

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

ITA No. 10/2009

J&K Bank Ltd. Rail Head Complex
Jammu

.....Appellant(s)/Petitioner(s)

Through: Mr. Vipin Gandotra, Advocate

vs

Jt. Commissioner Income Tax

..... Respondent(s)

Through: Mr. Suraj Singh Wazir, Advocate

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

ORDER

14.08.2025

1. This appeal, by the J&K Bank, filed under Section 260-A of the Income Tax Act, 1961 [**“the Act”**], arises from an order dated 10.07.2009 passed by Income Tax Appellate Tribunal, Amritsar (ITAT) in ITA No. 253(Asr)/2009 (assessment year 1993-94) titled *M/S J&K Bank Ltd. Vs. Joint Commissioner of Income Tax*. Vide order dated 13.02.2013, this appeal was admitted to hearing on the following substantial questions of law:

- (i) “Whether the appellant-assessee would be entitled to interest from January, 1994 to November, 1995 on the Income Tax Deduction Certificates?
- (ii) Whether the interest could be refused on the ground that Tax Deduction Certificates were defective, especially when the certificates have been duly accepted and interest paid from April, 1993 to December 1993”?

2. Having heard learned counsel for the parties and perused material on record, we are of the considered opinion that the question No. (i), formulated by this Court, is in no manner a substantial question of law arising out of the appeal preferred by the assessee. The payment of interest on refund is governed by Section 244-A. Sub-Section 2 of Section 244-A makes a clear and unequivocal provision that if the proceedings resulting in refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of delay so attributable to it shall be excluded from the period for which interest is payable.
3. The Sub-Section further provides that where any such question arises, the decision of the Chief Commissioner or the Commissioner concerned shall be final. So, the question raised would depend upon returning of a finding of fact whether the refund in the case of appellant-assessee was delayed for the reasons attributable to the assessee? This is purely a question of fact to be determined on the basis of the material available with the authority concerned.
4. Similarly, the question No. (ii), reproduced hereinabove is also not a substantial question of law for the reason that whether or not the TDS certificates submitted by the appellant-assessee were defective, calling for rectification is again a question of fact to be determined on the basis of material on record and the circulars governing the subject.
5. From reading of the impugned order, whereby the ITAT has upheld the order of CIT(A) passed in terms of Section 154 of the Act, it is

clear that the issue has not been addressed in the light of the material on record as also the circulars issued by the Reserve Bank of India from time to time.

6. During the course of argument, Mr. Vipin Gandotra, learned counsel appearing for the Bank brought to our notice a communication of RBI bearing No. DGBA.CDD.No.H-3278/11.08.001/2012-13 dated 11.12.2012, addressed to the Vice President of the assessee-Bank, which clearly reveals that the CBDT, had in July, 1989, advised regarding waiver on mentioning of challan etc. in respect of Unified Form No. 16 and the same for the position in vogue in the financial year 1992-93. The communication notice is taken on record.
7. The aforementioned communication, of course, could not have been in the notice of ITAT as the same was received by the Bank only in the year 2012. However, the fact remains that there was a CBDT circular or instructions issued in July 1989. It was equally incumbent upon the Income Tax Department to bring it to the notice of the CIT(A) exercising the power of rectification under Section 154 of the Act, as also the ITAT which dismissed the appeal filed by the appellant-assessee.
8. Having gone through the entire record including the order of the ITAT and hearing both the sides, we are of the view that the issue as to whether the delay in processing the case of refund was attributable to the appellant-assessee has not been thoroughly gone into by the CIT(A) while exercising its jurisdiction of rectification of orders under Section 154 of the Act. It also needs to be examined as to

whether, in the given facts and circumstances, it was a case of error apparent on the face of record requiring rectification of the order earlier passed by CIT(A) in favour of the Bank or it was revisiting the same order on merits. The only substantial question of law that arises for determination is whether the order passed by the ITAT affirming the order of CIT(A) passed under Section 154 of the Act suffers from perversity? The answer to this question is yes. The decision of the CIT(A) taken by having recourse to Section 154 of the Act and the order of the ITAT were both based virtually on no evidence, therefore, perverse in law.

9. For all these reasons we set aside the order passed by the ITAT, Amritsar Bench impugned in this appeal and also the order of CIT(A), Bathinda dated 24.02.2009. The matter is remanded back to CIT(A), Bathinda to rehear the rectification application filed by the respondent under Section 154 of the Act and decide the same having regard to the observations made by us hereinabove.
10. Let a decision afresh be taken by CIT(A), Bathinda within a period of two months from the date the copy of this order is delivered to it.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

Jammu
14.08.2025
Vishal Sharma