

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
I.T.A. Nos. 3785 & 3786/Del/2011
A.Yrs. : 1994-95 & 1995-96

M/s Metso Minerals (I) Pvt. Ltd.,
1st floor, Tower-A, Building No. 10,
Cyber City, DLF Phase-II,
Gurgaon-122002
(PAN : AAACS3407L)

vs. DCIT, CIRCLE 6(1),
DELHI

(Appellant)

(Respondent)

Assessee by
Department by

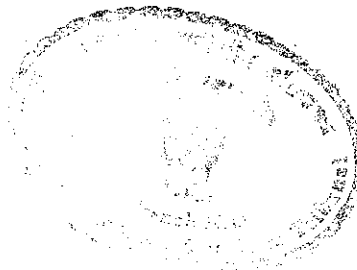
: Sh. Ved Jain & Ms. Rano Jain, CAS
: Sh. Deepak Sehgal, Sr. D.R.

ORDER

PER SHAMIM YAHYA : AM

These two appeals filed by the Assessee are directed against the respective orders of the Ld. Commissioner of Income Tax (Appeals)-IX, New Delhi pertaining to assessment years 1994-95 & 1995-96 respectively. Since the issues are common and the appeals were heard together, these appeals are being consolidated and disposed of by this common order for the sake of convenience.

2. The common issue raised in these two appeals is that Ld. Commissioner of Income Tax (A) has erred in confirming the action of the Assessing Officer in not allowing interest on excess tax collected from the date of payment upto the date of the order of ITAT.



3. Since the issues and circumstances are common, we are adjudicating the issue with reference to the facts of assessment year 1994-95 for the sake of convenience.

4. In this case assessee's contention for interest u/s. 244A was not accepted by the Assessing Officer. Assessing Officer observed that according to section 244A(2), if the proceedings resulting in 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. Assessing Officer held that from the records it is seen that the above condition was directly applicable to the assessee's case. He observed that assessee company was not able to produce the original documents and these were procured by assessee company much later to assessment proceedings. Accordingly, Assessing Officer held that no interest u/s. 244A was to be granted.

5. Upon assessee's appeal Ld. Commissioner of Income Tax (A) noted that the dispute in the case was regarding the allowability of interest on the tax found refundable to the assessee consequent to the assessment framed by the Assessing Officer u/s. 143(3) read with Section 254 of the Act. He noted that as per Assessing Officer no interest was payable on the refund of tax as the delay in the same was attributable to the assessee. Ld. Commissioner of Income Tax(A) further observed that on going through the facts, it was noticed that the return was filed on 30.11.1994; that during the assessment proceedings, assessee submitted some details but had failed to furnish evidences for certain transactions because of which the additions were made by the Assessing Officer. From this Ld.

Commissioner of Income Tax (A) inferred that it is clear that the additions were made by the Assessing Officer due to failure on the part of the assessee to substantiate its claims as per the return of income. Ld. Commissioner of Income Tax (A) further noted that not only the assessee did not produce the required evidence during the assessment proceeding, but also it failed to do so even during the appellate proceeding resulting into the decision of the first appellate authority going against it. To this extent, Ld. Commissioner of Income Tax (A) held that the delay was surely attributable to the assessee. Ld. Commissioner of Income Tax (A) further observed that since the assessee has failed to discharge the above responsibility as per the law, it will be highly inappropriate to grant it interest for the period when it had failed to discharge such responsibility.

5.1 Further, Ld. Commissioner of Income Tax (A) noted that the order was set aside by the Tribunal on 7.4.2003 to the file of the Assessing Officer who took more than six years to complete the assessment and therefore, delay for such period cannot be attributed to the assessee. Ld. Commissioner of Income Tax (A) concluded that Assessing Officer was not justified in not paying interest on the tax which was recovered consequent to the passing of the original assessment order for the whole period including the 6 years taken by her to pass the order giving effect to the ITAT's order. Ld. Commissioner of Income Tax (A) directed the Assessing Officer to allow the interest on the excess tax paid by the assessee from the date of the receipt of the order of the ITAT setting aside the assessment till the date of giving effect to such order.

6. Against the above order the Assessee is in appeal before us agitating that interest should be allowed on excess tax collected from the date of payment upto the date of the order of the ITAT.

7. We can gainfully refer to the provisions of section 244A 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 [paid under section 115WJ or] [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-half 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 115WE or] 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-half 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 115WE or section 115WF or section 115WG or] [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 under 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 :]

[Provided that in respect of assessment of fringe benefits, the provisions of this sub-section shall have effect as if for the figures "1989", the figures "2006" had been substituted.]"

8. From the above it is evident that in case of refund, interest has to be paid from the date of payment of tax to the date on which the refund is granted. Further, if there is delay in the proceedings for reasons attributable to the assessee, the period of such delay should be excluded. Further, if in the appellate proceedings the amount on which interest was payable is increased or reduced the interest shall be adjusted accordingly. In the present case we note that addition was made pursuant to the assessment order passed by the Assessing Officer u/s. 143(3). The same was also confirmed by the Ld. Commissioner of Income Tax (A). In the appellate proceeding before the ITAT the matter was set aside. Thereafter, after considerable time Assessing Officer passed the order giving effect to the tribunal order which resulted in refund to the assessee. In a situation as narrated above the assessee has been granted interest on refund from the date of ITAT order. No interest has been granted from the date of payment to the date of ITAT order on the ground that assessment proceedings were delayed due to assessee, as the assessee had failed to furnish the requisite detail before the Assessing Officer & Ld. Commissioner of

Income Tax (A). However, no cogent basis for this has been brought on record.

9. In our considered opinion, the above is not sustainable. The proceedings before the Assessing Officer, the Ld. Commissioner of Income Tax (A) and the ITAT is a continuous process. In the facts and circumstances of the present case there is no cogent basis to hold that assessment proceedings got delayed due to the assessee's failure to submit the details before the Assessing Officer & Ld. Commissioner of Income Tax (A).

10. Under the circumstances, we hold that the assessee should also be granted interest on refund from the date of payment of tax to the date of ITAT order.

11. In the result, both the appeals filed by the Assessee are allowed.

Order pronounced in the open court on 23/11/2012.

[RAJPAL YADAV]
JUDICIAL MEMBER

Date 23/11/2012

SRBHATNAGAR

Copy forwarded to:-

1. Appellant 2. Respondent
5. DR, ITAT

TRUE COPY

[SHAMIM YAKHIA]
ACCOUNTANT MEMBER

3. CIT 4. CIT (A)

By Order,

Assistant Registrar,
ITAT, Delhi Benches

सहायक पंजीकार

Assistant Registrar

आयकर अपील बोर्ड दिल्ली

Income tax appeal bench (Delhi Benches)

दिल्ली बेंच नई दिल्ली

Delhi Benches New Delhi.

