

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI**

BEFORE SHRI R.C.SHARMA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No.2883 to 2885/MUM/2013
Assessment Year: 2000-01 to 2001-02 & 2003-04**

Bank Of India 8 th Floor, Star House, Taxation Department, Bandra-Kura Complex, Bandra (East) PAN : AAACB0472C	Vs.	The Deputy Commissioner of Income Tax- 2(1), Aayakar Bhavan, Mumbai- 400020
(Appellant)		(Respondent)

Appellant by : Shri. C.Naresh
Respondent by : Shri. N.P.Singh

Date of Hearing: 17/12/2015
Date of Pronouncement: 29/01/2016

ORDER

PER RAM LAL NEGI, JM

These appeals have been filed by the assessee against order dated 21/01/2013 passed by the Ld. CIT(Appeals)-4, Mumbai u/s.250 of the Income Tax Act,1961(in short the Act) for the assessment year 2000-01, order dated 04/01/2013 passed by CIT(Appeals)-4, Mumbai u/s 250(6) of the Act for the assessment year 2001-02 and order dated 30/01/2013 passed by the Ld.CIT(Appeals)-4, Mumbai u/s 250(6) of the Act for the assessment year 2003-04.

2. Since all the three appeals pertain to the same appellant/assessee for the three assessment years and common issues are involved, the

same were heard together and are being disposed of by this common order for the sake of convenience.

ITA 2283/M/2013 for Assessment Year 2000-2001

2.1 The appellant has initially challenged the impugned order on the following effective ground:-

“ That, on the facts and in the circumstances of the case and in the law the learned Deputy Commissioner of Income tax (herein after referred to as DCIT) while giving effect to Commissioner of Income Tax (Appeals) (herein after referred to as CIT(A) order dated. 25.03.2011 has erred in granting interest u/s. of 244A of Rs. 667,501,532/- as against actual interest of Rs. 870,256,100 and Hon’ble CIT(A) erred in rejecting the appellant’s ground on the issue. The learned DCIT be directed to grant the due interest of Rs. 870,256,100 and increase the refund accordingly”.

2.2 The appellant vide application dated 11.07.2014 sought permission from the Tribunal to urge the following additional ground:-

“The Appellant not being a Company under the Companies Act, 1956 but being a Bank governed by the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and deemed as company under the aforesaid Act cannot be construed to be a company for the purpose of charging the Minimum Alternate Tax u/s 115JB in the light of decision of ITAT, Mumbai in the case of Union Bank of India, and its own case and therefore ought not to be subjected to book profits tax.”

2.3 Brief facts of the case are that the appellant being a Public Sector Bank engaged in the business of banking and other related Financial

Activities, filed its return of income declaring the total income of Rs. 27,54,71,550/- in the month of November, 2000. Revised return was filed on 28/03/2002 computing the total income at Rs. (-) 14, 96, 77,930/- The return was selected for scrutiny. Assessment order u/s 143(3) of the Act was accordingly passed on 30/03/2003 determining the total income of Rs. 303,46,40,580/- and raising the income tax demand of Rs. 116,83,36,623/-. Various orders u/s 154 were also passed on the applications made from time to time.

2.4 Aggrieved by the assessment order, the assessee filed an appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee. The order giving appeal effect to CIT(A) order was passed determining the total income at Rs. 6,07,25,078/-. Since the chargeable income as per CIT(A)'s order was less than 30% of the book profits as computed u/s 115JA of the Act, provisions of minimum alternate tax were applied and tax liability of Rs. 16,17,83,708/- was determined.

2.5 While giving effect to CIT(A) order, AO allowed interest of Rs. 66,75,01,532/- u/s 244A of the Act against the assessee's claim of Rs. 87,02,56,100/-. Relying on various decisions including the judgment passed by of Hon'ble Supreme Court in Sandvik Asia Ltd. vs. CIT 280ITR 643(SC), the Ld. CIT(A) upheld the above findings of the AO and dismissed this ground of appeal of the assessee holding as under:-

"I have considered the facts of the case and submissions of the assessee. Interest on excess payment is allowed to the assessee u/s 244A of the Act. This provision of interest is for allowing the simple interest and there is no provision for allowing the simple interest and there is no provision for allowing interest on interest,

whereas, in certain cases where there is inordinate delay in granting refund. Further interest has been allowed by Hon'ble appellate authorities. But there is no inordinate delay in granting refund in the case of the assessed and, therefore, there is no interest on interest is allowable. The assessee has mainly relied on the decision of Hon'ble Supreme Court in the case of Sandvik Asia Ltd.(supra), whereas, Hon'ble Supreme Court has recently held in the case of CIT vs. Gujarat Fluoro Chemicals (2012) 24 Taxman.com 338 that the decision in the case of Sandvik Asia Ltd. needs to be reviewed. Therefore, the ground of appeal of the assessee is rejected”.

2.6 Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before this tribunal.

2.7 After hearing the appellant and the Ld. Departmental Representative, the application for seeking permission to urge the additional ground with regard to application of section 115JB of the Act, was allowed being the legal ground and the appellant was permitted to argue on the additional ground of appeal also.

3. The Ld. Counsel for the assessee submitted that the first ground of the appeal is covered by the decision of the Tribunal in favour of the assessee as the identical issue has been decided in favour of the assessee by the ITAT Mumbai in assessee's own case, ITA 5444, 5445&5446/Mum/2013 for assessment year 2002-03, 2003-04&2006-07 respectively. On the other hand, the Ld. DR relying upon the order of the Ld. CIT(A) submitted that the Ld. CIT(A) has rightly dismissed this issue against the assessee as the principle of estoppel is not applicable in the case of the assessee.

4. We have heard the rival submissions and also perused the record in the light of their contentions. The co-ordinate bench of this tribunal relying on the ratio laid down by the Hon'ble Bombay High Court in Stock Holdings India Pvt. Ltd. v. CIT, WP No. 823 of 2000, has decided the identical issue in favour of the assessee in assessee's own case for the assessment years 2002-03, 2003-2004 and 2006-07, holding as under.

“We have heard the rival submission and also perused the material on record. So far as the contention of the Ld. DR that the issue of interest on self assessment cannot be raised in proceedings u/s 154, cannot be accepted, because it was only after giving effect to the Ld. CIT(A) order and while granting refund, the AO has not granted the interest on self assessment tax. The only course left before the assessee was to file a petition u/s 154. Thus the claim of interest of self assessment tax is maintainable in the proceedings u/s 154. So far as the issue, whether interest should be granted on the amount of self assessment tax paid is now covered by the decision of the Hon'ble Bombay High Court in the case of Stock Holding Corporation of India (supra), wherein the Hon'ble High Court held that tax paid on self assessment would fall within the ambit of section 244A(i)(b). Accordingly the AO is directed to grant interest u/s 244A on the self assessment tax. Thus ground no. 1 as raised by the assessee is treated as allowed”.

5. Respectfully following the decision of the coordinate bench, we set aside the impugned order passed by the CIT(A)) and direct the AO to recalculate the interest in terms of above decision and grant interest u/s 244A of the Act, to the assessee on the self assessment tax. Accordingly, this ground of the appeal of the assessee is allowed for statistical purposes.

6. So far as the additional ground is concerned the coordinate Bench of the Mumbai Tribunal has decided the identical issue in favour of the

assessee in assessee's own case, ITA No 1498/M/2011 for the assessment year 2001-2002 holding as under:-

“10 Following the decisions of the coordinate Benches of this Tribunal, we hold that when the insurance companies, banking companies and electrical generation and distribution companies are treated in the same class as per the provisions of sec.211 of the companies Act in preparing their final accounts, then these companies cannot be treated differently for the purpose of section 115JB and accordingly, the provisions of section 115 JB are not applicable in the case of the assessee.

Accordingly, this issue is decided in favour of the assessee and against the revenue.

6.4 Though, section 115JB has been amended to bring all the companies in its ambit vide finance Act, 2012, w.e.f. 1.4.2013, however, the said amendment is not applicable in the assessment year under consideration.”

7. Respectfully following the decision of the Co-ordinate bench, we decide this issue in favour of the assessee. Accordingly, additional ground of appeal is allowed.

