

Brakes India Limited,, Chennai vs Dcit (Ltu), Chennai on 23 February, 2022

IN THE INCOME TAX APPELLATE TRIBUNAL , 'A' BENCH, CHENNAI

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

./I.T.A.No.758/Chny/2012
(/ Assessm ent Year: 2002-03)
M/s. Brakes India Ltd. Vs Deputy Commissioner of
Padi, Income Tax, (LTU)
Chennai-600 050. Chennai-600 101.
PAN: AAA CB 2533Q
(/Appellant) (/Respondent)

/ Appellant by : Mr. R.Vijayaraghavan,
Advocate
/Respondent by : Mr. AR V. Sreenivasan,
Addl.CIT

/Da t e of h ear in g : 15.02.2022
/D at e of Pr on o unc e m en t : 23.02.2022

/ O R D E R

PER G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against order passed by the learned Commissioner of Income Tax (Appeals) Large Taxpayer Unit (LTU), Chennai, dated 21.02.2012 and pertains to assessment year 2002-03.

2. The assessee has raised following grounds of appeal:-

"1. The order of the Commissioner of Income tax (Appeals) is contrary to law, facts and circumstances of the case.

2. The Commissioner of Income tax (Appeals) erred in confirming the order of the assessing officer in granting interest under section 244A at Rs.11,46,6001- as against Rs.16,84,8671- claimed by the appellant.

2.1 The Commissioner of Income tax (Appeals) ought to have appreciated that according to provisions of section 244A where refund of "any amount" arises to the appellant out of advance/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 amounting to Rs.16,84,867/-. Hence this sum should have been granted as interest under section 244A.

2.2 The Appellant relies on the decision of the Honb'le Apex court in the case of Sandwik Asia Limited reported in 280 ITR

643. 2.3 The Commissioner of Incometax (Appeals) ought to have appreciated that in assessee's own case the Chennai Tribunal has allowed the issue in favour of assessee in ITA Nos. 1558 to 1564 in the for AY 1986-87, 89-90 to 94-95 by an order dated 06.02.2009."

3. The assessee had also filed a petition for admission of additional grounds by taking certain grounds on the issue of determination of interest payable u/s.244A of the Income Tax Act, 1961, and relevant additional grounds of appeal taken by the assessee are as under:-

"a) In computing the interest payable under Section 244A, the refunds paid by the department should be first adjusted against the interest in the amount refundable by the department and only the balance amount should be adjusted against the tax to be refunded.

b) Interest u/s.244A should be computed on the outstanding tax as adjusted in the manner specified in the grounds above.

c) Under Section 140A, the amount paid as self assessment tax is first adjusted against the interest payable by the Assessee and only the balance is adjusted against the tax payable.

d) This is the manner of adjustment prescribed by the Incometax Act under Section 140A and the same manner of adjustment should also be applied for calculating interest u/s.244A."

4. Brief facts of the case are that the assessee is engaged in the business of manufacturing of auto components. The assessee has filed its return of income for the assessment year 2002-03 on 31.10.2002 declaring total income of Rs.22,01,34,205/-. The assessment for the impugned assessment year has been completed u/s.143(3) of the Income Tax Act, 1961, on 28.02.2005 and determined total income at Rs.24,22,39,334/- and tax payable at Rs.83,07,846/-. The assessee carried the matter in appeal before the first appellate authority and challenged computation of interest payable u/s.244A of the Income Tax Act, 1961, in light of decision of the Hon'ble Supreme Court in the case of M/s.Sandwik Asia Ltd. vs. CIT (280 ITR 643) (SC). The learned CIT(A), after considering relevant facts and by following decision of the Hon'ble High Court of Madras in the case of M/s. Wheels India Ltd. in T.C.A. No.76 & 77 of 2008 dated 27.04.2011 decided the issue against assessee by holding that interest on interest is to be granted only if there is inordinate delay in

granting refund. Since, there is no inordinate delay in granting such refund, the assessee is not entitled for interest on interest. The assessee challenged order of the learned CIT(A) before the Tribunal. The Tribunal vide its order dated 29.06.2012 in ITA No. 758/Mds/2012 dismissed appeal filed by the assessee. The assessee carried the matter in further appeal before Hon'ble High Court of Madras in T.C.A No.53 of 2013 and raised two substantial questions of law. The relevant questions of law raised before the Hon'ble High Court of Madras are as under:-

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."

5. The Hon'ble High Court of Madras vide its order in TCA No.53 of 2013 dated 05.02.2021 remitted the issue back to the file of the Tribunal for fresh consideration. Therefore, present appeal is posted for hearing to decide the issue involved in the appeal filed by the assessee.

6. The learned A.R for the assessee referring to additional grounds of appeal filed by the assessee vide its petition dated 21.08.2021 submitted that although, the assessee is not entitled for interest on interest in view of subsequent judgement of the Hon'ble Supreme Court in the case of CIT Vs. Gujarat Flouro Chemicals (2013) 358 ITR 291 (SC), but manner in which such interest can be computed has been explained by the ITAT., Chennai bench in assessee's own case for the assessment year 1989-90 in ITA No.1559/Chny/2008 vide order dated 25.02.2020, where the Tribunal has held that although, the assessee is not entitled for interest on interest, but the manner in which any refund which has been granted partly to the assessee is to be adjusted first towards interest due to the assessee and remaining portion should be adjusted towards tax due to the assessee. The learned AR further referring to provisions of section 140A of the Act, submitted that u/s.140A amount of self-assessment tax paid by the assessee is first adjusted against interest payable by the assessee and balance, if any, is adjusted against tax payable. If you follow same analogy for computing interest payable to the assessee u/s.244A of the Act, then refund should be first adjusted against interest payable to the assessee and balance if any, should be adjusted for refund of tax for the purpose of computing interest u/s.244A of the Act. Therefore, he submitted that additional grounds filed by the assessee should be admitted and suitable direction may be given to the Assessing Officer to recompute interest payable in accordance with directions given by the Tribunal for earlier assessment year.

7. The assessee had also filed a petition under Rule 27 of Income Tax Appellate Tribunal Rules, 1963 in support of certain judicial precedents and argued that petitioner can raise issue which was decided against the assessee, even if the assessee has not filed any appeal or cross objection and thus, requested to consider petition filed under Rule 27 of ITAT Rules and decide issue in

accordance with law.

8. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that as per provisions of section 244A of the Act, the assessee is entitled for interest on refund from a particular day and except this, the assessee is not entitled for any interest, including interest on interest. The learned DR further submitted that this issue is also covered by the decision of the Hon'ble Supreme Court in the case of CIT Vs. Gujarat Flouro Chemicals (supra), where the Hon'ble Supreme Court, after considering its earlier decision in the case of M/s.Sandwik Asia Ltd. Vs. ACIT (supra), held that the assessee is entitled only interest on refund, but not entitled for interest on interest. Therefore, the learned DR submitted that there is no merit in the arguments of the assessee that while computing interest u/s.244A of the Act, refund given to the assessee should be first adjusted against interest payable and balance if any, payable should be adjusted against tax. Therefore, the learned DR submitted that additional grounds of appeal filed by the assessee and petition filed under Rule 27 of ITAT Rules cannot be entertained.

9. We have heard both the parties, perused material available on record and gone through orders of the authorities below. We have also carefully considered various case laws cited by the assessee in light of petition filed by the assessee for admission of additional grounds of appeal along with petition filed under Rule 27 of ITAT Rules, 1963. As regards petition filed by the assessee for admission of additional grounds dated 25th August, 2021, we find that the assessee has filed additional grounds taking certain grounds in light of provisions of section 140A of the Income Tax Act, 1961, and requested to give direction to the Assessing Officer as to how to compute interest u/s.244A of the Income Tax Act, 1961. As per petition filed by the assessee, it was contended that while computing interest u/s.244A of the Act, refund given to the assessee shall be first adjusted towards interest payable to the assessee u/s.244A and balance, if any, should be adjusted against tax due to the assessee. The assessee has taken this plea on the basis of provision of section 140A, which provides for how to adjust amount of tax paid by the assessee to tax and interest payable under the Act.

10. We have given our thoughtful consideration to petition filed by the assessee for admission of additional grounds in light of decision of the Hon'ble Jurisdictional High Court of Madras in T.C.A No.53 of 2013, and we ourselves do not subscribe to the arguments advanced by the learned counsel for the assessee in the petition filed for admission of additional grounds for simple reason that question of law raised before the Hon'ble High Court was that whether the appellant is entitled for interest on interest u/s.244A of the Act, and further, whether the Tribunal was right in not following judgement of the Hon'ble Supreme Court in the case of CIT Vs. H.E.G. Ltd. (324 ITR

331).

11. As regards, first question of law raised before the Hon'ble High Court of Madras, we find that the Hon'ble Supreme Court in the case of CIT Vs. Gujarat Flouro Chemicals (supra) had considered an identical issue and after considering its earlier decision in the case of M/s.Sandwik Asia Ltd. vs. CIT (supra), held that the assessee is not entitled for interest on interest while granting refund of tax. The second question of law raised before the Hon'ble High Court in light of decision of the Hon'ble

Supreme Court in the case of CIT Vs. H.E.G. Ltd.(supra) was whether that interest payable to the assessee u/s.244A of the Act, will become an integral part of TDS amount which was not refunded after it became due and payable and therefore, the assessee was entitled to interest u/s.244A of the Act, on delayed refund of TDS. We find that the Hon'ble Supreme Court in the case of CIT Vs. Gujarat Flouro Chemicals (supra) had very categorically held that it was only that interest provided for under statute which may be claimed by the assessee from the revenue and no other interest on such statutory interest. Therefore, we are of the considered view that although, there is no reference of earlier judgement in the case of CIT Vs. H.E.G. Ltd.(supra), while deciding the issue in the case of CIT Vs. Gujarat Flouro Chemicals (supra), but because judgement of Gujarat Flouro Chemicals is subsequent to the decision of CIT Vs. H.E.G. Ltd.(supra) and thus, we presume that the Hon'ble Supreme Court was aware of its earlier judgement of CIT Vs. H.E.G. Ltd.(supra), while deciding the issue and thus, we are of the considered view that subsequent judgement of the Hon'ble Supreme Court prevails on this issue. Further, in the case of CIT Vs. Gujarat Flouro Chemicals (supra), it was very categorically held that assessee is not entitled for interest on interest. Further, the law is very clear that as per section 244A of the Act, the assessee is entitled for interest on refund due from the date immediately following expiry of period of three months of aforesaid to the date on which refund is granted. We further noted that there is no substance in additional grounds taken by the assessee in light of provision of provisions of section 140A of the Act, because manner in which amount paid by the assessee to be adjusted has been specifically provided u/s.140A of the Act, and thus, there is no scope for the assessee as well as the department to go beyond what was specified and thus, as per said section, when tax paid by the assessee, it shall be first adjusted against interest payable under the Act, and only balance if any, should be adjusted against the tax payable by the assessee. But, u/s.244A of the Act, except payment of interest for specified period on refund due to the assessee, nothing has been specified on how to compute interest. Therefore, when the law is very specific and does not provide for manner in which such interest is to be computed, the analogy provided under the provisions of section 140A of the Act, cannot be imported to the provisions of section 244A to compute interest payable to the assessee. Therefore, for all these reasons, we are of the considered view that there is no merit in petition filed by the assessee seeking admission of additional grounds. Hence, we are of the considered view that petition filed by the assessee for admission of additional grounds is devoid of merits and thus, same is not admitted.

12. As regards petition filed by the assessee under Rule 27 of Income Tax Appellate Tribunal Rules, 1963, we find that as per Rule 27, the respondent, though he may not have appealed, may support order appealed against on any of the grounds decided against him. From Rule 27 of ITAT Rules, 1963, it is only a respondent in appeal, may support order appealed against on any of the grounds decided against him. In this case, the assessee is a petitioner in appeal filed against order of the learned CIT(A). Therefore, the assessee cannot file petition under Rule 27 of ITAT Rules, 1963 to support order appealed against on any of the grounds decided against him, because substantive grounds taken by the assessee in appeal filed against order of the learned CIT(A) is also on the issue of interest payable to the assessee u/s.244A of the Income Tax Act, 1961. Therefore, we are of the considered view that petition filed by the assessee under Rule 27 of ITAT Rules, is devoid of merit and thus, same is not admitted.

13. Coming back to the main issue in appeal. The assessee has challenged order of the learned CIT(A) in not granting interest on interest u/s.244A of the Act, while granting refund to the assessee. As we have noted in earlier part of this order that as per section 244A of the Act, the assessee is entitled for interest on refund due from a particular period and except this, the assessee is not entitled for interest on interest, in case there is delay in refund payable to the assessee. This provision has been explained by the Hon'ble Supreme Court in the case of CIT Vs. Gujarat Flouro Chemicals (supra), where the Hon'ble Supreme Court, after considering its earlier judgement in the case of M/s.Sandwik Asia Ltd. vs. CIT (supra), has very categorically held that the assessee is entitled only for interest provided under the Act for specified period, but not interest on interest while granting refund to the assessee u/s.244A of the Income Tax Act, 1961. Therefore, we are of the considered view that there is no merit in arguments taken by the counsel for the assessee that assessee is entitled for interest on interest while granting refund due to the assessee. This position has been reiterated by the ITAT., Chennai in assessee's own case for earlier year in ITA No.1559/Chny/2008 vide order dated 25.02.2020 and held that the assessee is not entitled for interest on interest. But, the Tribunal has admitted additional grounds filed by the assessee and directed the Assessing Officer as to how to compute interest payable u/s.244A of the Act. In our considered view, the Tribunal has exceeded its authority in admitting additional grounds filed by the assessee subsequent to the judgement of the Hon'ble Jurisdictional High Court of Madras, because substantial question of law raised by the assessee before the Hon'ble High Court was limited to the extent of examining claim of the assessee whether the assessee is entitled for interest on interest while granting refund u/s.244A of the Act or not. Since, question of computation and how to compute such interest was not before the Hon'ble High Court of Madras, in our considered view, additional grounds filed by the assessee seeking to give direction to the Assessing Officer and manner in which such interest should be computed is beyond scope of the Tribunal and thus, we are of the considered view that although, Tribunal had given direction to the Assessing Officer as to how to compute interest u/s.244A of the Act for earlier years, we prefer not to follow said decision of the Tribunal for earlier assessment year in assessee's own case, because it is not in accordance with the provisions of section 244A of the Act and also exceeds scope of issue before the Hon'ble High Court in Tax Case Appeal No.53 of 2013.

14. In this view of the matter and considering facts and circumstances of the case, we are of the considered view that the assessee is not entitled for interest on interest u/s.244A of the Act, while granting refund due. The learned CIT(A), after considering relevant facts has rightly held that the assessee is not entitled for interest on interest u/s.244A of the Act. Hence, we are inclined to uphold findings of the learned CIT(A) and dismiss appeal filed by the assessee.

15. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on

23rd February, 2022

Sd/-

Sd/-

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(V.Durga Rao) (G. Manjunatha)
\$ ' /Judicial Member ' / Accountant Member
\$ /Chennai,
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* /Dated 23 February, 2022
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1. Appellant 2. Respondent 3. / ()/CIT(A)
4. / /CIT 5. - ¢ 3 /DR 6. £ / /GF.