

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI RAJESH KUMAR (ACCOUNTANT MEMBER) AND  
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.5683/MUM/2019  
(Assessment Year: 2001-02)**

ACIT, Circle - 2(1)(1),  
Room No. 561, 5<sup>th</sup> Floor,  
Aayakar Bhavan, M.K. Road,  
Mumbai – 400 020

M/s Bank of India  
Vs. 8<sup>th</sup> Floor, Star House,  
C-5, G-Block, Bandra Kurla  
Complex, Bandra (E),  
Mumbai – 400 051

**PAN No. AAACB0472C**

**(Revenue)**

**(Assessee)**

Assessee by : Shri C. Naresh, A.R  
Revenue by : Shri Tharian Oommen, D.R

Date of Hearing : 22/07/2021  
Date of pronouncement : 26/07/2021

**ORDER**

**PER RAVISH SOOD, J.M:**

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-4, Mumbai, dated 11.06.2019, which in turn arises from the order passed by the A.O u/s 143(3) r.w.s 254 of the Income Tax Act, 1961 (for short 'Act'), dated 31.08.2018. The revenue has assailed the impugned order on the following grounds before us:

- "1. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) was correct in holding that the refund issued should first be adjusted against the 244A interest payable and balance towards tax refundable, which in case paid later will be entitled for additional interest u/s 244A.

2. Whether on the facts and circumstances of the case, the Id. CIT(A) was correct in law, in interpreting the provisions of Sec. 244A of the Income Tax Act, 1961.
3. The appellant craves to amend, alter, and delete any of the aforesaid grounds and add any additional grounds either before or at the time of hearing.”

2. Briefly stated, the assessee which is engaged in the business of banking had filed its return of income for A.Y. 2001-02 on 31.10.2001, declaring a total income of Rs.11,30,13,310/-. Original assessment was framed by the A.O vide his order passed u/s 143(3), dated 12.02.2004 determining the total income of the assessee at Rs.698,38,26,755/-. Subsequently, the CIT(A) vide his order passed u/s 250 of the Act, dated 25.03.2011 revised the income of the assessee at a loss of Rs.172,30,35,813/- under the normal provisions of the Act and determined its ‘book profit’ u/s 115JB at Rs.231,39,16,197/-. Thereafter, the income of the assessee was revised vide order passed u/s 154 of the Act, dated 16.03.2012 at a loss of Rs.170,63,16,538/- under the normal provisions while for the ‘book profit’ u/s 115JB was determined at Rs.633,50,28,341/-.

3. Subsequently, the Tribunal vide its order dated, 09.04.2014 in ITA No. 1498/Mum/2011 remanded the case to the file of the A.O, who therein gave the consequential effect vide his order dated 05.03.2015.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A) on the ground that the A.O had erred in not granting interest u/s 244A on the interest due on the refund amount. The CIT(A), vide his order dated 25.01.2017 partly allowed the assessee’s appeal with a direction to the A.O to re-compute the interest u/s 244A in view of the order passed by the Tribunal in the assessee’s own case for A.Y. 2004-05. The revenue preferred an appeal against the order passed by the CIT(A), dated 25.01.2017 before the Tribunal. The Tribunal vide its order dated 02.08.2017 in ITA No. 2567/Mum/2017, dated 02.08.2017 allowed the appeal of the revenue for statistical purposes and restored the matter to the file of the A.O for deciding the same afresh in light of the decision of the Hon’ble

High Court of Delhi in the case of India Trade Promotion Organization Vs. CIT, (2014) 361 ITR 646 (Del).

5. In the course of the set-aside proceedings, it was observed by the A.O that the claim of the assessee i.e the refund paid should be first adjusted against the interest and thereafter the balance amount of refund should be adjusted against the principal amount was not directly answered by the Hon'ble High Court of Delhi in the case of India Trade Promotion Organization (supra). In fact, the A.O was of the view that the Hon'ble High Court of Delhi in the aforementioned case, viz. India Trade Promotion Organization (supra) had relied on the decision of the Hon'ble Supreme Court in the case of H.E.G. Limited (2010) 324 ITR 331 (SC). Referring to the observations of the Hon'ble Apex Court, the A.O therein observed, that when there is a refund of Rs. 1 lac due and only Rs.60,000/- was paid, then, first it shall be adjusted towards principal amount which is Rs.1 lac, and the department would be liable to pay interest on the balance amount of Rs.40,000/- only for the rest of the period. It was, thus, observed by the A.O that as per the judgment of the Hon'ble Supreme Court the amount of refund would get adjusted towards the principal amounts first. Also, it was observed by the A.O that the Hon'ble High Court of Delhi in the case of CIT Vs. Indian Farmer Fertilizer Co-operative (2015) 375 ITR 56 (Del), had held, that "payment of any sum over and above interest payable u/s 244A(1) to the assessee, cannot be upheld." Backed by his aforesaid observations, the A.O was of the view that the submissions of the assessee were not found tenable.

6. Aggrieved, the assessee carried the matter in appeal before the CIT(A). Before the CIT(A), it was the grievance of the assessee that the A.O had erred in not giving effect to the directions of the Tribunal, and thus, had erred in not granting interest u/s 244A of the Act. After considering the observations of the Tribunal in its order passed in ITA No. 629/Mum/2018, dated 10.04.2019 in the assessee's case for A.Y. 2003-04, the CIT(A) directed the A.O to follow the said

decision of the Tribunal and re-compute the interest due u/s 244A and also calculate the interest as per Rule 119A of the Income Tax Rules, 1962.

7. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. It is the grievance of the revenue that the CIT(A) had erred in concluding that the refund issued should first be adjusted against the interest payable u/s 244A and the balance amount be adjusted against the tax refundable, for the reason, that such adjustment would result to an additional interest u/s 244A of the Act.

8. The Id. Authorized Representative (for short 'A.R') for the assessee relied on the order passed by the CIT(A). It was submitted by the Id. A.R that as the CIT(A) had followed the view taken by the Tribunal in the assessee's own case for A.Y. 2003-04 in ITA No. 629/Mum/2018, dated 10.04.2019, therefore, no infirmity did emerge from his order. It was submitted by the Id. A.R that as the appeal filed by the revenue was devoid and bereft of any merit, the same, thus, was liable to be dismissed.

9. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the order passed by the A.O.

10. We have heard the Id. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record. As observed by us hereinabove, the Tribunal vide its order passed in ITA No. 2567/Mum/2017, dated 02.08.2017 had while disposing off the appeal of the revenue restored the matter to the file of the A.O with a direction to decide the issue qua computing of the interest u/s 244A afresh in light of the judgment of the Hon'ble High Court of Delhi in the case of India Trade Promotion Organization (2014) 361 ITR 646 (Del). On a perusal of the order of the CIT(A), we find, that he had by drawing support from the order passed by the Tribunal in the assessee's own case for A.Y. 2003-04 in ITA No. 629/Mum/2018, dated

10.04.2019, had therein directed the A.O to follow the said decision of the Tribunal and re-compute the interest due u/s 244A of the Act and also calculate the interest as per Rule 119A of the Income Tax Rules, 1962, observing as under:

- "5. The next issue in this appeal of assesses is against the order of CIT(A) in not granting interest under section 244A of the Act on interest portion of refund due For this assessee has raised the following ground No 2:-

"2. On the facts and in the circumstances of the case and in law the learned DCIT has erred m non- granting of interest u/s. 244A of the Income-tax Act. 1961 on interest portion of refund one and the Hon'ble CIT(A) has erred in confirming the same The learned DCIT be directed to grant interest u/s 244A of lh9 Income-tax Act, 1961 on interest portion of refund due and enhance the refund accordingly."

6. We have heard rival contentions and gone through the facts and circumstances of the case We find that this issue is a/so covered by Tribunal's decision in assessee's own case in ITA No 2907 & 2908/Mum/2017 for AY 2007-08 & 2009-W vide -order dated 22.11.2018 wherein the issue is decided vide Para 7 as under:-

The next ground number 3 and 4 raised by Revenue in its appeal for AY 2007-08 relates to computation of grant of interest u/s 244A of the 1961 Act payable to the assesses on refund arising out of the order giving effect to order of the appellate authority or consequent to order passed u/s 154 of the 1961 Act. The identical issue is also recurring issue in assessee's own case wherein tribunal has restored the issue back to the AO with certain directions The tribunal order in assessee's own case for AY 2005-06 in ITA No.3002/Mum/2014 vide dated 03.06 2016 is reproduced hereunder:-

"5. The next issues contested by the assesses relates to the granting of interest u/s 244A of the Act The id AR submitted that the assessee has been receiving refunds upon passing of orders by the appellate authorities or upon passing of orders u/s 154 of the Art The Id AR submitted that the AO has made adjustment of refund (consisting of tax and interest) already granted against the refund of tax dye in each of the successive orders The Id. A.R submitted that the entire amount of refund (both tax and interest) granted should be first adjusted against the interest portion that has become due and then the remaining amount, if any, should be adjusted against the tax portion of me refund that has become due in support of his contentions the Ld. A.R planed reliance on the decision rendered by the Tribunal in the assessee's own case in ITA NO. 5444 to 5446/Mum/2013 dated 22.12.2014 and also the decision rendered by the Tribunal in the case of Union Bank of India (ITA No. 571 &5741/Mum/2013 dated 23.6.2014)

6. We heard the parties on this issue. Since it is matter involving computation of eligible amount of interest u/s 244A of the Act. We are of the view that this issue requires fresh examination of the end of me AO. In the decisions relied upon by the assessee, (the Tribunal has followed the decision rendered by Hon'ble Delhi High Court in the case of India Trade Promotion Organisation Vs CIT (361 ITR 646) and accordingly given direction of the AO to follow the said decision Consisted with the view taken by !he Tribunal, we restore this issue to his file with the direction to examine this issue afresh by following the rendered in the case of India Trade Promotion Organization (supra).

Respectfully following the decision of the tribunal in assessor's own case for AY 2005-06 we restore this issue So the file of the AQ with similar directions as were given by tribunal for AY 2005-06 in ITA no 3002/Mum/2014 more particularly in the light of decision of Hon'ble Delhi High Conn in the case of India Trade Promotion Organisation (supra) vide orders dated 03082016 The ground no 3 and 4 raised by Revenue ate allowed for statistical purposes We order accordingly."

7. The AO will decide this issue in term of the directions given by the Tribunal in AY 2007-05 and 2009- 10 in ITA No 2907 & 2908/MUM/2017 The Ground No 2 by assesses is allowed for statistical purposes."

We have deliberated on the observations of the CIT(A) in the backdrop of the issue in hand. As the CIT(A) has followed the order passed by the Tribunal in the assessee's own case for A.Y. 2003-04 in ITA No. 629/Mum/2018, dated 10.04.2019, we, thus, finding no infirmity in the view taken by him, uphold the same.

11. Resultantly, finding no merit in the appeal filed by the revenue, we dismiss the same.

Order pronounced in the open court on 26.07.2021

Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

Mumbai;  
Dated: 26.07.2021  
PS: Rohit

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,  
//True Copy//

(Sr. Private Secretary)  
**ITAT, Mumbai**