ITA 2284/M/2013 for Assessment Year 2001-2002

The appellant has challenged the impugned order dated 04/01/2013 of CIT(Appeals)-4, Mumbai passed u/s 250(6) of the Act for the assessment year 2001-02 on the following effective ground:-

“That, on the facts and in the circumstances of the case and in the law the learned Deputy Commissioner of Income Tax(herein after referred to as ‘ DCIT’) while giving effect to Commissioner of Income Tax (Appeals) (herein after referred to as ‘ CIT(A)’) order dated 25/03/2011 has erred in granting interest u/s of 244A of Rs. 1584,275,858 as against actual interest of Rs. 1637,412,456 and Hon’ble CIT(A) erred in rejecting the appellant’s ground on

the issue. The Learned DCIT be directed to grant the due interest of Rs. 1637,412,456 and reduce the demand accordingly”.

2. The appellant vide application dated 11.07.2014 sought permission from the Tribunal to urge the following additional ground:-

“The Appellant not being a Company under the Companies Act, 1956 but being a Bank governed by the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and deemed as company under the aforesaid Act cannot be construed to be a company for the purpose of charging the Minimum Alternate Tax u/s 115JB in the light of decision of ITAT, Mumbai in the case of Union Bank of India, and its own case and therefore ought not to be subjected to book profits tax.”

3. After hearing the appellant and the Ld. Departmental Representative, the application for seeking permission to urge the additional ground was allowed being the legal ground and the appellant was allowed to argue on the additional ground of appeal also.

4. The first ground of the present appeal is identical to the first ground of appeal in ITA No 2283/M/2013, discussed above in assessee's own case for Assessment Year 2000-2001 and since we have already decided this issue in favour of the assessee following the decision of the coordinate Bench, we allow this ground of appeal of the assessee and direct the AO to recalculate the interest u/s 244A of the Act on the self assessment tax. Thus ground no. 1 as raised by the assessee is treated as allowed.

5. The Ld. Counsel for the assessee has not pressed the additional ground of appeal pertaining to the applicability of section 115JB of the Act. Therefore, this ground of the appeal is dismissed as not pressed.

ITA 2285/M/2013 for Assessment Year 2003-2004

The assessee has challenged the impugned order dated 30/01/2013 passed by the Ld.CIT(Appeals)-4, Mumbai u/s 250(6) of the Act on the following two grounds.

“1. That, on the facts and in the circumstances of the case and in law, the learned Assistant Commissioner of Income Tax(hereinafter referred to as ‘ACIT) while giving effect to order of Commissioner of Income Tax Appeals (hereinafter referred to as ‘CIT(A)’ dated. 17.02.2011 has erred in not granting credit in respect of advance tax paid by the erstwhile BOI Asset Management Co. Ltd. of Rs. 57,00,000/- as directed by the CIT(A). The Hon’ble CIT(A) erred in directing the learned ACIT to give effect to the direction of CIT(A) and pass the speaking order and directed to allow the credit of advance tax but the same has not been allowed by the learned ACIT. The Learned ACIT be directed to give credit for Rs. 57,00,000 paid by BOI Asset Management and increase the refund of income tax accordingly.

2. That, on the facts and in the circumstances of the case and in the law the learned ACIT while giving effect to CIT(A)’s order dated. 17.02.2011 has erred in granting interest u/s. of 244A of Rs. 1762,554,824 as against actual interest of Rs. 2330,843,835 and Hon’ble CIT(A) erred in rejecting the appellant’s ground on the issue. The learned ACIT be directed to grant the due interest of Rs. 2330,843,835 and increase the refund accordingly.”

2. Ground No. 1 of the appeal is dismissed as not pressed.

3. The second ground of this appeal is identical to the first grounds of appeal in ITA No 2283/M/2013 and ITA 2284/M/2013 in assessee’s own case for Assessment Year 2000-2001 and 2001-2002 respectively and

since we have already decided this issue in favour of the assessee in both the appeals following the decision of the coordinate Bench, we allow this ground of appeal of the assessee and direct the AO to recalculate the interest u/s 244A of the Act on the self assessment tax. Thus this ground of appeal raised by the assessee is treated as allowed for statistical purposes.

Accordingly, all the three appeals filed by the assessee are disposed of.

Order pronounced in the open court on 29th January, 2016

Sd/- (R.C. SHARMA) ACCOUNTANT MEMBER	Sd/- (RAM LAL NEGI) JUDICIAL MEMBER
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मुंबई Mumbai; दिनांक Dated: 29/01/2016

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

Pramila