

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

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA Nos. 2034 & 2035/Mum/2023
(A.Y:1999-2000 &1998-99)

DCIT, Circle-3(3)(1), Room No.609, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	M/s Sicom Limited, Solitaire Corporate Park, Building no.4, Guru Nanak Marg, Chakala, MIDC S.O, Mumbai-400093.
PAN/GIR No. : AAACS5524J		
Appellant	..	Respondent

C.O. No. 72 & 73/Mum/2023
(A.Y:1999-2000 & 1998-99)

M/s Sicom Limited, Solitaire Corporate Park, Building no.4, Guru Nanak Marg, Chakala, MIDC S.O, Mumbai-400093.	Vs.	DCIT, Circle-3(3)(1), Room No.609, Aayakar Bhavan, M.K. Road, Mumbai-400020.
PAN/GIR No. : AAACS5524J		
Appellant	..	Respondent

Appellant/Respondentby	Shri. Rameshar Meena.Sr.DR
Respondent/Appellantby	Shri.Nikhil Tiwari.AR

Date of Hearing	12.10.2023
Date of Pronouncement	16.10.2023

आदेश / O R D E R

PER BENCH:

- 2 -

These appeals are filed by the Revenue and the cross objections by the Assessee against the different orders of the National Faceless Appeal Centre, (NFAC), Delhi / CIT(A) passed u/sec 154 and- U/sec 250 of the Income Tax Act, 1961.

2. Since the issues involved in these appeals and cross objections are common and identical, hence are clubbed, heard and a consolidated order is passed. For the sake of convenience, we shall take up the revenue appeal in ITA No. 2035/Mum/2023 for the A.Y 1998-99 and CO. No. 73/Mum/2023 as a lead case and facts narrated. The revenue has raised the following grounds of appeal.

1. Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in law in directing Assessing officer to allow the short grant of interest u/s 21 of the Interest Tax Act r.w.s 244A(1) of the Act as per law by applying the same principle & rationale as held in decision of Hon'ble Delhi High Court in the case of India Trade Promotion Organization (ITPO) vs CIT despite the fact that Hon'ble Division Bench of Delhi High Court in CIT vs Indian Farmer Fertilizer Co-operative case [2016] 71 taxmann.com 37 (Delhi) held that the law declared in decision of the Supreme Court in Commissioner of Income Tax v Gujarat Fluoro Chemicals [2013] 358 ITR 291/[2014] 222 Taxman 349/42 taxmann.com 1 is binding and permits no deviation?

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in law in directing Assessing officer to allow the short grant of interest u/s 21 of the Interest Tax Act r.w.s 244A(1) of the Act as per law by applying the same principle & rationale as held in decision of Hon'ble Delhi High Court in the case of India Trade Promotion Organization (ITPO) vs CIT despite the fact that Hon'ble Supreme Court in Commissioner of Income Tax v. Gujarat Fluoro Chemicals [2013] 358 ITR 291/[2014] 222 Taxman 349/42 taxmann.com 1 categorically clarified that it is only that interest provided for under the statute which may be claimed by an assessee from the Revenue and no other interest on such statutory interest?

3. Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in allowing the assessee's ground whereby it was suggested that for calculating interest u/s. 244A(1), the refund earlier granted should be adjusted against interest component and balance if any should be adjusted against principal refund amount and such net principal refund amount should be considered whereas no such methodology was laid down in the Delhi High Court's decision in the case of ITPO vs CIT 361 ITR 646?

4. Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in not appreciating that in the decision in the case of ITPO vs CIT 361 ITR 66, the Hon'ble Delhi High Court had only held that if interest due was not granted along with refund earlier granted, that interest amount was eligible for interest u/s. 244A(1) while in the assessee's case, it is not that refund earlier due was granted without interest u/s. 244A(1)?

5. "Whether on the facts and in the circumstances of the case and in law, the LdCIT(A) was right in granting interest u/s 244A up to the date of receipt of refund order by the assessee without appreciating the fact that the provisions of the Income Tax Act, 1961 provide for grant of interest u/s 244A upto the

- 4 -

date of grant of refund and not upto the date on which refund was actually received by the assessee?

6. The appellant craves leave to add, amend and/ or vary the grounds of Appeal before or during the course of hearing

3. The Brief facts of the case are that, the assessee is a non-banking finance company (NBFC) engaged in the business of project finance, leasing, merchant banking, investment and trading in shares, financial services and advisory business. The assessment was completed u/s 143(3) of the Act with additions including disallowance of depreciation on lease transactions. Subsequently the assessee has challenged the additions before the CIT(A) and partial relief was granted by allowing the normal lease transaction depreciation and with respect on sale & lease back transaction, depreciation was allowed on certain transaction and the CIT(A) has partly allowed the assessee appeal. Against the order of the CIT(A), the revenue and the assessee has filed cross appeal before the Hon'ble Tribunal. Whereas the Hon'ble Tribunal vide order dated in ITA No. 2237. 3194, 4719 & 5094/Mum/2005 dated 22.05.2013 has granted relief by deleting the disallowance made by the AO and depreciation on the normal lease transaction was allowed. Whereas with respect to depreciation on sale and lease back, the Honble Tribunal

has restored the matter to the file of the Assessing Officer to decide the issue afresh in view of Hon'ble Supreme Court decision and Delhi High Court decision. The revenue has challenged the order of the Honble Tribunal raising various grounds including depreciation on sale & lease back transaction before the Honble High Court of Bombay and was dismissed and the Honble Tribunal order was upheld.

4. Whereas the Assessing Officer (A.O) has passed the order giving effect u/sec 143(3) r.w.s 254 of the Act dated 23.04.2018. Since the A.O has not considered the decision of the Hon'ble Tribunal and disallowed the depreciation on assets acquired under sale and lease back transaction. The assessee has filed writ petition against the A.O order before the Hon'ble High Court of Bombay as the A.O has denied the refund of tax to the assessee by not allowing the claim of depreciation on sale & lease back transaction. The Hon'ble Bombay High Court in its interim order dated 17.09.2018 directed the Department's counsel to ask the AO to be present in Court along with the records. Subsequently the AO has passed order u/sec 154 of the Act on 27.09.2018 rectifying the order giving effect to the decision of the Honble Tribunal in ITA No. 2237 &

3194/Mum/2005 dated 22/05/2013 and allowed depreciation on assets acquired under sale and lease back transaction. Further the A,O has granted interest U/sec244A of the Act on the quantified consequential refund and passed the rectification order u/s 154 of the Act revising the total income of Rs.33,58,77,785/- vide order 27.09.2018.

5. Aggrieved by the rectification order U/sec154 of the Act, the assessee has filed an appeal with the CIT(A) challenging the action of the Assessing officer on short grant of Interest U/sec244A of the Act and claiming Interest U/sec244A(1A) of the act. In the appellate proceedings, the assessee has filed the detailed submissions substantiating the claim referred at Page 5 Para 4B of the order as under:

“Appellant's submissions

Ground 1-4: Short grant of interest under section 244A(1) of the Act

1. While computing the above interest under section 244A(1) of the Act, the learned AO, in its computation has adjusted the granted refund by adjusting principal against the principal component and interest against interest component which has resulted in grant of short interest and refund thereof to the Appellant.

1. In this regard, Appellant would like to submit as under:

1. Law applicable while payment of taxes should also apply while granting refund

1. As per Explanation 1 to Section 140A of the Act, where any amount is paid by the taxpayer towards outstanding tax demand, the payment made is first adjusted against the interest payable by the taxpayer and the balance, if any, is adjusted against the principal tax amount. The relevant extract of the said Explanation is reproduced 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"

1. The above provides that in case of partial payments by the taxpayers towards the outstanding demand, the amount shall first be adjusted against the interest and the balance, if any, should be adjusted against the principal component. This would lead to computation of higher interest on the unpaid principal component.

1. Section 244A(1) of the Act provides that where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon.

1. Applying the principles stated in Para 14 & 15 above to the interest computation for Section 244A, any partial refund issued to the Appellant should be first adjusted against the interest and the balance amount should be adjusted principal amount of refund.

1. Therefore, same principle and rationale should be applicable while granting refund to the appellant.

1Reliance in this regard is placed on the Hon'ble Delhi High Court judgment in case of *India Trade Promotion Organization vs CIT* (38 taxmann.com 233) wherein it was held that the tax department ought to follow the same procedure and rules while collecting tax and while issuing refunds.

1. Hon'ble Mumbai Income-tax Appellate Tribunal ('ITAT') in case of *Union Bank of India vs. Assistant Commissioner of Income-tax* (72 Taxmann.com 348) has upheld that the amount of interest received earlier should first be adjusted against the interest component of the earlier refund and thereafter the balance amount should be adjusted against the principal component of tax. The relevant extracts of the ruling are as under:

"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. Thus, with these directions, the appeal of the assessee is allowed.

1.. Reliance is also placed on the following decisions:

HEG Ltd. (324 ITR 331) (SC)

Bank of Baroda (ITA No. 1646/M/2017) (Mumbai Trib)

Peerless General Finance and Investment Co. Ltd (57 ITR(T) 536) (Kol)

1. Following the above judicial precedents and methodology stated in Explanation 1 to section 140A, the refund already issued to the Appellant shall first be adjusted against the interest and then towards the principal amount.

1. Further, it is pertinent to note that AO while granting refund for AY 2002-03 has followed the rationale/law laid by the Courts/Tribunals and have granted interest u/s 244A(1) by first adjusting against the interest and the balance amount adjusting against the principal amount.

1. Further, the Hon'ble CIT(A) in Appellant 's own case for AY 2000-01 has directed the AO to recomputed the interest under Section 244A after duly considering the judgment relied by AO in case of Union Bank of India (72 taxmann.com 348) (Mumbai Trib.). The relevant extract of the aforesaid CIT(A) order is reproduced as under (Copy enclosed at Sr. No. 8 of Paper Book):

"Accordingly the AO is directed to revisit the entire computation of interest under Section 244A in this case by passing a detailed and speaking order and after duly considering the above or any other judgment on this subject. These grounds of appeal are therefore technically allowed."

1. In view of the above, the Appellant is eligible for interest under section 244A amounting to Rs 4,76,80,515 as against interest computed by Ld. AO amounting to Rs 3,92,77,818.

Accordingly, the interest computed under section 244A(1) of the Act by the Ld. AO is short by an amount of Rs. 84,02,697 (computed till February 2020).

Interest should be granted till the actual date of refund

1. As per the provisions of section 244A, interest has to be granted till the date of grant of refund Accordingly, the interest computed under section 244A(1) of the Act upto February 2020 Accordingly, we request your Honours to direct the learned AO to grant the refund till the a actual date of grant of refund.

1.. In this regards also the Hon'ble CIT(A) in the Appellants own case for AY 2000-01 has directed the AO to verify the contentions of the Appellant and to calculate interest in accordance in law. The relevant extract of the aforesaid CIT(A) order is reproduced as under (Copy enclosed at Sr. No. 8 of Paper Book):

"The Appellant has also contended that the interest u/s 244A was short by Rs. 1, 46, 28, 7351 as it was not calculated till the actual date of refund The AO is directed to verify the contentions of the Appellant and to calculate interest in accordance in law in consequence of this order by passing a speaking and a detailed order. This ground of appeal is allowed for technical purposes."

1.. We request your Honour to kindly grant appropriate relief to the Appellant and issue necessary directions to the AO for re-computation of interest under section 244A(1) of the Act in light of the above.

Ground 5 & 6 - Non-granting of interest under section 244A(1A) of the Act

1.. Section 244A(1A) was inserted vide Finance Act 2016 which is applicable from 01 June 2016. This section was introduced

to provide additional interest where a refund arises out of appeal effect being delayed beyond the time prescribed under sub-section (5) of section 153, an additional interest on such refund amount calculated at the rate of three per cent per annum, for the period beginning from the date following the date of expiry of the time allowed under sub-section (5) of section 153 to the date on which the refund is granted.

1. The relevant extracts of section 244A(1A) of the Act are reproduced below for your Honour's reference:

"(1A) In a case where a refund arises as a result of glvmg effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264, wholly or partly, otherwise than by making a fresh assessment or reassessment, the assessee shall be entitled to receive, in addition to the interest payable under sub section

(1)an additional interest on such amount of refund calculated at the rate of three per cent per annum, for the period beginning from the date following the date of expiry of the time allowed under sub-section (5) of section 153 to the date on which the refund is granted."

1. The time limit for passing the order giving effect order was 31st March 2015 however, the order giving effect was passed in April 2018 which was further rectified in September 2018 and therefore, assessee should be eligible for interest from 01 June 2016 (i.e. the date on which section into effect) till the date of actual grant of refund.

1. However, AO while computing the income and refund due to the assessee, has not granted interest u/s 244A(1A) even though the order giving effect order was passed in April 2018 (first time) and rectified in September 2018 (i.e. after 1 June 2016, when section was brought into statute) time limit for passing order giving effect was 31st March 2015.

1. In this regard the assessee wishes to submit that it would be entitled to such additional interest after introduction of the relevant statutory provisions with effect from 1st June 2016. Even if the appellate or revisional order was passed before 1st June 2016, the liability to pay additional interest under section 244A(1A) would arise upon completion of such period as if the starting point for computing such period for passing the order was 1st June 2016. Reliance in this regard is placed on the decision of Gujarat High Court in case of Nima Specific Family Trust (Special civil application no.7073 of 2018).

1. Further, Hon'ble Supreme Court has dismissed the SLP filed by the Department in SLP No. 2851/2019)

1. Further, the Hon'ble CIT(A) in the Appellants own case for AY 2000-01 has directed the AO to re-compute and grant the same in accordance with law and the facts as being claimed by the Appellant if founds correct after verification. The relevant extract of the aforesaid CIT(A) order is reproduced as under (Copy enclosed at Sr. No. 8 of Paper Book):

"These grounds of appeal pertain to non-granting of interest u/s. 244A(1A) of the Act. The appellant has also contended that interest should be calculated till the actual grant of refund. The Assessing Officer is directed to re-compute and grant the same in accordance with law and the facts as being claimed by the assessee company if found correct after verification. These grounds of appeal are allowed for statistical purposes.

1. In view of the above, assessee would be entitled to an additional interest under section 244A(1A) for not passing the order giving effect order within stipulated time amounting to Rs. 31,91,415 (computed till February 2020).

Interest should be granted till the actual date of refund

1. As per the provisions of section 244A, interest has to be granted till the date of grant of refund. Accordingly, the interest under section 244A(1A) of the Act should be computed upto the date of actual grant of refund. Accordingly, we request your Honours to direct the learned AO to grant interest till the actual date of grant of refund.

1. We request you to kindly grant appropriate relief to the Appellant and issue necessary directions to the AO for computation of interest under section 244A(1A) of the Act in light of the above."

6. Whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee and findings of the AO and dealt extensively on the facts, provisions of the Act, and judicial decisions and directed the Assessing officer to allow the short grant of Interest U/sec244A(1) of the Act and also the A.O should recompute and grant additional interest U/sec244(1A) of the Act till the date of disbursement of refund and allowed the assessee appeal for statistical purposes. Aggrieved by the CIT(A) order, the revenue has filed an appeal before the Honble Tribunal.

7. At the time of hearing, the Ld.DR submitted that the CIT(A) has erred in directing the Assessing officer to allow the short grant of Interest U/sec244A(1) of the Act overlooking the facts that no interest shall be payable

other than provided under the provisions of the Act. Further CIT(A) overlooked the methodology of granting refund and adjustments permitted and not justified in issuing the directions to the AO to grant additional interest on refund u/s 244A(1A) of the Act and relied on the order of the Assessing officer on the computation of interest on refund and prayed for allowing the revenue appeal.

8. Per Contra, the Ld. AR has submitted that the AO has not followed the due process of the provisions of Act in adjustment of refund and resulted in short grant of refund and also interest has to be granted till actual date of refund. Whereas the CIT(A) has considered the facts, provisions of the Act, and judicial decisions and directed the Assessing officer to grant interest. The Ld. AR has made elaborate submissions on the law and facts and supported the order of the CIT(A) and substantiated the submissions relying on the judicial decisions and the factual paper book and prayed for dismissal of the revenue appeal.

9. We heard the rival submissions and perused the material on record. The grievances envisaged by the Ld.DR that the CIT(A) has erred in directing the Assessing officer to allow

the short grant of Interest U/sec244A(1) of the Act overlooking the facts that no interest shall be payable other than provided under the provisions of the Act. Further CIT(A) erred in not adopting the methodology of granting refund and adjustments permitted and is not justified in issuing the directions to the AO to grant additional interest on refund u/s 244A(1A) of the Act. The Ld.AR submitted that the A.O in the rectification order U/sec154 of the Act, while computing the interest has adjusted partial refund granted against the tax/principal component and interest against the interest component and thus resulted in short grant of refund and interest. Whereas the A.O has failed to follow the methodology under the provisions of section 244A of the act. The CIT(A) has rightly considered the provisions and procedures and issued the directions to the Assessing officer relying on the judicial decisions to grant short grant of interest under section 244A(1) of the Act, Further the CIT(A) has considered the factual aspects of date of payment of refund and relied on the assessee own case for A.Y 2000-01 and directed the A.O to calculate and grant additional interest U/sec244A(1A) of the Act till the actual date of disbursement. At this juncture, we considered it

appropriate to refer to the observations of the CIT(A) in granting the relief dealt at Page 11 of the order, read as under:

Decision:

Ground 1-4:Short grant of interest under section 244A(1) of the Act

5. The Appellant has contended that the AO has adjusted the refund by adjusting principal against the principal component and interest against the interest component which has resulted in grant of short interest and refund thereon to the appellant. Further, the appellant has contended that as per explanation 1 to section 140A, the refund already issued to the appellant shall first be adjusted against the interest and then, towards the principal amount, which was followed by the AO in A.Y.2002-03. The Appellant has also relied pronouncements as per submission detailed in above paras. Detailed upon various judicial

In the case of CIT Vs IFFCO, 56 taxmann.com 453 (High Court of Delhi) (2015), the following relevant extract, reproduced as under, gives an analysis on section 244A:-

5. The revenue contends that the reliance placed upon Sandvik Asia Ltd. (supra) is erroneous. It is submitted on its behalf that Sandvik Asia Ltd. (supra) was delivered in respect of facts prior to the insertion of Section 244A and that Courts are duty bound to correctly interpret that provision. It was emphasized that the plain text of Section 244A does not provide for a construction which entitles the assessee aggrieved by delayed payment of principal to any amount over and above the interest directed by Section 244A(1) itself. Learned counsel placed

reliance upon the decision of the Supreme Court in CIT v. Gujarat Fluoro Chemicals [2013] 358 ITR 291/[2014]

222 Taxman 349/42 taxmann.com 1. In that judgment, the Court noticed Sandvik Asia Ltd. (supra) and held pertinently as follows:

"7. As we have already noticed, in Sandvik case (supra) this Court was considering the issue whether an assessee who is made to wait for refund of interest for decades be compensated for the great prejudice caused to it due to the delay in its payment after the lapse of statutory period. In the facts of that case, this Court had come to the conclusion that there was an inordinate delay on the part of the Revenue in refunding certain amount which included the statutory interest and therefore, directed the Revenue to pay compensation for the same not an interest on interest.

8. Further it is brought to our notice that the Legislature by the Act No. 4 of 1988 (w.e.f. 01.04.1989) has inserted Section 244A to the Act which provides for interest on refunds under various contingencies. We clarify that it is only that interest provided for under the statute which may be claimed by an assessee from the Revenue and no other interest on such statutory interest."

6. Learned counsel for the assessee contends that the impugned order of the ITAT ought not to be disturbed. It is firstly argued that the refund sought was only in respect of the interest payable and not any amount over and above it. It was next contended that the decision of the Supreme Court in CIT v. HEG Ltd. [2010] 324 ITR 331/189 Taxman 335 supports the view adopted by the ITAT. Learned counsel also stated that a Division Bench of this Court had followed HEG Ltd. (supra), in India Trade Promotion Organization v CIT [2014] 361 ITR

646/[2013] 38 taxmann.com 233 (Delhi). In India Trade Promotion Organization (supra) it was held - after consideration of HEG Ltd. (supra) that

"15. A reading of the aforesaid passage from the decision of the Supreme Court in HEG Ltd. (supra) indicates that it would be incorrect and improper to regard payment of interest when part payment is made as interest on interest. What has been elucidated and clarified by the Supreme Court is that when refund order is issued, the same should include the interest payable on the amount, which is refunded. If the refund does not include interest due and payable on the amount refunded, the Revenue would be liable to pay interest on the shortfall. This does not amount to payment of interest on interest.

An example will clarify the situation and help us to understand what is due and payable under Section 244A of the Act. Suppose Revenue is liable to refund Rs. 1 lac to an assessee with effect from 1st April, 2010, the said amount is refunded along with interest due and payable under Section 244A on 31st March, 2013, then no further interest is payable. However, if only Rs. 1 lac is refunded by the Revenue on 31st March, 2013 and the interest accrued on Rs. 1 lac under Section 244A is not refunded, the Revenue would be liable to pay interest on the amount due and payable but not refunded. Interest will not be due and payable on the amount refunded but only on the amount which remains unpaid, i.e, the interest element, which should have been refunded but is not paid. In another situation where part payment is made, Section 244A would be still applicable in the same manner. For example, if Rs.60,000/- was paid on 31st March, 2013, Revenue would be liable to pay interest on Rs. 1 lac from 1st April, 2010 till 31st March, 2013 and thereafter on Rs.40,000/-. Further, interest payable on Rs.60,000/-, which stands paid, will be quantified on 31st March, 2013 and on this amount, i.e., interest amount

quantified, Revenue would be liable to pay interest under Section 244A till payment is made."

7. Section 244A(1) of the Income Tax Act reads as follows:

'244A. Interest on refunds.- (1) Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely:-

(a)where the refund is out of any tax paid under section 115WJ or collected at source under section 206C or paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the (a) assessment year, such interest shall be calculated at the rate of one-half per cent] for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted:

Provided that no interest shall be payable if the amount of refund is less than ten per cent of the tax as determined under sub-section (1) of section 115WE or sub-section (1) of section 143 or on regular assessment;

(b)in any other case, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted.

Explanation. For the purposes of this clause, "date of payment of tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.'

8. In *Sandvik Asia Ltd. (supra)* the Court admittedly was dealing with facts prior to the insertion of Section 244A. Therefore, it would be inappropriate for this Court to consider that judgment now as binding authority. More importantly, *Sandvik Asia Ltd (supra)* was explained by the larger Bench i.e. three Judge Bench decision in *Gujarat Fluoro Chemicals (supra)* where the Supreme Court categorically held that the only amount which an assessee aggrieved by delayed payment can legitimately claim under the statute is interest and that "no other interest on such statutory interest" is payable. This ruling, in the opinion of this Court, rendered by a larger Bench, would have to be followed as opposed to the ratio in *HEG Ltd. (supra)* where the Supreme Court had expressed a contrary opinion by indicating that the interest component towards the delayed payment of the tax refund would partake of the character of the 'amount of due' under Section 244 A. In other words, *HEG Ltd. (supra)* seems to suggest that there would be dues on bar, refund and delayed interest. Clearly, that view has not been approved in *Gujarat Fluoro Chemicals (supra)*. It was urged during the hearing that India Trade Promotion Organisation (*supra*) has become final since the revenue's appeal was withdrawn. This Court is of the opinion that such detail notwithstanding, the law declared in *Gujarat Fluoro Chemicals (supra)* is binding and permits no deviation. INCOMA
TMENT

9. In the light of the above decision, it is held that the impugned order to the extent it directs payment of any sum over and above interest payable under Section 244A(1) to the assessee, cannot be upheld. Accordingly, the matter is remitted to the AO for orders. In the circumstances of the case, the question of law framed is answered in favour of the revenue and against the assessee in the above terms. The appeal is partly allowed.

6. Thus, from above decision wrt Section 244A(1), it is seen that it is only that interest provided for under the statute, which may be claimed by an assessee from the Revenue, and no other interest, on such statutory interest.

Now moving further, in the case of *Tata Communication vs DCIT 108 taxmann.com 200 (Bom HC) (2019)*, the following relevant extracts are worth mentioning:-

The Tribunal by an order dated 16th June, 2017 gave certain directions to the Assessing Officer to compute and pay such interest. Relevant portion of this order reads as under:-

"4Under this issue the contention of the assessee is that the interest u/s. 244A of the Act was not properly calculated and refunded in accordance with law settled in by the Hon'ble Supreme Court in case titled as *CIT v. H.E.G. Ltd. 324 ITR 331* and Hon'ble Delhi High Court in case titled as *India Trade Promotion Organization v. CIT 361 ITR 646*. Therefore necessary direction should be given in this regard. However, on the other hand learned Departmental Representative has refuted the said contention. The contention of the assessee is that the interest u/s 244A of the Act on refund issued was not granted in accordance with law. Therefore, the same is required to be in view of the law settled by the Hon'ble Supreme Court in case titled as *CIT v. H.E.G. Ltd. 324 ITR 331* and Hon'ble Delhi High Court in case titled as *India Trade Promotion Organization v. CIT 361 ITR 646*. Since the interest is payable on the refund no doubt the same is liable to be payable in view of the law settled by the Hon'ble Supreme Court in case titled as *CIT v. H.E.G. Ltd. 324 ITR 331* and Hon'ble Delhi High Court in case titled as *India Trade Promotion Organization v. CIT 361 ITR 646*. Therefore, in the said circumstances we set aside the finding of the CIT (A) on this issue and direct the Assessing Officer to calculate the interest u/s 244 A of the Act on refund payable to the assessee in view of the law settled in Hon'ble Supreme Court in case titled as *CIT vH.E.G.Ltd. 324 ITR 331* and Hon'ble Delhi High Court in case titled as *India Trade Promotion Organization v.*

CIT 361 ITR 646. Accordingly, this issue is even decided in favour of the assessee against the revenue.

5. In the result, the appeal filed by the assessee is hereby ordered to be decided for statistical purpose."

3. Pursuant to this order of the Tribunal thus, the Assessing Officer was required to pay interest to the petitioner in terms of the law laid down by Supreme Court in case of CIT v. H.E.G. Ltd. [2010] 189 Taxman 335/324 ITR 331 and has further followed and expanded by Delhi High Court in case of India Trade Promotion Organisation v. CIT [2013] 38 taxmann.com 233/[2014] 361 ITR 646.

4The Assessing Officer passed his impugned order pursuant to such directions of the Tribunal. In such order he did not agree with the contention of the assessee that interest as per the said decision of the Delhi High Court in case of India Trade Promotion Organisation (supra) was outstanding and payable. He referred to the relevant portion of the judgment of the High Court and presented his understanding of the working of the interest as per the said judgment. He compared this with the assessee's computation of interest payable. He held that the assessee's computation of interest is not consistent with the decision of the Delhi High Court. He referred to a decision of the Income Tax Appellate Tribunal in which the formula propounded by him was accepted. Relevant portion of the impugned order reads as under:-

"2.3 Thus, the working suggested by the assessee is not consistent with Hon'ble Delhi High Court's decision. The assessee's contention that refund has to be first adjusted totally against the total interest refund due and thereafter against the tax refund due is unfounded and there is no specific section or provision in the Income Tax Act, 1961 for the same. The example considered by Hon'ble High Court clearly shows that this is not implied from the same. The assessee's contention will lead to granting of interest on interest.

2.4 In the case of the assessee involved here, whenever any part refund was issued to the assessee it was clearly bifurcated into the Principal component and the corresponding interest u/s 244A. The interest component (which was not due and payable on the principal paid) is not withheld and is issued whenever the corresponding principal is issued. So, the situation that interest which should have been refunded but is not paid does not arise. Therefore, facts and circumstances of the case are different from the case of India Trade Promotion Organisation (supra) considered by Hon'ble Delhi High Court. After issue of any part refund, principal part refunded is adjusted against the total principal outstanding and any subsequent interest u/s 244A is computed on the balance principal outstanding. This working also ensures that interest component is not withheld indefinitely and whenever any principal amount is paid the corresponding interest is also paid.

2.6 Accordingly, the above principle was adopted in granting interest to the assessee u/s 244A of the Act of Rs.283,71,61,850/- in the order passed u/s 154 of the Act dated 23.07.2012 for A.Y. 1994-95 and the assessee is not entitled for any further interest u/s 244A of the Act...

5. Learned counsel for the petitioner submitted that the Assessing Officer has exceeded his jurisdiction. He was directed by the Tribunal to apply the decision of the Delhi High Court in case of India Trade Promotion Organisation (supra) and grant interest to the assessee under Section 244A of the Act. It was not open for the Assessing Officer to distinguish the said judgment or indirectly hold that the directions issued by the Tribunal were not in consonance with law. In any case, it is held by the Delhi High Court in case of India Trade Promotion Organisation (supra) relying and referring to the decision of the Supreme Court in case of H.E.G. Ltd. (supra) that interest under Section 244A of the Act would be available on the entire amount which is due and payable not only on the principal tax due ignoring the interest component comprised in such outstanding amount.

6. On the other hand, learned counsel for the Department contended that this petition should not be entertained on the ground of availability of the alterative remedy. Against the impugned order passed by the Assessing Officer appeal is maintainable before the Appellate Commissioner. On merits he submitted that the Assessing Officer has applied correct principles of law and come to the conclusion that no further interest is payable to the petitioner.

7. In the present case, the Tribunal has already examined the question of interest payable to the petitioner under Section 244A of the Act. The decision of the Tribunal lays down certain parameters for payment of such interest. We have reproduced the relevant portion of the order of the Tribunal. As per this order the Assessing Officer was required to compute the interest under section 244A of the Act following the principles laid down by the Delhi High Court in case of India Trade Promotion Organisation (supra). It was not open for the Assessing Officer thereafter to dissect the ratio of the decision of the Delhi High court in case of India Trade Promotion Organisation and come to the conclusion that further interest under Section 244A is not payable. His role was limited to giving effect to the directions of the Tribunal. The question whether the interest is or is not payable was already decided by the Tribunal. Undoubtedly, if the Department had any legal dispute with the decision of the Tribunal, it was always open to the Department to challenge the same in accordance with law. The Department has infact exercised such option by first filing an application for rectification before the Tribunal and when such rectification application came to be dismissed, by filing income tax appeal before the High Court. We are informed such appeal is pending.

8. At any rate, the limited role of the Assessing Officer was to implement the directions of the Tribunal. In the process, in our opinion, he exceeded his brief virtually coming to the conclusion that the Tribunal was not justified in issuing such directions and distinguishing the ratio of the decision of the Delhi High Court in case of India Trade Promotion Organisation (supra).

9. In view of such position, we would not relegate the petitioner to alternate remedy. Availability of appeal is not an absolute bar on the High Court exercising its jurisdiction under Article 226 of the Constitution. When we find that the order passed by the Assessing Officer is palpably bad in law and exceeds its jurisdiction, relegating a litigant to appeal remedy will be wholly futile and in facts of the present case also lead to undue hardship.

10. Under the circumstances, impugned order dated 15th November, 2018 is set aside. The Assessing Officer is directed to compute the interest payable to the petitioner under section 244A of the Act by applying the principles laid down by the Delhi High court in case of India Trade Promotion Organisation as directed by the Tribunal. This shall be done within a period of six weeks from the date of copy of the receipt of this order. Before closing we clarify that nothing stated in this order shall prejudice the Department in pursuing to its Income Tax Appeal assessment order passed by the Tribunal and interest which would be paid shall be subject to outcome of such appeal.

11. Petition disposed of accordingly."

7. Further, in yet another recent case of ACIT vs BPCL ITA 4892 & 4893/Mum/2019 dated 17.05.2021 (Mum-ITAT), the Hon'ble Tribunal upheld the order of Ld.CIT(A) in favour of assessee BPCL, wherein the Hon'ble Tribunal relied upon the order of Delhi High Court in the case of Ton us ITPO vs CIT (361 ITR 646) and Union Bank of India vs. ACIT (ITA 7389/Mum)/2014 dated 11.08.2016) and directed the AO to recompute interest u/s 244A, as per findings given by Hon'ble Delhi High Court.

8. In view of above discussion & keeping in view of decision of Hon'ble Delhi High Court in the case of ITPO vs CIT & also in view of order of Ld.CIT(A) dated 22.11.2019, the AO is directed to allow the short grant of interest u/s 244A(1) of the Act as per law, upto the actual date of disbursement, by applying the same principle & rationale and pass a speaking order.

The grounds of appeal are, therefore, allowed for statistical purposes

Ground 5 &6-Non-granting of interest under section 244A (1A) of the Act

9. These grounds of appeal pertain to non granting of interest u/s 244A(1A) of the Act / additional interest. The Appellant has also contended that the interest should be calculated till the actual grant of refund.

10 In the recent case of Koninklijke Philips N.V.vs DCIT (IT)146 taxmann.com 213 (Kol - ITAT) (2023)-It was held in favour of assessee that interest under section 244A has to be granted upto the date of on which actual refund was received. Further in the case of Agilent Technologies India (P.) Ltd. vs ACIT (Delhi HC) 123 taxmann.com 299 (2021), it was held that where Revenue delayed to pass appeal effect order by eight months, It should pass such order immediately and grant refund with interest. INCOME TAX DEPARTMENT

11 Similarly, on the issue of additional grant of interest, in the case of Koninklijke Philips (as above) it was held that additional interest u/s 244A(1A) is attracted only if conditions of section 153(5) are breached, if order by AO is not passed within three months from the end of month in which order u/s 254 is received by CIT and in the case of the appellant, there was delay of years.

12 Similarly, in the case of Nima Specific Family Trust vs. ACIT, 100 taxmann.com 262 (Gujarat) (2018), which is quoted by the appellant also, it was held that additional interest would be applied prospectively under section 244(1A) only for period of delay after 01.06.2016 but only interest & not interest on interest, if awarded as computation

13 In view of submission of the appellant detailed in earlier paras, various judicial pronouncements, and keeping in view of the CIT(Appeal)'s order dated 22.11.2019 for A.Y. 2000-01 in

appellant's own case, the AO is directed to calculate and grant as per law, the additional interest u/s 244(1A) w.e.f 01.06.2016 in view of not passing the order giving effect to the order with in the stipulated time, in the light of above discussed judicial pronouncement & the above said order of CIT(A).

The assessing officer is directed to recomputed and grant the interest till the actual date of disbursement, in accordance with law and the facts as being claimed by the appellant, if found correct after verification. These grounds of appeal are allowed for statistical purposes.

In the result, the appeal is allowed for statistical purposes.

10. Whereas the CIT(A) observed that the refund granted first should be adjusted against the interest component and balance refund should be adjusted against principle component while calculating interest U/sec244A of the Act and the same methodology is applied under the provisions of section 140A of the Act by the revenue, while collecting interest on delay payment of taxes by the assessee. The CIT(A) has relied on the order of the predecessor for A.Y 2000-01 in the assessee own case and the appellate authority has also relied on the observations of Honble High Court of Delhi in the case of India Trade Promotion Organization Vs CIT (361 ITR 646) on the methodology of adjustment of interest and tax component. Further as per explanation 1 to section 140A of the Act, the

refund issued earlier shall be adjusted against interest component and the balance towards tax/principal amount. Whereas for the A.Y 2002-03, the A.O /revenue has granted refund along with interest U/sec244A of the Act in the rectification order u/sec154 of the Act dated 9-10-2018 and working of interest U/sec244A(1) of the Act placed at page 126 to 128 of the paper book. The Ld.AR submissions are that the decisions relied by the revenue are distinguishable on facts and in the present appeal, the subject matter is in respect of following the methodology of adjustment and granting short credit of interest. Further, in respect of grant of additional interest u/sec 244A(1A) of the Act, till date of actual disbursement of refund order the Ld.DR contentions are that interest is calculated up to the date of grant of refund and not till actual date of receipt of refund. Whereas the CIT(A) has considered the judicial decisions and the assessee own case and directed the A.O to calculate and grant additional interest U/sec244A(1A) of the Act till the actual date of disbursement. We find in the recent decision of the Honble Tribunal of Mumbai bench on

the similar facts in the case of DCIT Vs Small industries Development Bank of India ITA.NO.1813/Mum/2023 dated 22.08.2023 has observed at Page3 Para 6&7 of the order as under:

“06. We have carefully considered the rival contentions and perused the orders of the lower authorities. The solitary issue before us in this appeal is that when the refund is issued to the assessee, the interest under section 244A of the Act is required to be computed up to the date on which the refund order is received by the assessee. This is the mandate of the Hon’ble Bombay High Court in case of Pfizer Ltd(Supra) and also in case of Citi Bank(supra). Further ,in assessee’s own case for A.Y.2003-04 the coordinate bench has given the direction based on the order of the Hon’ble Bombay High Court. Therefore, this issue is squarely covered in favour of the assessee. Accordingly, we do not find any infirmity in the order of the learned CIT(A) in directing the learned Assessing Officer to grant interest to the assessee under section 244A of the Act ,up to the date of receipt of refund order. Accordingly, the grounds of appeal raised by the assessing are dismissed”

7. In the result, the appeal of the learned Assessing Officer is dismissed.”

11. We find the CIT(A) has dealt on the facts, provisions of law and judicial decisions. The Ld. DR could not controvert the findings of the CIT(A) with any new cogent material or information to take different view. We considered the facts, circumstances, submissions as discussed above are of the view that the CIT(A) has passed a reasoned and conclusive order. Accordingly, we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

12. In the result, the appeal filed by the revenue is dismissed.

CO. 73/Mum/2023 (A.Y 1998-99)(Assessee)

13. The appeal filed by the revenue is dismissed as discussed in the above paragraphs and consequently, the assessee's cross objections becomes infructuous and is dismissed.

14. In the result, the appeal filed by the Revenue and Cross objections filed by the Assessee are dismissed

ITA No.2034/Mum/2023 & CO.72/Mum/2023 (A.Y 1999-2000)

15. As the facts and circumstances in this revenue appeal and cross objections of the assessee are identical to ITA No 2035/Mum/2023 & CO.73/Mum/2023 for the A.Y 1998-99 (except variance in figures) and the decision rendered in paragraphs 9,10,11&12 would apply mutatis mutandis for this appeal and cross objections. Accordingly, the grounds of appeals of the revenue and the Cross objections of the Assessee are dismissed.

16. In the result, the appeals filed by the revenue and Cross Objections filed by the assessee are dismissed.

Order pronounced in the open court on 16.10.2023.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 16.10.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai