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

INCOME TAX APPEAL NO.320 OF 2003

Ceat Limited a company incorporated under the Indian Companies Act, 1913 and having its registered office at Ceat Mahal, 463, Dr. Annie Besant Road, Bombay - 400 018) ….Appellant

V/s.

Commissioner of Income Tax, Bombay, City IV having his office at Aayakar Bhawan, Maharshi Karve Road, Bombay – 400 020) ….Respondent

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Mr. Nishant Thakkar a/w. Mr. Rajesh Poojary i/b. Mulla and Mulla and Craigie Blunt and Caroe for appellant.
Ms. Shilpa Goel for respondent.

CORAM : K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED : 9th FEBRUARY 2024

ORAL JUDGMENT : (PER K.R. SHRIRAM, J.) :

1 This is an appeal filed under Section 260A of the Income Tax Act, 1961 (the Act) impugning an order dated 5th December 2002 passed by the Income Tax Appellate Tribunal, Mumbai Bench (ITAT) dismissing appellant's appeal and refusing grant of interest under Section 244A(1)(a) of the Act on the refund admissible to appellant. The ITAT refused to grant interest on the ground that the refund arising on regular assessment after allowing TDS and advance tax is less than 10% of the tax as determined on regular assessment.

2 For the Assessment Year 1989-1990 appellant returned an income of Rs.43,64,37,800/- as per the original return of income under

Section 139 of the Act and paid tax of Rs.22,68,62,710/- [comprising of Rs.20,44,29,076/- as advance tax and tax deducted at source (TDS) and Rs.2,24,33,634/- of self assessment tax (SA Tax)]. While processing appellant's return under Section 143(1) of the Act, the Assessing Officer made certain additions raising a demand of Rs.1,61,73,216/-. The said amount was paid by appellant on 25th June 1991.

3 Appellant's return was picked up for scrutiny and in the order of assessment dated 21st March 1992 under Section 143(3) of the Act, income was ascertained at Rs.45,91,84,440/- determining a tax of Rs.24,35,95,193/-. A demand of Rs.3,32,42,443/- was raised of which a sum of Rs.3,19,86,809/- was paid by appellant on 22nd April 1992.

4 Appellant challenged the assessment order before the Commissioner of Income Tax (Appeals) [CIT(A)] who, by an order dated 29th January 1993, disposed the appeal. The Assessing Officer on 31st May 1993 passed an order giving effect (OGE) to the CIT(A)'s order computing income of appellant at Rs.35,93,17,870/-, i.e., even below the originally returned income of Rs.43,64,37,800/- and determining tax thereon at Rs.18,99,09,619/-. In the circumstances, appellant was entitled to a refund of Rs.5,24,29,950/-. Given that the income determined pursuant to the CIT(A)'s order was lower than the returned income, the refund necessarily included, not only taxes appellant paid pursuant to demands raised by the Assessing Officer under the assessment framed but also a portion of the

advance tax, TDS and self assessment tax paid on the returned income. Herein below is a table of returned income and refund due :

Sr. No.	*Particulars*	*Actual Amount*
1	*Returned income*	*43,64,37,800*
2	*Tax paid on returned income :* • *Advance tax + TDS : 450* • *SA tax : 50*	*20,44,29,076* *2,43,33,634* ---------- *22,68,62,710*
3	*Income as per 143(3) Order (Regular Assessment)*	*45,91,84,440*
4	*Tax determined as per 143(3) Order*	*24,35,95,193*
5	*Income pursuant to CIT(A) Order*	*35,93,17,870*
6	*Tax determined on income pursuant to CIT(A) Order*	*18,99,09,619*
7	*Refund pursuant to CIT(A) Order*	*5,24,29,950*

5 While granting refund the Assessing Officer was required to compute interest under Section 244A of the Act. In computing interest, the Assessing Officer granted interest only on the taxes that were paid pursuant to demands raised, and, denied interest on the advance tax, TDS and SA Tax paid by appellant. Insofar as SA tax component is concerned, the Assessing Officer vide his order dated 31st May 1993 summarily denied interest under Section 244A(1)(b) of the Act. Insofar as interest on advance tax and TDS is concerned, the Assessing Officer observed that since the component of advance tax and TDS in the tax refunded is lower than 10% of the tax on assessed income, appellant's entitlement was hit by the proviso to Section 244A(1)(a) of the Act.

6 Being aggrieved, appellant approached the CIT(A). The CIT(A) by an order dated 1st January 1996 held that insofar as the SA Tax is

concerned, appellant is entitled to interest under Section 244A(1)(b) of the Act for the reason that once assessment is framed, SA Tax is appropriated towards the assessed tax and is no longer tax paid before assessment. This finding of the CIT(A) has been accepted by the Department as it was not challenged. Insofar as Advance Tax and TDS is concerned, the CIT(A) upheld the order of the Assessing Officer that since Rs.1,45,14,457/- (that component of refund which is a part of the advance tax and TDS) being less than 10% of the tax on assessed income, interest under Section 244A(1)(a) of the Act is not payable and appellant is entitled to interest on advance tax and TDS under Section 244A(1)(b) of the Act for the reasoning given by him for allowing interest on SA Tax. The CIT(A), however, held that interest should be granted only from the date of regular assessment (and not earlier) as otherwise it would amount to granting interest specifically declined under Section 244A(1)(a) of the Act. This finding of the CIT(A) has also been accepted by the Department.

7 Appellant carried the matter in appeal before Income Tax Appellate Tribunal (ITAT). The Tribunal, by the impugned order dated 5th December 2002, relying on the order of the Hon'ble Calcutta High Court in ***Kooka Sidhwa & Co. V/s. Commissioner of Income Tax***[1], dismissed the appeal holding that the words "regular assessment" meant the assessment pursuant to the CIT(A) order.

1. (1964) 54 ITR 54 (Calcutta)

8 The Assessing Officer/CIT(A) have based their conclusion that the advance tax and TDS component in the amount of refund is hit by the proviso to Section 244A(1)(a) of the Act, on the following working :

a.	Income as per original return (returned income)	43,64,37,800
b.	Income determined after CIT(A) Order	35,93,17,870
c.	Tax paid on returned income	22,68,62,710…(A)
d.	Tax determined on income as per CIT(A)'s Order	18,99,09,619…(B)
e.	Excess tax paid on returned income over the Income pursuant to CIT(A) Order [(A)-(B)]	3,69,53,091 (C)
f.	SA Tax out of the Excess Tax	2,24,33,634…(D)
g.	Balance therefore is Advance Tax/TDS component [(C)–(D)]	1,45,14,457…(E)
h.	Tax on income as per original assessment	24,35,95,193
i.	10% of tax on assessed income	2,43,59,519
j.	Tax determined on income as per CIT(A)'s Order	18,99,09,619
k.	10% of tax on assessed income	1,89,90,961

9 It is against this order the appeal is filed. On 29th July 2004 the appeal was admitted and the following substantial questions of law were framed :

> *(i) Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that the appellant was not entitled to interest under section 244A(1)(a) for the assessment year 1989-90?*
>
> *(ii) Whether on the facts and in the circumstances of the case the Tribunal ought to have held that the appellant would be entitled to interest under section 244A of Rs.2,37,22,886/-?*

10 Section 244(A) of the Act, as then in force, reads as under :

> *244A. (1) [Where 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 following manner, namely:—*

(a) where the refund is out of any tax [collected at source under section 206C or] paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one [***] per cent for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted:

Provided that no interest shall be payable if the amount of refund is less than ten per cent of the tax as determined [under sub-section (1) of section 143 or] on regular assessment;

(b) in any other case, such interest shall be calculated at the rate of one [***] per cent for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted.

Explanation. — For the purposes of this clause, "date of payment of tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

(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.

(3) Where, as a result of an order under [sub-section (3) of section 143 or section 144 or] section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable uner sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and in a case where the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the amount of the excess interest paid and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly.

(4) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years.]

This judgment has been modified by speaking to the minutes of the order dated 12.04.2024.
Gauri Gaekwad

11 At the outset, the ITAT has completely misdirected itself in adjudicating the controversy involved inasmuch in the facts and circumstances of the case it is wholly academic whether the words "regular assessment" appearing in the proviso to Section 244A(1)(a) of the Act means the original assessment order or the assessment order passed giving effect to the CIT(A) order. The real controversy is whether the words "amount of refund" in the proviso must be given its natural meaning and, therefore, the actual amount of refund ought to be considered or does it contemplate an artificial split of the amount of refund into various components of advance tax, TDS, SA Tax and taxes paid pursuant to demand raised. The words "amount of refund" must mean, in our view, the whole of the refund, viz., Rs.5,24,29,950/- and not an artificial split as canvassed by the Department. Therefore, irrespective of what the words "regular assessment" mean, the proviso would not be attracted.

12 The words "amount of refund" must be given their natural/neutral meaning and must, therefore, mean whole of the refund, i.e., Rs.5,24,29,950/-. These words must not be read as permitting an artificial split of the amount into various components of advance tax, TDS, SA Tax and tax paid pursuant to demand. The Hon'ble Apex Court in ***Union of India V/s. Tata Chemicals Ltd.***[2] and ***Godrej & Boyce Manufacturing Company Ltd. V/s. Deputy Commissioner of Income Tax***[3] held that it is a

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cardinal principal of interpretation that the words in a statute must be given their natural and ordinary meaning. This Court, in ***J.K. Industries V/s. Krishna Sahal, Commissioner of Income Tax***[4] wherein the word "amount" in the context of interest payable under the old Section 244A(1A) of the Act was interpreted, held, as being a neutral expression wide enough to include even the interest collected by the Department alongwith the tax and it was consequently held that appellant therein was entitled to interest on the aggregate amount.

