IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'C' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.332/PUN/2021
निर्धारण वर्ष / Assessment Year : 2014-15

DCIT, Circle-1(1), Pune	Vs.	M/s. Honeywell Automation India Ltd., 56/57, Hadapsar Industrial Estate, Pune - 411 013 PAN : AAACT3904F
Appellant		Respondent

Assessee by	Shri Siddhesh Chaugule
Revenue by	Shri Piyush Kumar Singh Yadav
Date of hearing	23-11-2021
Date of pronouncement	24-11-2021

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the Revenue emanates from the order passed by the ld. CIT(A) on 31-05-2021 in relation to the A.Y. 2014-15.

2. The first issue espoused herein is against holding by the ld. CIT(A) that interest earned as per the provisions of section 244A of the Income-tax Act, 1961 (hereinafter also called 'the Act') was not chargeable to tax.

3. Tersely, the factual panorama of the case is that the assessee was granted refund of Rs.11,47,73,740/- (inclusive of interest component of Rs.1,18,37,651/-) pertaining to the assessment year 2012-13 on 12-03-2014, i.e. within the financial year relevant to the assessment year

under consideration. During the course of the assessment proceedings, the AO observed that interest amounting to Rs.1.18 crore on income tax refund was not offered by the assessee for taxation. On being called upon to explain the reasons for non-inclusion, the assessee submitted that the interest on refund was *suo motu* adjusted by the Revenue against the demand for the assessment year 2009-10 without any intimation to the assessee and as such, the factum of receipt of interest on income tax refund was not in its notice. It was further submitted that assessment for the assessment year 2012-13 was finally concluded u/s.143(3) of the Act converting the amount of refund into a notice of demand u/s.156 of the Act. The AO remained unconvinced with the assessee's stand point and included the interest on refund granted for the assessment year 2012-13 in the total income for the year under consideration on receipt. The ld. CIT(A) got satisfied with the assessee's submission and ordered to delete the addition.

4. We have heard the rival submissions and scanned through the relevant material on record. Refund of Rs.11.47 crore pertaining to the assessment year 2012-13 was granted to the assessee on 12.3.2014 after processing the return u/s. 143(1) of the Act. Interest component of Rs.1.18 crore in the amount of refund was computed u/s.

244A(1)(a). The mere fact that the assessee was oblivious to or not informed about the adjustment of such refund (inclusive of interest) against the tax liability for the assessment year 2009-10 will not change the legal position *qua* the otherwise chargeability of interest of income-tax refund in the year of receipt as has been fairly settled by the Special Bench decision in *Avada Trading Co. (P) Ltd. VS. ACIT (2006) 100 ITD 131 (Mum)(SB). Howbeit*, it is significant to note that assessment for the assessment year 2012-13 was concluded u/s.143(3) of the Act in January, 2017 culminating into issuance of notice of demand for Rs.29.53 crore. Such income-tax computation for the assessment year 2012-13 has been placed at page 120 of the paper book. It is discernible there from that the initial amount of tax and interest payable came at Rs.26.23 crore. Thereafter, interest earlier paid u/s.244A of the Act amounting to Rs.1,18,37,651/- was added along with interest u/s.234D at Rs.2,00,85,405/-, thereby computing total demand at Rs.29,53,23,650/-. Thus, it is apparent that the amount of interest on income-tax refund, which was granted to the assessee during the financial year relevant to the assessment year under consideration, was eventually recovered by the Revenue when the final assessment u/s.143(3) was completed for the A.Y. 2012-13 determining a further amount of Rs.29.53 crore payable by the

assessee. Not only that the amount of refund earlier granted, inclusive of interest at Rs.1.18 crore, was recovered, but interest u/s.234D on the gross amount of refund earlier granted was also charged at Rs.2.00 crore. The effect is that the amount of interest of Rs.1.18 crore given to the assessee during financial year 2013-14 relevant to the assessment year under consideration was eventually recovered by the Revenue on the completion of assessment for the assessment year 2012-13 in January, 2017 and further that interest u/s.234D of the Act was also charged on the amount of refund including interest.

5. Here, it is pertinent to note that section 244A(1)(a) provides that: `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-half per cent for every month or part of a month comprised in the period,— (i) from the 1st day of April of the assessment year to the date on which the refund is granted, if the return of income has been furnished on or before the

due date specified under sub-section (1) of section 139'. It is pursuant to this provision that the assessee was granted refund of Rs.1.18 crore during the year under consideration. In principle, interest on income tax refund is chargeable to tax in the year of its receipt. Sub-section (3) of section 244A provides that: `Where, as a result of an order under ….. sub-section (3) of section 143 …., the amount on which interest was payable under sub-section (1) has been … reduced, … , the interest shall be … reduced accordingly, and in a case where the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand ….'. Sub-section (3) says that where the amount of refund on which interest was computed earlier under sub-section (1), is reduced because of an assessment order, *inter alia,* under section 143(3), the interest allowed earlier u/s 244A(1) [i.e. at the time of processing the return u/s 143(1) etc.] shall be reduced accordingly and the AO shall serve a notice of demand to the assessee. Section 234D dealing with interest on excess refund, provides through sub-section (1) that: `Subject to the other provisions of this Act, where any refund is granted to the assessee under sub-section (1) of section 143, and— (a) no refund is due on regular assessment; or (b) the amount refunded under sub-section (1) of section 143 exceeds the amount refundable on regular assessment, the assessee shall be liable to pay simple interest

at the rate of one-half per cent on the whole or the excess amount so refunded, for every month or part of a month comprised in the period from the date of grant of refund to the date of such regular assessment.' When section 244A is read in conjunction with section 234D, it turns vivid that in a case where the AO serves a notice of demand u/s 244A(3), the amount of interest on income tax already received at the time of processing of return u/s 143(1) gets substituted with the reduced amount of interest and the order earlier passed charging tax on such interest becomes amenable to rectification *pro tanto*. In a case where interest was awarded to the assessee earlier at the time of processing of return u/s.143(1), but on the conclusion of regular assessment later on, the assessee becomes liable to pay tax, the amount of refund earlier granted (inclusive of interest) shall be recovered along with interest. It is pursuant to this legal position that the full amount of interest granted earlier became returnable because of the latter assessment u/s 143(3) of the Act and the AO added the amount of interest earlier granted to the amount becoming due from the assessee on regular assessment u/s 143(3) of the Act besides interest u/s 234D computed at Rs.2.00 crore. It will be a sheer two-way traffic, if, in the first instance, the amount of interest on income tax refund is included because of its receipt in the year and then it is

reduced by rectification because of the obliteration of the income of interest on refund in a later year. The cumulative net effect of the both the events is that nothing remains includible in the total income of the assessee for the year under consideration.

6. Now, suppose in a later appellate proceedings, the assessee succeeds in getting relief on the additions made by the AO, it will again become entitled to interest on refund in terms of section 244A(1)/(1A) from 1st April of the relevant assessment year to the date on which the refund is granted. Reverting to the facts of our case, it is in such a later year, if and when, the assessee gets relief in appropriate appellate proceedings that the amount of interest will be granted to the assessee on refund from the 1st April of the A.Y. 2012-13 to the date on which the refund is actually granted. It is then that the amount of interest on income-tax refund will become chargeable to tax. Now, if the amount of interest on income-tax refund received at the time of processing of return u/s.143(1) in the financial year relevant to the assessment year under consideration is charged to tax, which has eventually been refunded on completion of assessment u/s 143(3) of the Act in the year 2017, and later on the assessee becomes entitled to refund through some appellate proceedings and again receives interest u/s.244A, that also covers interest for the period from

the A.Y. 2012-13 up to the date of grant of earlier refund on 12.3.2014, which will have to be necessarily charged to tax in the year of receipt, then the amount of interest initially received on processing of return u/s.143(1) during the year under consideration would stand charged to tax twice, which is impermissible under the law. Had it been a case of the assessee receiving refund along with interest on 12.3.2014 simpliciter not followed by any regular assessment u/s.143(3), thereby assigning finality to the processing of return u/s 143(1), the amount of interest on income-tax refund would have merited inclusion in the total income of the year of receipt itself. Considering the totality of the facts and circumstances obtaining in this case, we are satisfied that the ld. CIT(A) was justified in holding that interest on income-tax refund amounting to Rs.1.18 crore cannot be charged to tax on the processing of return u/s.143(1) during the year under consideration for the *raison d'etre* that the regular assessment made in the year 2017 resulted into creation of demand and wiping out the refund already granted to the assessee along with recovery of interest. This ground is, therefore, not allowed.

7. The only other grievance of the Revenue in this appeal is against the direction of the ld. CIT(A) that education cess was an allowable

expenditure. The Revenue has set up a case that the provisions of section 40(a)(ii) have not been taken into consideration.

8. The facts apropos this issue are that the assessee raised an additional ground before the ld. CIT(A) regarding the allowability of secondary and higher education cess on income-tax amounting to Rs.1,53,50,140/-. In support of its claim, the assessee relied on the judgment of Hon'ble Bombay High Court in the case of *Sesa Goa Ltd. Vs. JCIT (2020) 423 ITR 426 (Bom.)*. The ld. CIT(A) found the issue to be fully covered by various orders of the Pune Tribunal in favour of the assessee including *DCIT Vs. M/s. Bajaj Allianz General Insurance Company Ltd. in ITA Nos. 1111 & 1112/PUN/2017*. Aggrieved thereby, the Revenue has come up in appeal before the Tribunal.

9. Having heard the rival submissions and gone through the relevant material on record, it is seen that this issue is no more *res integra* in view of the judgment of Hon'ble jurisdictional High Court in *Sesa Goa Ltd. (supra)* laying down that education cess is not disallowable expenditure u/s.40(a)(ii) of the Act. Similar view has earlier been taken by the Hon'ble Rajasthan High Court in *Chambal Fertilisers and Chemicals Ltd. and Another Vs. JCIT (2018) 102 CCH 0202 (Raj-HC).* Since the ld. CIT(A)'s view accords with that of the

Hon'ble jurisdictional High Court, we, ergo, accord our imprimatur to the same. This ground is not allowed.

10. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 24th November, 2021.

Sd/-	Sd/-
(S.S. VISWANETHRA RAVI)	**(R.S.SYAL)**
JUDICIAL MEMBER	**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 24th November, 2021
सतीश

आदेश की प्रतिलिपि ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. The Respondent
3. प्रत्यर्थी / The CIT(A)-13, Pune
4. The PCIT-1, Pune
5. DR, ITAT, 'C' Bench, Pune
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	23-11-2021	Sr.PS
2.	Draft placed before author	24-11-2021	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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