IN THE INCOME TAX APPELLATE TRIBUNAL, 'F' BENCH MUMBAI

BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No.1817/Mum/2023
(**Assessment Year :2013-14**)

DCIT-3(4) Mumbai	Vs.	M/s. Union Bank of India (Erstwhile Andhra Bank) Central Accounts Dept 6th Floor, Union Bank Bhavan, 239, Vidhan Bhavan Marg Nariman Point Mumbai – 400 021
PAN/GIR No.AAACU0564G (Erstwhile-AAACC7245E		
(Appellant)	..	**(Respondent**)

Assessee by	Shri C Naresh
Revenue by	Shri Ankush Kapoor
Date of Hearing	**28/08/2023**
Date of Pronouncement	**30/08/2023**

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The appeal has been filed by the Revenue against order dated 20/03/2023 passed by NFAC Delhi for the quantum of assessment passed u/s .143(3) r.w.s. 250 for A.Y/2013-14.

2. The grounds of appeal raised by the Revenue reads as under:-

"The Ld. CIT(A) erred in directing the AO to compute 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 by relying on ITATS decision in the assessee's own case reported in ITA No./2016) 52 ITR(T) 221 (Mumbai) which was based on earlier decision for AY 2001-02 without appreciating that the Department's appeal on this issue is pending before the Hon'ble High Court of Mumbai?"

3. At the outset, ld. Counsel submitted that this issue stands covered by the decision of the Tribunal in assessee's own case for the A.Y. 2008-09 reported in (2017) 162 ITD 142. The present appeal is arising out of the order giving effect of the order of the ld. CIT (A) by the ld. AO wherein the only issue involved is short grant of interest u/s. 244A. The grievance of the assessee before the ld. CIT (A) against the order giving effect of the ld. AO was that, the ld. AO ought to have adjusted the refund first against the interest and thereafter, against the tax refund. The ld. CIT (A) following the decision of the Tribunal in assessee's own case for the A.Y.2008-09 decided in favour after observing and holding as under:-

5.3.4 With regard to the second issue the appellant raised the ground that whore a refund is due to the appellant, and a part of the refund is granted the same should be first adjusted against the interest and thereafter against the tax refund that becomes due in this regard the Hon'ble Tribunal in the appellants own case Union Bank of India vs ACIT reported in [2016] 52 ITRIT) 221 (Mumbai) held as under:

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 (ie 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).

3.9 Before parting with, we are reminded of a recent judgment of Hon'ble Supreme Court in the case of Union of India v Tata Chemicals Ltd. [2014] 363 ITR 658/822 Taxman 225/43 taxmann.com 240 wherein Hon'ble Supreme Court has discussed at length about moral and legal obligation of the department to refund the amount of tax collected from the tax payers which was more than the amount actually due as per law, along with interest Some of the useful observations are

reproduced hereunder for the sake of better clarity in deciding the issue before us.

'37. A "tax refund" is a refund of taxes when the tax liability is less than the tax paid. As per the old section an assessee was entitled for payment of Interest on the amount of taxes refunded pursuant to an order passed under the Act, including the order passed in an appeal. In the present fact scenario, the deductor / assessee had paid pursuant to a special order passed by the assessing officer/Income Tax Officer. In the appeal filed against the said order the assessee has succeeded and a direction is issued by the appellate authority to refund the tax paid. The amount paid by the resident/deductor was retained by the Government till a direction was issued by the appellate authority to refund the same. When the said amount is refunded it should carry interest in the matter of course. As held by the Courts while awarding interest, it is a kind of compensation of use and retention of the money collected unauthorizedly by the Department. When the collection is illegal, there is corresponding obligation on the revenue to refund such amount with interest in as much as they have retained and enjoyed the money deposited. Even the Department has understood the object behind insertion of Section 244A, as that an assessee is entitled to payment of interest for money remaining with the Government which would be refunded. There is no reason to restrict the same to an assessee only without extending the similar benefit to a resident/deductor who has deducted tax at source and deposited the same before remitting the amount payable to a non-resident/foreign company.

38. Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the aforesaid amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing Statute. Refund due and payable to the assessee is debt-owed and payable by the

Revenue. The Government, there being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest Whenever money has been received by a party which ex aequo et bono ought to be refunded, the right to interest follows, as a matter of course."

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 proprietary 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."

5.3.5. Respectfully following the decision of the Hon'ble ITAT mentioned supra in appellants own case, the Assessing Officer is directed to compute refund 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. Thus, the ground of the appellant on this issue is allowed.

4. We have heard both the parties and perused the relevant finding given in the impugned order. The issue which has been raised by the department is that, ld. CIT (A) has erred in directing the ld. AO to compute interest u/s.244A, by first adjusting the amount of refund already granted towards interest component; and balance left if any shall be adjusted towards tax component. We find that there is no provision under the Act as to how the refund granted by the department should be adjusted. However, the only clue which can be taken is from *Explanation* to Section 140A which reads as under:-

"Explanation- Where the amount paid by the assessee under this sub-section Falls short of the aggregate of the tax, [interest and fee as aforesaid, the amount so paid shall first be adjusted towards the fee payable and thereafter towards] the interest payable as aforesaid and the balance, if any, shall be adjusted towards the tax payable.]

The aforesaid explanation provides that wherein the amount paid by the assessee falls short of the aggregate of the tax, the amount so shall be first to be adjusted towards the fee payable and the interest payable and the balance if any shall be adjusted

towards tax payable. Thus, if the amount paid by the assessee is first adjusted towards interest payable, then balance if any is to be adjusted towards tax payable, then conversely speaking, the same treatment should be given by the department while adjusting the refund which should be first adjusted towards interest and then if any balance left should be adjusted against the tax.

5. This precise issue has been dealt in detail by the Tribunal in assessee's own case for the earlier year wherein the Tribunal has discussed this issue in detail and the relevant portion of it has already been quoted above in the order of the ld. CIT(A). Accordingly, respectfully following the same precedents, we do not find any infirmity in the order of the ld. CIT(A) and the same is confirmed and the grounds raised by the Revenue are dismissed.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced on 30th August, 2023.

(GAGAN GOYAL)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 30/08/2023

KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar)
ITAT, Mumbai