

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" SMC" BENCH, AHMEDABAD**

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.183/AHD/2022

निर्धारण वर्ष/Asstt. Year: 1984-1985

Karsanbhai Kacharabhai Patel HUF, 87, Kalhar Exotica, Science City Road, Sola, Ahmedabad-380060.. PAN: AAAHP7022B	Vs.	I.T.O. Ward-5(3)(1), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri Bandish Soparkar, with Shri Himanshu Shah, A.Rs
Revenue by :	Shri M.M. Garg, Sr. D.R

सुनवाई की तारीख/**Date of Hearing** : **01/12/2022**

घोषणा की तारीख/**Date of Pronouncement**: **21/12/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), Ahmedabad dated 22/03/2022 arising in the matter of assessment order passed under s. 143(3) r.w.s. 250 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 1984-1985.

2. The assessee has raised the following grounds of appeal:

1. *In law and in facts and circumstances of the Appellant's case, the learned CIT(A) has grossly erred in points of law and facts.*

2. *In law and in facts and circumstances of the Appellant's case, the learned CIT(A) has grossly erred in dismissing the ground regarding error in calculating refund amount. The Ld. AO has erred in segregating the refund issued into tax refund and interest refund. He ought to have adjusted the refund granted first against the interest refund due and thereafter against the tax refund due.*

3. *Your appellant reserves the right to add, alter, amend all or any of the above grounds of appeal as may be advised from time to time.*

3. The only effective issue raised by the assessee is that the learned CIT (A) erred in confirming the order of the AO by not calculating the exact amount of interest payable to the assessee on the amount of refund granted under section 244A of the Act.

4. The facts in brief are that the assessee in the present case is a HUF and filed the return of income having tax liability at rupees nil. Nevertheless, the assessee has paid the advanced tax amounting to Rs. 1,71,780/- only. However, the assessment was framed by the AO under section 143(3) of the Act at Rs. 1,98,813/- before deduction u/s 80C & 80L vide order dated 13-03-1997. On appeal, the learned CIT (A) vide order dated 27-06-2017 has determined the income of the assessee at Rs. 12,681/-only before deduction u/s 80C & 80L and after deduction at Rs. NIL. Consequentially, the AO in giving effect order has determined income at Rs. NIL only and thus the advance tax paid by the assessee was to be refunded along with interest. But the assessee was not satisfied with the working of the interest payable to it on the amount of refund under the provisions of section 244A of the Act. Accordingly, the assessee moved an application dated 18-07-2017 under section 154 of the Act which was dismissed by the AO vide order dated 13-06-2019. On appeal, the learned CIT (A) was also pleased to confirm the order of the AO by dismissing the appeal of the assessee by observing as under:

DECISION:- *The order u/s 143(3), statement of facts and the submission furnished by the appellant have been considered. The assessee has claimed for additional compensation of interest on refund issued u/s 244A of I.T. Act. The case of the appellant is that the refund*

receivable is to be calculated by determining the refund receivable including interest on refund as reduced by the refund already issued. The balance amount derived will be the net refund receivable. On this balance amount, interest receivable will be calculated. The same should be continued till total taxes paid as well as total refund issued are considered.

As *there is no specific provision in the I.T. Act for granting additional compensation of interest on interest, the same was not granted by the AO. The AO has relied upon the judgment of Hon'ble Supreme Court in the case of Gujarat Flouro Chemicals (2013) wherein it was held that interest provided for for under the statue which may be claimed by an assessee form the Revenue and no other interest on such statutory interest. Further, the AO has also cited the the judgement of Hon'ble Gujarat High court in the case of Nima Specific Family Trust vs. ACIT, Circle-5(2), Ahmedabad (SCA No. 7073 of 2018} wherein it was decided that the petitioner cannot claim any further interest as compensation over and above the statutory interest prescribed.*

In view of no specific provision in the statue to allow interest on interest and respectfully relying on the decisions of the Hon'ble courts (supra), I agree with the observation of the AO and upheld the allowance of refund of Rs.4,32,331/- only. Grounds of appeal No.3 is therefore, DISMISSED.

5. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

6. The learned AR before us filed a paper book running from pages 1 to 28 and contended that the assessee has not claimed any interest on interest as alleged by the authorities below. According to the learned AR, the 1st instalment of refund was given by the Revenue dated 15-04-1987 which was of Rs. 1,09,410/- only. According to the learned AR the impugned amount of refund, first, should be adjusted towards the interest payable on the refund to the assessee under the provisions of section 244A of the Act. Thus, as per the learned AR, the amount of refund for Rs. 76,876/- should be attributable to the amount of interest received from the income tax Department and the balance amount of Rs. 32,538/- should be adjusted against the principal amount. However, the AO made the adjustment of refund amount in proportion of Rs. 76,920/- towards principal and Rs. 32,490/- towards interest by appreciating incorrect provisions of law.

6.1 On the other hand, the learned DR contended that the AO has rightly attributed the amount of refund granted to the assessee under section 244A of the

Act towards the principal and interest amount for Rs. 76,920/- and Rs. 32,490/- respectively.

