

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.4678/M/2019
Assessment Year: 1989-90**

M/s. Lubrizol India P. Ltd., 9/3, Thane-Belapur Road, Turbhe, Navi Mumbai - 400705 PAN: AAACLO126H	Vs.	The Deputy Commissioner of Income- tax, LTU-2, 29 th Floor, Centre No.1, World Trade Centre, Cuffe Parade, Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Neeraj Sheth, A.R.
Revenue by : Shri Satya Pinisetty, D.R. &
Shri Brajendra Kumar, D.R.

Date of Hearing : 09.07.2021
Date of Pronouncement : 22.07.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 14.05.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 1989-90.

2. The only issue raised by the assessee in the 1st ground of appeal is against the order of Ld. CIT(A) whereby the Ld. CIT(A) has upheld the action of the AO in granting short interest under section 244A of the Act and also not directing the AO to adjust the refund granted first towards the interest receivable and the balance remaining against the tax amount receivable by the

assessee. The assessee has also challenged the order of Ld. CIT(A) on the issue of holding that the issue is debatable and can not be rectified under section 154 of the Act.

3. The facts in brief are that in terms of order dated 20.07.2011 passed under section 154 of the Act, the AO determined the amount of Rs.2,98,529/- as refundable to the assessee. Against the said order, the assessee moved another rectification application under section 154 of the Act dated 24.08.2011 and 06.08.2012 requesting the AO to allow interest on interest section 244A of the Act relying on the decision of Apex Court in the case of Sandvik Asia Ltd. vs. CIT (2006) 280 ITR 643 and submitted that a refund of Rs.3,48,62,954/- should have been granted to the assessee. Again the AO rejected the rectification application vide order dated 12.04.2018. The assessee again filed a rectification application dated 15.05.2018 against the order dated 12.04.2018 requesting the AO that the amount of refund issued to the assessee on various dates such as 31.07.1990, 29.11.1991 and 15.10.2007 should first be adjusted towards interest receivable under 244A of the Act as on that date and balance amount if any should be adjusted against the tax receivable by the assessee. In defence of his arguments, the assessee relied on the decision of the co-ordinate bench of the Tribunal of Mumbai Bench in the case of UOI vs. ACIT (2016) 521 ITR(T) 221. Noteworthy to state that while making the above rectification application, the assessee has not claimed interest on interest receivable u/s 244A of the Act. The AO again rejected the rectification application moved under section 154 of the Act by the assessee by relying on the Hon'ble Supreme Court decision in the case of Gujarat Fluro Chemicals

as reported in (2014) 42 taxmann.com 1 which provides that only interest provided under the statute can be given by the department and no other interest.

4. Aggrieved by the order of rectification order dated 21.05.2018, the assessee filed an appeal before the Ld. CIT(A) submitting that order passed by the AO is bad in law as the same is against the ratio laid in the decision of co-ordinate bench of the Tribunal in the case of UOI vs. ACIT (2016) 72 taxmann.com 348 wherein it has been held that refund granted should be adjusted first against interest component of earlier refund and thereafter balance amount should be adjusted against principal component of tax in the refund granted earlier. The assessee also distinguished the decision of Hon'ble Apex Court in the case of Gujarat Fluoro Chemicals (supra) on the ground that said decision deals with the issue of interest on interest whereas assessee has not claimed any interest on interest but asking for the adjustment of refund paid by the department against the interest due first and thereafter against the principal amount. However the ld CIT(A) dismissed the appeal of the assessee by observing that the issue raised by the assessee is debatable in nature and can not be rectified under section 154 of the Act.

5. At the outset, the Ld. A.R. submitted before us that the decision of the Apex Court in the case of Gujarat Fluoro Chemicals (supra) has no bearing on the instant case since that case dealt with the issue whether interest on interest can be allowed to an assessee, whereas the Appellant has not made a claim of interest on interest but has merely requested that the

proper method of adjustment of refund be followed, namely, the refund should first be adjusted against the interest and thereafter against the tax. It is well settled that refund granted by the tax department has to be first adjusted against the interest and thereafter against tax amount refundable to the assessee. The ld counsel in his defense placed reliance on the following decisions:

- a. Union of India v/s. ACIT [2016] 72 taxmann.com 348;
- b. DCIT v/s. State Bank of Saurashtra (now merged with SBI) [ITA No. 99/Mum/2016];
- c. Bank of Baroda v/s. DCIT [ITA No. 1646 & 2565/Mum/2017];
- d. DCIT v/s. Peerless General Finance & Investment Co. Ltd. [2017] 88 taxmann.com 708

The Ld. A.R. also submitted that the decision of the Hon'ble Supreme Court in Gujarat Flouro Chemicals (supra) has been considered in the aforementioned decisions. Reliance is also placed on the decision of the Mumbai Tribunal in the case of Grasim Industries Ltd. v/s. DCIT reported in [2021] 123 taxmann.com 312 wherein the same view was taken. In view of the above, the ld AR submitted that the view canvassed by the appellant is supported by several rulings of the Tribunal referred above and hence and hence, the issue cannot be regarded as being debatable In nature as held by the CIT(A). The Ld. A.R. prayed before the Bench that in view of the foregoing judicial pronouncements, the AO may be directed to adjust the amount of refund first against interest receivable u/s. 244A of the Act and thereafter the balance amount against the principal component of tax. The AO may further be directed to grant further interest under section 244A of the Act in accordance therewith.

6. The Ld. D.R., on the other has, heavily relied on the orders of AO and Ld. CIT(A).

7. We have heard the rival submissions of both the parties and perused the material on record. The undisputed facts are that the assessee has claimed before the AO vide rectification application dated 12.04.2018 that interest granted on various dates should first be adjusted against the interest on income tax refund and thereafter if balance remaining any should be adjusted against the principal amount of tax due to the assessee by way of refund. The Ld. CIT(A) dismissed the appeal of the assessee by just mentioning that the issue is debatable one and can not be decided at this point under section 154 of the Act and thus upheld the order of the AO. However, we find that the adjustment of refund issued earlier has to be adjusted against the interest and only thereafter against the principal amount of tax. The issue is squarely covered by the various decisions cited by the Ld. A.R. during the course of hearing namely; Union of India vs. ACIT (supra), DCIT vs. State Bank of Saurashtra (now merged with SBI) (supra), Bank of Baroda vs. DCIT (supra) and DCIT vs. Peerless General Finance & Investment Co. Ltd. (supra). In view of these facts, we are of the considered opinion that a refund issued to the assessee on various dates has to be first adjusted against the interest due on the income tax and thereafter against the principal amount. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to make adjustment of refund as indicated above.

8. In the result, the appeal of the assessee is hereby allowed.

Order pronounced in the open court on 22.07.2021.

**Sd/-
(Amarjit Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 22.07.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.