IN THE INCOME TAX APPELLATE TRIBUNAL

"I" BENCH, MUMBAI

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.380/Mum./2021
(Assessment Year : 2007–08)

ITA no.381/Mum./2021
(Assessment Year : 2006–07)

ITA no.382/Mum./2021
(Assessment Year : 2008–09)

Dy. Commissioner of Income Tax
Circle–3(2)(2), Mumbai ……. Appellant

v/s

MSM Satellite (Singapore) Pte. Ltd.
C/o Dhruv A & Co., 1101 & 1102
One Indiabulls Centre, Tower–2B ……. Respondent
Elephinstone Road (W), Mumbai 400 013
PAN – AABCS9229H

Assessee by : Shri Nitesh Joshi, Advocate
Shri Ritesh Thakkar, C.A.
Revenue by : Shri Milind Chavan, Sr. D.R.

Date of Hearing – 04.04.2022	Date of Order – 09/06/2022

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the Revenue challenging the common impugned order dated 28/02/2020, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of

Income Tax (Appeals)–57, Mumbai, inter-alia, for the assessment years under consideration.

2. Since all these appeals pertain to the same assessee involving common grounds on identical facts and circumstances, therefore, as a matter of convenience these appeals were heard together and are being adjudicated by way of this consolidated order.

3. The Revenue, in the present appeals for all the years under consideration, has raised following common grounds:–

> *"1. Whether On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that the refunds granted should first be adjusted towards the interest components and the balance, if any towards tax components of the refund, without appreciating that such a methodology results into awarding interest on interest which has been clearly disapproved by the Hon'ble Supreme Court in the case of CIT vs. V. Gujrat Fluoro Chemicals (358 ITR 291).*
>
> *2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in narrating a hypothetical situation of granting of refund in his order to arrive at the final conclusion without realizing that such an hypothesis has never arrived as a matter of fact.*
>
> *3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred to arrive at a conclusion solely on the basis of some hypothesis which is not at all correct.*
>
> *4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not holding that the interest component should first be adjusted against the refund paid, without appreciating that the interest portion would always come later once the extra prepaid taxes are refunded back to the assessee."*

4. In the first round of proceedings, the Co–ordinate Bench of the Tribunal, vide order dated 28/08/2015, passed in appeal being ITA no.

8272/Mum./2010, and order dated 29/02/2016, passed in appeal being ITA no.8748/Mum./2011, inter-alia, granted relief to the assessee. The Assessing Officer passed order, giving effect to the directions of the Tribunal, and determined the refund payable to the assessee. The assessee being aggrieved with the short grant of refund, preferred appeal before the learned CIT(A).

5. The learned CIT(A), vide common impugned order directed the Assessing Officer to re–compute the interest granted under section 244A of the Act by first adjusting the refund already granted to the assessee against the interest component and the balance, if any, towards the tax component of the refund due. Being aggrieved with this direction, the Revenue is in appeals before us.

6. During the course of hearing, learned Departmental Representative submitted that the directions of the learned CIT(A) vide common impugned order, results in awarding interest on interest which is contrary to the decision of Hon'ble Supreme Court in CIT v/s Gujarat Fluoro Chemicals, [2014] 358 ITR 291 (SC). Learned Departmental Representative further submitted that the refund already granted to the assessee should be adjusted only against the tax component and interest under section 244A of the Act should be accordingly computed.

7. On the other hand, learned Authorised Representative for the assessee submitted that the direction of learned CIT(A) is in consonance with various decisions of the Co–ordinate Bench of Tribunal, wherein this issue has been decided in favour of the tax payer.

8. We have considered the rival submissions and perused the material available on record. We find that the Hon'ble Supreme Court in Gujarat Fluoro Chemicals (supra) was considering the correctness or otherwise of the decision of the Hon'ble Supreme Court in Sandvik Asia Ltd. v/s CIT, [2006] 280 ITR 643 (SC). The Hon'ble Supreme Court, while clarifying, held that under section 244A of the Act, interest provided for under the statute can only be claimed by the assessee from the Revenue and no other interest on such statutory interest is payable. The present case is not a case where interest on interest due was claimed by the assessee. The issue arising in the present case is regarding correct computation of refund. As per the Revenue, while computing the refund and interest thereon under section 244A of the Act, the refund already granted to the assessee should be adjusted against the tax component. However, as per the assessee, the refund already granted to the assessee should be first adjusted against the interest component and balance, if any, towards the tax component of the refund due. We find that the Co–ordinate Bench of Tribunal in Union Bank of India v/s ACIT, [2017] 162 ITD 142 (Mum.),

after considering the decision of the Hon'ble Supreme Court in Gujarat Fluoro Chemicals (supra), observed as under:–

> *"3.8 Thus, from the perusal of the above, it is clear that where the amount of tax demanded is paid by the assessee then it shall first be adjusted towards interest payable and balance if any whatever tax payable. Now, if we go through section 244A, we find that no specific provision has been brought on the statute with respect to adjustment of refund issued earlier for computing the amount of interest payable by the revenue to the assessee on the amount of refund due to the assessee. Thus, the law is silent on this issue. Under these circumstances, fairness and justice remands that same principle should be applied while granting the refund as has been applied while collecting amount of tax. The revenue is not expected to follow double standards while dealing with the tax payers. The fundamental principle of fiscal legislation in any civilized society should be that the state should treat its citizens (i.e. tax payers in this case) with the same respect, honesty and fairness as it expects from its citizens. It is further noted by us that Hon'ble Delhi High Court has already decided this issue in clear words which has been followed by the Tribunal in assessee's own case in the earlier years. It is further noted by us that assessee is not asking for payment for interest on interest. It is simply requesting for proper method of adjustment of refund and for following the same method which was followed by the department while making collection of taxes. Under these circumstances, we find that judgment of Hon'ble Supreme Court in the case of Gujarat Fluoro Chemicals (supra) is not applicable on the facts of the case before us and thus Ld. CIT (A) committed an error in not following the decisions of the Tribunal of earlier years in assessee's own case as well as judgment of Hon'ble High Court in the case of India Trade Promotion Organisation (supra)."*

9. Similarly, another Co-ordinate Bench of the Tribunal in Grasim Industries Ltd. v/s CIT, [2021] 23 taxmann.com 31 (Mum.), following the aforesaid decision in Union Bank of India (supra), observed as under:-

> *"6. We find that assessee has raised ground before us stating that refund granted to the assessee is to be first adjusted against the correct amount of interest due on that date and thereafter, the left over portion should be adjusted with the balance tax. We find that in the instant case refund was granted to the assessee vide refund order in October 2013 and it was pleaded by the assessee that the said refund is to be adjusted against the correct amount of interest payable thereof to be computed as per the*

directions of the ld. CIT(A) and only the balance amount is to be adjusted against tax paid. Accordingly, unpaid amount is the tax component and therefore, the assessee would be entitled for claiming interest on the tax component remaining unpaid. In our considered opinion, the same would not tantamount to interest on interest as alleged by the ld. CIT(A) in para 4.2 on his order. Similarly, the refund granted to the assessee in July 2016 is to be adjusted against the correct interest payable on the tax amount remaining unpaid and balance towards tax component. We find that this issue is already settled in favour of the assessee by the following decisions of this Tribunal:—

a. Decision in the case of Union Bank of India v. Asstt. CIT [2016] 72 taxmann.com 348/162 ITD 142 (Mum.).

b. Decision in the case of Bank of Baroda v. Dy. CIT [IT Appeal No. 646 (Mum.) of 2017, dated 20-12-2018].

7. In view of our aforesaid decision in the facts and circumstances of the instant case and respectfully following the judicial precedents relied upon hereinabove, the alternative argument made by the ld. AR on without prejudice basis, need not be gone into and no opinion is given herein and they are left open.

8. Accordingly, we direct the ld. AO to compute the correct amount of interest allowable to the assessee as directed by the ld. CIT(A) as on the date of giving effect to the Tribunal's order i.e. 6-9-2013. We further hold that the refund granted on 6-9-2013 be first appropriated or adjusted against such correct amount of interest and consequently, the short fall of refund is to be regarded as shortfall of tax and that shortfall should then be considered for the purpose of computing further interest payable to the assessee u/s. 244A of the Act till the date of grant of such refund. Accordingly, the grounds raised by the assessee in this regard are allowed for both the years."

10. As the issue arising in the present appeals is already settled in favour of the assessee by the aforesaid decisions, respectfully following the aforesaid judicial precedents, we find no infirmity in the directions issued by the learned CIT(A). Accordingly, grounds raised by the Revenue, which are common in all the years under consideration, are dismissed.

11. In the result, appeals by the Revenue, for the years under consideration, are dismissed.

Order pronounced in the open court on 09/06/2022

Sd/-	**Sd/-**
PRAMOD KUMAR	**SANDEEP SINGH KARHAIL**
VICE PRESIDENT	**JUDICIAL MEMBER**

MUMBAI, DATED: 09/06/2022

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The CIT(A);
(4) The CIT, Mumbai City concerned;
(5) The DR, ITAT, Mumbai;
(6) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai