**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**
**WRIT PETITION NO.3460 OF 2004**

V. N. Parekh Securities Pvt. Ltd. ....Petitioner

V/s.

S. K. Gupta ...Respondent

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Mr. Atul K. Jasani a/w Mr. P. C. Tripathi for Petitioner
Mr. Suresh Kumar for Respondent

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**CORAM : K.R. SHRIRAM &**
**AMIT B. BORKAR, JJ**
**DATED : 10th DECEMBER 2021**

**P.C. :**

1 The petitioner is impugning an order dated 14th September 2004 passed under Section 244A(2) of the Income Tax Act 1961 (the Act) passed by respondent no.1. Respondent no.1 in the said order impugned in this petition has upheld the view of the Assessing Officer that the delay in refund processing occurred due to petitioner not furnishing the original advance tax challans and, therefore, the period of delay so attributable to petitioner shall be excluded from the period for which interest was payable.

2 Petitioner filed its return of income A.Y.-2001-2002 on 31st October 2001 declaring loss of Rs.5,21,98,056/-.

Petitioner received a notice on 28th January 2002 under Section 142(1) of the Act requiring petitioner to furnish return of income for A.Y.-2001-2002 on or before 7th February 2002.

Petitioner replied vide its letter dated 5th February 2002 stating that return of income was already filed on 31st October 2001.

On 15th February 2002, petitioner filed another letter enclosing advance tax challan in original for a sum of Rs.40,00,000/-.

By another letter dated 20th March 2002, petitioner also filed 6 TDS certificates for Rs.64,658/-.

On 3rd April 2002 notice under Section 143(2) of the Act was issued.

On 26th January 2003 petitioner received an intimation under Section 143(1)(a) of the Act accepting the returned loss and granting refund of Rs.43,04,400/-, of this Rs.40,00,000/- was towards advance tax that had been paid and Rs.3,04,400/- was towards interest. Petitioner also received the income tax computation form from which it appears that interest on advance tax has been computed from 1st March 2002 and no interest was granted for the period 1st April 2001 to 28th February 2002. Refund of TDS and interest thereon also was not granted.

3 Subsequently, an order dated 12th September 2003 was passed under Section 154 of the Act whereby petitioner was granted refund of TDS amount of Rs.64,658/- alongwith interest of Rs.3,033 under Section 244A of the Act. This of course, is not the subject matter of the petition but has been mentioned only for completion of record.

4 The assessment order came to be passed on 30th March 2004 completing the assessment for A.Y.-2001-2002 under Section 143(3) determining the total loss of Rs.4,90,11,380/-.

5 As petitioner was not granted interest for the period 1st April 2001 to 28th February 2002, petitioner filed an application before respondent no.1

praying for allowing of interest under Section 244A of the Act on the advance tax payment of Rs.40,00,000/- for the period 1st April 2001 to 28th February 2002.

6 On 14th September 2004, the order impugned was passed on the grounds that because petitioner did not file the original receipts of the advance tax challan for payment of Rs.40,00,000/- and as these were submitted only on 19th February 2002, interest was not payable for the period 1st April 2001 to 28th February 2002.

Aggrieved by this order, petitioner has approached this court.

7 Under Section 237 of the Act, if any person satisfies the Assessing Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess.

Section 244A provides that where the refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this Section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the manner provided in the Sub Section (1) of Section 244 of the Act.

Section 244A(2) provides that in the event the proceeding resulting in refund has been delayed for reasons attributable to the assessee, the period of delay was attributable shall be excluded from the period for which the interest is payable.

8 In this case, the proceeding resulting in the refund cannot be stated to be delayed for reasons attributable to petitioner. In any event, there is no finding that there was delay in the proceeding resulting in the refund and that delay was attributable to petitioner. It is true that petitioner submitted original advance tax challan for Rs.40,00,000/- on 15th February 2002 after filing the return of income and not with the return of income filed on 31st October 2001, but petitioner has received intimation accepting the returned loss and granting refund on 26th January 2003 and the assessment order itself came to be passed on 30th March 2004. Therefore, the benefit of advance tax has already been allowed to the assessee, i.e., petitioner. In any event, there is no finding either by the Assessing Officer or respondent no.1 that there was delay and how petitioner was responsible for that delay.

We have to also note that no reply has been filed to this petition.

9 In the circumstances, we have to allow the petition, which we hereby do in terms of prayer clauses (a) and (b) which read as under:

> *"(a) that this Hon'ble Court may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, calling for the records of the petitioner's case in so far as they relate to the impugned order dated 14/9/2004 passed under Section 244A of the Act being Exhibit "O" hereto and after going through the same and examining the question of the legality thereof, to quash, cancel and set aside the same.*
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> *(b) that this Hon'ble Court may be pleased to issue a writ of Mandamus of a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, ordering and directing respondent no.1 to grant interest on refund to the petitioner under Section 244A of the Act for the period 1/4/2001 to 28/2/2002 of Rs.3,50,000/-."*

10 We, of course, clarify that we are not endorsing the interest calculated

by petitioner and that the department may independently calculate the same and either pay or give credit to petitioner.

11 Petition disposed.

**(AMIT B. BORKAR, J)** **(K.R. SHRIRAM, J.)**