

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA Nos.1300, 1301 & 1302/M/2023
Assessment Years: 1998-99, 1999-2000 & 2000-01**

Dy. Commissioner of Income Tax,-3(4), 29 th Floor, Center-1, World Trade Centre, Cuffe Parade, Mumbai- 400005	Vs.	M/s. IDBI Bank Ltd., 7 th Floor, IDBI Tower, WTC Complex, Cuffe Parade, Mumbai- 400005 PAN: AABCI8842G
(Appellant)		(Respondent)

Present for:

Assessee by : Shri C. Naresh, CA
Revenue by : Shri Solgy Jose T. Kottaram, CIT DR

Date of Hearing : 27 . 07. 2023
Date of Pronouncement : 28 . 07. 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

Since common question of law and facts have been raised in these inter-connected appeals, the same are being disposed of by way of composite order to avoid repetition of discussion.

2. Dy. Commissioner of Income Tax,-3(4), Mumbai (hereinafter referred to as the Revenue) by filing the aforesaid appeals sought to set aside the impugned order dated 16.02.2023, 16.02.2023 & 17.02.2023 for A.Y. 1998-99, 1999-2000 & 2000-01 respectively on the identically worded grounds except the

difference in figures of refund/disallowance (ground of appeal A.Y. 1998-99 are taken for the sake of brevity) inter-alia that :

“1) Whether on the facts and in the u/s 244A circumstances of the case and in law, the Ld. CIT(A) erred in holding that the interest portion of the refund issued earlier has to be ignored for the purpose of calculating interest u/s 244A of the Income tax Act, 1961, payable to the assessee, on refund arising out of the order giving effect to order of appellate authority?

(ii) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in holding that the refund amount issued earlier should be bifurcated into the interest portion and tax portion of the refund while calculating interest u/s 244A of the Income Tax Act, 1961, payable to the assessee while giving effect to appellate order and further in directing the AO to not adjust the interest portion of the refund granted earlier towards the interest portion of the refund to be granted in the order giving effect to appellate order?

(iii) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in interpreting the provisions of section 244A of the Income Tax Act, 1961?”

3. Briefly stated facts necessary for consideration and adjudication of the common issues raised in all the aforesaid appeals at hand are : Assessing Officer (AO) while giving effect to the order passed by the Tribunal dated 02.01.2022 has granted interest to the tune of Rs.345.75 crore as against Rs.556.09 crore and thereby passed the order under section 143(3) read with section 254 of the Income Tax Act, 1961 (for short 'the Act').

4. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the Revenue has come up before the Tribunal by way of filing present appeals.

5. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower

Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

6. Ld. D.R. for the Revenue challenging the impugned order relied upon the order passed by the AO and contended that the AO has duly complied with the order (Supra) passed by the Tribunal.

7. However, on the other hand the Ld. A.R. for the assessee to repel the arguments addressed by the Ld. D.R. for the Revenue contended that the issue has been duly thrashed by the Ld. CIT(A) in the light of the case law applicable thereto.

8. We have perused the impugned order passed by Ld. CIT(A) who has decided the issue by returning following findings:

“4.0 Decision on grounds of appeal and reasons thereof:- In this appeal only 1 Ground was raised Ground no. 1 has been raised against short grant of interest u/s 244A Ground no. 1.1 and 1.2 has been raised directly or indirectly against error in granting interest u/s 244A at Rs.345.75 crore as against the correct amount of Rs.556.09 crore due to segregating the refund due into tax and interest refund and not granting further interest on the total amount of balance refund due.

4.1 It is the submission of the appellant that interest u/s 244A was granted at Rs. 345.75 crore as against Rs. 556.09 crore. The difference arose on account of segregating the refund due into tax and interest refund and not granting further interest on the total amount of balance refund due. It had been submitted by the appellant that AO had wrongly adjusted the part refunds granted to the appellant by segregating the same into tax refund and interest refund. The AO had reduced the tax refund granted from the tax refund due and interest refund granted from interest refund due and that the issue is squarely covered by the decision of Hon'ble Jurisdictional ITAT, Mumbai "B" Bench in the case of DCIT 2(1)(1) vs. Bank of Baroda ITA No. 1646/Mum/217 dated 20.12.2018. It is further submitted by the appellant that CIT(Appeals)-1, Mumbai in its own case for AY 2003-04 has directed the AO to provide the resultant relief to the appellant by placing reliance on the above decision of Hon'ble Jurisdictional ITAT Mumbai.

4.2 I have carefully considered the facts of the case, grounds of appeal, oral contentions, written submission as well as judicial pronouncements relied upon by the appellant. It is the submission of the appellant that the method of computation for granting interest u/s 244A for the refund due to the appellant is not in accordance with the prevailing jurisprudence of the issue as also with the decision of Hon'ble ITAT in the case of Bank of Baroda in ITA no 1646 and 2565/Mum/2017. Upon careful consideration of facts and circumstances of the case as well as respectfully following the decision of Hon'ble Jurisdictional ITAT Mumbai in the case mentioned above on the issue, the AO is directed to examine the computation of refund including interest u/s 244A of the Act in accordance with the direction given by Hon'ble Jurisdictional ITAT Mumbai in the case of Bank of Baroda in ITA no 1646 and 2565/Mum/2017 dated 20 12 2018.”

9. We have perused the findings returned by Ld. CIT(A) particularly para 4.2 wherein it is validly observed and held that the AO while giving effect to the order passed by the Tribunal has not adhered to the method of computation for granting interest under section 244A for the refund due to the assessee as per order passed by the Tribunal in case of Bank of Baroda in ITA No.1646 & 2565/M/2017 which is squarely applicable to the facts and circumstances of the case. Ld. CIT(A) has given terse findings directing the AO to examine the computation of refund including interest under section 244A of the Act in accordance with the direction given by the Tribunal in case of Bank of Baroda (Supra). Since we do not find any illegality or infirmity in the impugned findings we are constrained to record that even after passing the impugned order dated 16.02.2023 the AO has not complied with the directions which is breach of judicial protocol and forced the assessee to again approach the Tribunal by filing present appeals. In these circumstances the AO is directed to comply with the order within a period of three months.

10. Resultantly, the appeals filed by the Revenue are hereby allowed.

Order pronounced in the open court on 28.07.2023.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 28.07.2023.

* Kishore, Sr. P.S.

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.