



IN THE INCOME TAX APPELLATE TRIBUNAL
"J" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.5756/Mum./2016
(Assessment Year : 2008-09)

Dy. Commissioner of Income Tax
Circle-2(2)(1), Mumbai

..... Appellant

v/s

State Bank of Indore
(Now merged with State Bank of India)
SBI Bhavan, Madam Cama Road
Nariman Point, Mumbai 400 021
PAN – AAACS8577K

..... Respondent

Revenue by : Ms. Aarju Garodia
Assessee by : Shri C. Naresh

Date of Hearing – 28.02.2018

Date of Order – 28.02.2018

ORDER

PER SAKTIJIT DEY, J.M.

This is an appeal by the Department against order dated 1st June 2016, passed by the learned Commissioner (Appeals)-5, Mumbai, for the assessment year 2008-09.

2. The only effective ground raised by the Revenue, reads as under:-

"1. On the facts and in the circumstances of the case and in law the learned CIT(A) erred in directing the Assessing Officer to adjust the refund granted, first towards interest amount refundable and thereafter considered the balance against the tax amount refundable which will lead to excess grant of interest, contrary to the legislative provision and law which is regularly followed by the Department."

3. Brief facts are, the assessee is a public sector Bank. For the assessment year under dispute, the assessee filed its return of income on 29th September 2008, declaring total income of ₹ 356,52,97,040. Subsequently, the assessee filed revised return of income on 11th November 2009, declaring total income of ₹ 354,90,95,760. Assessment in case of the assessee was completed under section 143(3) of the Act vide order dated 28th December 2010, determining the total income at ₹ 512,39,20,130, after making certain additions / disallowances including disallowance under section 14A of the Act. Against the assessment order so passed, the assessee went in appeal before the learned Commissioner (Appeals) and thereafter to the Tribunal. The Tribunal, while disposing off assessee's appeal in ITA no. 376 and 479/Ind./2012, dated 31st October 2014, restored the matter back to the Assessing Officer with a direction to re-work out the disallowance to be made under section 14A of the Act. In pursuance to the directions of the Tribunal, the Assessing Officer completed the assessment vide the impugned assessment order determining the total income at ₹ 355,01,51,090. In view of determination of income made by the Assessing Officer as aforesaid, assessee became entitled to refund of excess tax paid. The Assessing Officer while computing the refund granted interest thereon under section 244A of the Act at ₹ 16.98 crore as against assessee's claim of ₹ 17.69 crore. The

difference arose on account of the fact that the Assessing Officer adjusted the refund granted first against the tax refund due and leaving aside the interest on which no further interest was granted. The assessee challenged the methodology adopted by the Assessing Officer in computing interest under section 244A of the Act by filing an appeal before the first appellate authority.

4. The learned Commissioner (Appeals) following the decision of the first appellate authority in case of State Bank of Saurashtra, which in turn, has followed the decision of the Hon'ble Delhi Court in *India Trade Promotion Organisation v/s CIT*, 361 ITR 646 (Del.) directed the Assessing Officer to compute the refund in a manner so that the refund granted should be first adjusted against the interest refund due and balance, if any, should be adjusted against tax refund due.

5. We have considered rival submissions and perused materials on record. Learned Counsels appearing for both the parties have conceded that the issue in dispute stands decided in favour of the assessee in the order passed by the Tribunal in case of *DCIT v/s State Bank of Saurashtra*, ITA no.5336/Mum./2015 and others dated 20th November 2017. On a perusal of the aforesaid order of the Co-ordinate Bench, we find that the Tribunal relying upon its own order passed in case of the same assessee has approved the decision of the learned Commissioner (Appeals) in directing the Assessing Officer to

compute the refund in a manner so that the refund granted should be first adjusted against the interest refund due and balance, if any, should be adjusted against the tax refund due. There being no material difference in fact nor any contrary decision having been brought to our notice by the learned Departmental Representative, respectfully following the aforesaid decision of the Co-ordinate Bench, we uphold the order of the first appellate authority by dismissing the ground raised by the Revenue.

6. In the result, Revenue's appeal is dismissed.

Order pronounced in the open Court on 28.02.2018

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 28.02.2018

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Asstt. Registrar/Sr.P.S)
ITAT, Mumbai