

**आयकर अपीलीय अधिकरण, "जी" खंडपीठ मुंबई**  
**INCOME TAX APPELLATE TRIBUNAL, MUMBAI-"G", BENCH**  
 सर्वश्री राजेन्द्र, लेखा सदस्य एवं पार्थसारथी चौधरी, न्यायिक सदस्य

Before S/Sh. Rajendra, Accountant Member & Parthasarathy Choudhury, Judicial Member

S N.	ITA NO. & A.Y.	Appellant	Respondent	PAN
<b>Assessment Year -1986-87</b>				
1	4712/Mum/2014	Ranchod Discretionary Family Trust; C/o., Sevantilal N. Shah & Co., 28, Dalamal Chambers, 2nd floor, 17 New Marine Lines, Mumbai-400 020.	ITO 12(2)(1), Mumbai.	AACTR0886 M
2	4713/Mum/2014	Umapati Discretionary Family Trust	ITO 12(2)(1), Mumbai.	AAATU5020 E
3	4714/Mum/2014	Shiv Discretionary Family Trust	ITO 12(2)(1), Mumbai.	AAMTS3206N
4	4715/Mum/2014	Pavanputra Discretionary Family Trust	ITO 12(2)(1), Mumbai.	AACTP2511 R
5	4716/Mum/2014	Narayan Discretionary Family Trust	ITO 12(2)(1), Mumbai.	AABTN7318 K
6	4717/Mum/2014	Rayman Discretionary Family Trust	ITO 12(2)(1), Mumbai.	AACTR0887 L
7	4718/Mum/2014	Vithal Discretionary Family Trust	ITO 12(2)(1), Mumbai.	AABTV6322 R
8	4719/Mum/2014	Tarak Discretionary Family Trust	ITO 12(2)(1), Mumbai.	AACTT1865 A
9	4720/Mum/2014	Nikanth Discretionary Family Trust	ITO 12(2)(1), Mumbai.	AABTN7319 J
10	4721/Mum/2014	Ram Discretionary Family Trust	ITO 12(2)(1), Mumbai.	AACTR0894 H
11	4722/Mum/2014	Radhakrishna Discretionary Family Trust	ITO 12(2)(1), Mumbai.	AACTR0888 F

**निर्धारिती ओर से/Assessee by :Shri Hemanshu Shah**

**राजस्व की ओर से/ Revenue by :Shri Debashis Chanda-(CIT-DR)**

**सुनवाई की तारीख/ Date of Hearing : 27-08-2015**

**घोषणा की तारीख / Date of Pronouncement : 24-11-2015**

**आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश**

**Order u/s.254(1) of the Income-tax Act, 1961 (Act)**

**PER BENCH-खंडपीठ के अनुसार:**

All the above appeals, pertaining to AY.1986-87, have been filed by the respective assesseees against a consolidated order, dated 03.03.2014, of CIT(A)-23, Mumbai. Grounds of appeal in all these appeals are identical and read as under:

1) In law and in facts and circumstances of the Appellant's case, the learned CIT(A) has grossly erred in the points of law and facts.

2) In law and in facts and circumstances of the Appellant's case, the learned CIT(A) has grossly erred in holding that appellant is not entitled to interest on refund of Rs.1,360/-.

3) In law and in facts and circumstances of the Appellant's case, the learned CIT(A) has grossly erred in holding that appellant is not eligible for interest on refund of Rs.5,400/-.

4) In law and in facts and circumstances of the Appellant's case, the ld. Assessing Officer be directed to give refund of all pre-paid taxes with due interest.

5) In law and in facts and circumstances of the Appellant's case, the learned CIT(A) has grossly erred in holding that appellant is not eligible for interest on interest.

6)Your appellant reserves the right to add, alter, amend all or any of the above grounds of appeal as may be advised from time to time.

We would like to mention here that while arguing the lead appeal i.e.ITA/4712/Mum/2014,it was stated by the representatives of both the sides that facts are identical in respect of each of the appeals.Therefore,for the sake of convenience, a consolidated order is being passed to adjudicate the above appeals.

**Brief Facts-(ITA No.4712/Mum/2014):**

2.The assesseees are beneficiaries of K.Kacharadas Patel Specific Family Trust(KKPSFT), having 0.5% interest in parent Trust'.For AY.under appeal, return was filed on 18/06/ 1986, showing total income of Rs.38,740/- and paid taxes of Rs.5,900/-.the AO completed the assessment u/s. 143(3) of the Act on 30.3.1987 determining the income of the assessee at Rs. 45,740/-. However,the assessment was made on protective basis as the income was assessed to tax on substantive basis in the case of main-trust.The main-trust,namely KKPSFT,was agitating the matter in further appeals.Later on,KKPSFT settled the dispute under Kar Vivad Samadhan Scheme(KVSS).In that background,the income in the hands of the assessee-trust were deleted by the AO vide order,dated 28/11/2000,passed u/s.155 of the Act.While computing the income of the assessee at Rs.NIL,the AO allowed the refund as under:

“Total taxes paid	Rs.500/-
Add: Refund of A.Y.84-85 adjusted	Rs.860/-
Bal. refund due	Rs.1,360/-

The assessee vide application,dated 07/12/2000,sought refund of Rs.1,360/-,transferred in the case of the main-trust along with due interest and interest on refund as also interest on interest.It filed a rectification application for interest on refund under section 244A of the Act till the date of refund order for the year under consideration. The AO, while disposing the application filed u/s. 154 of the Act, held that refund for the above AY was allowed vide order dated u/s.155(2), dated 28/11/2000, that the interest on the same was not allowed, that refund had arisen on account of declaration made under KVSS by the main-Trust, refund had arisen in case of beneficiary Trust, that the main Trust had not been paid interest on the disputed income,that the beneficiary Trust could not be allowed on consequential refund, that no claim for the said refund was made in the return of income, that the claim of refund was made only after the KVSS declaration was filed and accepted, that in view of the specific provisions of section 244A of the Act the assessee was not entitled to interest under that section.Finally, the AO rejected the application filed by the assessee-trust and the First Appellate Authority(FAA)confirmed the order of the AO.

3.During the course of hearing before us,Authorised Representative(AR)and the Departmental Representative(DR)agreed that identical issue has been deliberated upon and decided by the Tribunal in other group cases,following the order of the Special Bench,that the Hon' ble Gujarat High Court had upheld the order of the Special Bench on 26.06.2008 in IT appeal Nos.1514 to 1795of 2006(Punitaben K.Patel OSFDT and 284 other cases),Nos. 573-618 and1216-1233of 2007 (Manjulaben Pramodbhai & Ors)and Nos.182,204 of 2002, No.27-30 of 2004(Janak Pramodbhai Patel & Ors).Dimissing the appeals filed by the Revenue,the Hon'ble High Court observed as under :

*“As regards grant of interest on refund, we find that Tribunal was justified in holding that refund should be granted with interest. We are in full agreement with the order of the Special Bench of the Tribunal. We repeat that Revenue should not drag the respondents to unnecessary avoidable litigation”*

We find that while deciding 31 appeals filed by the other trusts,on 25.3.2015,the “F” Bench of the Tribunal had held as under :-

3.3. It is undisputed fact that in view of the substantial assessability of the income in the hands of the main Trust no income is assessable in the hands of these assesseees. Thus, it is the case of the assessee that whatever tax is refunded to the assessee, the assessee is entitled to get interest on the said refund under the provisions of section 244(1A) of the Act. It is the case of the assessee that on similar facts and circumstances in the cases of other beneficiaries there is decision of Special Bench, which is dated 7/7/2006, copy of which is filed at pages 33 to 63 of the paper book and it was decided by the Special Bench that the beneficiaries are entitled to get the interest. The Special Bench while deciding this issue in favour of the assessee has considered the provisions of KVSS 1998 and after considering those provisions it was held that interest was rightly granted to the assessee. In the cases before Special Bench initially such interest was granted by the AO which was withdrawn by the CIT u/s.263 and it was held that interest was rightly granted by the AO. Reference was made to the following observations of the Special Bench.

27. We heard both sides in detail and considered the matter in the light of the earlier orders of the different benches of the Tribunal on the subject and the plethora of materials placed before us along with assessment, appeal and revision orders.

28. The first issue that came up for consideration is whether the dispute regarding the issue involved in these appeals were continued to exist at that point, of time. We find that this question is quite academic. The Main Trusts have sought settlement of their substantive assessments under KVSS which have been accepted and acted upon by the department. That itself showed that the controversy continued and existed at that point of time and there is no doubt that the issue was pending before the High Court in Reference jurisdiction. Therefore, to make the matter clear, we state that the Commissioner of Income-tax was not correct in holding that such a controversy did not exist.

29. We further find that the answer to the controversy cropped up in these cases is available in the relevant instructions issued by the CBDT in the context of Kar Vivad Samadhan Scheme, 1998. We have already seen the relevant question and answer to the question. The CBDT has stated in unequivocal terms that declarations are to be made in respect of substantive assessments. The Board has clarified that the protective demand is not subject to recovery unless it is finally upheld. The Board has further explained that once the declaration in a substantive case or year is accepted, the tax arrear in protective case / year would no longer be valid and will be rectified by suitable orders in the normal course. In the present case substantive assessments have been made by the department in the hands of Main Trusts. Protective assessments have been made in the case of beneficial trusts. Main Trusts have settled the dispute under KVSS. They have paid the tax under KVSS in respect of the assessment completed in their hands on substantive basis. Therefore, in the light of the circular, the corresponding protective assessments made in the hands of beneficial trusts would fade away and the demand raised in those protective assessment would no longer be valid. When the assessment is not subsisting and the demand is not valid, the amount paid by the assessee along with the return subject to protective assessment becomes refundable to the assessee. Therefore, we are of the considered opinion that the assessing officer has rightly accepted the prayers of the assesseees and passed appropriate orders excluding the incomes which have already been considered in the hands of the Main Trusts under KVSS. Therefore, obviously, the assessing officer is justified in following the consequential procedure and making refund to the assesseees.

30. One of the basic principles of taxation is that the income shall not be taxed twice. In the present case, the income under dispute is the same considered in the hands of the Main Trusts and also considered in the hands of the beneficial trusts. Kar Vivad Samadhan Scheme, 1998 was introduced by Government of India to settle the pending litigations at different levels and collect the tax once for all and reach finalities in the matters connected thereto. Even though KVSS was a special scheme, the KVSS did not propose to tax any income twice. Whether under the regular provisions of the Income-tax Act or under the scheme of KVSS what is to be assessed and subjected to tax is the real income once for all. KVSS does not create any artificiality. A case of double taxation of the same income cannot be endorsed under the KVSS. In other words, the Kar Vivad Samadhan Scheme, 1998 does

*not empower the income-tax department to tax the same income more than once. This must be made very clear.*

*31. What are the simple facts available in these cases? The incomes of the main Trust have been distributed to the beneficiary trusts. The beneficiary trusts have filed returns in their individual hands. This position was not accepted by the Revenue. Therefore, substantive assessments have been made in the hands of Main Trusts. In abundant precaution protective assessments have been made in the hands of the respective beneficiary trusts. Suppose the proposition made out by the department was acceptable to the assessee and the substantive assessments made in the hands of the Main Trusts have been accepted by the assessee, what would be the Position of the corresponding protective assessments made in the hands of the beneficiary trusts? The protective assessments would have become invalid as a result of which the Revenue would refund the amount of tax if any paid by the beneficiary trusts while filing the returns of income in their individual capacities. There cannot be any dispute on this proposition. Is it possible to hold that the above position would be disturbed only because of the intervention of KVSS. The Main Trusts have settled their substantive assessments under KVSS which for all practical purposes is equivalent to finally settling the substantive assessments in their hands. The final outcome of the whole process is not different from the substantive assessments having been accepted by the assessee as such or having been settled under an available scheme known as Kar Vivad Samadhan Scheme, 1995. In either case the protective assessments become invalid whereby no demand can be enforced against those protective assessments. The consequence is that if the assessee has paid any amount of tax along with their returns considered for protective assessments, such taxes have to be refunded to them.*

*32. We do not find much force on the reliance placed by the learned standing counsel on the decision of the Gujarat High Court in the case of Saurashtra Cement & Chemical Industries vs. ITO 194 ITR 659. In that case there was no assessment at all and the question of refund was considered in that perspective which is quite different from the present case. The income involved in the substantive assessment as well as in the protective assessments are one and the same. The income has been assessed substantively in the hands of the Main Trusts and the demand subsequently settled under KVSS. It is quite unnecessary to repeat that the income has already been assessed in the hands of the Main Trusts. Therefore, nothing remains thereafter to be assessed in the hands of the beneficiary trusts, as far as the income of Main Trust is concerned. Moreover, a case of assessment can be contemplated in the present cases because the stand taken by the assessee is that the income of the Main Trusts has to be assessed in the hands of the individual beneficiary trusts. It is on the basis of that proposition that the returns were filed by the beneficiary trusts. While returns were filed by the beneficiary trusts in their individual capacities they are in fact offering income for taxation. Section 140A provides that when an assessee files a return of income and where tax is due as per the said return, the tax shall be paid by the assessee before filing the return of income and the proof of such payment of tax shall be accompanied along with the return of income. This is called self-assessment. When an assessee files a return with positive income and remits tax thereon u/s 140A, in fact, an assessment is being contemplated even though it is a "self-assessment". Later on, when it is found that the income covered by the said return is not taxable the tax paid by the assessee in pursuance of that return has to be returned by the Revenue. Therefore, refund of tax is a must in this case. The proposition made by the CIT against the refund of tax is not proper.*

*33. Regarding the grant of interest also, the position is very clear. As already observed in the above paragraph, the refund of tax in the present case is a mandate of law. When such a refund is called for, interest has to be paid as interest is compensatory in nature. It always moves with the principle amount.*

*34. There is no substance in the argument of the Revenue that the delay in the refund was caused because of the conduct of the assessee. In fact, the assessee was questioning the proposition of the Revenue to assess the income in the hands of the Main Trusts. That is why the beneficiary trusts have filed their individual returns of income disclosing the benefits*

received from the main trusts also. But when KVSS was pronounced by the Government of India, it was for the assesseees to decide whether to take benefit out of that or not. Therefore, it is only when KVSS was promulgated, the assessee had an occasion to make a move and settle the dispute. So also the proceedings were locked up in different appellate forums. Therefore, there is no merit in the argument of the Revenue that the delay was caused by the conduct of the assesseees.

35. Therefore, we also find that the assessing officer has rightly granted interest to the assesseees on refunds due to them.”

XXXXXXXXXXXXXXXXXXXXX

3.5. It was further submitted that in one of the cases interest has already been granted by the Revenue and said grant of interest has not been reversed. Reference in this regard was made to the case of M/s. Vruti Discretionary Family Trust, in respect of which AO disallowed the application of the assessee for grant of interest and Ld. CIT(A) restored the matter back to the file of AO to allow the interest as per law and AO vide his order dated 11/2/2010 has allowed such interest. Reference in this regard was made to the papers filed in the paper book as follows:

- (1.) Rectification application of the assessee from pgs. 106 to 108
- (2.) Order passed by Ld. CIT(A) dated 19/9/2008 page 109 to 110 of the paper book.
- (3.) Order giving effect by the AO dated 11/2/2010 pages 111 of the paper book.
- (4.) Notice of demand under section 156 granting interest of Rs.40,238/- page 112 of the paper book.
- (5.) Computation of such interest at pages 113 to 114 of the paper book.

3.6. Thus, it was pleaded by Ld. AR that in view of above submissions the necessary relief should be granted to the assessee. In this manner ground No.2 and 3 were argued by Ld. AR.

4. So far as it relates to Ground No.4, it was submitted by AR that since Revenue has deprived the assessee for long time for granting the interest or refund without any just cause, assessee should also be held entitled for receiving interest on interest.

5. On the other hand, after narrating the facts, it was submitted by Ld. DR that AO has rightfully denied interest to the assessee and referring to the order passed by Ld. CIT(A) it was submitted by Ld. DR that it has been clearly held by Ld. CIT(A) that according to the facts of the case it cannot be said that refund is due to the assessee as a result of any amount having not been paid in pursuance of any order of assessment since, in order under section 143(3) only protective assessment was made by the AO, with the undisputed position of the AO being that income on which the tax was paid by the assessee did not belong to it and hence, the assessee was not liable to the demand on the income of the main Trust. Since the assessee has disclosed the income as its own and had paid the tax on its own volition, and in order to protect interest of Revenue the AO only made the protective assessment. No enforceable demand was created on the assessee. According to well settled position of law, in protective assessment demand is only contingent demand and not legally enforceable and thus, in reality assessee did not pay tax in pursuance of any order of assessment. Ld. DR further referred to the decision of Hon'ble Supreme Court in the case of Modi Industries Ltd. vs. CIT, 216 ITR 759 referred to in para-6.2.3 of order of Ld. CIT(A) pleaded that the meaning of regular assessment in section 214, would be that a tax payer is entitled to claim interest on the excess amount advance tax paid only with reference to assessed tax determined on regular assessment and further no interest can be claimed under section 214 beyond the date of regular assessment. In this manner Ld. DR pleaded that interest has rightly been denied by Ld. CIT(A).

6. So far as it relates to ground No.4, it was submitted by Ld. DR that according to decision of Hon'ble Supreme Court in the case of CIT vs. Gujarat Flouro Chemicals, 358 ITR 291 (SC)w.e.f. 1/4/1989 the interest which can be granted to the assessee on refund as per section 244A would be the interest provided in that section and no other interest on such statutory interest can be provided. Thus, it was pleaded by Ld. DR that there is no provision according to which assessee can be granted interest on interest.

7. We have heard both the parties and their contentions have carefully been considered. In the present cases assessee is common to the assessee with regard to whom, earlier Special Bench had decided the issue that assessee is entitled to interest on the refund. Special Bench order was on the merits of the issue as well as on the validity or otherwise of section 263 of the Act which was invoked by the CIT to deny these assessee benefit of interest which was already granted by the AO. Special Bench has decided this issue in favour of the assessee and relevant observation of Special Bench have already been reproduced above.

7.1. The Revenue challenged the aforementioned order of Special Bench before Hon'ble Gujarat High Court and Gujarat High Court has not only upheld the decision of Special Bench on the issue regarding grant of interest but Hon'ble High Court has also directed Revenue authorities that they should not drag the assessee to unnecessary avoidable litigation. In spite of such a warning given by the Court to the Revenue, the Department again in the present cases has dragged these assessee in litigation for non-granting of the interest. The relevant observations of their Lordships of Gujarat High Court have already been reproduced. It is made clear that the facts of the present cases and those which were decided by the Special Bench and Hon'ble Gujarat High Court are pari-materia and this fact was not disputed by the Revenue. The AO has adopted a view which is contrary to the decision of Special Bench and the decision of the Hon'ble Gujarat High Court and as he has again made the disallowance by rejecting the rectification application of the assessee. Thus, the conduct of the AO is against the decision rendered by Special Bench. Similarly, Ld. CIT(A) has disregarded the Special Bench by simply holding that the same would not be applicable. According to Ld. CIT(A) the said order was in respect of section 244A. We don't find any justification in such disregard shown by Ld. CIT(A). Therefore, in the facts & circumstances of the case, such conduct of the Revenue is neither according to the accepted position of law settled by the higher judicial forums nor it is appreciable for the reason that Hon'ble Gujarat High Court has already directed the Revenue not to drag the assessee in unnecessary avoidable litigation.

7.2. The issue regarding grant of interest to the assessee is clearly covered by the decision of the Special Bench as well as Hon'ble Gujarat High Court which have not been contended to be reversed or modified. Therefore, we direct the Revenue to grant the interest to the assessee and Ground No.2 & 3 are allowed."

7.3. Before parting with Ground Nos. 2 & 3 of the assessee's appeal, we may mention here that it is a proper case where cost can be imposed on the Department in favour of the assessee for not following the directions of Hon'ble Gujarat High Court (supra), but keeping in view that no such request was made by Ld. AR, we restrain ourselves to award such cost.

8. Now coming to Ground No.4, this issue has now been settled by Hon'ble Supreme Court by the decision relied upon by Ld. DR. Therefore, we hold that assessee is not entitled to interest on interest.

9. In the result, appeals filed by these assessee are partly allowed in the manner aforesaid.

4. We further find that on 7.9.2015, the Tribunal had decided 35 appeals of the same group wherein identical grounds were raised in ITA 6090 – 6124/Mum/2013 AY 84-85. In that matter the order of the Tribunal dated 25/3/2015 was followed. Respectfully following the above, we hold that the conduct of the Assessing Officer(AO) is against the decision of the Special Bench and Hon'ble Gujarat High Court, that the issue regarding grant of interest to the assessee is covered by the Hon'ble Court. Therefore, AO is directed to grant interest to the assessee. Ground Nos. 2 -4 are allowed in favour of the assessee. Following the order of the Tribunal dated.25.03.2015(supra), we decide Ground No.5 against the assessee.

5. Following the above order for ITA/4712/Mum/2014, we allow all the other appeals in favour of the assessee-trusts in part.

As a result appeals filed by the all the assessee stand partly allowed .

फलतः सभी निर्धारितियों द्वारा दाखिल की गई अपीलें अंशतः मंजूर की जाती हैं.

Order pronounced in the open court on 24<sup>th</sup> November, 2015.

आदेश की घोषणा खुले न्यायालय में दिनांक 24<sup>th</sup> नवंबर, 2015 को की गई।

Sd/-

Sd/-

(पार्थसारथी चौधरी / Parthasarathy Choudhury)

(राजेन्द्र / RAJENDRA)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई/Mumbai, दिनांक/Date: 24.11.2015

व.नि.स. Jv.Sr.PS.

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR “ G” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, ए खंडपीठ, आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.