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

INCOME TAX APPEAL NO.894 OF 2016
WITH
INCOME TAX APPEAL NO.920 OF 2016

Commissioner of Income Tax -LIU … Appellant

V/s.

Union Bank of India … Respondent

Mr.Tejveer Singh for the Appellant.
Mr.Percy Pardiwalla, Senior counsel with Ms.Nupur Awasthi i/by M/s Consulta Juris for the Respondent.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : DECEMBER 17, 2018.

P.C.:-

1. Since facts are common, we may record them from Income Tax Appeal No.894 of 2016.

2. Revenue has filed this appeal against the judgment of Income Tax Appellate Tribunal ("Tribunal" for short) dated 31st July, 2015.

3. Following question is presented for our consideration:

> "Whether on the facts and in the circumstances of the case and in law, the ITAT was right in directing to allow interest u/s. 244A of the Act on rs.48,09,517/- for period April 1991 to March 1998, in contravention to section 244A(2), ignoring the fact that the delay in the proceedings for granting the refund was attributable to assessee and relief u/s. 244A(2) can only be granted by the commissioner and/or Chief Commissioner of Income tax?"

4. The respondent-assessee is the Union Bank of India. For the assessment year 2006-07, the assessee had deducted tax at source at the time of making various payments and also deposited such tax in the Government Revenue. TDS certificates were also produced during the assessment. However, it appears that certificates which were issued by the Government agencies contained such minor defects. The assessee had to have the defects removed and re-submit the certificates. This took substantial time.

5. In this context, the question of denying the interest on the refund in terms of section 244A of the Income Tax Act, 1961

("the Act" for short) came up for consideration. The Tribunal by the impugned judgment held that such interest cannot be withheld. The Tribunal observed as under.:

> "We have given a thoughtful consideration to the rival submissions and have carefully perused the orders of the authorities below. The undisputed facts are that the TDS certificates were submitted with the return of income. It is also a fact that the TDS certificate has been issued by Reserve Bank of India and various other Government agencies therefore any defect in the TDS certificate cannot be attributed to the assessee. Further, the tax deducted at source by the deductors have been deposited to the credit of the Government, therefore assessee cannot be denied interest u/s 244A of the Act when the tax was deducted and deposited in the exchequer in time, section 244A(2) is not attracted. We draw support from the decision of the Hon'ble High Court of Bombay in the case of Larsen & Toubro (supra). We, accordingly set aside the findings of the Ld.CIT (A) and direct the AO to allow the interest for the period 1.4.1991 to 31.3.1998."

6. Learned counsel for the revenue submitted that under sub-section (2) of Section 244A it is only the Principal Chief Commissioner. Chief Commissioner or Principal Commissioner who alone can decide the question whether there was any delay on part of the assessee in the refund proceedings due to which

the interest should be withheld. The Tribunal, therefore, in the opinion of the counsel for the revenue incorrectly entered into such question and held that the delay cannot be attributed to the assessee.

7. On the other hand, learned counsel for the assessee drew our attention to the decision of this Court in case of **Commissioner of Income Tax Vs. Larsen & Toubro Limited**[1] in which under similar factual situation the Court had made following observations:

> "Section 244A(2) provides that in the event of proceeding resulting in refund has been delayed for reasons attributable to the assessee, the period of delay so attributable shall be excluded from the period for which the interest is payable. In the present case, section 244A(2) is clearly not attracted. The proceeding resulting in the refund was not delayed for reasons attributable to the assessee. Though the TDS Certificates were not submitted with the return and were filed during the course of the assessment proceedings, the Tribunal has noted that the tax was in fact deducted at source at the right time. In the circumstances, the Tribunal is correct in holding that since the benefit of TDS has been allowed to the assessee, interest under section 244A could not be denied only on the ground that the TDS certificates were not furnished with the return of

1 (2011) 196 Taxman 308(Bombay)

> income. Tax was deducted and deposited in the exchequer in time. Section 244A(2) is not attracted. The appeal, therefore, does not raise any substantial question of law and is dismissed."

8. It can thus be seen that the Tribunal in its impugned judgment did not enter into the question of delay as referred to sub-section (2) of Section 244 A of the Act on the ground that the tax was deducted at source in time and also deposited in the Government Revenue and therefore, sub-section (2) of Section 244A would not apply and no portion of interest can be denied to the assessee. This is what this Court in case of **Larsen & Toubro (supra)** had also held. No question of law arises. Tax appeals are dismissed.

(M.S.SANKLECHA,J.) **(AKIL KURESHI,J.)**

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