

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

**BEFORE SHRI S. RIFAUR RAHMAN (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 236/MUM/2016  
Assessment Year: 1995-96**

M/s Indian Aluminium Co. Ltd., (Since merged with Hindalco Industries Ltd.), Century Bhavan, Dr. Annie Besant Road, Worli, Mumbai – 400025 PAN: AAACI5375F	<b>Vs.</b>	The DCIT, Central Circle – 1(4), 902, Old CGO Bldg., Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Mahavir Jain (DR)  
Revenue by : Shri Vijay Kumar Jaiswal (DR)

Date of Hearing: 12/09/2019  
Date of Pronouncement: 30/10/2019

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against the order dated 20.10.2015 passed by the Commissioner of Income Tax (Appeals) -12 (for short the CIT (A)), Mumbai, for the assessment year 1995-96, whereby the Ld. CIT (A) has dismissed the appeal filed by the assessee against the order passed u/s 154 of the Income Tax Act, 1961 (for short the 'Act').

2. In this case, the appellant/assessee filed rectification application u/s 154 of the Act, pointing out that in the order giving effect to the order passed by the ITAT, interest u/s 244A has not been computed properly and the interest due has not been adjusted first with the refund granted. The AO rejected the application holding that there is no mistake apparent from the order to rectify the same. The assessee challenged the order passed by the AO before the Ld. CIT(A). The Ld. CIT(A) after hearing the assessee dismissed the

appeal of the assessee and confirmed the order passed by the AO. The assessee is in appeal before the Tribunal against the said findings.

3. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

1. *“On the facts and circumstances, Ld. CIT (A) erred in dismissing the appeal of the appellant without considering the facts and circumstances of the case,*
2. *That the Ld. CIT (A) erred in ignoring the plea of the appellant that short grant of interest is being a mistake apparent from record should have been rectified by the AO u/s 154.*
3. *That the Ld. CIT (A) erred in rejecting the claim of the appellant with respect to method of calculation of interest u/s 244A, wherein it was contended that refund granted should be first adjusted with the interest amount due to appellant as per the observations of Apex Court in the case of Sandvik Asia Limited and also as per observations of the Delhi High Court in the case of India Trade Promotion Organization vs. CIT.*
4. *That the Ld. CIT (A) erred in observing that the appellant has not demonstrated the fact of unlawfully withholding the refund or interest by the department completely ignoring the fact that appellant has worked out the interest as per the observations of Delhi High Court in the case of India Trade Promotion.*
5. *That the Ld. CIT (A) erred in ignoring the plea of the appellant that the issue before them is covered by Hon’ble ITAT decision in appellant’s own case and order has been passed without affording any opportunity to the appellant regarding submission of working.”*

4. At the outset, the Ld. counsel for the assessee submitted that this issue is covered by the decision of the ITAT in assessee’s own case for the assessment years 1996-97, 2000-01 and 2001-02. The Ld. counsel further submitted that since the findings of the Ld. CIT(A) is contrary to the decision of the Tribunal, the same is liable to be set aside. The Ld. counsel invited our attention to the findings of the Hon’ble Delhi High Court in the case of *India*

*Trade Promotion Organisation vs. CIT*, 361 ITR 646 which has been followed by the Tribunal.

5. On the other hand, the Ld. departmental representative (DR) admitted that the ITAT has directed the AO to adjust the refund in accordance with the ratio laid down by the Hon'ble Delhi High Court referred above, however, supported the concurrent findings of the authorities below.

6. We have carefully gone through the entire relevant material on record in the light of the rival submissions of the parties including the cases relied upon by the Ld. counsel and the authorities below. As pointed out by the Ld. counsel in assessee's Appeals ITA No 2080,342 & 343/Mum/2013 for the assessment years 1996-97,2000-01 & 2001-02, one of the issues were identical to the issue raised by the assessee in the present appeal. The coordinate Bench after hearing the rival contentions allowed the said ground of appeal for statistical purposes and directed the AO adjust the refund in question in accordance with the principles laid down by the Hon'ble Delhi High Court in the case of *India Trade Promotion Organisation vs. CIT*, (supra). The findings of the coordinate Bench read as under:

*"9. After considering the impugned order and also the order of the Hon'ble Delhi High Court, it is seen that the Hon'ble High Court after detail analysis and discussion has held that, when the revenue does not pay full amount of refund, but part of amount is paid, they will be liable to pay interest on the balance outstanding amount, which consist, of tax paid on the interest, which is payable till the payment of the part amount and interest payable on the principal amount, which remained outstanding thereafter. The Hon'ble High Court after analyzing the various decisions and also the relevant section 244A, had observed and held as under:-*

*"The words used in section 244A are "where refund of any amount becomes due and payable to the assessee under the Act", the assessee shall be entitled to receive in addition to the said amount simple interest calculated in the manner stipulated. The Legislature has not used the words "tax paid" or "the principal amount of tax paid". The words used by the Legislature are "any amount" and "said amount". The words are, therefore, much wider and broader than the tax amount,*

*which is to be refunded. The words “any amount” would include within its scope and ambit the interest element, which has accrued and is payable on the date of the refund. Thus, when the Revenue does not pay full amount of refund but part amount is paid, they will be liable to pay interest on the balance outstanding amount. The balance outstanding amount may consist of the tax paid or the interest, which is payable till the payment of the part amount and interest payable on the principal amount, which remained outstanding thereafter.....*

*15 A reading of the aforesaid passage from the decision of the Supreme Court in R.E.G. Ltd. (supra) indicates that it would be incorrect and improper to regard payment of interest when part payment is made as interest on interest. What has been elucidated and clarified by the Supreme Court is that when refund order is issued, the same should include the interest payable on the amount, which is refunded. If the refund does not include interest due and payable on the amount refunded, the Revenue would be liable to pay interest on the shortfall. This does not amount to payment of interest on interest. An example will clarify the situation and help us to understand what is due and payable under section 244A of the Act. Suppose the Revenue is liable to refund Rs.1 lakh to an assessee with effect from April 1, 2010, the said amount is refunded along with interest due and payable under section 244A on March 31, 2013, then no further interest is payable. However, if only Rs. 1 lakh is refunded by the Revenue on March 31, 2013, and the interest accrued on Rs. 1 lakh under section 244A is not refunded, the Revenue would be liable to pay interest on the amount due and payable but not refunded. Interest will not be due and payable on the amount refunded but only on the amount which remains unpaid, i.e, the interest element, which should have been refunded but is not paid. In another situation where part payment is made, section 244A would be still applicable in the same manner. For example, if Rs. 60,000 was paid on March 31, 2013, the Revenue would be liable to pay interest on Rs. 1 lakh from April 1, 2010, till March 31, 2013, and thereafter on Rs.40,000. Further, interest payable on Rs. 60,000, which stands paid, will be quantified on March 31, 2013, and on this amount, i.e., interest amount quantified, the Revenue would be liable to pay interest under section 244A till payment is made.*

*The aforesaid manner of computation is not only applicable to cases where the Revenue has to pay interest on refund, but is equally applied when an assessee is in default and interest is payable under section 220(2) of the Act. Interest payable under section 234B and section 234C become part of the demand notice issued under section 156 and it is on this amount, i.e., the tax payable plus interest payable under sections 234B and 234C that interest under section 220(2) is calculated from the date mentioned in the notice of demand till the date of actual payment. Under the Explanation to section 140A(1), it is stipulated where the amount paid by an assessee under self - assessment falls short of the aggregate amount of tax and interest aforesaid, the amount paid shall first be adjusted towards the interest payable and the balance, if any, shall be adjusted towards the tax payable. The interpretation given by us follows the same principle, when the Revenue defaults and makes part payment of the amount refundable. The aforesaid interpretation also ensures that the Assessing Officer/Revenue refund the entire amount, which is due and payable, including interest payable under section 244A. It discourages part payment. There is no other provision under the Act under which an Assessing Officer/Revenue can be made liable to pay interest when part payment is made and the entire amount, which is refundable is not paid to the assessee. Otherwise the Assessing Officer/Revenue can refund the principal amount and not pay the interest component under section 244A for an unlimited period with impunity and without any sanction, which would amount to granting premium to a non-compliance with law.”*

*Thus, respectively following the aforesaid principle we direct the AO to adjust the refund in line of the principle laid down by the Hon'ble Delhi High Court. Accordingly, assessee's ground no. 3 and additional ground is treated as partly allowed for statistical purpose.”*

7. The coordinate Bench has dealt with the identical issue in assessee's own appeal for the assessment year 1996-97 and vide order dated 11.02.2015 the Tribunal has directed the AO to adjust the refund in accordance with the principle laid down by the Hon'ble Delhi High Court referred above. Since, there is no material change of facts in the present case and since the findings of the Ld. CIT(A) are not in accordance with the decision of the coordinate

Bench of the Tribunal, we find merit in the contention of the Ld counsel for the assessee. Hence, respectfully following the decision of the coordinate Bench rendered in assessee's own appeal aforesaid allow the appeal of the assessee for statistical purposes and set aside the impugned order passed by the Ld. CIT(A). Accordingly, we direct the AO to adjust the refund in line of the principle laid down by the Hon'ble Delhi High Court in the case of *India Trade Promotion Organisation vs. CIT*, (supra).

In the result, appeal filed by the assessee for assessment year 1995-96 is allowed for statistical purposes.

Order pronounced in the open court on 30<sup>th</sup>.October, 2019.

Sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 30 /10/2019

Alindra, PS

**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