13 The submission of Ms. Goel that Advance Tax and TDS component in the amount of refund is hit by proviso of Section 244(1)(a) of the Act is fallacious. According to Ms. Goel, since, out of the refund Advance Tax/TDS component is only Rs.1,45,14,457/- and that being less than Rs.1.89 Crores being 10% of the tax liability, whether pre or post CIT(A) order, i.e., Rs.24,35,95,193/- or Rs.18,99,09,619/-, it will be hit by the proviso. We cannot accept this submission because if that is the way we have to read, the proviso would have said "*provided that no interest shall be payable if the amount is less than 10% of the ADVANCE TAX OR TDS COMPONENT or treated as paid under Section 199 of the Act*". Whereas, the proviso says "*provided that no interest shall be payable if the amount of refund is less that 10% of tax as determined under sub-Section (1) of Section 143 of the Act or on regular assessment*".

This judgment has been modified by speaking to the minutes of the order dated 12.04.2024.
Gauri Gaekwad

14 Apart from the above, the proviso refers to refund on the basis of tax determined under Section 143(1) of the Act or regular assessment, which will necessarily include not only advance tax/TDS paid during the year but also the SA Tax paid. The Revenue is, therefore, not right. The Revenue's submission that the amount of refund to be considered for the purposes of the proviso must only be the advance tax/TDS portion of the refund cannot to be accepted. If the Revenue's contention is accepted then appellant will not be compensated for the monies lying with the Department from 1st April 1989, which is not only contrary to the law laid down by the Hon'ble Apex Court but also contrary to the plain and simple reading of the Section 244A(1)(a) of the Act which entitles appellant to interest on the advance tax and TDS from the first day of assessment year (in the present case 1st April 1989). If the Revenue's contention that appellant is entitled to interest on advance tax and TDS under Section 244A(1)(b) of the Act is to be upheld, then appellant would be entitled to interest from the date of actual payment (i.e., for a period even prior to the first day of the assessment year) and the exchequer will only have to pay more interest to appellant, as is clear from the plain reading of Section 244A(1)(b) of the Act. The Explanation to Section 244A(1)(b) of the Act, giving a meaning to the phrase "date of payment" as being the date of notice of demand under Section 156 of the Act, has no application to cases where taxes have been paid voluntarily by an assessee – as held by the

Hon'ble Apex Court in *Tata Chemicals Ltd.* (Supra) which was in turn applied by this Court in cases of ***Stock Holding Corporation of India Ltd. V/s. N.C. Tewari, Commissioner of Income Tax, Mumbai City - III***[5] and ***Sitadevi Satyanarayan Malpani V/s. Income Tax Settlement Commission***[6].

15 Reliance has been placed by the Revenue on the decision of ***Modi Industries Ltd. V/s. Commissioner of Income Tax***[7] to submit that advance tax and TDS lose their character as such on the framing of an assessment and, therefore, Section 244A(1)(a) of the Act is inapplicable. In this regard we shall note firstly, the Hon'ble Apex Court in *Modi Industries* (Supra) was concerned with interpretation of the provisions of old law, i.e., the law as it stood prior to 1st April 1989. Significant changes were introduced in the Act replacing the law then existing (w.e.f., from 1st April 1989) to specifically to overcome the inequities prevalent under the old law, as explained in the Circular No.549 dated 31st October 1989 explaining the provisions of Direct Tax (Amendment) Act, 1987. In the circumstances, the decision in *Modi Industries* (Supra) can be of no assistance to decide the controversy in the present case which is concerned with the amended law. Secondly, the submission of the Revenue and its reliance on findings in *Modi Industries* (Supra) would only mean that appellant would be entitled to interest for the whole of the amount refunded, i.e., Rs.5,24,29,950/- under Section 244A(1)(b) of the Act in which case interest would be

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payable from the date of actual payment.

16 On the contrary, the Hon'ble Apex Court has subsequently analysed the provisions of the amended law, i.e., the law after 1st April 1989, in its decision in the case of *Tata Chemicals Ltd.* (Supra), and it is this decision which is relevant for the purposes of deciding the controversy in the present case. The Hon'ble Apex Court has clearly explained the purpose of the amended law and has held in paragraph 30 that "*refund becomes due when tax deducted at source, advance tax paid, self assessment tax paid and tax paid on regular assessment exceeds tax chargeable for the year as a result of an order passed in appeal or other proceedings under the Act. When refund is of any advance tax (including tax deducted/collected at source), interest is payable for the period starting from the first day of the assessment year to the date of grant of refund*". Reliance placed by the Revenue on the decision of the Hon'ble Punjab and Haryana High Court in the case of ***Commissioner of Income Tax V/s. Hansa Agencies Pvt. Ltd.***[8] is equally misplaced as it merely relies on the decision of the Hon'ble Apex Court in *Modi Industries* (Supra) and is not relevant to decide the controversy under the amended law and in the present case.

17 In the circumstances, the questions of law as framed on 29th July 2004 have to be answered in favour of assessee, i.e., appellant. Appellant would be entitled to interest under Section 244A of the Act of

8. (1998) 234 ITR 271

Rs.2,37,22,886/-.

18 Appeal disposed accordingly.

(DR. NEELA GOKHALE, J.) (K. R. SHRIRAM, J.)

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Gauri Gaekwad