

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

INCOME TAX APPEAL NO. 2333 OF 2013

Commissioner of Income Tax-2

.. Appellant

v/s.

M/s. Tech. Mahindra Ltd.

.. Respondent

Mr. Suresh Kumar for the appellant

Mr. Niraj Sheth a/w Atul Jasani for the respondent

**CORAM : M.S. SANKLECHA &
B.P. COLABAWALLA, J.J.
DATED : 23rd FEBRUARY, 2016.**

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 10th July, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2003-04.

2. The Revenue has raised following question of law for our consideration :-

(i) Whether on the facts and circumstances of the case, the Tribunal was correct in law in holding that the interest u/s 244A of the Income Tax Act, 1961 was payable on refund arising on account of Double Taxation Relief u/s 90 without appreciating that as per the provisions of Section 244A(1)(a) of

the Income Tax Act, interest was payable only on refunds arising out of Tax paid / collected in India u/s 115WJ/206C/199 of the Income Tax Act?

3. The respondent assessee filed an appeal before the Income Tax (Appeals) for the subject Assessment Year declaring income of Rs.16.84 crores. On 30th December, 2005, the Assessing Officer by the order passed under Section 143(3) of the Act, determined the petitioner's income at Rs.17.43 crores. Thereafter, on 29th December, 2008, the Assessing Officer consequent to the order passed by the Commissioner of Income Tax under Section 263 passed an Assessment Order under Section 143(3) r/w Section 263 of the Act and determined the respondent assessee's income at Rs.18.83 crores, determining the tax liability at Rs.1.12 crores.

4. On 18th November, 2010, the Assessing Officer consequent to reopening of assessment for A.Y. 2003-04 passed an order under Section 143(3) r/w Section 147 of the Act. By the aforesaid order, the Assessing Officer had allowed the interest at Rs.1.29 crores. However, according to the Assessing Officer, no interest under Section 244A of the Act was payable, as the excess tax paid which was refunded, was a consequence of Double Tax Avoidance Agreement (DTAA) relief granted

to the respondent assessee. According to the Assessing Officer, Section 244A of the Act only grants interest on refund of the tax paid either as advance or by way of deduction at source (TDS). The Assessing Officer held that refund available to the assessee consequent to a DTAA relief in computing the tax payable is not entitled to interest under the Act.

5. Being aggrieved, the respondent assessee carried the issue in an appeal to the Commissioner of Income Tax (Appeals) [CIT(Appeals)]. By an order dated 22nd March, 2012, the CIT(Appeals) held that the DTAA relief by way of credit available / granted to the petitioner goes on to reduce the tax payable. It is after the determination of the tax payable, one has to determine the tax which has already been paid and to the extent the tax has been paid in advance or by way of deduction at source is refunded then interest in terms of Section 244A of the Act is also to be granted to the assessee. Consequently, CIT(Appeals) directed the Assessing Officer to recompute the interest payable on the refund of tax which has been paid by the respondent assessee in India either in advance or by way of deduction at source.

6. Being aggrieved, the Revenue carried the issue in appeal to the Tribunal. The Tribunal by the impugned order upheld the order dated

22nd March, 2012 of the CIT(Appeals) and held that the DTAA relief / credit is available in respect of the taxes paid abroad and this credit goes on to reduce the tax payable in India. As a result of the reduction of tax payable in India, the respondent assessee would be entitled to a refund of tax paid in India either an advance tax or by way of tax deduction at source. In such circumstances, the provisions of Section 244A would apply. Accordingly, the Revenue's appeal was dismissed.

7. Mr. Suresh Kumar, learned Counsel for the Revenue in support of the appeal submits that in terms of Section 244A(1)(a) of the Act, interest is payable only on refunds arising out of tax paid / collected either as advance tax or as TDS. It has no application where the refund arises on account of DTA relief under Section 90 of the Act. It is also submitted that if the impugned order of the Tribunal is to be accepted then, the State would have to pay interest on taxes paid to a foreign Government. In view thereof, it is submitted that the appeal should be admitted.

8. The submission on behalf of the Revenue that the impugned order of the Tribunal results in the State paying interest to the respondent assessee in respect of taxes paid to foreign countries and,

therefore, not sustainable, is beyond our comprehension. The interest which is being paid in terms of the order of the CIT (Appeals) and the Tribunal is in respect of the advance tax and TDS which has been paid by the respondent assessee in India to the Indian State and the same is found to be in excess after giving credit in terms of the DTAA. The other contentions raised by the Revenue is exactly the direction of the Commissioner of Income Tax (Appeals) and the Tribunal i.e. interest is to be paid on refund of amounts paid as advance tax or TDS.

9. We find that both the Commissioner of Income Tax (Appeals) and the Tribunal have while examining the claim for interest on refund granted, considered the fact that the relief under Section 90 of the Act is available in respect of the income tax which is payable both in India as well as in the other Countries with which India has DTAA. Therefore, relief under Section 90 of the Act is to be allowed while computing the tax liability in India by virtue of credit being given to the extent that tax has been paid abroad. Therefore, the tax payable is to be computed on the income to be assessed. Thereafter the credit which is available to the assessee in view of DTAA is to be taken into account and if there is any excess which the assessee has paid into the Indian Treasury, then, he is entitled to the refund of the same which would also carry interest

in terms of Section 244A of the Act.

10. Thus, the question as framed does not arise out of the impugned order of the Tribunal. We are unable to understand what grievance could the Revenue have with the impugned order. Thus, the proposed question does not give rise to any substantial question of law.

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

(B.P. COLABAWALLA, J.)

(M.S. SANKLECHA, J.)