

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI 'H' BENCH, MUMBAI****[Coram: Pramod Kumar (Vice President),  
and Vikas Awasthy (Judicial Member)]**ITA No.: 1865/Mum/2022  
Assessment year: 2010-11**Otis Elevator Company (India) Limited** ..... **Appellant**  
*9<sup>th</sup> floor, Magnus Tower, Malad Link Road,  
Mumbai- 400 064 [PAN: AAACO0481E]*

Vs.

**Dy. Commissioner of Income Tax-13(1)(1),** ..... **Respondent**  
**Mumbai****Appearances by:***None for the appellant**Tejinder Pal Singh for the respondent*Date of concluding the hearing : August 10, 2022  
Date of pronouncement the order : August 18, 2022**O R D E R****Per Pramod Kumar, VP:**

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 24<sup>th</sup> May, 2022 passed by the learned CIT(A) in the matter of rectification of mistake under section 154 r.w.s. 143(3) of the Income Tax Act, 1961, for the assessment year 2010-11.

2. Grievances raised by the assessee appellant are as follows :

***"1. Ground No. 1 : Wrongful withdrawal of interest on income tax refund***

*On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) [CIT(A)] erred in upholding the withdrawal of interest amounting to Rs.43,71,038 under section 244A of the Income Tax Act, 1961 ('the Act') made by the Deputy Commissioner of Income tax, Range 13(1)(1), Mumbai ('the learned AO')*

*The Appellant prays that the interest amounting to Rs.43,71,038 to be granted to the Appellant.*

2. *Ground No. 2 : No jurisdiction of rectification under section 154 of the Act for a debatable issue*

*On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the initiation of rectification proceedings by learned AO as there is more than one view of the same issue and thus it cannot be construed that there is mistake apparent from record.*

*The Appellant prays that the rectification order passed by the learned AO be squashed.”*

3. To adjudicate on this appeal, only a few material facts need to be taken note of. The assessment was finalized under section 143(3) on 04.02.2014. Subsequently, however, the Assessing Officer withdrew the interest granted under section 244A(2) on the ground that “it is undisputed fact that in the income tax return filed u/s 139(1) on 30.09.2010, the TDS claim was Rs.10,62,11,325/- which was enhanced to Rs.13,70,80,237/- by filing revised return on 29.03.2012” and “thus, the delay was on the part of the assessee to make correct claim of refund”. The interest payment of Rs.43,71,038/- was thus withdrawn, disregarding the plea of the assessee that on merits such a claim could not have been declined, and, in any event, such a withdrawal of interest is beyond what is permissible under section 154. The assessee carried the matter in appeal but without any success. The assessee is in second appeal before us.

4. We have heard the learned Departmental Representative, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. We find that, as evident from the detailed statement of facts on record, there was a dispute between the assessee and the Assessing Officer about as to whether or not the assessee is responsible for delay in refund. As to what should be done in such a situation, we find guidance from section 244A(2) itself which *inter alia* provides that “*where any question arises about the period to be excluded (for which interest is to be declined), it shall be decided by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, whose decision thereon shall be final*”. Clearly, therefore, final call about the period to be excluded for grant of interest is to be taken by the higher authority and that exercise is admittedly not done in the present case. In this background, we may refer to the following observations in a co-ordinate bench decision in the case of **DBS Bank Ltd. vs DDIT [(2016) 157 ITD 476 (Mum)]**:-

*“The delay in making of the claim by itself, without anything else, cannot lead to the conclusion that the delay is attributed to the assessee. Let us not forget that it is not a case of declining interest levy under section 244A on merits but it is a case in which not declining the interest under section 244A for this period has been treated as a mistake apparent on record, which, by implication, means that it is "an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions". In our considered view, even if the interest under section 244A could be declined for this period on merits, not declining the interest under section 244A could not be treated as a mistake apparent on record within the inherently limited scope of Section 154. In any event, when a question arises as to the period for which such interest under section 244A is to be excluded, this is to be decided by the Commissioner or the Chief Commissioner. The law is quite unambiguous on this aspect as it provides that "where any question arises as to the period to be excluded, it shall be decided by Chief Commissioner or Commissioner whose decision thereon shall be final". Undoubtedly, such a decision by the Commissioner or the Chief Commissioner cannot be a subject matter of then the call about the period for exclusion of interest is to be determined by the Commissioner or the Chief Commissioner. Obviously, no such exercise was carried out at the assessment stage or even at the stage of the rectification proceedings, and it was, therefore, not open to the Assessing Officer, on his own, to decide the period for which interest under section 244A was to be declined. For this reason also, not declining the interest under section 244A for the period of 1.4.2002 to 20.1.2005, was not a mistake apparent on record. In view of the above discussions, and for more reasons than one, the Assessing Officer was in error in passing the impugned order under section 154 on this aspect of the matter as well.”*

6. We are in respectful agreement with the views so expressed by the co-ordinate bench. Respectfully following the same, we uphold the plea of the assessee to the extent that given the limited scope of section 154 for rectification of mistakes apparent on record and given the fact that the period to be excluded for grant of interest has not yet been taken a call on by the PCCIT/CCIT/PCIT or the CIT, the impugned withdrawal of interest under section 244A(2) is beyond the scope of rectification of mistake under section 154. The order under section 154 is set aside. The assessee gets the relief accordingly.

7. In the result, the appeal is allowed. Pronounced in the open court today on the 18<sup>th</sup> August 2022.

Sd/-  
**Vikas Awasthy**  
(Judicial Member)

Sd/-  
**Pramod Kumar**  
(Vice President)

**Mumbai, dated the 18<sup>th</sup> day of August 2022.**

*Copies to:*

|            |                      |            |                       |
|------------|----------------------|------------|-----------------------|
| <i>(1)</i> | <i>The Appellant</i> | <i>(2)</i> | <i>The respondent</i> |
| <i>(3)</i> | <i>CIT</i>           | <i>(4)</i> | <i>CIT(A)</i>         |
| <i>(5)</i> | <i>DR</i>            | <i>(6)</i> | <i>Guard File</i>     |

*By order*

*Assistant Registrar/Sr.PS  
Income Tax Appellate Tribunal  
Mumbai benches, Mumbai*