IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI

BEFORE SHRI P.M. JAGTAP, ACCOUNTANT MEMBER
AND DR. S.T.M. PAVALAN, JUDICIAL MEMBER

ITA No.: 8527/Mum/2010
Assessment Year: 2003-04

The Tata Power Co. Ltd. Corporate Centre, Block 'B', 5th Floor, 34, Sant Tukaram Road, Carnac Bunder, Mumbai 400 009	Vs.	ACIT 2(3), Aayakar Bhavan, Maharshi Karve Road, Mumbai – 400 020. **PAN No. AAACT 0054 A**
(Appellant)		(Respondent)

Appellant by : Shri Dinesh Vyas
Respondent by : Shri K.C.P. Patnaik

Date of hearing : 14.01.2013
Date of Pronouncement : 23.01.2013

O R D E R

Per Dr. S.T.M. Pavalan, JM :

This appeal filed by the assessee is directed against the order of Ld.CIT(A)-6, Mumbai dated 04.10.2010 for the Assessment Year 2003-04.

2. In this appeal, the assessee has raised the following grounds:

1. *"The CIT(A) erred in not adjudicating on the only ground of appeal and instead directing the AO to dispose off the application filed with the AO u/s 154.*

2. *The CIT(A) ought to have appreciated that disposal of application filed u/s 154 would have taken place in the normal course and no appellate order is required to be passed for the same.*

3. *The CIT(A) ought to have appreciated that the appellant had filed the appeal with him for obtaining a speaking order and a clear direction on the issue.*

4. The CIT(A) ought to have held that while calculating amounts on which interest u/s 244A shall be allowed, only tax components of refunds issued earlier should be excluded and not the interest components.

5. The appellant reserves the right to amend, alter or add to the ground of appeal."

3. Briefly stated, during the year under consideration, the AO while computing interest u/s 244A, granted interest at Rs.17,19,92,340/- against granting of interest at Rs.22,84,05,949 as claimed by the assessee from 01.04.2005 on wards. While doing so, the AO reduced the refund including interest granted from time to time in order to arrive at the balance amount on which interest is to be granted. According to the assessee, there was a shortage in the grant of interest to the tune of Rs.62,07,786/-.

4. On appeal, the Ld.CIT(A) directed the AO to dispose of the rectification application filed by the assessee u/s 154 since the AO had not adjudicated the rectification application and the same issues on which the appeal was filed before him. Not satisfied with the order of the Ld.CIT(A), the assessee is in appeal before us.

5. Before us, the Ld.A.R. has stated that the Ld.CIT(A) ought to have adjudicated the issue on merits instead of merely directing the AO to dispose off the application filed with the AO u/s 154 as the disposal of the same by the AO would take place in the normal course for which an appellate order is not required to be passed by the Ld.CIT(A). The Ld.A.R. further has argued that the CIT(A) ought to have held that while calculating amounts on which interest u/s 244A shall be allowed, only tax components of refunds issued earlier should be excluded and not the interest component. The Ld.D.R. on the other hand, relied on the order of the

Ld.CIT(A). He has further requested that, if the Bench deems it proper to restore the issue to the file of the Ld.CIT(A), then the same be restored with a direction to give an opportunity to the AO to verify the quantification.

6. We have heard both the parties and perused the material on record. Keeping in view of the submissions made by both the sides as well as facts of the case, we are of the opinion that the Ld.CIT(A) ought to have disposed off the appeal of the assessee on merits. Therefore, we restore the issue to the file of the Ld.CIT(A) for deciding the same on merits and in accordance with law after giving opportunity of being heard to the assessee. We hold and direct accordingly.

8. In the result, appeal filed by the assessee is accordingly allowed for statistical purpose.

Order pronounced in the open court on 23rd January, 2013.

Sd/-
(P.M. JAGTAP)
ACCOUNTANT MEMBER

Sd/-
(Dr. S.T.M. PAVALAN)
JUDICIAL MEMBER

MUMBAI, Dt : 23.01.2013
Rasika*
Copy forwarded to :

1. The Appellant,
2. The Respondent,
3. The C.I.T., concerned Mumbai
4. CIT (A) concerned Mumbai
5. The DR, " " - Bench, ITAT, Mumbai

//True Copy//

BY ORDER

ASSISTANT REGISTRAR
ITAT, Mumbai Benches, Mumbai