IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05.02.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

T.C.A.No.53 of 2013

M/s.Brakes India Limited,
Padi, Chennai – 600 050. ... Appellant

Vs.

The Deputy Commissioner of Income Tax (LTU),
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai – 600 101. ... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, Bench "A" Chennai, dated 29.06.2012 in I.T.A.No.758/Mds/2012, against the order of the Commissioner of Income-Tax(Appeals), Large Tax Payer unit, Chennai dated 21.02.2012 and made in ITA.No.10/09-10/LTU(A) for the Assessment year 2002-2003, against the order of the Assistant Commissioner of Income Tax, Large Tax Payer unit, Chennai dated 30.03.2009 and made in AAACB2533Q/2002-03, against the order of the Commissioner of Income Tax(LTU Appeals), Large Tax Payer Unit, Chennai, dated 24.04.2008 and made in ITA.No: 33/2007-08/LTU(A) for the Assessment year 2002-03.

For Appellant : Mr.R.Venkatanarayanan

For Respondent : Mr.T.Ravikumar,
Senior Standing Counsel

JUDGMENT
(Judgment was delivered by M.DURAISWAMY, J.)

The above appeal arises against the order dated 29.06.2012 passed by the Income Tax Appellate Tribunal "A" Bench in I.T.A.No.758/Mds/ 2012 in respect of the assessment year 2002-03.

2.It is the case of the appellant that they are engaged in the business of manufacture of brake assemblies and automobile components. For the assessment year 2003-04 under appeal assessee filed return of income on 31.10.2002 declaring a total income of Rs.22,01,34,205/-. The scrutiny assessment under Section 143(3) was completed on 28.02.2005 determining the total income at Rs.24,22,39,334/- after making certain disallowances. Pursuant to the appellate order passed by the CIT (Appeals) - III, the assessment was subsequently revised on 15.02.2006 giving effect to the order of CIT (Appeals), as a result of which, the total income was revised to Rs.22,54,78,112/-. Subsequently, the assessment order passed under Section 143(3) on 28.02.2005 was set aside by the CIT by order dated 30.03.2007 to examine the payment of Rs.3,97,55,441/- to M/s.Wescare India Private Limited vis-a-vis the units of electricity supplied to the assessee. In consequence of the direction given by the CIT, the Assessing Officer passed an order under Section 143(3) read with Section 263 on 18.12.2007, determining the total income at Rs.26,52,33,550/-. The assessee preferred an appeal against the said order before the CIT (Appeals) and the Appellate Authority, by order dated 24.04.2008, partly allowed the appeal. While giving effect to the order of CIT (Appeals), the order dated 18.12.2007 was revised vide order dated 30.03.2009 and the Assessing Officer granted interest under Section 244A at Rs.11,46,600/- as against Rs.16,84,867/-. While Computing the refund under Section 244A, the Assessing Officer has omitted to consider that as per provisions of Section 244A, where refund of any amount arises to the appellant out of advance tax/TDS/tax paid, the appellant is entitled to interest from the 1st day of April of the assessment year/date of payment to the date on which the refund is actually granted. The actual interest due to the appellant calculated strictly on the above basis amounts to Rs.16,84,867/-. Aggrieved by the said order granting lesser interest, the assessee preferred an appeal to the CIT (Appeals) and the Appellate Authority by order dated 21.02.2012 rejected the contentions of the assessee holding that the interest under Section 244A is to be granted only if there is inordinate delay in the granting of refund. Aggrieved by the order of the CIT (Appeals), the assessee preferred an appeal to the Income Tax Appellate Tribunal and the Tribunal, by its order dated 29.06.2012, confirmed the order of the CIT (Appeals) and dismissed the appeal. Aggrieved over the same, the assessee has filed the above appeal.

3.The above appeal was admitted on the following substantial questions of law:

> "1)Whether on the facts and circumstances of the case, the Tribunal was right in holding that the appellant is not entitled to the differential claim of interest u/s 244A on refund as claimed by it?
>
> 2)Whether the Tribunal was right in law in not following the judgment of the Hon'ble Supreme Court in the case of CIT Vs. H.E.G. Ltd. (324 ITR 331) holding that interest component will partake of the character of the amount due u/s 244A of the Act which becomes an integral part of the principal amount and assessee would be entitled to interest after the said amount becomes due and payable?"

4.Heard Mr.R.Venkatanarayanan, learned counsel for the appellant and Mr.T.Ravikumar, learned senior standing counsel for the respondent.

5.The learned counsel appearing for the appellant submitted that in similar circumstances, in respect of the same assessee, the Hon'ble Division Bench of this Court, by its judgment dated 20.03.2019 in T.C.A.Nos.813, 814, 816 to 819 of 2009, following the judgment of the Hon'ble Supreme Court reported in (2013) 358 ITR 291 (SC) [CIT Vs. Gujarat Fluoro Chemicals] remitted the matter back to the Tribunal to decide the appeals afresh in accordance with law.

6.The learned counsel appearing for the appellant submitted that the present appeal may also be remitted back to the Tribunal for fresh consideration.

7.Mr.T.Ravikumar, learned Senior Standing Counsel for the Department also submitted that in view of the judgment of the Hon'ble Division Bench of this Court dated 20.03.2019, the matter may be remitted back to the Tribunal for fresh consideration.

8.Having regard to the submissions made by the learned counsel on either side, following the judgment made by the Hon'ble Division Bench of this Court in T.C.A.Nos.813, 814, 816 to 819 of 2009, dated 20.03.2019, the matter is remitted back to the Income Tax Appellate Tribunal to decide the matter afresh in accordance with law.

9.With these observations, the Tax Case Appeal is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Income Tax Appellate Tribunal,
Madras, Bench "A", Chennai.

2.The Commissioner of Income-Tax(LTU Appeals)
Large Tax Payer Unit, II Floor,1775,
Jawaharlal Nehru Inner Ring Road,
Anna Nagar West Extension, Chennai-101.

3.The Assistant Commissioner of Income Tax,
Large Tax Payer Unit,

1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar West Extension,
Chennai-101.

4.The Deputy Commissioner of Income Tax(LTU)
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar West Extension,
Chennai-600 101.

+1cc to Mr.T.Ravikumar, Advocate SR.6361
+1cc to Mr.Subbaraya Aiyar, Advocate SR.6817

T.C.A.No.53 of 2013

SV(CO)
CB(09/03/2021)