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

INCOME TAX APPEAL NO. 100 OF 2018

Pr. Commissioner of Income Tax – 2 ….Appellant

V/s.

Bank of Baroda …Respondent

Mr. Suresh Kumar for Appellant.
Mr. P.J. Pardiwalla, Senior Advocate i/b Mr. Atul K. Jasani for Respondent.

CORAM : K.R. SHRIRAM &
M.M. SATHAYE, JJ.
DATED : 7th JUNE 2023

P.C. :

1. The following substantial question of law is proposed :

SUBSTANTIAL QUESTION OF LAW

Whether on the facts and circumstances of the case and in law, the Hon'ble Tribunal was right in cancelling the order made u/s 263 directing the AO to exclude interest u/s 244A granted to it on excess refund claimed through a revised return even when the Pr. Commissioner in Section 244A(2) is the final authority on this issue in law and the cases relied are distinguishable on facts ?

2. Respondent had filed return of income on 30th October 2007 for Assessment Year 2007-08 declaring total income of Rs.997,10,30,681/-. Subsequently revised return declaring income of Rs.615,19,97,000/- was filed on 19th March 2009. The assessment was completed under Section 143(3) of the Income Tax Act, 1961 (the Act) on 23rd March 2009 assessing total income at Rs.19,04,69,88,000/-. Respondent preferred an appeal and the Commissioner of Income Tax (Appeals) [CIT(A)] vide an order dated

15th June 2011 decided some issues in favour of respondent. An effect to the CIT(A) order has been given by the Assessing Officer on 7th March 2012 resulting in revised income being accepted at Rs.968,38,10,000/-. This resulted in refund of Rs.377,95,44,631/-.

3. On verification of records, the CIT(A) noticed that the Assessing Officer had failed to conduct proper enquiries and examine the issues in an appropriate manner which give rise to an erroneous assumption in as much as in the original return the assessee had claimed refund of Rs.21,19,54,764/- as against the claim of refund of Rs.337,74,22,347/- in the revised return. The CIT(A) felt that the delay in claiming enhanced refund was attributable to respondent and accordingly interest under Section 244(A) of the Act was not allowable on the refund of Rs.125,54,67,583/- for 11 months, i.e., from 1st April 2008 to 19th March 2009. According to CIT(A) this resulted in excess allowance of interest of Rs.9,81,31,689/-. Consequently, notice under Section 263 of the Act was issued. Respondent appeared, made submissions and CIT(A) passed an order which was impugned by respondent before the Income Tax Appellate Tribunal (ITAT). The ITAT allowed the appeal vide impugned order dated 9th November 2016.

4. Sub Section (2) of Section 244(A) of the Act reads as under :

> *(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the*

> *period of the delay so attributable to him shall be excluded from the period for which interest is payable, and where any question arises as to the period to be excluded, it shall be decided by the Chief Commissioner or Commissioner whose decision thereon shall be final.*

As per this provision if the proceedings resulting in the refund are delayed for the reasons attributable to the assessee, the period of delay so attributable to the assessee shall be excluded from the period for which interest is payable. There is nothing in the findings of the CIT as to how respondent delayed the proceedings that resulted in the refund or what were the reasons that could be attributable to respondent. It is true that respondent had initially filed return of income on 30th October 2007 declaring total income of Rs.997,10,30,681/- and subsequently on 19th March 2009 revised return declaring income of Rs.615,19,97,000/- was filed. The assessment was completed under Section 143(3) of the Act on 23rd March 2009 assessing the total income at Rs.19,04,69,88,000/-. Against the assessment order respondent preferred an appeal and the CIT(A) vide an order dated 15th June 2011 decided some issues in favour of respondent in giving effect to CIT(A)'s order by the Assessing Officer on 7th March 2012 and it resulted in refund of Rs.377,95,44,631/-. Therefore it cannot be stated that proceedings resulting in the refund were delayed for reasons attributable to respondent wholly or in part.

5. Moreover, the ITAT has also, relying on a judgment of this court in State Bank of India vs. DCIT-2 and came to a conclusion that the order

passed by the Assessing Officer was neither erroneous nor prejudicial to the interest of revenue and the Assessing Officer has allowed the amount of interest in question taking one of the possible view. The tribunal has held that where two views are possible and the Assessing Officer takes one of the possible views, the CIT(A) could not have exercise revisional jurisdiction under Section 263 of the Act.

6. The entire issue is fact based. The Tribunal having come to the factual conclusion on the basis of materials on record, no question of law arises.

7. Appeal dismissed.

(M.M. SATHAYE, J.) **(K.R. SHRIRAM, J.)**