R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 444 OF 2017

The Commissioner of Income Tax -8 .. Appellant

Versus

M/s. Melstar Information Technologies Ltd .. Respondent

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- Mr. Arvind Pinto a/w Mr. N.C. Raugauayakalu for the Appellant
- Ms. A. Vissanji a/w Mr. S.J. Mehta for the Respondent

....

CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : JUNE 10, 2019.

P.C.:

1. This appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal, Mumbai ("the Tribunal" for short) dated 15.1.2014.

2. Following question is presented for our consideration:-

> "Whether on the facts and circumstances of the case and in law, the ITAT has erred in law in assuming jurisdiction to hear the appeal when no such appeal lies before ITAT or before CIT(A) because as per the provisions of Section 244A(2) of the Income Tax Act, decision of CIT is final as held by Kerala High Court in the case of Kerala Civil Supplies 185 taxman 1.?"

3. The issue pertains to interest payable to the respondent – assessee under Section 244A of the Income Tax Act, 1961 ("the Act" for short). The Revenue does not dispute either the assessee's claim of refund or that ordinarily under sub-section (1) of Section 244A of the Act, such refund would carry interest at statutorily prescribed rate. However, according to the Revenue, by virtue of sub-section (2) of Section 244A of the Act, since the delay in the proceedings resulting in the refund was attributable to the assessee, the assessee would not be entitled to such interest.

4. The facts on record would show that the assessee had not claimed certain expenditure before the Assessing Officer but eventually raised such a claim before the Tribunal. Upon which, the Tribunal remanded the proceedings to the CIT(A). As such stage, the additional benefit claimed by the assessee was granted. This resulted in refund and the question of payment of interest on such refund.

5. As is well known, in case of refunds payable to the assessee, interest in terms of sub-section (1) of Section 244A would be payable. Sub-section (2) of Section 244A, however, provides that if the proceedings resulting in the refund are delayed for reasons attributable to the assessee whether wholly or in part, the period of delay so attributable, would be excluded from the period for which interest is payable under sub-section (1) of Section 244A of the Act.

6. The Tribunal in the present case came to the conclusion that the delay cannot be attributed to the assessee and therefore, directed payment of interest.

7. Sub-section (2) of Section 244A of the Act refers to the proceedings resulting in the refund which are delayed for the reasons attributable to the assessee. There is no allegation or material on record to suggest that any of the proceedings hit the assessee’s appeal before the Tribunal or remanded the proceedings before the CIT(A) whether in any manner delayed on accounts of the reasons attributable to the assessee. The Tribunal, was, therefore correct in allowing the interest to the assessee.

8. We may notice that in the case of **Ajanta Manufacturing Ltd Vs. Deputy CIT (Guj)**[1], the Division Bench of Gujarat High Court had occasion to consider a similar issue. The assessee had made a belated claim during assessment of filing revised return. According to the Revenue, this would entitle the assessee for claim of interest to the extent of delay. Provisions of sub-rule (2) of Section 244A of the Act were sought to be pressed in service. The Court made following observations:

> "16. We would also examine the order of the Commissioner on merits. As noted, according to the Commissioner the assessee had raised a belated claim during the course of the assessment proceedings which resulted into delay in granting of refund and therefore, the assessee was not entitled to interest for the entire period from the first date of assessment year till the order giving effect to the appellate order was passed. We cannot uphold the view of the Commissioner. First and foremost requirement of sub-section (2) of Section 244A is that the proceedings resulting into refund should have been delayed for the reasons attributable to the assessee, whether wholly or in part. If such requirement is satisfied, to the extent of the period of delay so attributable to the assessee, he would be disentitled to claim interest on refund. The act of revising a return or raising a claim during the course of the assessment proceedings cannot be said to be the reasons for delaying the

1 [2017] 391 ITR 33 (Guj)

proceedings which can be attributable to the assessee. Mere fact that the claim came to be granted by the Appellate Commissioner, would not change this position. In essence, what the Commissioner (Appeals) did was to allow a claim which in law, in his opinion, was allowable by the Assessing Officer. In other words, by passing order in appeal, he merely recognized a legal position whereby, the assessee was entitled to claim certain benefits of reduced tax. Surely, the fact that the assessee had filed the appeal which ultimately came to be allowed by the Commissioner, cannot be a reason for delaying the proceedings which can be attributed to the assessee.

17. The Department does not contend that the assessee had needlessly or frivolously delayed the assessment proceedings at the original or appellate stage. In absence of any such foundation, mere fact that the assessee made a claim during the course of the assessment proceedings which was allowed at the appellate stage would not ipso facto imply that the assessee was responsible for causing the delay in the proceedings resulting into refund. We may refer the decision of the Kerala High Court in case of CIT Vs. South Indian Bank Ltd., reported in (2012) 340 ITR 574 (Ker) in which the assessee had raised a belated claim for deduction which was allowed by the Commissioner (Appeals). The Revenue, therefore, contended that for such delay, interest should be declined under Section 244A of the Act. In the said case also, the assessee had not made any claim for deduction of provision of bad debts in the original return. But before completion of the assessment, the assessee had made such a claim which was rejected by the Assessing Officer. The Commissioner allowed the claim and remanded the matter to the Assessing Officer. Pursuant to which, the assessee became entitled to refund. Revenue argued that the assessee would not be entitled to interest in view of Section 244A(2). In this context, the Court held in

Para. 6 as under (page 578 of 340 ITR):

> "6. Sub-section (2) of section 244A provides that the assessee shall not be entitled to interest for the period of delay in issuing the proceedings leading to the refund that is attributable to the assessee. In other words, if the issue of the refund order is delayed for any period attributable to the assessee, then the assessee shall not be entitled to interest for such period. This is of course an exception to clauses (a) and (b) of section 244A(1) of the Act. In other words, if the issue of the proceedings, that is, refund order, is delayed for any period attributable to the assessee, then the assessee is not entitled to interest of such period. Further, what is clear from sub-section (2) is that, if the officer feels that delay in refund for any period is attributable to the assessee, the matter should be referred to the Commissioner or Chief Commissioner or any other notified person for deciding the issue and ordering exclusion of such periods for the purpose of granting interest to the assessee under section 244A(1) of the Act. In this case, there was no decision by the Commissioner or Chief Commissioner on this issue and so much so, we do not think the Assessing Officer made out the case of delay in refund for any period attributable to the assessee disentitling for interest. So much so, in our view, the officer has no escape from granting interest to the assessee in terms of section 244A(1)(a) of the Act."

9. In the result, no question of law arises. The appeal is dismissed.

[S.J. KATHAWALLA, J.] **[AKIL KURESHI, J]**