IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI

Before Shri J. Sudhakar Reddy, Accountant Member
and Shri. V. Durga Rao,Judicial Member.

I.T.A. No. 7509/Mum/2010.
Assessment year : 1999-2000

M/s Reliance Infrastructure Ltd., Reliance Energy Centre, Santacruz (East), Mumbai – 400 055. PAN AACCR 7446Q	**Vs.**	Dy. Director of Income-tax, (International Taxation)-2(1), Mumbai.

Appellant by : Shri Jitendra Sanghavi.
Respondent by : Dr. S. Senthil Kumar.

O R D E R

Per J. Sudhakar Reddy, A.M. :

This is an appeal filed by the assessee directed against the order of the CIT(Appeals)-11, Mumbai dated 06-09-2010 on the following grounds :

1. a) The learned CIT(Appeals) erred in confirming the order of the TDS Officer on non granting of interest u/s 244A on the refund of tax paid in pursuance of Order u/s 201 of the Income Tax Act, 1961.

   Your appellant submits that the interest u/s 244A(1)(b) is allowable and should be granted on the refund of tax paid in pursuance of Order u/s 201 of the Act.

b) The learned CIT(A) erred in confirming the order of the TDS officer relying on the CBDT circulars and instructions for non-grant of interest u/s 244A.

The appellant submits that the learned CIT(A) ought not to have followed the CBDT circulars and instructions which are prejudicial to the interest of the assessee and should have directed the TDS Officer to grant interest u/s 244A on the tax paid pursuant to Order u/s 201 of the Act.

2. The learned counsel for the assessee submitted that the issue stands covered in his favour by the following decisions:

1. Tata Chemicals Ltd. vs. DCIT 16 SOT 481 (Mum Trib).
2. Additional Director of Income Tax (IT) vs. M/s Reliance Infocomm Ltd., ITA Nos. 6100 to 6110/M/2008.
3. ADIT(IT)-2(1) vs. M/s Reliance Infocomm Ltd. ITA No. 5581/M/2008 & 5585/M/2008.
4. DDIT(IT) vs. Star Cruises (India) Travel Services Private Limited, ITA No. Cruises (India) Travel Services Private Limited., ITA Nos. 6498 & 6500/M/06,C.O.os. 10 & 12/Mum/09.
5. ITO vs. Delhi Development authority (SC) 252 ITR 772 (SC).

2. Dr. S. Senthil Kumar, learned DR, on the other hand, submitted that the issue cannot be treated as covered for the reason that the order in the case Tata Chemicals Ltd. applies only to cases where tax has been deducted at source, consequent to any order passed by an authority u/s 195(2) or u/s 201. He submitted that in case the assessee has suo motu deducted taxes at source and thereafter claims a refund, it should not be entitled to interest u/s 244A.

3. Rival contentions heard. On a careful consideration of the facts and circumstances of the case and a perusal of the papers on record and the orders of the authorities below, we hold as follows.

4. In this case the assessee hired M/s Jardine Flemming as a Lead Managers for the GDR issue and the payment of commission was made to M/s Jardine Flemming as well as their associates. The AO issued notice dated 19-3-1998 u/s 195 of the Act, requiring the assessee to show cause as to why they have not deducted tax at source on payments made to M/s Jardine Flemming International. After considering the submissions, the AO held that the assessee was liable to deduct tax at source. The assessee was accordingly directed to pay US $ 26,76,750/-. The assessee carried the matter in appeal. The first appellate authority partly allowed the same. On further appeal, the Tribunal vide ITA No. 4340 and 4341/Mum/2000, order dated 4th April, 2007, set aside the matter to the file of the AO. Consequently, the AO passed the impugned order dated 7-3-2008 and determined a refund. The assessee claimed interest u/s 244A. The first appellate authority rejected the claim by holding that the assessee company could not show that the TDS was voluntarily deposited by it or under protest u/s 195(2) and hence was not eligible for interest u/s 244A. Aggrieved, the assessee is in appeal before us.

5. From the facts of the case it can be seen that the payment of TDS was not voluntary and in pursuance to an order passed u/s 195 by the AO. The refund also was due in pursuance to an order passed by the AO on 7-3-2008. Under these circumstances, we are of the considered opinion that the assessee is entitled to interest u/s 244A. We fully agree with the contentions of the learned counsel for the assessee. We are also of opinion that the issue stands covered in favour of the assessee by the judgment of the Hon’ble Supreme Court and the orders of the

Tribunal (as mentioned in para 2 above). Respectfully following the same, we allow this appeal of the assessee and direct the AO to pay interest u/s 244A.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 28th January , 2011.

Sd/-	Sd/-
(V. Durga Rao))	(J. Sudhakar Reddy)
Judicial Member.	Accountant Member

Mumbai,

Dated: 28th January, 2011.

Wakode

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, D-Bench

(True copy)

By Order

Asstt. Registrar,
ITAT, Mumbai Benches,
Mumbai.