

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
(Through Video Conferencing)**

**BEFORE
SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 6992/Del/2017
Asstt. Year : 2014-15

Bimla Devi 2/6, East Patel Nagar, New Delhi – 110 008 PAN ABCPD3481D (Appellant)	Vs.	ACIT, Circle-50(1) New Delhi. (Respondent)
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Assessee by:	Shri Raja Ram Gupta, Advocate
Department by :	Shri K.A. Manu, Sr. DR
Date of Hearing	17.08.2021
Date of pronouncement	.10.2021

ORDER

PER AMIT SHUKLA, JM

The aforesaid appeal has been filed by the assessee against impugned order dates 23.8.2017 passed by Ld. CIT(A) – 17, New Delhi for the quantum of assessment passed u/s 143(3) for the assessment year 2014-15.

2. In the grounds of appeal, the assessee has challenged firstly, disallowance of certain expenses claimed for the business purpose; and secondly, not allowing the interest u/s 244 of the Act.

3. The facts, in brief, are that the assessee is an individual and engaged in the business of hospitality services under the name and style of M/s. Regent Grand. The Ld. AO on the perusal of the profit and loss account, noted that assessee had debited following expenses :-

S. No.	Particulars	Amount of expenses (in Rs.)
i.	Business promotion	779667
ii.	Car Expenses & Repair	148210
iii.	Festival Expenses	124969
iv.	Telephone Expenses	297370
v.	Staff Welfare	1157390
vi.	General Expenses	136508
	Total	26,44,114

4. It was further observed by the AO that, on perusal of complete bills and vouchers and other related details regarding the aforesaid expenses and on verification of books of accounts alongwith ledger account that assessee has not maintained any

separate ledger for personal nature of expenses and certain vouchers and bills were not produced. Accordingly, he disallowed 1/5th of these expenses on adhoc basis holding that the same could be of personal in nature and accordingly, made disallowance of Rs. 5,28,822/-. Ld. CIT(A), reduced the disallowance to 15%.

5. After hearing both the parties and on perusal of the impugned order, we find that both the parties had categorically admitted that assessee has maintained regular books of accounts and complete bills and vouchers and other related details regarding the expenses which were filed by the assessee. Simply because assessee has not maintained separate ledger account and too for personal expenses, it does not mean that the expenses cannot be verified or are personal in nature. No discrepancy or any particular expenses have been pointed out as these are for personal nature or the expenses incurred are not for the purpose of business. Such adhoc disallowance cannot be sustained and the same is directed to be deleted.

6. On the issue of interest on refund on self assessment tax and advance tax u/s 244A, from the perusal of the records and written submissions filed by the Ld. Counsel, the facts in brief

are that the assessee filed the return and declared net income of Rs. 7442380/- and paid tax of Rs. 2439683/- including TDS of Rs.157590/- and Rs. 2282093/- U/s 140A of the Income Tax Act. The return was revised at a loss of Rs.383667/- and the tax of Rs. 2439683 /- paid become refundable. The A.O. issued the refund after assessment after providing interest of Rs.25,216/- on TDS amount of Rs.1,57,590/- only u/s 244 of the Income Tax Act. The refund was computed through the IT system which has not considered the tax paid u/s 140-A of the Income Tax Act. Thus the Income Tax Software considered the payment of Advance Tax and TDS for the purpose of interest u/s 244A(1)(a). The Income Tax officer has not passed the order in respect of interest and calculation made as per system. Though manual increase or decrease of interest is allowed to the A.O. but no such calculations were made. The CIT (A) passed the order without considering the correct facts. It has been wrongly stated that disallowance of interest made by the AO u/s 244 is on account of additional demand raised as a result of above addition. But the fact of the case that the assessee paid tax of Rs. 22,82,100/- u/s 140A as per original return that the same has been refunded as a result of revised returns. The appellant was in appeal to allow the

interest on refundable amount in terms assessment of order u/s 143(3).

7. From the perusal of section 244A, it is seen that the interest is payable on the refund of the excess self assessment tax under clause (b) of Sub-Section (1) of Section 244A. It has been held by the Hon'ble Apex Court in the case of **CIT, Kolkata vs. Birla Corporation Ltd.** that same should be considered liberally and in favour of the assessee. Their Lordship have considered the judgment of **Union of India vs. Tata Chemicals Ltd. reported in (2014) 6SCC 335.** Section 244A reads as under:

"244-A. Interest on refunds.—(1) Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely:—

(a) where the refund is out of any tax paid u/s. 115-WJ or collected at source u/s. 206-C or paid by way of advance tax or treated as paid u/s. 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted:

Provided that no interest shall be payable if the amount of refund is less than ten per cent of the tax as determined under sub-section (1) of Section 115-WE or sub-section (1) of Section 143 or on regular assessment;

(b) *in any other case, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of tax or penalty to the date on which the refund is granted.*

Explanation.—For the purposes of this clause, “date of payment of tax or penalty” means the date on and from which the amount of tax or penalty specified in the notice of demand issued u/s. 156 is paid in excess of such demand.

(2)...

(3)...

(4)...

Thus, section 244A(1)(a) provides for interest on refunds out of Advance tax and tax deducted at source while Section 244A(1)(b) is residual in nature and provides for interest on refund in other cases including excess tax paid on self assessment u/s.140A. The CBDT Circular No. 549 dated 30 October 1989; (III) that the provisions of s.244A(1)(b) mandate that the revenue would pay interest on the amount refunded for the period commencing from the date when the tax was paid to the date when the refund is granted;

8. In the case of Tata Chemicals (supra) the issue before the Supreme Court was whether the resident/Deductor is also entitled to interest on refund of excess deduction or erroneous deduction of tax at source u/s. 195 of the Act. In this case, the assessee was an Indian Company engaged in manufacture of fertilizer. The assessee engaged the services of two technicians from a foreign company. The said foreign company raised an invoice for the services rendered by the technicians, which

included reimbursement for some expenses incurred by them. The assessee approached the Income Tax Officer u/s. 195(2) of the Act to determine the percentage of tax, which should be withheld from the amount payable to the foreign company. The assessing officer passed a special order u/s. 195(2) directing the assessee to deduct 20% of the amount payable to the foreign company before remitting the same. The assessee, accordingly made deduction and credited the amount in favour of the revenue. The assessee preferred an appeal before the CIT(A) against the aforesaid order of the assessing officer. The CIT(A) concluded that the reimbursement of expenses was not part of the income open for deduction of tax at source u/s. 195 of the Act and directed refund of the tax. The assessee thereafter claimed refund of the said amount along with the interest u/s. 244A of the Act. The assessing officer refused to grant interest on the amount of refund. CIT(A) upheld the order of the assessing officer on the following grounds:-

1. That circular number 769 and 790 issued by CBDT specifically deny the benefit of interest u/s 244A on refund to the Deductor/resident; and
2. That a conjoint reading of section 156 and the explanation appended to section 244A(1)(b) would indicate that the amount refunded to the Deductor/resident cannot be equated to the refund of the amount(s) envisaged u/s. 244A(1)(b) of the Act, wherein only the interest on refund of excess payment made u/s. 156 of the Act pursuant to a notice of demand issued on account of post-assessment tax is contemplated and

not interest on refund of tax deposited under self assessment as in the instant case.

8.1 The ITAT reversed the order of the CIT (A) by holding that the tax was paid by the Deductor/ resident pursuant to an order passed u/s. 195 (2) of the Act and the refund was ordered u/s. 240 of the Act, therefore, the provisions of Section 244A(1)(b) are clearly attracted and the revenue is obliged to pay interest on the aforesaid amount of refund. High Court refused to interfere with the order of the tribunal. The revenue challenged the order before the Supreme Court. The Apex Court dismissed the appeal and recognised the right of the deductor/resident to receive interest u/s.244A on the amount of refund.

8.2 The Apex Court held that the amount paid was held by the Government till a direction was issued by the appellate authority to refund the same, therefore, it should carry interest as a matter of course. Furthermore, it was held that interest was in the nature of compensation for use and retention of money collected unauthorisedly by the department. In this regard, the Apex Court held as follows:-

A “tax refund” is a refund of taxes when the tax liability is less than the tax paid. As per the old section an assessee was entitled for payment of interest on the amount of taxes refunded pursuant to an order passed under the Act, including the order passed in an appeal. In the present fact scenario, the deductor/assessee had paid taxes pursuant to a special order passed by the assessing officer/Income Tax Officer. In the appeal filed against the said order the assessee has succeeded and a direction is issued by the appellate authority to refund the tax paid. The amount paid by the resident/deductor was retained by the Government till a direction was issued by the appellate authority to refund the same. When the said amount is refunded it should

carry interest in the matter of course. As held by the Courts while awarding interest, it is a kind of compensation of use and retention of the money collected unauthorisedly by the Department. When the collection is illegal, there is corresponding obligation on the Revenue to refund such amount with interest inasmuch as they have retained and enjoyed the money deposited. Even the Department has understood the object behind insertion of Section 244-A, as that, an assessee is entitled to payment of interest for money remaining with the Government which would be refunded. There is no reason to restrict the same to an assessee only without extending the similar benefit to a resident/deductor who has deducted tax at source and deposited the same before remitting the amount payable to a non-resident/foreign company.”

8.3 The Apex Court further held that refund due and payable to the assessee is debt owed and payable by the revenue. Furthermore, it was held that merely because there is no express statutory provision for payment of interest on refund of excess amount collected by the Revenue, the Government cannot evade its obligation to refund the money with accrued interest for the period of undue retention. In this regard the Apex Court held as follows:-

Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the aforesaid amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing statute. Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there-being no express statutory provision for withholding payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with

the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party which ex aequo et bono ought to be refunded, the right to interest follows, as a matter of course.”

8.4 The Apex court also held that explanation to Clause (b) of Sub-section (1) of Section 244A will not be applicable where payment is not made pursuant to any notice u/s.156. Furthermore, Clause (b) of Section 244A(1) is residual in nature and prescribes interest on refund from the date of payment of tax in cases which are not covered by Clause (a) of Section 244A (1). In this regard the Apex Court held as follows:-

In the present case, it is not in doubt that the payment of tax made by the resident/depositor is in excess and the department chooses to refund the excess payment of tax to the depositor. We have held that the interest requires to be paid on such refunds. The catechise is from what date interest is payable, since the present case does not fall either under clause (a) or (b) of Section 244-A of the Act. In the absence of an express provision as contained in clause (a), it cannot be said that the interest is payable from the 1st of April of the assessment year. Simultaneously, since the said payment is not made pursuant to a notice issued under Section 156 of the Act, Explanation to clause (b) specifically referred to as “in any other case”, the interest is payable from the date of payment of tax. The sequel of our discussion is the resident/deductor is entitled not only to the refund of tax deposited u/s. 195(2) of the Act, but has to be refunded with interest from the date of payment of such tax.”

8.5. The contention of the Revenue that Clause (b) is not applicable in view of the explanation which only admits of interest on refund of any amount paid in excess consequent to notice of demand issued u/s. 156 was answered as follows by the Apex Court:-

“Since the said payment is not made pursuant to a notice issued u/s. 156 of the Act, Explanation to clause (b) has no application.”

8.6 The Bombay High Court in Stockholding Corporation of India –Vs- N.C. Tewari, CIT reported in (2015) 373 ITR 282 (Bom.) has elaborately dealt with the question of interest on refund of excess self assessment tax and held as follows:-

*On a bare analysis of Section 244A(1) of the Act it is clear that amount paid by the petitioner as tax on self assessment would not stand covered by Section 244A(1)(a) of the Act. This is so as it is neither the payment of tax by way of advance tax or by way of tax deducted at source. **Thus tax paid on self assessment would fall u/s. 244A(1)(b) of the Act, i.e. a residuary clause covering refunds of amount not falling u/s. 244A(1) of the Act. The revenue contends that in the absence of tax on self assessment finding mention in Section 244A(1)(a) of the Act, no interest is payable u/s. 244A(1) of the Act and Section 244A(1)(b) of the Act would have no application. This contention is opposed to the meaning of the provision disclosed even on a bare reading. If the tax paid is not covered by clause (a) of Section 244A(1), it falls within clause (b), which is a residuary clause. Besides, this contention stands negated by the CBDT Circular bearing No. 549 dated 31 October 1989 wherein reference is made to Section 244A and para 11.4 thereof reads as under (see [1990] 182 ITR (St) 1, 49): “11.4 The provisions of the new section 244A are as under:-***

(i) Sub-section (1) provides that where in pursuance of any order passed under this Act, refund of any amount becomes due to the assessee then-

(a) if the refund is out of any advance tax paid or tax deducted at source during the financial year immediately preceding the assessment year, interest shall be payable for the period starting from the 1st April of the assessment year and on the date of grant of the refund. No interest shall, however, be payable, if the amount

The said decision has been considered in various cases and allowed interest on Tax paid u/s 140-A also.

9. The Finance Bill 2016, considered the Equity and justice amended The Act, introduced a Sec. 244A(1aa). The explanatory note attached to the finance Bill is reproduced as under:-

“Payment of interest on refund

Section 244A inter alia provides that an assessee is entitled to interest on refund arising out of excess payment of advance tax, tax deducted or collected at source. It also provides that the period for which the interest is paid on such excess payment of tax begins from the 1st April of the assessment year and ends on the date on which refund is granted.

In order to ensure filing of return within the due date it is proposed to amend section 244A to provide that in cases where the return is filed after the due date, the period for grant of interest on refund may begin from the date of filing of return.

In the interest of fairness and equity, it is further proposed to provide that an assessee shall be eligible to interest on refund of self-assessment tax for the period beginning from the date of payment of tax or filing of return, whichever is later, to the date on which the refund is granted. For the purpose of determining the order of adjustment of payments received against the taxes due, the prepaid taxes i.e. the TDS, TCS and advance tax shall be adjusted first.

It is also proposed to provide that where a refund arises out of appeal effect being delayed beyond the time prescribed under sub-section (5) of section 153, the assessee shall be entitled to receive, in addition to the interest payable under sub-section (1) of section 244A, an additional interest on such refund amount 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. It is clarified that in cases where extension is granted by the Principal Commissioner or Commissioner by invoking proviso to sub-section (5) of section 153, the period of additional interest, if any, shall begin from the expiry of such extended period.

These amendments will take effect from 1st day of June, 2016.”

10. The aforesaid amendment provides that assessee shall be eligible to interest on refund of self-assessment tax for the period beginning from the date of payment of tax or filing of return, whichever was later, to the date on which the refund is granted. This amendment though has been brought w.e.f. 1.6.2016, but it is curative and declaratory provision therefore, same should be applied retrospectively. It has been held so by the Hon'ble High Court in the case of CIT vs. Ansal Land Mark Township (P) Ltd (Delhi High Court ITA 160/215, and 161/215 that if the amendment was declaratory and curative in nature, the same should have been on retrospective basis specially when this amendment has been brought to bring fairness and equity and

proposed to pay interest in the case where the refund is a result of self assessment tax. Such a benefit has to be extended to all and not only from a particular date i.e. 1.6.2016. Accordingly we direct the AO to allow the interest u/s 244(A).

11. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 8th October, 2021.

sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated: 08/10/2021

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi