

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

INCOME TAX APPEAL NO. 1218 OF 2016

Pr. Commissioner of Income Tax -2 .. Appellant

Versus

State Bank of India .. Respondent

-
- Mr. Suresh Kumar for the Appellant
 - Mr. Atul Jasani for the Respondent
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**CORAM : AKIL KURESHI &
M.S. KARNIK, JJ.**

DATE : JANUARY 4, 2019.

P.C.:

1. The appeal is filed by the revenue to challenge the judgment of the Income Tax Appellate Tribunal ("**Tribunal**" for short" dated 31.8.2015. Following question is presented for our consideration:-

" Whether on the facts and circumstances of the case and in law, the Tribunal was justified in directing the AO to grant interest u/S. 244A from 1st April itself, when the amount of refund became due for the first time because of the order of the appellate authority and was delayed for the reasons attributable to the assessee?"

2. Brief facts are as under:-

Respondent - assessee had filed return of income for

the assessment year 2001-02. During the course of the assessment, the assessee argued before the assessing officer that a portion of interest income which the assessee had in the return offered to tax, on the basis of accrual had not become due and that therefore, such interest income should not be taxed for the year under consideration. A note to this effect was inserted to the return of income. The assessing officer, however, did not accept the stand of the assessee upon which the assessee filed appeal to the Commissioner of Income-tax (Appeals) ["**CIT(A)**" for short]. The CIT(A) allowed the appeal of the assessee and deleted tax on the disputed component of interest income. The order of CIT(A) became final. The question of refunding the excess tax with interest came up for consideration before the assessing officer. He granted refund with interest only from the date of the order of the CIT(A). The assessee disputed this position. The issue eventually reached the Tribunal. The Tribunal referred to the provisions of sub-sections 1 and 2 of Section 244A of the Income Tax Act, 1961 ("**Act**" for short) and held that the stand of the assessing officer was incorrect. Thereupon, the revenue has filed this appeal.

3. Section 244A of the Act pertains to interest on refunds. Sub-section 1 of Section 244A recognizes grant of interest to an assessee who is found entitled to refund under certain circumstances. Sub-section 2 of Section 244A of the Act, however, provides as under:

"(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee [or the deductor, as the case may be,] whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable [under sub-section (1) or (1A)] [or (1B)], and where any question arises as to the period to be excluded, it shall be decided by the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner whose decision thereon shall be final."

As per sub-section (2) of Section 244A, if the proceedings resulting in refund are delayed for the reasons attributable to the assessee, whether wholly or in part, the period of delay so attributable shall be excluded from the period for which the interest is payable.

4. In the present case, the assessing officer was wholly incorrect in invoking sub-section (2) of Section 244A of the Act, since we do not find any reasons attributable to the

assessee which delayed his refund claim. During the assessment proceedings itself, relying on the note to the return filed, the assessee had argued that certain interest income had not accrued and therefore, not chargeable to the tax. The assessing officer did not accept this stand . The CIT(A), however, allowed the claim of the assessee which resulted in the refund claim of the assessee. In plain terms, the assessing officer was incorrect in holding that the assessee was responsible for delay in the refund claim.

5. Learned counsel for the assessee correctly pointed out certain decisions of this Court and other Courts elaborating this aspect of the matter, e.g. in a Division Bench judgment of Gujrat High Court in the case of **Ajanta Manufacturing Ltd Vs. Deputy CIT(Guj)**¹, it was observed that the act of the assessee revising the return or the fact that the claim was allowed by the Commissioner in Appeal would not be a ground for holding that it was for the reasons attributable to the assessee that the refund was delayed. Relying upon the decision of the Kerala High Court in case of **CIT Vs. South**

1 [2017] 391 ITR 33 (Guj)

Indian Bank Ltd (Ker)², following observations were made:-

" The Department does not contend that the assessee had needlessly or frivolously delayed the assessment proceedings at the original or appellate stage. In the absence of any such foundation, the 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 the case of CIT Vs. South Indian Bank Ltd., reported in (2012) 340 ITR 574 (Ker) 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 be entitled to interest for the period of delay in issuing the proceedings leading to the refund that is attributable to the assessee. In other words, if 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

2 [2012] 340 ITR 574 (Ker)

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."

6. This Court in the case of **Chetan N. Shah Vs. M.K. Moghe, Commissioner of Income-tax 1, Mumbai³**, also had occasion to interpret sub-section (2) of Section 244A. The facts were that in revision proceedings, the assessee took a stand that in the return, there was an erroneous declaration of an amount of income chargeable to the tax. The Commissioner accepted the assessee's contention. Even in such a situation, the Court held that sub-section (2) of Section 244A would have no applicability. Following observations were made:-

³ [2015] 53 taxmann.com 18 (Bombay)

"13. The Assessing Officer has been given no discretion in the matter of granting interest. The amount of interest has to be paid to an assessee in terms of Section 244A of the Act. The only limitation provided therein under Section 244A of the Act is under sub-section 2 thereof which mandates that where any refund results to an assessee, while computing the interest payable thereon, the delay which is attributable to the assessee, in obtaining the refund would be excluded. The Act itself does not provide for rejecting the claim for interest on account of a mistake committed by an assessee. If such a proposition is to be accepted then all excess amounts of tax paid by the assessee on account of a mistake would stand rejected rendering Section 244A of the Act otiose. Section 244A of the Act provides for interest on refunds in respect of any amount which has been paid in excess to that otherwise payable under the law. In most cases the excess amount paid as tax would originate on account of some mistake either on fact or of law on the part of the assessee. Advisedly the Act does not empower the authorities to reject a claim for interest on account of a mistake committed by the assessee.

14 The impugned order does not seek to deny any part of interest on account of delay attributed to the Petitioner in disposal of the proceedings. The Petitioner has averred in the petition that though the application for refund was filed on 3 October 1997 the same was disposed of on 9 February 2005 only on account of the file not being located by Revenue. The aforesaid averment has not been challenged / denied by Respondent-Revenue in it's affidavit in reply or even at the hearing before us."

7. We are not unmindful of the admission of the tax appeals by this Court in case of M/s. ACC Limited on which the reliance has been placed by the Tribunal. However, we have given independent reasons to confirm the view of the

Tribunal. We have, therefore, not travelled into the territory of the pending appeals. No question of law arises. The tax appeal is dismissed.

[M.S. KARNIK, J.]

[AKIL KURESHI, J]