

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE SHRI LALIET KUMAR, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपील सं./ I.T.A. No. 2309/Mum/2019
(निर्धारणवर्ष / Assessment Year: 1996-97)

State Bank of India Financial Reporting & Taxation, 3 rd floor, Corporate Centre, Madam Cama Road, Nariman Point, Mumbai-400 021	बनाम/ Vs.	ACIT-2(2)(1), R. No. 545, Aayakar Bhavan, M. K. Road, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAACS8577K		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

आयकरअपील सं./ I.T.A. No. 2188/Mum/2019
(निर्धारणवर्ष / Assessment Year: 1996-97)

DCIT-2(2)(1), R. No. 545, Aayakar Bhavan, M. K. Road, Mumbai-400 020	बनाम/ Vs.	State Bank of India Financial Reporting & Taxation, 3 rd floor, Corporate Centre, Madam Cama Road, Nariman Point, Mumbai-400 021
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAACS8577K		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थीकीओरसे/ Appellant by	:	Shri C. Naresh , Ld. AR
प्रत्यर्थीकीओरसे/Respondent by	:	Shri Surendra Kumar, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	16.12.2021
घोषणाकीतारीख / Date of Pronouncement	:	17.12.2021

आदेश / ORDER

PER LALIT KUMAR (JUDICIAL MEMBER):

1. These are two connected appeals filed by the assessee and revenue on the order passed by Ld. CIT(A)-5, Mumbai dated 28.01.2019 on the following grounds :-

Grounds raised by assessee:-

1. The learned Commissioner of Income Tax (Appeals) erred in holding that part of a month as specified in rule 119A has to be considered as a period of 30 days and not British calendar month and accordingly, appellant is not entitled to interest for part of a month.

1.1 The learned Commissioner of Income Tax (Appeals) failed to note that the said issue was decided in favour of appellant by CIT(A) in all earlier orders and accepted by department and hence the issue had reached finality. Accordingly, the same should have been followed and appellants claim allowed.

1.2 Your appellant craves to add, amend, alter or modify any of the ground .of appeal.

Grounds raised by revenue:-

1. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) correct in holding that assessee has to be granted additional interest as per provisions of section 244(1A); ignoring the fact that in the present case, section 244(1A) must be read with 2nd proviso of section 153(5)".

2. At the outset Ld. AR for the assessee brought to our notice para 7.3.5 of the order of Ld. CIT(A), which are as under:-

7.3.5 From the above referred decision of the Hon'ble Gujarat High Court it is evident that for the purpose of sec 244A of the Act meaning of "month" means 30 days period

and not the British calendar month as defined u/s 35(5) of the General Clauses Act. The Ld. AO has not given the details of working of computation of interest u/s 244A of the Act. Hence, respectfully, following the above decision of the Hon'ble Gujarat High Court in the case of Arvind Mills Ltd, which has considered the decision of the Hon'ble Bombay High Court in the case of Asians Paints Ltd, referred therein, the Ld. AO is directed to recompute the interest u/s 244A of the Act taking into account the meaning of "month" as decided the by the Hon'ble Gujarat High Court inlaid case. The Ground No.1 (a) raised in appeal is disposed off accordingly.,

2.1 Ld. AR submitted that this issue has already been settled in favour of the assessee by the order of Coordinate Bench of ITAT in ITA No. 2295/Mum/2018 in the case of UTI Mutual fund Vrs. DCIT. The operative portion of this order is reproduced below:-

7.6 Further , we have noted that Hyderabad-tribunal in Navayuga Quazigund Expressway Private Ltd. v. DCIT in ITA No. 1651/Hyd/14 vide order dated 13.03.2015 has held that „month“ is to be interpreted as period of 30 days and not British Calendar Month in context of Section 201(1A) of the 1961 Act, by holding as under:-

“ 5. We have heard the arguments of both the sides and also perused the relevant material on record. The issue involved in this appeal relates to the computation of interest payable by the assessee under S.201(1A), the provisions of which read as under- —

201.(1)..... (1A) Without prejudice to the provisions of subsection (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deduction fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest, -

(i) At one percent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and

(ii) At one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid; and such interest shall be paid before furnishing the statement in accordance with the provisions of subsection (3) of section 200; Provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso to sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident”

The procedure to be followed for calculating the interest payable by the assessee or by the Central Government is given in Rule 119A of Income-tax Rules, 1962 as under

“119A. In calculating the interest payable by the assessee or the interest payable by the Central Government to the assessee under any provisions of the Act-

(a) where interest is to be calculated on annual basis, the period for which such interest is to be calculated shall be rounded off to a whole month or months and for this purpose any fraction of a month shall be ignored; and the period so rounded off shall be deemed to be the period in respect of which the interest is to be calculated;

(b) where the interest is to be calculated for every month or part of a month comprised in a period, any fraction of a month shall be deemed to be a full month and the interest shall be so calculated;

(c) the amount of tax, penalty or other sum in respect of which such interest is to be calculated shall be rounded off to the nearest multiple of one hundred rupees and for this purpose any fraction of one hundred rupees shall be ignored and the amount so rounded off shall be deemed to be the amount in respect of which the interest is to be calculated.

6. In the present case, clause (ii) of S.201(1A) read with Clause (b) of Rule 119A is applicable and it provides that where the interest is to be calculated for every month or part of a month comprised in a period, any fraction of a month shall be deemed to be a full month, and the interest shall be so calculated. The dispute in this context as involved in the present case is whether the month for such calculation of interest is to be taken as a British calendar month or a period of 30 days. It is observed that similar controversy had arisen in the case of CIT V/s. Arvind Mills Limited (2011)16 Taxman.com.291 (Guj), wherein the assessee claimed interest under S.244A on the basis of British calendar month. The claim of the assessee, although was not allowed by the Assessing Officer as well as the learned CIT(A), the Tribunal allowed the same. When the matter was carried before the Hon'ble Gujarat High Court in an appeal filed by the Revenue, Their Lordships held that a reading of sub-section (1) of S.244A, the relevant provisions of which are analogous to the provisions of clause (ii) of S.201(1A) read with Rule 119A, would make it clear that the term 'month' must be given the ordinary meaning of the term of 30 days period and not the British calendar month as defined in S.3(35) of the General Clauses Act. It was held that the definition given in General Clauses Act cannot be adopted for the purposes of subsection (1) of

S.244A as such importation of the definition would lead to anomalous situation. In our opinion, the ratio of the decision of the Hon'ble Gujarat High Court in the case or CIT V/s. Arvind Mills Limited (supra) is squarely applicable in the present case, and there being no decision cited by the learned Departmental Representative of any High Court taking a contrary view, we respectfully follow the decision of the Hon'ble Gujarat High Court in the case of Arvind Mills Limited (supra) and direct the Assessing Officer to recompute the interest payable under S.201(1A) by taking a period of 30 days as a month instead of British calendar month.

7.7 The learned DR could not controvert the above position and no contrary decision is brought on record. As could be seen from above, the Hon'ble High Court as well tribunal has taken a consistent view that „month“ is to be interpreted as period of 30 days and not British calendar . There are other judgments also relied upon by assessee wherein similar view has been taken. Thus , Respectfully following the ratio of aforesaid decisions, we allow the appeal of the assessee, by holding that for purpose of computation of interest payable u/s. 201(1A)(ii) of the 1961 Act read with Rule 119A(b) of the 1962 Rules, month is to be interpreted as period of 30 days and not British Calendar Month. However, now for the purpose of computation of interest payable by the assessee in accordance with our decision in this order, we are restoring the mater back to the file of AO for limited purpose of computing the interest payable by assessee u/s 201(1A)(ii) of the 1961 Act. The AO is directed to compute interest payable by the assessee u/s 201(1A) of the 1961 Act in accordance with our decision in this order. We order accordingly.

8. In the result, appeal of the assessee in ITA no. 2295/Mum/2018 for AY 2014-15 is allowed as indicated above.

2.2. In view of the above, Ld. AR submitted that the appeal of the assessee is required to be allowed.

3. On the other hand Ld. DR relied on the order passed by Ld. CIT(A).

4. We have heard the rival submissions and perused the material placed on record. We find that the identical issue has been settled in favour of the assessee by the decision of Coordinate Bench of ITAT in ITA No. 2295/Mum/2018 in the case of UTI Mutual fund Vrs. DCIT. Therefore, respectfully following the order passed by Coordinate Bench of ITAT on identical issue, we allow the appeal of the assessee.

5. With respect to the revenue's appeal, Ld. DR had drawn our attention para 7.3.6 of the order of Ld. CIT(A), which are as under:-

*7.3.6 In respect of Ground No. 1 (b), the appellant has submitted that the Ld. AO ought to have noted that as per the provisions of sec 244A of the Act, interest ought to have been granted at 2/3% upto 07.09.2003, since the rate of interest was changed only from 08.09.2003. The Ld. AO has not given the details of rate on which the interest u/s 244A of the Act has been computed while granting refund. Hence, the Ld. AO is directed to verify the records and claim of the appellant and re-compute the interest allowable u/s 244A of the Act at the applicable rate as per law. The Ground No. 1 (b) raised in appeal is disposed off **accordingly**.*

6. From the above, Ld. DR submitted that Ld. CIT(A) has wrongly given the direction to verify the records and to compute the interest u/s 244A of the Act.

7. On the other hand, Ld. AR submitted that Ld. CIT(A) had merely issued the directions to the AO to verify the records. The order passed by Ld. CIT(A) and challenged by the revenue is not sustainable as the direction to verify the record is not amenable to the appeal.

8. We have heard the rival submissions and perused the material placed on record. We find that Ld. CIT(A) has merely directed the AO to verify the record. Therefore, it cannot be said that revenue is aggrieved by the order passed by Ld. CIT(A). We may like to mention section 251 of the Act whereby Ld. CIT(A) as the power to dispose of the appeal by confirming, enhancing or annul the assessment in the present case. As per clause (c) of section 251, Ld. CIT(A) may pass such order as he thinks fit. In the present case, Ld. CIT(A) has merely issued the directions to the AO for verifying the records. This direction of the Ld. CIT(A) is not an order as it has not determined or adjudicated any lis between the parties for which the revenue may have aggrieved.

9. In view of the above, the order sought to be challenged as under is not amenable to the appeal. Accordingly, we do not find any merit in the appeal of the revenue, therefore the same is dismissed.

10. In the net result, the appeal filed by assessee stands allowed and appeal filed by revenue stands dismissed.

Order pronounced on 17th December, 2021.

<i>Sd/-</i>	<i>Sd/-</i>
(S. Rifaur Rahman)	(Laliet Kumar)
लेखा सदस्य /Accountant Member	न्यायिकसदस्य / Judicial Member

मुंबई Mumbai;दिनांक Dated : 17.12.2021
Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File
आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai