

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 835/MUM/2020
Assessment Year: 2003-04**

Assistant Commissioner of Income Tax (LTU-1), 29 th Floor, Center-1, World Trade Centre, Cuffee Parade, Mumbai - 400005 PAN: AABC18842G	Vs.	M/s IDBI Bank Limited, 6 th Floor, IDBI Tower, Colaba Office, Cuffe Parade, Mumbai - 400005
(Appellant)		(Respondent)

**ITA No. 777/MUM/2020
Assessment Year: 2003-04**

IDBI Bank Ltd., 22 nd Floor, Taxation Cell, IDBI Tower, WTC Complex, Cuffe Parade, Mumbai - 400005 PAN:AAACI1603C	Vs.	The DCIT/ACIT Large Tax Payers Unit, 29 th Floor, Centre-1, WTC Complex, Cuffe Parade, Mumbai - 400005
(Appellant)		(Respondent)

Revenue by : Ms. Shreekala Pardeshi (DR)

Assessee by : Shri C Naresh (AR)

Date of Hearing : 18/08/2021

Date of Pronouncement: 28/09/2021

ORDER

PER SAKTIJIT DEY, JM

Captioned cross appeals arise out of order dated 26.11.2019 of learned Commissioner of Income Tax (Appeals)-1, Mumbai for the assessment year 2003-04.

2. Briefly the facts are, the assessee, a resident company, is engaged in the business of banking. For the assessment year under dispute, assessee filed return of income declaring total income of Rs. 114,18,18,570/-. However, while completing the assessment, the Assessing Officer (AO) made various additions/disallowances which enhanced income to Rs. 139,95,84,750/-. Against the assessment order so passed, assessee filed appeal before the learned Commissioner (Appeals). While deciding assessee's appeal, learned Commissioner (Appeals) granted partial relief to the assessee. The relief granted by learned Commissioner (Appeals) resulted in refund due to the assessee. After giving effect to the order of learned Commissioner (Appeals), the AO vide order dated 03.04.2013, granted refund amounting to Rs.16,45,25,005 including interest under section 244A of the Act. While computing the refund as aforesaid, the AO adjusted the refund granted earlier amounting to Rs. 1,95,24,797/- against the interest component. Subsequently, the AO issued a notice under section 154 of the Act for rectifying the order dated 03.04.2013 giving effect to the order of learned Commissioner (Appeals) on the ground that excess refund of Rs.80,95,764/- was granted to the assessee. The AO while coming to the aforesaid decision was of the view that the refund amount of Rs. 1,95,24,797/- should have been adjusted against the tax component and not interest component computed under section 244A of the Act. Though, the assessee objected to the initiation of proceeding under section 154 of the Act, however, rejecting the objection of the assessee the AO passed an order under section 154 of the Act holding that the assessee has been granted excess interest under section 244A of the Act amounting to Rs.80,95,764/-.

Accordingly, he raised a demand notice for recovery of the said amount. Against the order passed under section 154 of the Act, the assessee preferred an appeal before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and materials on record and judicial precedents cited before him, learned Commissioner (Appeals) held as under:-

“6.3 I have carefully considered the facts of the case, oral contentions and written submissions of the assessee’s discussion of the AO in the rectification order u/s 154 of the Act and material available on record. Vide Ground No.1 the appellant has contested the assumption of jurisdiction by the AO u/s 154 of the Act as the appellant contends that the issue involved is highly legal and debatable and which can be concluded only by a long drawn process of reasoning on various issues. However, in respect of such submission and contention of The assessee it is slated that the same becomes academic in nature, in view of the disposal of the issue raised by the assessee in its Ground No. 2. The assessee in its Ground No,2 has raised an issue regarding less grant of interest u/s 244 of the Act and it is the submission of the assessee that such action on the part of the AO is not in accordance with the prevailing jurisprudence of the issue as also with the decision of the Hon’ble ITAT in the case of Bank of Baroda in ITA No. 1646 & 2545/Mum/2017. As The assessee contends that the issue is covered by the decision of the Hon’ble jurisdictional ITAT in the case of Bank of Baroda (supra), respectfully following the same, the AO is directed to examine the computation of the refund including interest” u/s 244A of the Act in accordance with the directions given by the Hon’ble jurisdictional Tribunal in the case of Bank of Baroda in ITA No. 1646 & 2545/Mum/2017 dated 20.12.2018. Subject to such examination and computation of refund including interest u/s 244 of The Act in accordance with the decision of Hon’ble Mumbai ITAT in the aforesaid case. Ground No, 2 of appeal is disposed off and for statistical purposes, it is treated as partly allowed. Ground No.1 is disposed off being academic in nature, however, for statistical purposes it is treated as dismissed.”

3. Shri C. Naresh, learned Authorised Representative of the assessee submitted, the very initiation of proceeding under section 154 of the Act is invalid as the issue on which the AO initiated the proceeding is a purely legal and highly debatable issue. He submitted, the issue on which the AO intended to rectify the order passed earlier does not fall within the ambit of mistake apparent on the face of record. He submitted, there are number of judicial precedents holding that refund amount has to be first adjusted against the interest component computed under section 244A of the Act and only thereafter it can be adjusted against the tax amount. In this context, he drew our attention to the following decisions:-

1. *“India Trade Promotion Organization vs. CIT (2014) 361 ITR 646 (Delhi)*
2. *Union Bank of India vs. ACIT (2016) 72 taxman.com 348.*
3. *Bank of Baroda vs. PCIT, ITA No. 1646/Mum/2017 dated 20.12.2018”.*

4. Thus, he submitted, since more than one view is possible on the issue, it is not a rectifiable mistake under section 154 of the Act. He submitted, learned Commissioner (Appeals) has erred in law in holding that ground raised by the assessee challenging the validity of the order passed under section 154 of the Act is academic in nature. Thus, he submitted, the order passed under section 154 of the Act should be held as invalid.

5. The learned Departmental Representative submitted, since the Commissioner (Appeals) has not decided the legal ground raised by the assessee, the matter may be restored back to him. Without prejudice, she submitted, learned Commissioner (Appeals) was wrong in allowing assessee's claim as it amounts to granting interest on interest, which is impermissible. In

support of such contention, she relied upon the decision of Hon'ble Supreme Court in case of CIT vs Gujarat Fluoro Chemicals, SLP (C) No. 11406 of 2008, Judgment dated 18.09.2013. Thus, she submitted, the AO was justified in initiating proceeding under section 154 of the Act to recover the excess interest paid to the assessee.

6. We have considered rival submissions and perused the materials on record. At the outset, we intend to examine the legal ground raised by the assessee challenging the validity of the order passed under section 154 of the Act. Admittedly, in pursuance to order passed by the learned Commissioner (Appeals), the AO recomputed income of the assessee resulting in refund of certain amount. While computing the refund, the AO adjusted a part of the refund granted earlier against the interest component computed under section 244A of the Act. Subsequently, the AO changed his view while holding that no part of the refund granted earlier can be adjusted against the interest component computed under section 244A of the Act. Accordingly, he passed the order under section 154 of the Act withdrawing the alleged excess interest paid to the assessee under section 244A of the Act. The issue arising for consideration is, whether the alleged mistake for which the AO initiated proceeding under section 154 of the Act comes within the ambit of "mistake apparent on the face of record" as contemplated under the said provision.

7. Undisputedly, there are judicial precedents, as cited by learned Authorised Representative of the assessee, holding that refund amount, if any, first has to be adjusted against the interest component forming part of the refund computed earlier but not granted and the balance amount has to be

adjusted against the tax component. Even, assuming that there are decisions to the contrary, as submitted by learned Departmental Representative, this can only suggest that there is more than one view possible on the issue whether the refund granted earlier to the assessee first has to be adjusted against interest computed under section 244A of the Act or otherwise. In other words, it is highly debatable issue. Thus, keeping in view the aforesaid factual and legal position, it has to be held that the issue on which the AO initiated proceeding under section 154 of the Act cannot be considered to be in the nature of mistake apparent on the face of record as envisaged under section 154 of the Act. Therefore, the AO has erroneously assumed jurisdiction under section 154 of the Act to rectify the mistake. In our view, there is no rectifiable mistake as contemplated under section 154 of the Act which could have been rectified. In view of the aforesaid, we hold the order passed under section 154 of the Act to be invalid.

8. In view of our aforesaid decision, there is no need to dwell upon the merits of the issue raised in revenue's appeal. Accordingly, assessee's appeal is allowed and revenue's appeal is dismissed.

Order pronounced in the open court on 28th September, 2021.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 28/09/2021

Alindra, PS

आदेश 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**