

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
' C' BENCH : CHENNAI

श्री महावीर सिंह, उपाध्यक्ष
एवं श्री एम बाला गणेश, लेखा सदस्य

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT &
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.1559/Chny/2008

निर्धारण वर्ष /Assessment year : 1989-90

Assistant Commissioner of
Income Tax,
Large Taxpayer Unit,
Chennai 600 101
[PAN AAACB 2533 Q]
(अपीलार्थी/Appellant)

Vs. M/s.Brakes India Ltd.,
Padi, Chennai 600 050.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Mrs.Vijaya Prabha,JCIT,D.R
: Mr.R.vijayaraghavan,Advocate

सुनवाई की तारीख/Date of Hearing

: 24.02.2020

घोषणा की तारीख /Date of Pronouncement

: 25.02.2020

आदेश / ORDER

PER M. BALAGANESH, ACCOUNTANT MEMBER:

These appeal of the Revenue arise out of the order of the Id
Commissioner of Income Tax (LTU Appeals), Chennai, in ITA No.2/2008-
09/LTU(A) dated 25.04.2008 for assessment year 1989-90.

2. The only issue to be decided in the appeal of Revenue is with regard to grant of interest under Section 244A of the Act.

3. We have heard the rival submissions and perused the material available on record. We find that this Tribunal in ITA Nos.1705/Mds/1993 and 1047/Mds/1996 dated 06.02.2003 had set aside the order of the Administrative Commissioner of Income Tax under Section.263 of the Act on 15.03.1993 and consequential assessment order framed by the A.O. pursuant to section 263 proceedings was quashed by the Tribunal. Later, the Revenue preferred an appeal before Hon'ble Madras High Court in Tax case Appeal No.813,814, 816 to 819 of 2009, which was disposed of by the Hon'ble Jurisdictional High Court vide its order dated 20.03.2019 wherein the Hon'ble Madras High Court remitted the matter back to this Tribunal to decide the issue in the light of Hon'ble Supreme Court decision in the case of C.I.T Vs. Gujarat Fluoro Chemicals reported in 358 ITR 291(SC) and in accordance with law. Hence, the present appeal is to be decided pursuant to the directions of the Hon'ble Madras High Court. Thereafter, the assessment originally revised on 16.11.1992 was further revised to give effect to the order of the Tribunal in I.T.A. No. No.32/Mds./1993 dated 06.02.2003. Accordingly, the Ld. A.O framed the assessment giving effect to the order of the Tribunal on 04.01.2008 by determining the total income at ₹86,74,388/- which ultimately resulted in refund of tax due to the assessee. Since final assessment resulted in

refund, the assessee was entitled for interest under Section 244A of the Act, which was also granted by the Ld. A.O in the final assessment framed on 04.01.2008. But we find that there is some dispute with regard to the adjustment of refund and consequential interest under Section.244A of the Act thereon. The assessee accordingly preferred an appeal before the learned CIT(A), who held that the assessee is entitled to interest on "any amount" which admittedly includes interest, that is due to the assessee. In fact, the learned CIT(A) held that the assessee is entitled for interest on interest. Against this order of learned CIT(A), the Revenue is in appal before us.

4. We find that the law is very well settled that the assessee is is not entitled for interest on interest. However, the manner in which any refund, which has been granted partly to the assessee is to be adjusted first towards interest due to the assessee, and remaining portion should be adjusted towards the tax due to the assessee. This adjustment, if made, would be just and fair and would also be in consonance with the provisions of section 140A of the Act, which talks about the manner of adjustment of amounts paid by the assessee to the Income Tax Department. In this regard, we find that the assessee had filed a petition under Rule-27 of ITAT Rules with the following prayer:

"Ä) In computing the interest payable under Section.244A, the refunds paid by the department should be first adjusted against the

interest in the amount refundable by the department and only the balance amount should be adjusted against the tax to be refunded.

- B) Interest under Section 244A should be computed on the outstanding tax as adjusted in the manner specified in the grounds above.
- C) Under Section 140A, the amount paid as self assessment tax is first adjusted against the interest payable by the assessee and only the balance is adjusted against the tax payable.
- d) This is the manner of adjustment prescribed by the Income Tax Act under Section 140A and the same manner of adjustment should also be applied for calculating interest under Section 244A."

We find lot of force in the Petition under Rule 27 of ITAT Rules filed by the assessee, which deserve to be admitted and the prayer sought for thereon deserves to be accepted as such. We accordingly direct the Ld. A.O.to first adjust the part of the refund granted to the assessee towards interest under Section 244A of the Act due to the assessee and the remaining portion if any, shall be adjusted towards the tax portion due to the assessee. This would be in spirit and in consonance with the provisions of section 140A of the Act when taxes are paid by the assessee to the Income Tax Department. The same

pattern of Section 140A of the Act should be followed by the Income Tax Department while granting refund including interest under Section 244A of the Act. Accordingly, the appeal of Revenue is allowed and Petition under Rule 27 of ITAT Rules preferred by the assessee is allowed.

5. In the result, the appeal of Revenue is allowed and Petition under Rule 27 of ITAT Rules preferred by the assessee is allowed.

Order pronounced on 25th February, 2020, at Chennai.

Sd/-

(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष/**Vice President**

चेन्नई/Chennai

दिनांक/Dated: 25th February, 2020.

K S Sundaram

Sd/-

एम बाला गणेश)
(M. BALAGANESH)
लेखा सदस्य /**Accountant Member**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF