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Interest on refund allowed from year of tax deduction and not from year of filing of return if PCM method is followed

Summary – The High Court of Bombay in a recent case of Kumagai Skanska HCC ITOCHU Group., (the Assessee) held that where assessee, a contractor, followed project completion method of accounting and during assessment years 2003-04 to 2005-06 it had received certain payments after deduction of tax at source and in return of income filed for assessment year 2005-06 it had disclosed payments received during three assessment years 2003-04 to 2005-06 and Assessing Officer passed assessment order and granted refund to assessee, on such refund, interest in terms of section 244A would be payable from respective assessment years

Facts

- The assessee was engaged in the business of civil construction. It followed the project completion method of accounting to offer its income to tax. During the assessment years 2003-04, 2004-05 and 2005-06, it had received certain payments as a contractor, on which the prayer had deducted tax at source. In the return of income filed for assessment year 2005-06, it had declared a certain loss. In the said return, it had claimed the income relatable to the payments made during the said year as well as during earlier two assessment years, *i.e.*, 2003-04 and 2004-05.
- The assessment order passed by the Assessing Officer gave rise to refund.
- The assessee contended before the Assessing Officer that on such refund, interest in terms of section 244A would be payable from the respective assessment years.
- The Assessing Officer held that the income in relation to the payments on which tax was deducted at source was returned by the assessee in the assessment year 2005-06 and, therefore, interest could not be paid on the refund for any period prior to the said assessment year.
- The Tribunal relying on the judgment of the Supreme Court rendered in the case of *Union of India* v. *Tata Chemicals Ltd.* [2014] 363 ITR 658/222 Taxman 225 (Mag.)/43 taxmann.com 240 held in favour of the assessee.
- On appeal to High Court by revenue:

Held

- Section 194C pertains to payment to deductors. Sub-section (1) of section 194C requires a person making payment of any sums to a person carrying out any works in pursuance to the contract to deduct tax at source at prescribed rates. Section 199 pertains to credit for tax deducted. Sub-section (2) of section 199 provides that any sum referred to in sub-section (1A) of section 192 and paid to the Central Government, shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made.
- Section 244A pertains to interest on refunds.

- Sub-section (1) of section 244A provides for interest on refund in three separate clauses, covering different situations. Clause (*a*) pertains to cases 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. Clause (*aa*) refers to the refund arising out of any tax paid under section 140A. Clause (*b*) essentially provides that in case the refund becomes due in any other case, *i.e.*, cases not covered under clause (*a*) or (*aa*), such interest shall be calculated at the rate of 1/2 per cent for every month or part of the month comprised in the period from the date of payment of the tax or penalty to the date on which the refund is granted. This clause (*b*) contains an Explanation which provides that for the purpose of said clause, the date of payment of tax or penalty would mean the date on and from which the amount of tax or penalty specified in notice of demand issued under section 156 is paid in excess of such demand. If the case of a person was to fall under clause (*b*), the question of applicability of the Explanation would certainly arise. In the instant case, however, for the reasons to follow, the assessee's case falls under clause (*a*).
- Clause (*a*) of sub-section (1) of section 244A covers situation where the refund is out of any tax collected at source or paid by way of advance tax or treated as paid under section 199. This reference to treat tax as paid under section 199 would clearly cover the tax deducted at source. In the instant case, the assessee had suffered deduction of tax at source at the time of payments. In that view of the matter, the case of the assessee would clearly be covered under clause (*a*) to sub-section (1) of section 244. In such a situation, this clause provides that interest shall be calculated at the rate of 1/2 per cent for every month or part thereof, comprising a period from the 1st day of April of the assessment year to the date on which the refund is granted, provided the return is filed before the due date, specified in sub-section (1) of section 139. Here the reference 'from the 1st day of April of the assessment year', which is the starting point for computing the interest payable, must be to the assessment year, in which the tax was deducted at source. This expression has to be read along with the main body of clause (*a*) which refers to the refund arising out of, *inter alia*, of the tax treated to have been paid as per section 199. Any other view would be holding untenable, since the revenue which has received the tax deducted at source from the payments to be made to the assessee and appropriate the same would refund the same but the interest would be accounted much later when the return giving rise to the refund is filed.
- In slightly different background, the provisions of section 244A came up for consideration before the Supreme Court in case of *Tata Chemicals Ltd.* (*supra*). It was a case in which the payee while paying an amount to a non-resident had deducted tax at source at certain rate. Payee disputed deduction at such rate and succeed in appeal. This gave rise to refund of excess collection of tax. In this context, the question of passing interest on refund arose. The Supreme Court while granting interest made certain observation.
- In view of the aforesaid, the Tribunal had not committed any error.
- The appeal filed by the revenue deserved to be dismissed.