

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” Bench, Mumbai**

**Before Shri Pramod Kumar, VicePresident  
and Shri Ravish Sood, Judicial Member**

**ITA No.2847/Mum/2019  
(Assessment Year: 2015-16)**

Tata Steel Limited  
Bombay House,  
24, Homi Mody Street,  
Fort, Mumbai 400 001

Vs.

Principal Commissioner of Income Tax-2(3)(1),  
Room No. 552, 5<sup>th</sup> Floor,  
Aayakar Bhavan, M.K. Marg,  
Mumbai 400 020.

PAN – AACT2803M

**(Appellant)**

**(Respondent)**

Appellant by: Shri Kirit Kamdar, A.R  
Respondent by: Shri R. Manjunatha Swamy, CIT D.R  
Date of Hearing: 15.10.2019  
Date of Pronouncement: 08.01.2020

**ORDER**

**PER RAVISH SOOD, JM**

The captioned appeal filed by the assessee is directed against the order passed by the Principal Commissioner of Income Tax-2, Mumbai (for short ‘Pr.CIT’) under Sec. 263 of the Income Tax Act, 1961 (for short ‘Act’) dated 28.03.2019 for A.Y 2012-13. The assessee has assailed the impugned order on the following grounds of appeal before us:-

Sr. No.	Ground (s)	Amount (s) of Disallowance
1.	The Learned Principal Commissioner of Income-tax [“Ld. PCIT”] erred in revising, purportedly under Sec.263, the assessment Order “u/s. 143(3) r.w.s. 144C (13) of the I.T. Act, 1961”, dated 27 <sup>th</sup> February, 2017, of the learned Assessing Officer [“Ld. A.O”].	Rs.41,70,51,091  (Tax Effect Rs.13,53,12,226/-)
	<b>GROUND (S) ON JURISDICTION</b>	Amount (s) of Disallowance
2.	<u>Without prejudice</u> to the generality of the foregoing, the Ld. PCIT’s Revisional Order is without jurisdiction and illegal for the following reasons:  (i) The initiation of the proceedings under Sec.263 was without jurisdiction, inasmuch as that provision, in terms, authorizes the authorities specified therein to revise only an “..... order passed.....by the Assessing Officer.....” <u>Not</u> an order passed by the Assessing Officer in pursuance of the directions of the Learned Dispute Resolution Panel (“Ld.	Rs.41,70,51,091  (Tax Effect Rs.13,53,12,226/-)

	<p>DRP”).</p> <p>(ii) The assessment Order dated 27<sup>th</sup> February, 2017 was neither erroneous nor prejudicial to the interests of the Revenue, having regard to the fact that the Ld. A.O had followed decisions of the jurisdictional Bombay High Court and of the Jurisdictional Mumbai Bench of the Appellate Tribunal which were binding on him.</p> <p>(iii) The Id. PCIT’s rejection of the Assessee’s submission to him that since the Ld. A.O had made power enquiries before passing the Assessment Order, proceedings under Sec.263 could not have been invoked, is manifestly erroneous in law, inasmuch as such rejection is founded on the Ld. PCIT’s following findings, each of which is unsupported by any evidence and each of which is, therefore, perverse:</p> <p>(a) “In the instant case, it is found that the A.O. passed the assessment order without enquiry and examination as to the applicability of deductions claimed under the head IFOs were (sic) required in facts and circumstances of the case”;</p> <p>(b) “In the instant case the A.O. failed to apply his mind on all perspective..”</p> <p>(iv) The Id. PCIT’s determination that the Id A.O passed the Assessment Order “without enquiry and examination” is manifestly perverse and unsustainable, also for the reason that the Id. A.O had allowed the netting off of interest after consideration of the Assessee’s detailed submission made vide the Assessee’s letter dated 2<sup>nd</sup> December, 2015</p> <p>(v) In any event, since a regular assessment had been made under Section 143(3) and that, too, in pursuance of the directions of the DRP, a presumption arises that the assessment order has been made upon application of mind {<u>CIT Vs. Honda Siel Power Products Ltd. [2011] 333 ITR 547 (Del)</u>}. Accordingly, the Id. A.O having, after application of mind, taken one of two views available to him, his assessment order cannot be said to be erroneous and much less prejudicial to the interests of the revenue within the meaning of Sec.263, and the Commissioner’s purported revision of that order under Sec.263 is without jurisdiction.</p> <p>(vi) The Id. PCIT erred in following the CIT(A)’s Order in the case of Tata Sons, in preference to the following 5 decisions of the jurisdictional Bombay High Court and the Jurisdictional Mumbai Bench of the Appellate Tribunal, which decisions were cited before him and which were binding on him:</p> <p>(a) The Director of Income Tax (Intl Taxation) V. Bank of America NT &amp; SA (Bombay High Court) (ITA No. 177 of 2012 dated 3<sup>rd</sup> July, 2014)  [Affirmative Appellate Tribunal’s decision at (ii) below].</p> <p>(b) DCIT V. Bank of America NT &amp; SA [2011-TII-114-ITAT-Mum-INTL] dated 27<sup>th</sup> April, 2011</p> <p>(c) Credit Agricole Corporate and Investment Bank V. ADIT (Trib-Mum)  (Order dated 10<sup>th</sup> December, 2014 in ITA Nos. 724 &amp; 1135/Mum/2011 and 4116/Mum/2014, along with CO. No.220/Mum/2013)</p> <p>(d) Superplaza Mercantile Co. P. Ltd. Vs. ACIT (Trib- Mum)  (Order dated 27<sup>th</sup> April, 2015 in ITA No.2100/Mum/2012)</p>	
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	(e) Lupin Ltd. V. ACIT [2018] 94 taxmann.com 282 (Mumbai – Trib) Dated 27 <sup>th</sup> April, 2018	
GROUND (S) ON MERITS Netting Off of Interest		
3.	<p>In holding that netting off of interest is not allowable, the Ld. PCIT erred in the following respects:</p> <p>(i) He erred in not following the following decisions of the Bombay High Court and of the Mumbai Bench of the Appellate Tribunal, which were cited before him and which were binding on him:</p> <p>(a) The Director of Income Tax (Intl Taxation) V. Bank of America NT &amp; SA (Bombay High Court ) (ITA No.177 of 2012 dated 3<sup>rd</sup> July, 2014) [Affirmative Appellate Tribunal's decision at (ii) below]</p> <p>(b) DCIT v. Bank of America NT &amp; SA [2011 – TII-114-ITAT-Mum-INTL] Dated 27<sup>th</sup> April, 2011</p> <p>(c) Credit Agricole Corporate and Investment Bank V. ADIT (Trib – Mum) (Order dated 10<sup>th</sup> December, 2014 in ITA Nos. 724 &amp; 1135/Mum/2011 and 4116/Mum/2014, along with CO No. 220/Mum/2013)</p> <p>(d) Superplaza Mercantile Co. P. Ltd. V. ACIT (Trib-Mum) (Order dated 27<sup>th</sup> April, 2015 in ITA No. 2100/Mum/2012)</p> <p>(e) Lupin Ltd. V. ACIT [2018] 94 taxmann.com 282 (Mumbai – Trib) Dated 27<sup>th</sup> April, 2018</p> <p>(ii) He erred in following the CIT(A)'s Order in the case of Tata Sons, in preference to the aforesaid binding decisions of the jurisdictional Bombay High Court and of the jurisdictional Mumbai Bench of the Appellate Tribunal.</p> <p>(iii) He erred in holding that “the interest charged under income tax Act assumes the character of tax”, which determination flies in the face of the following judicial precedents which were binding on him:</p> <p>(a) Harshad Shantial Mehta V. Custodian &amp; Others [1998] 231 ITR 871 (SC)</p> <p>(b) CIT Vs. P.S. Hathiramani [1994] 207 ITR 483 (Bom)</p> <p>(c) CIT v. Oryx Finance and Investment Pvt. Ltd. [2017] 395 ITR 745 (Bom)</p>	<p>Rs. 41,70,51,091</p> <p>(tax Effect Rs.13,53,12,226)</p>

2. Briefly stated, the assessee company which is engaged in the business of manufacturing of iron and steel bearings, ferro alloys, excavating minerals and sale of power etc. had e-filed its return of income on 29.11.2012, declaring a total income of Rs. 9598,20,66,309/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. Subsequently, the assessee had on 31.03.2016 entered into an “Advance Pricing Agreement” (for short ‘APA’) with the CBDT in terms of Sec. 92CC of the Act. As the APA had a bearing on the year under consideration i.e A.Y 2012-13, therefore, the assessee had pursuant to the provisions of Sec. 92CD e-filed a modified return of income on

27.06.2016, revising its total income at Rs. 9599,20,17,046/-. Thereafter, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act. The assessment was framed by the A.O vide his order passed under Sec. 143(3) r.w.s 144C(13), dated 24.02.2017 and the income of the assessee company was assessed at Rs. 10280,98,11,410/-.

3. The Pr. CIT after the culmination of the assessment proceedings called for the records of the assessee. On a perusal of the records, the Pr. CIT observed that the assessee after netting the interest received on income tax refund of Rs. 44,24,14,839/- against the interest paid u/ss. 234B and 234C of Rs. 41,7,51,091/-, had offered for tax the balance amount of interest received on income tax refund of Rs. 2,53,63,748/- as its income from 'Other sources'. Observing, that the aforesaid claim of deduction that was based on netting of the interest paid was not as per the provisions of the Act, the Pr. CIT held a conviction that the failure on the part of the A.O to disallow the said claim of deduction had rendered the assessment framed by him as erroneous insofar it was prejudicial to the interest of the revenue. On the basis of his aforesaid observations the Pr. CIT called upon the assessee to explain as to why the assessment framed by the A.O under Sec. 143(3) r.w.s 144C(13), dated 24.02.2017 may not be revised under Sec 263 of the Act. In reply, the assessee tried to impress upon the A.O that the netting off the interest received on income-tax refund against the interest paid to the same party i.e Government of India was in conformity with the settled position of law. Also, the assessee objected to the jurisdiction assumed by the Pr. CIT for revising the assessment order of the A.O under Sec. 143(3) r.w.s 144C(13), dated 24.02.107, for the reason, that the same was passed pursuant to the directions of the DRP. However, the Pr. CIT was not persuaded to subscribe to the aforesaid explanation of the assessee. Observing, that alike the income-tax payment the statutory interest payment was also not allowable as a deduction, the Pr. CIT held a conviction that the failure on the part of the A.O to disallow the assessee's claim of netting off the interest paid against the interest received on income tax refund had rendered his order passed under Sec. 143(3) r.w.s 144C(13), dated 24.02.2017 as erroneous insofar it was prejudicial to the interest of the revenue. Also, the Pr. CIT did not find favour with the assessee's claim that the assessment order passed by the A.O under Sec. 143(3) r.w.s 144C(13), dated 24.02.2017, having been passed pursuant to the directions of the DRP would fall beyond the realm of his revisional jurisdiction under Sec. 263 of the Act. Accordingly, on the basis of his

aforesaid observations, the Pr. CIT in exercise of the powers vested with him under Sec. 263, directed the A.O to re-compute the income of the assessee after disallowing the aforesaid claim of deduction of interest paid u/ss. 234B and 234C of Rs. 41,70,51,091/-.

4. Aggrieved, the assessee had assailed before us the order passed by the Pr. CIT under Sec. 263 of the Act. The Id. Authorised representative (for short 'A.R') for the assessee took us through the facts of the case. The Id. A.R took us through the relevant pages of the assesses 'Paper book' (for short 'APB') which revealed the basis for arriving at the net income-tax refund of Rs. 2,53,63,748/- by the assessee. It was further submitted by the Id. A.R that if the time limitation for passing of the order under Sec. 263 was to be reckoned from the date of the draft assessment order, then the same was barred by limitation. As regards the netting off the interest received on income tax refund of Rs. 44,24,14,839/- against the interest paid u/ss. 234B and 234C of Rs. 41,7,51,091/-, it was submitted by the Id. A.R that the same was well in order. In order to support his aforesaid contention the Id. A.R relied on the judgment of the Hon'ble High Court of Bombay in DIT(IT) Vs. Bank of America NT & SA [ITA 177 of 2012](Bom). Also, reliance was placed on the orders of the ITAT, Mumbai in the case of viz. (i). DCIT Vs. Bank of America NT & SA [ITA No. 141/Bom/96](Mum);(ii). Superplaza Mercantile Co. P. Ltd. Vs. ACIT [ITA 2100/Mum /2012] (Mum);and (iii). Credit Agricole Corporate & Investment Bank Vs. ADIT [ITA 724/Mum /2011](Mum). It was further submitted by the Id. A.R that the aforesaid judgment of the Hon'ble jurisdictional High Court and the orders of the coordinate benches of the Tribunal were available at the time when the A.O had framed the assessment vide his order passed under Sec. 143(3) r.w.s 144C(13), dated 24.02.2017. It was thus the claim of the Id. A.R that as the view taken by the A.O fell within the four corners of the aforesaid judicial pronouncements, therefore, the same could not be held as erroneous within the meaning of Sec. 263 of the Act. In order to drive home his contention that a plausible view arrived at by an A.O cannot be dislodged by the revisional authority in exercise of powers vested with him under Sec. 263 of the Act, the Id. A.R had relied on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Max India Ltd. (2007) 295 ITR 282 (SC).

5. Per contra, the Id. Departmental representative (for short 'D.R') relied on the order passed by the Pr. CIT under Sec. 263 of the Act. It was submitted by the Id. D.R, that as the netting off the interest received on refund against the interest paid u/ss. 234B and 234C was

not permissible under law, therefore, the Pr. CIT taking cognizance of the said fallacy in the assessment order, which had rendered the same as erroneous insofar it was prejudicial to the interest of the revenue had rightly directed the A.O to recompute the income of the assessee after disallowing the aforesaid claim of deduction.

6. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. As is discernible from the orders of the lower authorities, the assessee company after netting off the interest received on income tax refund of Rs. 44,24,14,839/- against the interest paid U/ss. 234B and 234C of Rs. 41,7,51,091/-, had offered the balance amount of interest on income tax refund of Rs. 2,53,63,748/- as its income from 'Other sources'. The A.O vide his assessment order passed under Sec. 143(3) r.w.s 144C(13), dated 24.02.2017, had allowed the aforesaid claim of netting off the interest received on income-tax refund against the interest paid by the assessee U/ss. 234B and 234C. Observing, that the aforesaid claim of deduction/netting of the interest paid was not as per the provisions of the Act, the Pr. CIT was of the view that the failure on the part of the A.O to disallow the said claim of deduction had rendered the assessment framed by him vide his order passed under Sec. 143(3) r.w.s 144C(13), dated 24.02.2017 as erroneous insofar it was prejudicial to the interest of the revenue. As observed by us hereinabove, the claim of the assessee that the assessment order under Sec. 143(3) r.w.s 144C(13), dated 24.02.2017, having been passed by the A.O pursuant to the directions of the DRP would fall beyond the realm of his revisional jurisdiction under Sec. 263 of the Act, also did not find favour with the Pr. CIT.

7. We have have deliberated at length on the issue under consideration and find that the issue that an assessee is well within his right to 'set off' the interest received on the income tax refund against the interest paid on the taxes to the income tax department is squarely covered by the judgment of the **Hon'ble High Court of Bombay** in the case of **DIT Vs. Bank of America NT & SA [ITA No. 177 of 2012, dated 03.07.2014]**. We find that the Hon'ble High Court after deliberating at length on the issue under consideration had observed as under:-

"3. Even with regard to the question No. 2 we do not find that it is a substantial question of law. The Tribunal found that the assessee Bank received interest on refund of taxes paid. It also paid interest on the taxes which were payable. The Assessee sought to set off the interest paid against the interest received and offered the net interest received to tax. We do not see that such findings of the Tribunal are vitiated in law. All

that the Tribunal has done earlier and now is that in the case of this Assessee simply because the exercise out by it does not result in loss of revenue and there could not be any prohibition for the same, allowed it. That is how the Assessing officer's order is set aside. We do not see how any larger controversy or question arises for our consideration. Mr. Pinto would refer to Section 57 of the Income Tax Act, 1961 in that regard and submit that this course would be adopted by other Assesseees as well and in that even the order passed by this Court would come in the way of the revenue in investigating and probing such exercise by other assesseees.

4. We do not see how this order can be cited as precedent inasmuch as the Assessee before the Tribunal and before us paid interest to the Income Tax Department amounting to Rs.10,26,906/-. The Assessee claimed that this was business expenditure and this should have been allowed. The Assessee has received the interest of Rs.1,07,57,930/-. It was submitted that the amount of interest paid by the Assessee should have been allowed to be set off against the interest deposited with the Department and taxed in the hands of the Assessee. The argument was that the interest paid to and received from is the same party i.e. Government of India and therefore, both transactions should be taken together."

Apart from that, we find that the aforesaid issue is also squarely covered by the orders of the coordinate benches of the Tribunal viz. **(ii).Superplaza Mercantile Co. P. Ltd. Vs. ACIT [ITA 2100/Mum /2012] (Mum)**; and **(iii). Credit Agricole Corporate & Investment Bank Vs. ADIT [ITA 724/Mum /2011](Mum)**. In fact, we find that the aforesaid judgment of the Hon'ble High Court of jurisdiction and also the above mentioned orders of the coordinate benches of the Tribunal were available at the time when the A.O had framed the assessment, vide his order passed under Sec. 143(3) r.w.s 144C(13), dated 24.02.2017. Also, a similar view had been taken by the jurisdictional tribunal in its subsequent order passed in the case of **ACIT-LTU, Mumbai-5 Vs. Lupin Ltd [ITA No. 4338/Mum/2011; dad 13.06.2018]**. In the backdrop of the aforesaid facts, we are unable to comprehend as to how the order passed by the A.O under Sec. 143(3) r.w.s 144C(13), dated 24.02.2017 could be held as erroneous. Be that as it may, in our considered view as the A.O while framing the assessment had arrived at a plausible view and therein concluded that the claim of netting off the interest received on income-tax refund as against the interest paid by the assessee to the tax department U/ss. 234B and 234C was in order, therefore, the same could not have been brought within the realm of the revisional jurisdiction of the Pr. CIT under Sec. 263 of the Act. On the basis of our aforesaid observations, we are of the considered view that the Pr. CIT had clearly exceeded the scope of the jurisdiction vested with him under Sec. 263 and revised the assessment framed by the A.O under Sec. 143(3) r.w.s 144C(13), dated 24.02.2017. Accordingly, we 'set aside' the order passed by the Pr. CIT under Sec. 263, dated 28.03.2019 and restore the assessment framed by the A.O Sec. 143(3) r.w.s 144C(13), dated 24.02.2017. As we have quashed the order

passed by the Pr. CIT under Sec. 263 of the Act, dated 28.03.2019, therefore, we refrain from advertng to the other contentions advanced by the Id. A.R on the basis of which the validity of the impugned order has been assailed before us.

8. Resultantly, the appeal filed by the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 08.01.2020

Sd/-  
(Pramod Kumar)  
VICE PRESIDENT

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 08.01.2020

Ps. Rohit

**आदेश की 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.

सत्यापित प्रति //True Copy//

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**