IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)

ITA Nos. 4606 & 4608/MUM/2024
Assessment Years: 2006-07 & 2011-12

Viacom 18 Media Pvt. Ltd., One Unity Centre, Tower-4, Senapati Bapat Marg, Prabhadevi, Mumbai-400013. **PAN NO. AAACM 9164 E** **Appellant**	**Vs.**	Asst. CIT-16(1) 4th floor, Aayakar Bhavan, Maharshi Karve Rd., Churchgate, Mumbai-400020. **Respondent**

ITA No. 4658/MUM/2024
Assessment Year: 2011-12

Asst. CIT, 439, Aykar Bhavan, Maharishi Karve Road, Maine Lines, Mumbai-400020. **Appellant**	**Vs.**	Viacom 18 Media Pvt. Ltd., 6th floor, Zion Biz, Ville Parle (East), Mumbai. **PAN NO. AAACM 9164 E** **Respondent**

Assessee by	:	Ms. Moksha Mehta
Revenue by	:	Ms. Kanupriya Damor, Sr. DR

Date of Hearing	:	02/01/2025
Date of pronouncement	:	23/01/2025

ORDER

PER OM PRAKASH KANT, AM

The appeal of the assessee for assessment year 2006-07 is directed against order dated 16.07.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)']. The cross appeals of the assessee and the Revenue for assessment year 2011-12 are directed against order dated 16.07.2024 passed by the Ld. CIT(A). A common issue in dispute is involved in these appeals, therefore same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. First, we take up the appeal of the assessee for assessment year 2006-07. The grounds raised by the assessee are reproduced as under:

> ***Non-grant of additional interest on refund u/s. 244A (1A):***
>
> *1. erred in rejecting the ground of the Appellant of non-grant of additional interest u/s. 244A (IA) of the Act, at the rate of 3 percent, from date on which time limit to pass the Order Giving Effect to the order of Hon'ble Income-Tax Appellant Tribunal ('ITAT') expired u/s. 153(5) of the Act to the date of grant of refund alleging that the Appellant has not provided documentary proof vis-à-vis service of the ITAT order to the AO and Principal CIT.*
>
> *2. should have called for the records from AO to verify the date of receipt of order of ITAT by the AO instead of summarily rejecting the claim of the Appellant.*
>
> ***Set off of brought forward business losses and unabsorbed depreciation:***

3. erred in not directing to grant correct amount of set off of brought forward business losses and unabsorbed depreciation of Rs. 14,29,87.288 instead of set off granted of Rs. 12,53,12,905 ignoring the detailed working provided.

4. Failed to appreciate that merely because the rectification application dated 11 March 2011 was not disposed off by the AO can't be the ground to reject set off of correct amount of brought forward business losses and unabsorbed depreciation as they are consequential and statutorily available as per provisions of section 72 read with section 32(2) of the Act

Non- grant of opportunity of virtual hearing

5. erred in alleging non-receipt of any reply from the Appellant in response to the opportunity for video conferencing granted without appreciating the responses filed by the Appellant seeking the opportunity.

3. Briefly stated facts of the case are that the assessee is a company primarily engaged in broadcasting of television channels from India which includes marketing of advertising airtime on these channels and distribution of the channels. The facts of the case for addressing the dispute before us are that the Assessing Officer passed an order giving effect (OGE) to the order dated 03/09/2021 of the ITAT for assessment year consideration on 30/09/2022 , wherein he computed refund to be granted to the assessee at Rs.14,81,24,720/-comprising of interest u/s 244A of the Income-tax Act amounting to Rs 7,32,32,565/- and Rs. 1,38,22,830/-. Relevant part of the OGE dated 30/09/2022 is reproduced as under:

	TAX CALCULATIONS	
38.	*GROSS TAX*	*81,26,751*
39.	*REBATE*	*0*
40.	*SURCHARGE*	*8,12,675*
41.	*EDUCATION CESS*	*1,78,789*

