IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2297 OF 2013
AND
INCOME TAX APPEAL NO.194 OF 2014

Commissioner of Income Tax-2,
Mumbai 400 020 ... Appellant
v/s
M/s Tata Power Co.Ltd. ... Respondent

Mr Suresh Kumar for Appellant.
Mr Mandar Vaidya with Mr Shrihari Iyer for Respondent.

CORAM : M.S. SANKLECHA AND B.P. COLABAWALLA JJ.

DATE : 9TH FEBRUARY, 2016

P.C.:-

1. Mentioned. Income Tax Appeal No.194 of 2014 not on board. Counsel for the parties state that this Appeal arises out of a common order dated 3rd July 2013 of the Income Tax Appellate Tribunal. In fact, Income Tax Appeal No.2297 of 2013 raising identical questions from the common order dated 3rd July 2013 is on board. Therefore, at the request of counsel, Income Tax Appeal No.194 of 2014 is heard alongwith Income Tax appeal No.2297 of 2013.

2. Both these Appeals under section 260A of the Income Tax Act 1961 (Act) challenges the common order dated 3rd July 2013 of the Income Tax Appellate Tribunal relating to Assessment Years 2002-03 and 2005-06 respectively.

3. Mr Suresh Kumar, learned counsel for the Revenue urges for following identical questions of law arising in both Appeals for our consideration :-

> "(1) Whether the Tribunal was correct 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?"
>
> "(2) Whether the Tribunal was correct in law in interpreting provisions of section 244A of the Income Tax Act 1961?"

4. It is an agreed position between the parties that the impugned order dated 3rd July 2013 of the Tribunal while disposing of the Appeals for AYs 2002-03 and 2005-06 has followed its order in the case of Respondent – Assessee's itself for AY 1997-98 rendered on 6th March 2013 while dismissing

the Revenue's Appeal before it.

5. The Revenue challenged the order dated 6th March 2013 of the Tribunal for the AY 1997-98 in this Court being Income Tax Appeal No.1560 of 2013 on identical question as raised herein. This Court by an order dated 7th July 2015 refused to entertain the Revenue's Appeal being Income Tax Appeal No.1560 of 2013 from the order dated 6th March 2013 passed for AY 1997-98.

6. The issue in these Appeals viz. granting of refund to the Respondent – Assessee consequent to the order of the Appellate Authority, the refund of tax has to be adjusted / reduced only out of the refund granted earlier and the interest element paid earlier on the delayed refund is not to be adjusted / reduced is now settled in favour of the Respondent – Assessee. This is by the decision of this Court dated 7th July 2015 passed in Income Tax Appeal No.1560 of 2013. This is not disputed by the Revenue. In fact, it is a common ground that the questions raised herein stand covered by the order of this Court dated 7th July 2015 rendered in Income Tax Appeal No.1560 of 2013 for

AY 1997-98 in favour of the Respondent - Assessee. Therefore, the questions as formulated do not give rise to any substantial question of law. Thus not entertained.

7. Accordingly both the appeals are dismissed. No order as to costs.

(B.P.COLABAWALLA, J.) **(M.S. SANKLECHA, J.)**