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

INCOME TAX APPEAL NO.1589 OF 2016

Pr.Commissioner of Income-Tax-2 … Appellant

V/s.

Bank of India … Respondent

Mr.Suresh Kumar for the Appellant.
Mr.Subhash Shetty for the Respondent.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : FEBRUARY 05, 2019.

P.C.:-

1. Revenue has filed this appeal against the judgment of the Income Tax Appellate Tribunal. Following question was presented for our consideration:-

> "Whether on the facts and in the circumstances of the case, the Tribunal was correct in law, in holding that interest u/s 244A is to be allowed on the self assessment tax refunded to the assessee without appreciating the fact that self assessment tax has been voluntarily paid by the assessee and not pursuant to a notice of demand issued u/s 156 of the Income Tax Act and as such the assessee is not eligible for interest u/s 244(1)(b) of the Income Tax Act?"

2. The issue came up for our consideration before this Court in case of **Principal Commissioner of Income Tax Vs. Bank of India**[1]**.** The High Court observed as under:-

> "2. The Revenue insists that both the following questions of law, arise for our consideration:
> "(a) Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in law in holding that interest u/s.244A is to be allowed on the self assessment tax refunded to the assessee without appreciating the fact that self assessment tax has been voluntarily paid by the assessee and not pursuant to a notice of demand issued u/s. 156 of the I.T.Act and as such the assessee is not eligible for interest u/s. 244(1)(b) of the I.T. Act?
> (b) Whether on the facts and in the circumstances of the case, the Tribunal was correct in law, in holding that interest u/s.244A is to be allowed on the self assessment tax refunded to the assessee ignoring the decision of the Delhi High Court in the case of Engineers India Ltd.,(55 Taxman.com1)?"
> 3. Re. Question (a):-
> (i) We find that the impugned order of the Tribunal has held that the Respondent-Assessee is entitled to interest under Section 244-A of the Act on the refund of the excess self assessment tax paid by it. This by following the decision of this Court in Stock Holding Corporation of India Ltd. v/s. N. C. Tewari, Commissioner of Income Tax (2015) 373 ITR 282/29 Taxman 512/53 taxmann.com 106.
> (ii) In view of the above, question (a) does not give rise to any substantial question of law, thus not entertained.

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4. Re. Question (b):-
(i) The grievance of the Revenue is that the impugned order of the Tribunal erred in ignoring the decision on Delhi High Court in CIT v/s. Engineers India Ltd., (2015) 373 ITR 377/232 Taxman 287/55 taxmann.com 1 while allowing the appeal of the Respondent-Assessee.
(ii) This grievance of the Revenue is unsustainable in law. This is so, as the Tribunal is bound by the decision of the jurisdictional High Court as held by the Apex Court in East India Commercial v/s. Collector of Customs AIR 1962 (SC) 1893 and this Court in CIT v/s. Thane Electricity Supply Co. Ltd., (1994) 206 ITR 727.
(iii) Thus, no fault can be found with the impugned order of the Tribunal in allowing the Respondent-Assessee's appeal by following the decision of this Court in Stock Holding Corporation (supra).
(iv) It may also be pointed out in passing, that the decision of the Delhi High Court in Engineering India Ltd., (supra), has been set aside by the Apex Court in Engineers India Ltd. v/s. CIT (2017)397 ITR 16/250 Taxman 19/84 taxmann.com 178 and restored to the High Court for fresh consideration.
(v) In view of the above, the question no.(b) as framed does not give rise to any substantial question of law. Thus, not entertained.”

3. In the result, this tax appeal is dismissed.

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

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