42.	*TAX CREDIT 115JAA/115JD*	*0*
43.	*RELIEF U/S 89(1) U/S 90 / U/S 91*	*0*
44.	*NET TAX*	*91,18,215*
45.	*INTEREST U/S 234A*	*0*
46.	*DELAY PERIOD*	*0*
47.	*INTEREST U/S 234B*	*16,44,035*
48.	*INTEREST U/S 234C*	*50,511*
49.	*GROSS DEMAND*	*1,08,12,761*
	TAXES PAYMENT DETAILS	
50.	*TDS/TCS*	*57,00,171*
51.	*ADVANCE TAX*	*0*
52.	*SELF ASSESSMENT TAX*	*11,06,314*
53.	*REGULAR ASSESSMENT TAX*	*14,79,05,763*
54.	*AMOUNT ALREADY REFUNDED*	*0*
55.	*TOTAL TAX PAID*	*9,95,27,749*
	DIVIDEND DISTRIBUTION TAX DETAILS	
56.	*ADDITIONAL INCOME TAX AND INTEREST PAYABLE ON DISTRIBUTED PROFITS*	*0*
57.	*ADDITIONAL INCOME TAX AND INTEREST PAID*	*0*
	FINAL DETAILS	
58.	*TOTAL TAX AND INTEREST PAYABLE*	*-8,87,14,988*
59.	*INTEREST U/S 244A*	*-7,32,32,565*
60.	*INTEREST MADE U/S 244A RECOVERED*	*-1,38,22,830*

61.	*DELAY PERIOD ATTRIBUTABLE TO ASSESSEE*	
62.	*INTEREST U/S 234D*	*0*
63.	*INTEREST U/S 220*	*0*
	DEMAND /REFUND	
64.	*NET AMOUNT PAYABLE / REFUNDABLE*	*-14,81,24,720*

3.1 A copy said order giving effect dated 30/09/2022 was provided to the assessee on 14.10.2022 via e-mail. As per the provisions of section 153(5) of the Act, the Assessing Officer is mandated to give effect to the order of the ITAT within three months from the date on which ITAT order is received by the relevant Pr. Chief Commissioner or Chief Commissioner or Pr. Commissioner of Income-tax except the case where fresh assessment is required to be made. Accordingly, the assessee contended that effect of the order of ITAT has not been given within three months of its receipt by the CIT or PCIT, it is entitled for additional interest u/s 244A(1A) of the Act for a period of 182 days from 01.04.2022 to 30.09.2022 on such refund granted.

3. On further appeal, the Ld. CIT(A) adjudicated the issue in dispute as under:

> *"The contention of the Appellant has been that the order of the Hon'ble ITAT was passed on 03.09.2021 and the same was served on learned AO as well as the Principal CIT Range 8, Mumbai in December 2021. Since the order of the Hon'ble ITAT has been served in the office of the concerned PCIT by December 2021, and there is no fresh assessment to be made pursuant to*

Hon'ble ITAT's order dated 03.09.2021, the provisions of Section 153(5) are very clear that the order giving effect to such ITAT's order should be given within 3 months from the date on which Hon'ble ITAT's order was served in the office of the concerned PCIT. However the appellant has not been able to provide any documentary proof in favour of his argument. The contention of the appellant that order was served on AO and Principal CIT Range 8 in December 2021 is not supported by any documentary proof and in view of the same Ground of appeal of the appellant is dismissed."

4. We have heard rival submission of the parties and perused the relevant material on record. The section 153(5) of the Act provides for giving effect to the order of the ITAT, except fresh assessment within the stipulated period of three or six months from the receipt of the order of the ITAT. For ready reference the relevant provision is reproduced as under:

"(5) Where effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 is to be given by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] wholly or partly, otherwise than by making a fresh assessment or reassessment [or fresh order under section 92CA, as the case may be], such effect shall be given within a period of three months from the end of the month in which order under section 250 or section 254 or section 260 or section 262 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, the order under section 263 or section 264 is passed by the [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be] :

Provided that where it is not possible for the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the Assessing Officer [or the Transfer Pricing Officer, as the case may be], if satisfied, may allow an additional period of six months to give effect to the order:

[Provided further that where an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 requires verification of any issue by way of submission of

any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 shall be made within the time specified in sub-section (3).]"

4.1 Therefore, the Assessing officer has to comply with the limitation of three months or six months, whichever apply, while giving effect to the order of the ITAT. If the AO fails in doing so, then, the assessee is eligible for additional interest u/s 244A(1A) of the Act on the refund if any arises to him. The relevant part of the provision is reproduced as under:

"(1A) In a case where a refund arises as a result of giving effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264, wholly or partly, otherwise than by making a fresh assessment or reassessment, the assessee shall be entitled to receive, in addition to the interest payable under sub-section (1), an additional interest on such amount of refund 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:]

4[Provided that where proceedings for assessment or reassessment are pending in respect of an assessee, in computing the period for determining the additional interest payable to such assessee under this sub-section, the period beginning from the date on which such refund is withheld by the Assessing Officer in accordance with and subject to provisions of sub-section (2) of section 245 and ending 4a[with the date up to which such refund is withheld] , shall be excluded.]"

4.2 In the instant case the sole issue of dispute is due to the reason that the date of the service of the order of the ITAT on the Pr. CIT or CIT was not mentioned in the order giving effect. The assessee presumed that order of the ITAT must have been served on the PCIT or CIT on date when it was issued, and therefore, the date

on which refund issued being beyond the period of three months as prescribed in section 153(5), the assessee was entitled for additional amount of interest u/s 244A(1A) of the Act. Now during the course of hearing before us, the Ld. Departmental Representative (DR) has filed a report from the Assessing Officer wherein he has submitted that said order of the Tribunal was received in the office of the Pr. CIT-8, Mumbai on 28.01.2022. In view of the date of the receipt, the Assessing Officer is directed to verify compliance of the provisions of section 153(5) of the Act and allow the interest in terms of section 244A(1A) of the Act in accordance with law. The ground Nos. 1 & 2 of appeal of the assessee is accordingly allowed for statistical purposes.

5. The ground Nos. 3 &4 of the appeal relate to the issue of set off of brought forward business losses and unabsorbed depreciation. The relevant finding of the Ld. CIT(A) on the issue in dispute is reproduced as under:

> *"21. I have gone through the OGE order and the computation sheet forming part of the OGE order, the detailed written submissions filed by the Appellant and the supporting documents submitted in the form of Paper Book. The contention of the Appellant is that as per the latest records, the available brought forward losses (based on the assessed income as per the latest orders for the relevant years for which the loss belongs) for set-off against the assessed income for the year under consideration is R$ 14,29,87,288. The learned ACIT has considered the losses at 12,53,12,905 which was computed as per the rectification order dated 25 February 2011. However, the contention of the applicant is that the learned ACIT did not consider the rectification application filed dated 11 March 2011 by Appellant pursuant to rectification order dated 25 February 2011. As the said application has never been disposed of by the assessing officer hence there is no question why the figures coming in it should be*

considered. In view of the above the Ground of appeal filed by the applicant is dismissed."

4.1 We have heard rival submissions of the parties and perused the relevant material on record. It is the contention of the assessee that rectification application of the assessee dated 11.03.2011 against the rectification order dated 25.02.2011 has not been disposed off thus resulting into lower amount of carry forward of the losses. The Ld. DR could not provide any ready reply regarding disposing off rectification application of the assessee dated 11.03.2011. In view of the above facts, we feel it appropriate to restore this issue back to the file of the Assessing Officer for verification of the claims made in the rectification application dated 11.03.2011 and compute the correct amount of brought forward business losses/ unabsorbed depreciation eligible to the assessee. Accordingly, the ground Nos. 3 & 4 of appeal are also allowed for statistical purposes. The ground No. 5 of the appeal was not pressed and same is dismissed as infructuous.

5. Now, we take up appeal of the assessee for assessment year 2011-12. The grounds raised by the assessee are reproduced as under:

Non-grant of additional interest on refund u/s. 244A (1A):

1. erred in rejecting the ground of the Appellant of non-grant of additional interest u/s. 244A (IA) of the Act, at the rate of 3 percent, from date on which time limit to pass the Order Giving Effect to the order of Hon'ble Income-Tax Appellant Tribunal ('ITAT') expired u/s. 153(5) of the Act to the date of grant of refund alleging that the Appellant has not provided

documentary proof vis-à-vis service of the ITAT order to the AO and Principal CIT.

2. should have called for the records from AO to verify the date of receipt of order of ITAT by the AO instead of summarily rejecting the claim of the Appellant.

Non- grant of opportunity of virtual hearing

3. erred in alleging non receipt of any reply from the Appellant in response to the opportunity for video conferencing granted without appreciating the responses filed by the Appellant seeking the opportunity.

5.1 The ground Nos. 1 and 2 of the appeal are identical to the ground Nos. 1 and 2 of the appeal for assessment year 2006-07 relating to claim of additional interest refund under section 244A(1A) of the Act. Since the ITAT has passed a common order for AY 2006-07 and AY 2011-12 which was served on the Pr. CIT on 28.01.2022 and therefore, interest u/s 244A(1A) of the Act has to be computed in the manner of direction given for assessment year 2006-07. Accordingly, the issue in dispute is decided mutatis mutandis. The ground No. 3 was not pressed and therefore same is dismissed as infructuous.

6. Now, we take up appeal of Revenue for the assessment year 2011-12. The grounds raised by the Revenue are reproduced as under:

1. "Whether on the facts and circumstances of the case and in light of the Supreme Court decision in Goetz (India) Ltd. v. CIT (284 ITR 323 (SC)), the Tax Deducted at Source (TDS) claimed by the assessee can be allowed if the claim was not specifically made in the return of income but is otherwise substantiated by the relevant TDS certificates and supporting documents?"

2. The Ld. CIT (A)'s order is contrary in law and on facts and deserves to be set aside. 3. The appellant prays that the order of Ld. CIT (A) on the above ground be set aside and that of the AO restored. The appellant craves leave to amend or alter any ground or add a new ground that may be necessary at the time of hearing

6.1 The issue in dispute in the grounds raised relate to granting credit for tax deducted at source of Rs.24,49,56,319/- as against claim of the assessee of Rs.26,40,46,810/- thereby granting short credit of Rs.1,19,19,491/-. The finding of the Ld. CIT(A) on the issue in dispute is reproduced as under:

"DECISION

18. I have gone through the OGE order and the computation sheet forming part of the OGE order, the detailed written submissions filed by the Appellant and the supporting documents submitted in the form of Paper Book. The Appellant has claimed TDS credit of Rs 24,49,56,319 in its revised return of income and it claimed an additional TDS credit of Rs TDS credit of Rs. 1,90,90,491 (TDS credit appearing in latest form 26AS for AY 2011-12 of Rs 26,40,46,810 less TDS credit granted by AO in the OGE order of Rs 24,49,56,319), as the corresponding income was offered to tax, by way of rectification application, however the AO while passing the OGE to Hon'ble ITAT's order did not grant such additional TDS credit claimed by the appellant.

19. The contention of the Appellant is that the corresponding income in relation to the claim for the additional TDS credit has been offered to tax in the year under consideration, hence such additional TDS credit has to be allowed in the year under consideration. Therefore, the AO is directed to verify the claim of the Appellant and if the corresponding income is offered by the appellant during the year and TDS is duly deducted and reflected, the same shall be allowed. If the claim is found incorrect then the action of the AO is upheld."

7. We have heard rival submissions of the parties and perused the relevant material on record. We find that the Ld. CIT(A) has only issued direction to verify the claim of the assessee of the TDS and allow in accordance with law. The contention of the Revenue is that in view of the decision of the Hon'ble Supreme Court in the case of

Goetz India Ltd. v. CIT 284 ITR 323 (SC) such claim of TDS cannot be entertained by the Assessing Officer if such claim was not made specifically in the return of income. We are of the opinion that such bonafide claim can be entertained by the appellate authorities as held by the Hon'ble Supreme Court in the case of Goetz India (supra). Accordingly, the Ld. CIT(A) has accepted the claim and directed the Assessing Officer to verify and allow in accordance with law. We do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute and accordingly we uphold the same. If the AO has already not given effect to the direction of ld CIT(A), then he is directed to comply and give effect to finding of ld CIT(A) under our directions. The ground of appeal of the Revenue is accordingly dismissed.

8. In the result, appeals of the assessee are allowed partly for statistical purposes whereas appeal of the Revenue is dismissed.

Order pronounced in the open Court on 23/01/2025.

Sd/-	**Sd/-**
(RAJ KUMAR CHAUHAN)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 23/01/2025
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT

4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai