024

Sd/-
(GIRISH AGARWAL)
ACCOUNTANT MEMBER

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai; Dated: 09.12.2024
Karishma J. Pawar (Stenographer)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai