

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(E-Court Module)

ITA No. 2553/Del/2013 : Asstt. Year : 1999-00

Maruti Suzuki India Ltd., Plot No. 1, Nelson Mandela Road, Vasant Kunj, New Delhi-110070 (APPELLANT)	Vs	Commissioner of Income Tax (Appeals)-IX, Income Tax Office, Laxmi Nagar, New Delhi (RESPONDENT)
PAN No. AAACM0829Q		

ITA No. 2641/Del/2013 : Asstt. Year : 1999-00

DCIT, Circle-6(1), New Delhi (APPELLANT)	Vs	Maruti Suzuki India Ltd., Plot No. 1, Nelson Mandela Road, Vasant Kunj, New Delhi-110070 (RESPONDENT)
PAN No. AAACM0829Q		

ITA No. 468/Del/2014 : Asstt. Year : 1994-95

Maruti Suzuki India Ltd., Plot No. 1, Nelson Mandela Road, Vasant Kunj, New Delhi-110070 (APPELLANT)	Vs	JCIT(OSD), Circle-6(1), New Delhi (RESPONDENT)
PAN No. AAACM0829Q		

ITA No. 599/Del/2014 : Asstt. Year : 1994-95

DCIT, Circle-6(1), New Delhi (APPELLANT)	Vs	Maruti Suzuki India Ltd., Plot No. 1, Nelson Mandela Road, Vasant Kunj, New Delhi-110070 (RESPONDENT)
PAN No. AAACM0829Q		

Assessee by : Sh. Ajay Vohra, Sr. Adv.

Revenue by : Ms. Pramita M. Biswas, CIT DR

Date of Hearing: 22.07.2020

Date of Pronouncement: 31.08.2020

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The appeals have been filed by the revenue against the orders of the Id. CIT(A)-IX, New Delhi dated 28.02.2013 and 29.11.2013. The assessee has filed cross appeals.

2. In ITA No. 2553/Del/2013, following grounds have been raised by the assessee:

"1.0 That the CIT(Appeals) erred on facts and in law in confirming the action of the Assessing Officer in not granting interest under section 244A of the Income Tax Act, 1961 ('the Act') on the amount of refund of Rs.14,59,79,228/-, being the excess of tax liability on the assessed income over the taxes paid under section 143(1) of the Act.

2.0 That the CIT(Appeals) erred on facts and in law in concluding that for giving effect to the provisions of section 244A(3), the limitation as per the proviso to 244A(1)(a) of the Act would apply.

3.0 Without prejudice, that the CIT(A) erred on facts and in law and in the circumstances of the case in not granting interest under section 244A on the amount of refund pertaining to self assessment tax, without appreciating that the bar contained in proviso to clause (a) of section 244A(1) of the Act is not applicable to self assessment tax."

3. In ITA No. 2641/Del/2013, following grounds have been raised by the revenue:

"1. On the facts and in the circumstances of the case, the Id. CIT (A) has erred in not appreciating the provisions of section 244A(b) of the Income Tax Act which calls for calculating interest for every month or part of the month comprised in the period or periods from the date or dates of payment of tax as the case may be. That is the interest is to be computed for a

period of every month taking the date of payment as the starting date and if part of the month remains at the end the same is to be taken as full month.

2. The Id. CIT (A) has not appreciated that rounding off of the month is to be done only once and not twice as the interest is to be given from the date or dates of payment of tax."

4. In ITA No. 468/Del/2014, following grounds have been raised by the assessee:

"1.0 That the CIT(Appeals) erred on facts and in law in confirming the action of the Assessing Officer in not granting interest under section 244A of the Income Tax Act, 1961 ('the Act') on the amount of refund, being the excess of tax liability on the assessed income over the taxes paid under section 143(1) of the Act.

2.0 That the CIT(Appeals) erred on facts and in law in concluding that for giving effect to the provisions of section 244A(3), the limitation as per the proviso to 244A(1)(a) of the Act would apply."

5. In ITA No. 599/Del/2014, following grounds have been raised by the revenue:

"1. Whether on the facts and circumstances of the case & in law, the Id. CIT (A) erred in directing the AO to allow interest u/s 244A to the assessee for the month in which payments/adjustments were made on the last day of the month?

2. Whether on the facts and circumstances of the case & in law, the Id. CIT (A) erred in holding that few hours of the day constitute part of the month whereas for constituting part of the month at least one day should have been completed?

3. That the order of the Id. CIT (A) is erroneous and is not tenable on facts and in law."

ITA No. 2553/Del/2013 (Assessee's Appeal):**The core issue:**

6. The assessee claimed refund of Rs.201,37,93,163/- comprising of advance tax, TDS and self assessment tax of Rs.14,59,79,228/- and Rs.186,78,13,935/-, the tax paid on different dates. The AO did not allow interest u/s 244A(1)(a) on the amount of Rs.14.59 crores as the refund was less than 10% of the tax determined u/s 254 r.w.s. 143(3). The Id. CIT (A) confirmed the order of the AO on the grounds that, to give effect to the provisions of Section 244A(3), the assessee had to mandatorily cross the limitations imposed u/s 244A(1)(a).

7. The chronological events of the case are as under:

- The assessee is a public limited company, engaged in the business of manufacture and sale of motor vehicles and spare parts. The assessee had, in respect of the previous year ended 31.03.1999, filed return of income on 28.12.1999 declaring total income of Rs.667,34,03,410/-.
- The return was revised on 30.03.2001 at total income of Rs.667,41,40,340/-.
- Assessment under section 143(3) followed by order u/s 154 of the Act, the total income of the assessee was determined at Rs. 1606.34 crores.
- In pursuance to the directions of the ITAT, the Assessing Officer passed order under section 143(3) r.w.s. 254 of the Act on 23.03.2006 giving effect to the order of the ITAT, determining the income of the assessee at Rs. 1424.43 crores.

- The assessee again preferred appeal against the consequential order before the CIT(A) and thereafter, before ITAT. The ITAT, vide order dated 31.10.2008, allowed substantial relief.
- After giving effect to the order of the ITAT in the second round, the Assessing Officer determined the total income at Rs.625.70 crores, on which the income tax liability was calculated at Rs.218,99,69,889/- (excluding interest under section 234C of the Act).
- As against the aforesaid tax liability of Rs.218.99 crores, the assessee had paid taxes aggregating to Rs.233,59,49,119/- by way of advance tax, tax deducted at source (TDS) and self assessment tax, thereby resulting in income tax refund of Rs.14,59,79,228/- out of the same.
- Apart, from the aforesaid prepaid taxes, the assessee had paid Rs.186,78,13,935/- on various dates in compliance of demands being raised by the Revenue, pursuant to the earlier assessment order(s)/orders giving effect to appellate orders at various stages as under:

Sep 2002	118,858,457
Oct 2002	2,00,000,000
Jan 2003	3,00,00,000
Feb 2003	250,000,000
Mar 2003	231,200,000
Mar 2003	300,000,000
Mar 2007	250,000,000
Refund of AY 2004-05 adjusted on 10.11.2008	<u>217,755,478</u>
Total (Rs.)	<u>186,78,13,935</u>

8. The assessee was, therefore, entitled to total income tax refund of Rs.201,37,93,163/- (Rs.14,59,79,228 + Rs.186,78,13,935).

9. In the impugned order dated 24.02.2009 passed by the Assessing Officer giving appeal effect to the order dated 31.10.2008, the Assessing Officer omitted to calculate and allow interest under section 244A on the amount of refund of Rs.14,59,79,228/- on the basis of revised return of income {Rs. 14,57,21,304/- as per original return}.

10. The tax paid by the assessee of Rs.186.78 cr. against the demand raised by the revenue by the way of assessment has been duly refunded by the assessee along with interest.

11. The AO did not allow interest u/s 244A(1)(a) on the amount of Rs.14.59 crores on the grounds that the refund was less than 10% of the tax determined u/s 254 r.w.s. 143(3). The Id. CIT (A) confirmed the order of the AO on the grounds that, to give effect to the provisions of Section 244A(3), the assessee had to mandatorily cross the limitations imposed u/s 244A(1)(a).

12. The main grievance is that while of the assessee is eligible for interest u/s 244A on the amount of original refund of Rs.14.59cr., the same has been declined by wrongly interpreting the provisions of Section 244A(1)(a) and Section 244A(3).

13. Before us, the Id. AR explained at length, the provisions of Section 244A and the amendments inserted by Direct Tax Laws

amendment Act 1987. He also argued that based on the Circular of the CBDT No. 549 dated 31.10.1989, the assessee is eligible for the interest on the refund due. He further relied on the judgments of the Hon'ble Supreme Court in the case of CIT Vs HEG 324 ITR 331 and CIT Vs Chola Mandalam Investment and Finance Company 294 ITR 438. Relying on the various case laws, he argued that there is statutory liability on the revenue to pay the interest on general principles to pay the interest on sums wrongfully retained.

14. On the other hand, the Id. DR vehemently argued that the provisions of Section 244A(1)(a) clearly lays down an embargo on the interest payment, if the amount of refund is less than 10% of the tax as determined under sub-Section (1) of the Section 143 or on regular assessment. Hence, the assessee is not eligible for interest on the refund due in the instant case.

15. Heard the arguments of both the parties and perused the material available on record.

16. The provisions of Section 244A as applicable for the assessment year 1994-95/1999-2000 are as under:

[Interest on refunds.

*244A. (1) Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, **simple interest** thereon calculated in the following manner, namely :—*

(a) where the refund is out of any tax [collected at source under section 206C or] paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such

interest shall be calculated at the rate of one per cent for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted.

Provided that no interest shall be payable if the amount of refund is less than ten per cent of the tax as determined [under sub-section (1) of section 143 or] on regular assessment;

(b) in any other case, such interest shall be calculated at the rate of one per cent for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted.

Explanation: For the purposes of this clause, "date of payment of tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable, and where any question arises as to the period to be excluded, it shall be decided by the Chief Commissioner or Commissioner whose decision thereon shall be final.

(3) Where, as a result of an order under [sub-section (3) of section 143 or section 144 or] section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and in a case where the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the amount of the excess interest paid and requiring him to pay such amount; and such notice of demand shall be deemed to be

a notice under section 156 and the provisions of this Act shall apply accordingly.

(4) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April 1989, and subsequent assessment years.]

17. Section 244A(1)(a) deals with interest where refund is out of TDS or by way of advance tax. The proviso under sub-Section (a) has to be read with regard to sub-Section (a) and applies to sub-Section (a) only. A bare reading of sub-Section (b) do not portray any such provision/condition which is applicable to sub-Section (b). Hence, it has to be read that the provision restricts the interest on amount, if the refund is less than 10% of the tax as determined and is applicable only to the advance tax paid u/s 206 or FBT under 115WJ.

18. We find that the Id. CIT (A) treated the entire amount of Rs.14.60 cr. falls for the purpose of Section 244A(1)(a) and treated it as prepaid taxes. This is exactly where the Id. CIT (A) considered/read the provisions wrongly. The prepaid taxes consist of TDS, advance tax. The provisions of self-assessment tax are governed by Section 140A which is not covered by the provision u/s 244A(1)(a). The opening sentence of the Section 140A reads as under:

(1) Where any tax is payable on the basis of any return required to be furnished u/s 139 -----

19. This clearly gives a meaning that self-assessment tax which is payable on the basis of return do not constitute part of prepaid taxes.

20. For the purpose of embargo of 10% of the tax determined in accordance with the provisions of Section 244A(1)(a), it is clear from the provision of the Section that the self-assessment tax do not form a part of the embargo as self-assessment tax falls under sub-Section (b) of Section 244A(1).

21. Now, if one reads Section 244A(1)(b), it reads "in any other case the interest shall be calculated at the rate of one-half per cent". Here "in any other case" signifies refund out of any tax paid, other than u/s 115WJ or collected at source u/s 206 or paid by the way of advance tax which treated as paid u/s 199 which have been duly mentioned u/s 244A(1)(a).

22. The difference between sub-Section (a) and (b) is with regard to the method of computation of interest on the refund. For calculation of interest on the refund of the taxes paid u/s 115WJ, Sec. 199, Sec. 206 and Sec. 209, the simple interest is calculated at the rate of one-half per cent from first day of the April of the assessment year whereas under sub-Section (b) i.e. in case of self-assessment tax or tax paid in excess of such demand as demanded u/s 156 it is from the date or dates of payment of the tax. The one-half per cent is the percent of interest on the refund is for every month or part of the month is common for all types of taxes paid by the assessee.

23. The Id. AR argued that the provisions of Section 244A(3) applies to the cases where the refund arised out of the order of the Tribunal but not out of the Section 143(1) or 143(3) and hence, the provisions of Section 244A(1)(a) are not applicable to the instant case.

24. We have also examined the arguments of the counsels on the provisions of sub-Section (3) and examined whether it applies or not to the provisions to clause (a) to the refunds arise out consequent to the orders of the ITAT or other judicial forums.

25. The provisions of sub-Section (3) of Section 244A reads as under:

"(3) Where, as a result of an order under [sub-section (3) of section 143 or section 144 or] section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and in a case where the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the amount of the excess interest paid and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly."

26. This section connotes the procedure to be followed while computing the interest in accordance with the sub-Section (1) to Section 244A. The sub-Section (3) gives equal treatment to the refund arise out of the orders namely, order u/s 115WE(3), order u/s 115WF, order u/s 115WG, order u/s 143(3), order u/s 144, order u/s 147, order u/s 155, order u/s 250, order u/s 254, order u/s 260, order u/s 262, order u/s 263, order u/s 264, order u/s 245D(4). It directs the revenue authorities to re-compute the interest payable and to notify the assessee with a demand notice in case there is any increase in the interest payable by the assessee owing to such order. This is a

procedural section to give effect to the orders passed by various authorities by the revenue. By this section, the revenue is directed to re-compute the tax due consequent to the passing of any further orders which will have an effect on the tax determined u/s 143(1) in the case of non-scrutiny cases and u/s 143(3) in the case of regular assessment. Thus, Section 244A(3) is a re-computational purvey under the Income Tax Act.

27. Provision to Section 244A(1)(a) deals with the refund determined u/s 143(1) or Section 143(3). The orders u/s 147, Sec. 154, Sec. 155 or Sec. 254, Sec. 255, Sec. 260, Sec.262, Sec. 263, Sec. 264, Sec. 245D(4) effectively directed to re-compute the refund determined u/s 143(1) or Sec. 143(3) and to pre-determine the quantum of the refund of the amount due afresh. Thus after receipt of the order under these sections, the tax payable/refund payable would be re-computed as provided u/s 244A(1). And consequently, the interest is determined as provided in the clause (a) i.e. from the first day of April and/or clause (b) i.e. from the date of payment of tax to Section 244A(1) as applicable. The sub-Section (3) doesn't in any way nullify the provision below clause (a) to Section 244A (1).

28. We have also examined the arguments of the Id. AR with regard to Circular No. 549 dated 31.10.1989 of CBDT. We have also gone through the model computation Example III

29. *Example III* : Grant of refund as a result of appellate order - Interest payable by the Department under section 244A:

(i) Tax due as per return of income for the assessment year 1989-90 filed on 31-10-1989, the due date	Rs. 3,00,000	
*(ii) The tax of Rs. 3,00,000 due as per return has been paid by the assessee as follows:-		
By way of advance tax by 31-3-1989	Rs. 2,80,000	
Under section 140A on 31-10-1989	<u>Rs. 20,000</u>	Rs.3,00,000
(iii) Tax determined on completion of regular assessment under section 143(3) on 31-3-1990		Rs.4,00,000
(iv) Date of payment of further demand of Rs. 1,00,000 [col. (iii) minus (ii)]	1-5-1990	
(v) Tax determined as a result to appellate order under section 250 on 30-9-1990	Rs. 3,20,000	
(vi) Refund due as a result of appeal	Rs. 80,000	
(vii) Date of grant of actual refund	31-10-1990	
(viii) Interest payable by the Department @ 1.5% per month for 6 months (1-5-1990-31-10-1990), i.e., @ Rs. 9% on 80,000	Rs. 7,200	

30. This example illustrates payment of interest on the refund from the date of payment of tax (01.05.1990) to the date of issue of refund. There is no dispute about this example and payment of interest on the tax paid post-assessment. We also concur to the fact that the assessee is eligible for interest on the refund on payment of self-assessment tax from the date of payment to the date of granting of refund as per the provisions of Section 244A(1)(b).

31. Thus, the sequence of computation of interest would be:

Eg:1

Tax determined u/s 143(3)= 100

Tax paid - 112

Step 1: Refund determined - 12 [Section 244(1)]

Step 2: Refund out of advance tax payment -2[Section 244(1)(a)]

No interest payable as refund is less than 10% [proviso applicable]

Step 3 : Refund out of self-assessment tax - 10

Interest allowed from the date of payment.

Eg:2

Tax payable - 100

Tax paid - 112 (advance tax -111, self-assessment tax -1)

Tax determined u/s 143(3) - 300 (demand notice issued for Rs. X)

Tax paid on receipt of demand notice - X

On appeal, the additions deleted.

The tax paid Rs. X becomes refundable.

Interest on refund is eligible from the date(s) of payment of Rs. X till the date of grant of refund.

That leaves us with the action on the original refund due, then the Section 244A(1) falls in and so as clause (a) and (b) as applicable.

{Tax demanded of "X" u/s 156 - Refunded along with interest}

Step 1: Refund determined - 12 [Section 244(1)]

Step 2: Refund out of advance tax payment -11[Section 244(1)(a)]

Interest is payable as refund is more than 10% of the advance tax paid

Step 3 : Refund out of self-assessment tax - 1[Section 244(1)(b)]

Interest is payable from the date of payment

32. In brief, we hold that in the instant case:

- When refund is of any advance tax paid or TDS or TCS – The interest is payable at the rate of 0.5% per month or part of the month of refund.
- No interest is payable if the excess payment is less than 10% of the tax determined on regular assessment or u/s 143(1).
- When refund is of tax other than advance tax paid or TDS or TCS, the interest is payable at the rate of 0.5% per month or part of the month of refund.

33. We have also examined the arguments of the Id. AR with regard to applicability of the judgment the Hon'ble Apex Court in the case of Sandvik Asia Ltd. Vs CIT 280 ITR 643 (SC) wherein it was held that the assessee was entitled interest on delayed payment of interest. We find that the facts of this case is not applicable to the instant case as the judgment of in the case of Sandvik Asia Ltd. Vs CIT deals with payment of amount in the nature of compensation which was specific to the facts of that case.

34. We have also examined the arguments of the Id. AR relying on the judgment of the Hon'ble Apex Court in the case of CIT Vs H.E.G. 324 ITR 331. The Id. AR argued that "any amounts becomes due" will include the "interest which accrued to the assessee for not refunding the amounts". The relevant observation of the Hon'ble Supreme Court which is as under:

"The next question which we are required to answer is-what is the meaning of the words "refund of any amount becomes due to the assessee" in Section 244A? In the present case, as stated above,

there are two components of the tax paid by the assessee for which the assessee was granted refund, namely TDS of Rs. 45,73,528 and tax paid after original assessment of Rs. 1,71,00,320. The Department contends that the words "any amount" will not include the interest which accrued to the respondent for not refunding Rs. 45,73,528 for 57 months. We see no merit in this argument. The interest component will partake the character of the "amount due" under Section 244A. It becomes an integral part of Rs. 45,73,528 which is not paid for 57 months after the said amount became due and payable. As can be seen from the facts narrated above, this is the case of short payment by the Department and it is in this way that the assessee claims interest under Section 244A of the Income-tax Act. Therefore, on both the aforesaid grounds, we are of the view that the assessee was entitled to interest for 57 months on Rs. 45,73,528. The principal amount of Rs. 45,73,528 has been paid on December 31, 1997 but net of interest which, as stated above partook the character of "amount due" under Section 244A"

35. Straight reading of the judgment, denotes that any "where refund of any amount becomes due" means any refund and on that refund simple interest is to be provided. The calculation of the simple interest is explained in the sub-Clause (a) in case of advance tax or tax u/s 206 and in sub-Clause (b) in any other case. The steps involved are determination of refund and then calculation of interest on such refund determined. The proviso kept back the interest in case the refund is less than 10% of the tax as determined under sub-Section (1) to Section 244A.

36. In the case of H.E.G, the revenue has not provided interest on the TDS i.e. the tax paid u/s 206 which the Court has ordered to pay interest on the TDS of Rs.45,73,528/- on the

original assessment till the date of payment. To reiterate the Hon'ble Supreme Court directed that interest be paid as per the Act on the amount of TDS of Rs.45,73,528/-. It never directed for compounding of the interest or held that refund becomes part of the principle and to pay further interest on that amount.

37. However, this direction of the Hon'ble Apex Court has been interpreted in such a way that the interest on the delayed refund becomes part of the principle amount (the TDS of Rs.45,73,528/-) in the delayed interest includes the interest for not refunding the principle amount [i.e. TDS of Rs.45,73,528 (say 'P') + interest (say 'Q') = amount due Say 'R' = (P+Q)]. And then to pay interest on the amount treating 'R' as the amount due. We hold that this is not the correct way of interpreting the judgment. The Hon'ble Court directed that amount of 'Q' needs to be computed till the date of issue of refund as the amount of 'P' (Rs.45,73,528), since the revenue failed to pay the interest 'Q' on the amount of original refund 'P'.

38. Owing to the confusion arising out of the interpretation as explained in the above para, the Hon'ble Supreme Court order dated December 3, 2009 further clarified as to what the judgment meant.

*"Delay condoned in S.L.P.(C) No...CC 10437/2009.
Leave granted.*

In income tax matters, it is well settled that if the question is not properly framed, then, at times, confusion arises resulting in wrong answers. The present batch of Civil Appeals is an illustration of the proposition mentioned herein-above.

In the synopsis to the Civil Appeal arising out of S.L.P.(C) No.18045/2009, the question raised by the Department is whether the assessee was entitled to claim interest on interest under the provisions of Section 244A of the Income Tax Act, 1961. In our view, on facts, the question framed was totally erroneous.

Annexure P-1 is Income-tax Computation in Civil appeal arising from S.L.P.(C) No.18045/2009. On going through the Computation, we find that during the Assessment Year 1993-1994, the amount paid by the assessee towards TDS was Rs.45,73,528/-. The Tax paid after Original Assessment was Rs.1,71,00,320/-. The total of TDS amounting to Rs.45,73,528/- plus Tax paid after Original Assessment of Rs.1,71,00,320/- stood at Rs.2,16,73,848/-. In other words, the total tax paid had two components, viz., TDS + Tax paid after Original Assessment. The respondent was entitled to the refund of Rs.2,16,73,848/- (consisting of Rs.1,71,00,320/- and Rs.45,73,528/- which payment was made after 57 months and which is the only item in dispute).

The assessee claimed statutory interest for delayed refund of Rs.45,73,528/- for 57 months between 1.4.1993 and 31.12.1997 in terms of Section 244A of the Income Tax Act. Therefore, this is not a case where the assessee is claiming compound interest or interest on interest as is sought to be made out in the civil appeals filed by the Department.

The next question which we are required to answer is What is the meaning of the words "refund of any amount becomes due to the assessee" in Section 244A? In the present case, as stated above, there are two components of the tax paid by the assessee for which the assessee was granted Refund, namely TDS of Rs.45,73,528/- and Tax paid after Original Assessment of Rs.1,71,00,320/-. The Department contends that the words "any amount" will not include the Interest which accrued to the respondent for not refunding Rs.45,73,528/- for 57 months. We see no merit in this argument. The interest component will partake of the character of the "amount due" under Section 244A. It becomes an integral part of Rs.45,73,528/- which is not paid for 57 months after the said amount became due and payable. As can be seen from the facts narrated above, this

*is the case of short payment by the Department and it is in this way that the assessee claims interest under Section 244A of the Income Tax Act. **Therefore, on both the afore-stated grounds, we are of the view that the assessee was entitled to interest for 57 months on Rs.45,73,528/-.** The principal amount of Rs.45,73,528/- has been paid on 31st December, 1997 but net of interest which, as stated above, partook the character of "amount due" under Section 244A....."*

*.....J.
(S.H. KAPADIA)*

*.....J.
(H.L. DATTU)*

*.....J.
(DEEPAK VERMA)*

*New Delhi,
December 03, 2009.*

39. The Hon'ble Supreme Court has reiterated that the assessee is eligible for interest for delayed refund for the period of 01.04.1993 to 31.12.1997. In this case, the assessment year being 1993-94, the Hon'ble Apex Court has allowed the interest as per the computation prescribed for computing the simple interest in accordance with the provisions of Section 244A(1)(a). What has been elucidated and clarified by the Hon'ble Supreme Court is that when the refund order is issued, the same should include the interest payable on the amount which is refunded. If the refund doesn't include the interest due and payable on the amount refunded, the revenue would be liable to pay interest on the shortfall.

40. However, the issue before us is dissimilar to the issue adjudicated by the Hon'ble Apex Court.

41. Now, the question involved in the instant case is with regard to the proviso to Section 244A(1)(a) but not with regard to payment of tax and consequent refund and interest on the tax paid u/s 195/199/206/207. No judgment or the direction nullifying the provision has been brought to our notice. Even in the case of H.E.G. Ltd. The Hon'ble Apex Court rightly observed that, if question is not properly framed then at times confusion arises resulting in wrong answers.

42. In the instant case, the question before us is whether no interest shall be payable on the amount of refund is **less** than 10% tax determined, if the refund is out of tax paid u/s 206/207/199. The Hon'ble Apex Court has extended the interest to TDS u/s 195 also in addition to the tax paid u/s 206/207/199. We have also gone through the judgment of Tata Chemicals Ltd. on the issue of proviso to Section 244A(1)(a). The Hon'ble Apex Court having gone through the provisions of Act has nowhere held that the proviso is unwarranted. At the cost of repetition, we hereby hold that the Courts have found no illegality on the proviso below Clause (a) to Sub-Section (1) to Section 244A.

43. Vide the provisions to Section 244A(1)(a), the legislature clearly laid down that in case the refund arise out of the prepaid taxes such as TCS/TDS/Advance Tax is less than 10% of the tax no interest is allowable. The statute is to be read as a whole in its content. It is unambiguous, straight, effective and workable. The proviso to Clause (a) to Sub-Section (1) is constitutionally valid and intra vires. In the absence of any confusion, arbitrariness or vagueness, the provision has to be read as it is.

There is no need to interpolate any word to give a different meaning. A taxing statute should be strictly construed even if the literal interpretation results in hardship or inconvenience, common sense approach equity, logic and morality have no role to play. ***CIT vs. Calcutta Knitweaves (2014) 362 ITR 673 (SC)***.

44. If the language of the statute is clear and unambiguous, words must be understood in their plain meaning. The wordings of the Act must be construed according to its literal and grammatical meaning, whatever the result may be.

45. While interpreting tax statute, the function of the court of law is not to give words in the statute a strained and unnatural meaning to cover and extent its applicability to the areas not intended to be covered under the said statute. ***Vidarbha Irrigation Devs. Corpn. vs. ACIT [(2005) 278 ITR 521 (Bom)]***.

46. It is not permissible to construe any provision of a statute, much less a taxing provision, by reading into it more words than its contains. ***CIT vs. Vadilal Lallubhai [(1972) 86 ITR 2 (SC)]***. Literal construction means that there is no room for any intendment. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used. *Voltas Ltd. vs. State of Gujarat (2015) 12 STD 658 (SC)*

47. Hence, we hold that the proviso to Clause (a) of Sub-Section (1) of Section 244A is applicable and has to be considered for computational purpose of the interest computable for the refund payable u/s 244A(1)(a).

48. The next question before us is whether interest is payable on the self-assessment tax paid by the assessee or not.

49. We have gone through the judgment of Hon'ble Jurisdictional High Court in the case of CIT Vs Sutlej Industries Ltd. in ITA No. 1204/2005 order dated 15.03.2010 wherein the Hon'ble High Court held that where self-assessment tax paid by the assessee u/s 140A is refunded, the assessee should be entitled to interest thereon. The Hon'ble High Court held that the self-assessment tax falls within the expression "refund of any amount". The computation of simple interest on self-assessment tax has to be in terms of Section 244A(1)(b), i.e., from the date of payment of such amount up to the date on which refund is actually granted. The judgment of the Hon'ble jurisdictional High Court was shored up by the judgment of Hon'ble Madras High Court in Cholamandalam Investment and Finance Co. Ltd., the SLP against which order was dismissed by the Supreme Court.

50. Even otherwise, it is trite law that wherever the assessee is entitled to refund, there is statutory liability on the Revenue is to pay the interest on such refund on general principles to pay the interest on sums wrongfully retained.

51. The Hon'ble Jurisdictional High Court in the case of Engineers India Ltd. 373 ITR 377, based on the judgment of the Hon'ble Apex Court in the case of Gujarat Flora Chemicals 358 ITR 291 held that the assessee is not entitled to get interest u/s 244A on the refund of self-assessment tax which was voluntarily

paid u/s 140A and did not agree with the decision of the Co-ordinate Bench of High Court in the case of Sutlej Industries Ltd. 325 ITR 337.

52. The Hon'ble Apex Court, having gone through the different views expressed by the Hon'ble Jurisdictional High Court, referred back the matter for adjudication by larger bench.

53. The Hon'ble High Court of Kolkata in the case of Birla Corporation Ltd. held that clause (1)(b) of Section 244A is residual in nature which prescribes interest on refund from the date of payment of tax in cases which are not covered by Section 244A(1)(a). Necessarily, it will cover interest on refund of excess self-assessment tax paid by the assessee. The proviso to section 244A (1)(a) would have no application as the tax paid was self-assessment tax u/s 140A. Hence according to mandate of section 244A(1)(b), interest is payable on refund of excess self assessment tax, from the date of payment of such tax to the date when the refund is granted. The Hon'ble Court of Kolkata has duly considered the judgment of Hon'ble High Court of Delhi in the case of CIT Vs Engineers India Ltd.

54. Similarly, the Hon'ble High Court of Bombay in the case of Stockholding Corporation of India Vs. CIT 373 ITR 282 has elaborately dealt with the question of interest on refund of excess self assessment tax and held that where the self-assessment tax paid by the assessee u/s. 140A is refunded, the assessee should be, in principle entitled to interest thereon since the self assessment tax falls within the expression "refund of any amount". The computation of interest on self-assessment

tax has to be in terms of Section 244A(1)(b), i.e., from the date of payment of such amount up to the date on which refund is actually granted.

55. Section 244A does not deny payment of interest in case of refund of amount paid under Section 140A. On the contrary, Clause-(b) being a residuary clause necessarily includes payment made u/s. 140A. Since, there is no proviso attached to sub-Clause (b), the embargo of 10% is not applicable for calculation of interest for the refund arising out of payment of self-assessment tax.

56. Further, in this aspect, we are guided by the judgment of Tata Chemicals Ltd. 6 SCC 335 as to what the tax refund is. It was held that the tax refund is a refund of taxes when the tax liability is less than the taxes paid. The Hon'ble Apex Court has held that the assessee was entitled for payment of interest on the amount of taxes refunded pursuant to an order passed under the Act including the order passed in an appeal. In the case of Tata Chemicals Ltd., the assessee has paid taxes pursuant to the order passed by the AO. In the appeal filed against the said order the assessee has succeeded and a direction is issued by the appellate authority to refund the tax paid. The amount paid by the resident/ deductor was retained by the Government till a direction was issued by the appellate authority to refund the same. When the said amount is refunded it should carry interest in the matter of course. As held by the Courts while awarding interest, it is a kind of compensation of use and retention of the money collected unauthorizedly by the Department. When the collection is illegal, there is

corresponding obligation on the revenue to refund such amount with interest in as much as they have retained and enjoyed the money deposited. Even the Department has understood the object behind insertion of Section 244A, as that, an assessee is entitled to payment of interest for money remaining with the Government which would be refunded.

57. The question before the Hon'ble Apex Court is whether the resident/deductor is also entitled to interest on refund of excess deduction or erroneous deduction of tax at source under Section 195 of the Act. The Hon'ble Apex Court has ruled that the assessee is eligible to refund of excess tax deducted and also interest on such excess tax refunded.

58. The Hon'ble Apex Court held that the language of the Section is precise, clear and unambiguous. Sub-Section (1) of Section 244A speaks of interest on refund of the amounts due to an assessee under the Act. The assessee is entitled for the said amount of refund with interest thereon as calculated in accordance with clause (a) & (b) of sub-Section (1) of Section 244A. In calculating the interest payable, the section provides for different dates from which the interest is to be calculated.

59. The Hon'ble Apex Court held that Clause(a) of sub-Section(1) of Section 244A talks of payment of interest on the amount of tax paid under Section 155WJ, tax collected at source under section 206C, taxes paid by way of advance tax, taxes treated as paid under Section 199 during the financial year immediately preceding the assessment year.

60. Under this clause, the interest shall be payable for the period starting from the first day of the assessment year to the date of the grant of refund. No interest is payable if the excess payment is less than 10% of the tax determined under Section 143(1) of the Act or on regular assessment.

61. Clause(b) of Sub-Section(1) of Section 244A opens with the words "in any other case" that means in any case other than the amounts paid under Clause(a) of Sub-section(1) of Section 244A. Under this clause, the rate of interest is to be calculated at the rate of one and a half per cent per month or a part of a month comprised in the period or the periods from the date or, as the case may be, either the dates of payment of the tax or the penalty to the date on which the refund is granted. An explanation is appended to clause(b) of the aforesaid sub-Section to explain the meaning of the expression "date of payment of tax or penalty". It clarifies that the "date of payment of tax or penalty" would mean the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

62. Thus, the Hon'ble Apex Court brought the self-assessment tax under the ambit of tax u/s 244A(1)(b). The assessee is eligible for interest on the complete amount of the refund arising out of self-assessment tax. Whatever the money received by the department in excess is ought to be refunded ex-aequo et bono.

63. Hence, keeping in view the entire facts and circumstances of the case, the provisions of the Act as at 1989, 2016, judgments of the various Hon'ble High Courts and Hon'ble Apex Court, we hold as under:

- Where refund of any amount becomes due denotes refund arising out of
 - advance tax u/s 207
 - TCS u/s 206
 - TDS u/s 195
 - All credits u/s 199
 - Taxes paid as specified u/s 156 and
 - Self-assessment tax

- Before 01.06.2016, no interest would be paid if the amount of refund is less than 10% of the taxes determined in case the refund is out of the taxes paid other than self-assessment tax.
- Before 01.06.2016, in the case of refund arising out of self-assessment tax, interest would be calculated on the entire self-assessment tax refunded from the date of payment of S.A. tax.
- After 01.06.2016, no interest would be paid if the amount of refund is less than 10% of the taxes determined whether it is u/s 140, u/s 156, u/s 195, u/s 199, u/s 206 and u/s 207.
- Where refund of "any amount" [244A(1)] due connotes the refund of taxes paid by the assessee.
- Where refund of "any amount" [244A(1)] is due, the assessee is entitled to simple interest. The simple interest would be calculated at the prescribed percentage after

determining the refund due and paid along with the principle.

- Even, "a single day" should be considered as a part of the month for the purpose of computation of interest.

64. Ergo, the AO is hereby directed to pay interest on the refund eligible in accordance with the proviso to Section 244A(1)(a) with regard to the advance tax paid. With regard to the self-assessment tax paid, we hereby hold that the assessee is eligible for interest on the total amount of refund in accordance with provision of Section 244A(1)(b) as the bar contend in proviso to Clause (a) to Section 244A(1) is not applicable to the cases (A.Ys. 1999-2000 and 1994-95) before us. The ground no.3 of the assessee is treated as allowed.

ITA No. 2641/Del/2013 (Departmental Appeal):

65. The AO did not allow interest to the assessee on the amounts of tax paid on 31.01.2003 and 28.02.2003 on the grounds that a few hours cannot be construed as part of a month. The AO held that in order to qualify as part of a month at least one entire day should have been completed.

66. The Id. CIT (A) referred to the analogy provided u/s 234A, Sec. 234B & Sec. 234C wherein similar phrase has been used. Based on the phraseology, the Id. CIT (A) held that while interest is charged from the assessee when the date changes to the next day, similarly, the assessee is also eligible for receipt of interest when the date changes. Hence, it was held that the assessee who pays tax on 31.01.2003 at 23.59 hrs. and eligible

to refund of tax, would be entitled to interest for the month of January.

67. Having gone through the specific provisions of the Act, pertaining to computation of interest u/s 244A(1)(a) and Sec. 244A(1)(b) as well as Sec. 234A, Sec. 234B & Sec. 234C, we hereby hold that the rule of collection of interest on the taxes due from the taxpayer would be applicable in the comparable way while paying interest to taxpayer on the refund.

68. Hence, we hold that the assessee is eligible for interest on the,

(i) Amount of Rs.30,00,00,000/- paid on 31.01.2003 is eligible for interest for the month of January.

(ii) Amount of Rs.25,00,00,000/- paid on 28.02.2003 is eligible for interest for the month of February.

69. In the result, the appeals of the assessee are allowed and the appeals of the revenue are dismissed.

Order Pronounced in the Open Court on 31/08/2020.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 31/08/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR