IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1560 OF 2013

Commissioner of Income Tax-2, Mumbai ..Appellant

Vs.

M/s Tata Power Company Ltd. ..Respondent

....

Mr. Suresh Kumar, Advocate for Appellant.
Mr. Dinesh Vyas, Senior Advocate a/w Mr. Srihari Iyer, Advocate i/b Srihari for Respondent.

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CORAM : M.S. SANKLECHA &
N.M. JAMDAR, JJ.
DATED : 7 JULY 2015

P.C.:

This appeal by revenue under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges the order dated 6 March 2013 passed by Income Tax Appellate Tribunal (the 'Tribunal'). The impugned order dated 6 March 2013 relates to the Assessment Year 1997-98.

2. Mr. Suresh Kumar, the learned Counsel for revenue urges the following questions of law as framed in the appeal memo for our consideration:

> "A. Whether, the Tribunal erred in law in holding that the interest portion of the refund arising out of the order giving effect to appellate authority has to be ignored for the purpose of calculating interest under section 244A to the assessee?
>
> B. Whether, the Tribunal erred in law in interpreting provisions of section 244A of the Act?"

3. The only controversy in this appeal before us is: Whether while granting refund to the assessee, consequent to the Tribunal order is the revenue entitled to adjust only the refund paid earlier or is the revenue entitled to adjust also the interest paid alongwith the refund earlier and pay interest only on the balance.

4. In the present facts for the subject assessment year the revenue granted refund of Rs.76.43 crores in 2007 being the tax paid in excess. The same was handed over to the respondent-assessee alongwith interest of Rs.9.74 crores for the delayed refund of Rs.76.43 crores. Thereafter on 10 May 2010, the Assessing Officer while giving effect to the order of the Tribunal for the

subject assessment year determined the assessee's refund at Rs.126.63 crores. The Assessing Officer while determining the interest payable on the refund, reduced the refund of Rs.86.17 crores (Tax amount of Rs.76.43 crores + Interest of Rs.9.74 crores) out of the refund of Rs.126.63 crores as determined. Consequent to the above adjustment the appellant granted interest to the respondent on Rs.40.46 crores and not on Rs.50.20 crores as claimed by the respondent-assessee.

5. Being aggrieved, the respondent-assessee carried the issue in appeal. Both the Commissioner of Income Tax (Appeals) (the 'CIT(A)') and the Tribunal have on examination of facts correctly held that when a refund of tax has to be reduced by refund already granted it is only the tax element which has to be adjusted and not the interest element paid on the delayed refund of the tax. This is so as the interest which is paid to the assessee is for the wrongful withholding of the assessee's refund by the revenue. It has no element of tax which would justify reducing the same from the refund due while computing the interest payable on the delayed payment of refund.

6. In appeal before us the revenue has not been able to point out how the questions of law as formulated arise in the present appeal. Further the ground of appeal also does not indicate in what manner does the impugned order on a reading of Section 244A of the Act gives rise to the question framed for our consideration.

7. We find that no fault can be found with the impugned order of the Tribunal. In any event the impugned order does not give rise to any substantial question of law as proposed or at all.

8. Accordingly, the appeal is dismissed. No order as to costs.

[N.M. JAMDAR, J] **[M.S. SANKLECHA, J.]**