7. We have heard the rival contentions of both the parties and perused the materials available on record. There is no dispute to the fact that the assessee has paid advanced tax of ₹ 1,71,780/- whereas the income was determined at rupees NIL. Accordingly, the amount of advance tax paid by the assessee became due to him (the assessee). The 1st refund of ₹ 1,09,410/- was granted by the revenue against the advance tax paid by the assessee. As on the date of refund of ₹1,09,410/-, the calculations made by the assessee and the revenue stand as under:

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|--|----------------|
| a. As per the calculation of the assessee | |
| - Advance tax due to be refunded | Rs. 1,71,780/- |
| - Interest up to the date of first issue of refund | Rs. 76,872/- |
| b. As per the calculation of the Revenue | |
| - Advance tax due to be refunded | Rs. 1,71,780/- |
| - Interest up to the date of first issue of refund | Rs. 76,872/- |

7.1 At the time of 1st refund of ₹ 1,09,410/-, there was no dispute between the assessee and the Department qua the principal amount of refund viz a viz the interest thereon till November 1987 which has been elaborated in the immediate preceding paragraph.

7.2 Further, there is also no dispute to the fact that the amount of refund was short granted by the Revenue in November 1987. The assessee has first adjusted the full amount of interest of ₹ 76,870/- payable till November 1987 against the refund of ₹ 1,09,410/- and the balance amount of ₹ 32,538/- was treated as the recovery against the principal amount of ₹ 1,71,780/- only, thus leaving the principal amount due at Rs. 1,39,242/- only. As per the assessee, the interest should be calculated on this amount till the date of issuance of second instalment of refund.

7.3 On the contrary, the revenue was of the view that the amount of refund for ₹ 76,920/- should be treated as adjustment against the principal amount and the balance amount of ₹ 32,490/- should be adjusted against the interest of ₹ 76,872/- only. Thus, the issue arises whether the assessee can claim the recovery of the interest amount out of the refund granted by the revenue or first the principal amount should be adjusted against the refund granted by the revenue. This controversy has been answered by Mumbai tribunal in the case of Union Bank of India vs. ACIT reported in 72 taxmann.com 348 wherein it was held as under:

"3.10 It is noted from the observations of the Hon'ble Supreme Court that it has been observed that whatever money has been received by the department, it ought to be refunded ex aequo et bono. It is a Latin phrase which means 'what is just and fair' or 'according to equity and good conscience'. Something to be decided ex aequo et bono is something that is to be decided by principles of what is fair and just. A decision-maker who is authorized to decide ex aequo et bono is not bound by legal rules but may take account of what is just and fair. Thus, if we decide the issue before us ex aequo et bono, then it would be decided by the principles of what is fair and just and not necessarily as per strict rule of law. Thus, since the statute itself has already prescribed a particular method of adjustment in explanation to section 140A(1), then justice, fairness, equity and good conscience demands that same method should be followed while making adjustment for refund of taxes, especially when no contrary provision has been provided. Under these circumstances and aforesaid discussion, we find that the judicial propriety demands that order of the Tribunal of earlier years must be followed and therefore we direct the AO to re-compute the amount of interest u/s. 244A by first adjusting the amount of refund already granted towards the interest component and balance left if any shall be adjusted towards the tax component. Thus, with these directions, the appeal of the assessee is allowed."

7.4 In view of the above we hold that the amount of refund granted to the assessee, first, has to be adjusted against the interest payable to the assessee in the given facts and circumstances.

7.5 We are also conscious to the fact that the AO has made a reference in his order to the judgment of the Hon'ble Supreme Court in the case of Gujarat Flouro chemicals reported 24 taxmann.com 338 wherein the issue was different than the case on hand. The Hon'ble Supreme Court has directed as under:

8. The argument in Sandvik Asia Ltd. (supra) on behalf of the assessee was that it was entitled to compensation by way of interest for the delay in payment of the amounts lawfully due to it which were wrongly withheld for a long period of seventeen years. Vide Paragraph (23) of Sandvik Asia Ltd. (supra), the Division Bench held that, in view of the express provisions of the Act, the assessee was entitled to compensation by way of interest for the delay in payment of the amounts lawfully

due to the assessee, which were withheld wrongly by the Revenue. With due respect, Section 214 of the Act does not provide for payment of compensation by the Revenue to the assessee in whose favour a refund order has been passed. Moreover, in Sandvik Asia Ltd. (supra), interest was ordered on the basis of equity.

7.6 However, in the case on hand before us, the facts are altogether distinguishable from the facts of the case which were there before the Hon'ble Supreme Court as discussed above. In our humble understanding, we find that there was no question before the Hon'ble Supreme Court whether the amount of refund granted by the Revenue first has to be adjusted against the interest or the principal. Accordingly, no benefit can be derived by the revenue based on the judgment of Hon'ble Supreme Court cited above. As such, the issue on hand is identical to the controversy which was there before the Mumbai tribunal in the case cited above and the same has been resolved. The relevant extract of the order of the ITAT has already been reproduced somewhere in the preceding paragraph. In view of the above and after considering the facts in totality, we set aside the finding of the learned CIT (A) and direct the AO to allow the amount of interest to the assessee in the light of the aforesaid discussion and as per the provisions of law. Hence, the ground of appeal of the assessee is allowed.

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

Order pronounced in the Court on 21/12/2022 at Ahmedabad.

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated **(True Copy)**
21/12/2022

Manish