

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. 863/AHD/2023

निर्धारण वर्ष/Asstt. Year: 1982-1983

Minor Haresh Karsanbhai Patel Oral Specific Deferred Family Trust, Nirma House, Near Income Tax Circle, Ashram Road, Ahmedabad-380009. PAN: AAATH4880P	Vs.	Income Tax Officer, Ward-5(2)(2), Ahmedabad. Now Income Tax Officer, Ward 5(3)(1), Ahmedabad
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(Applicant)		(Respondent)
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Assessee by :	Shri Hemanshu Shah, A.R
Revenue by :	Ms. Saumya Pandey Jain, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **27/12/2023**

घोषणा की तारीख /**Date of Pronouncement**: **03/01/2024**

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, arising in the matter of rectification order passed under s. 154 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 1982-1983.

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

1) In law and in facts and circumstances of the Appellant case, the learned Commissioner of Income-tax (Appeals) has erred in points of law and facts.

2) In law and in facts and circumstances of the Appellant's case, the learned Commissioner of Income (Appeals) has grossly erred dismissing the ground regarding not granting interest till the date of issue of refund.

3) In law and in facts and circumstances of the Appellant's case, the learned Commissioner of Income(Tax Appeals) has grossly erred dismissing the ground regarding not granting interest u/s.244A(1A) of the I.T. Act from June 2016 till the date of issue of refund

4) 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.

2.1 The assessee vide letter dated Nil has also raised the additional grounds of appeal which are reproduced as under:

1) In law and in facts and circumstances of the Appellant's case, Ld. Commissioner of Income-tax (Appeals) has directed the Assessing Officer to verify the Self Assessment Tax paid and allow interest as per provisions of the section. He ought to the same. have allowed

2) In law and in facts and circumstances of the Appellant's case, Ld. Commissioner of Income-tax (Appeals) has directed the Assessing Officer to take into account of working and pass speaking order. He ought to have allowed the same.

3) In law and in facts and circumstances of the Appellant's case, Ld. Commissioner of Income-tax (Appeals) has erred in directing the Assessing Officer to verify regular tax paid and allow interest u/s 244A of I.T. Act. as per provisions of the section. He ought to have allowed the same.

3. At the outset, we note that there was a delay in filing the appeal by the assessee for 167 days. The assessee has filed the petition for condonation of delay dated 08/12/2023, explaining that the order passed by the Ld. CIT(A) dated 13/03/2023, was not received by it. As such the assessee came to know about the order passed by the Ld. CIT(A) on viewing Income-tax portal and the order was accordingly downloaded on 29/09/2023. Thereafter, the assessee preferred the appeal before the ITAT dated 27/10/2023, within the period of 60 days when it came to its notice about the order passed by the Ld. CIT(A). It is for this reason the assessee failed to file the appeal within the stipulated time and accordingly, there was delay of 167 days in filing the appeal.

4. The Ld. AR also submitted assessee has fair chance to succeed on merit and therefore, a meritorious case should not be rejected on technical ground.

5. On the other hand, the Ld. DR opposed to condone the delay in filing the appeal by the assessee.

6. I have heard the rival contentions of both the parties and perused the materials available on record. The issue before us relates to the Assessment Year 1982-1983 meaning thereby almost 40 years have gone in the litigation. Considering the length of litigation and keeping in view the suffering faced by the assessee in pursuing the matter at different stages, I am inclined to condone the delay in filing the appeal by the assessee.

6.1 Besides the above, I note that the Hon'ble Gujarat High Court in the case of S.R. Koshti Vs. CIT reported in 276 ITR 165 has held as under:

20. A word of caution. The authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or on not being properly instructed, is over-assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected. This Court, in an unreported decision in case of Vinay Chandulal Satia v. N.O. Parekh, CIT [Spl. Civil Application No. 622 of 1981 dated 20-8-1981], has laid down the approach that the authorities must adopt in such matters in the following terms:

"The Supreme Court has observed in numerous decisions, including Ramlal v. Rewa Coalfields Ltd. AIR 1962 SC 361, State of West Bengal v. Administrator, Howrah Municipality AIR 1972 SC 749 and Babutmal Raichand Oswal v. Laxmibai R. Tarte AIR 1975 SC 1297, that the State authorities should not raise technical pleas if the citizens have a lawful right and the lawful right is being denied to them merely on technical grounds. The State authorities cannot adopt the attitude which private litigants might adopt."

6.2 From the above, it is revealed that the income of the assessee should not be over assessed even if there is a mistake of the assessee. As such the legitimate deduction for which the assessee is entitled should be allowed while determining the taxable income.

6.3 I also note that the Hon'ble Gujarat High Court in the case of Vareli textile industry versus CIT reported in 154 Taxman 33 has held as under:

It is equally well-settled that where a cause is consciously abandoned (as in the present case) the party seeking condonation has to show by cogent evidence sufficient cause in support of its claim of condonation. The onus is greater. One of the propositions of settled legal position is to ensure that a meritorious case is not thrown out on the ground of

limitation. Therefore, it is necessary to examine, at least prima facie, whether the assessee has or has not a case on merits.

6.4 In view of the above and after considering the facts in totality, I am of the view that it is a fit case where the delay in filing the appeal by the assessee deserves to be condoned. Accordingly, I condone the delay and proceed to adjudicate the issue raised by the assessee on merit.

7. The first issue raised by the assessee in ground number 2 is that the Ld. CIT(A), erred in confirming the order of the AO by not granting interest till the date of refund is issued.

8. The AO in the present case has passed the giving effect order in pursuance to the direction of the Ld. CIT(A) u/s 154 of the Act, dated 28/06/2019, determining the refund of Rs. 185313/- only. Such refund was issued on 15/04/2020, but the interest u/s 244A of the Act, was granted till 28/06/2019, instead of granting the same till 15/04/2020 i.e. up-to the date when the refund was issued. The relevant submission, in this regard, of the assessee is reproduced as under:

1. It is submitted that the Id. Assessing Officer passed CIT(A)'s effect order and order u/s. 154 of I.T. Act on 20-06-2019 determining refund aggregating to Rs. 1,85,313/-. However, the said refund was issued on 15-04-2020. Copies of the said order along with the proof of refund issued are enclosed marked as Annexure-A & B respectively.

2. Ld. Assessing Officer granted interest u/s.244A of the I.T. Act of Rs. 1,16,985/- on Rs.68,328/- up to the date of order i.e. 20-06-2019. However, refund was issued on 15-04-2020. It is to be noted that interest u/s. 244A of the I.T. Act is to be granted up to the date of issue of refund. Hence, interest should be granted from July 2019 to April, 2020 on refund of Rs. 68,328/-

3. It is requested to direct Assessing officer to grant interest on refund from July 2019 till April 2020 on refund amount of Rs. 68,328/-

9. However, the Ld. CIT(A) rejected the contention of the assessee by observing as under:

The appellant's submissions have been duly considered. It may however be noted that as per the wording and provisions of Section 244A, interest is to be computed upto date of grant of refund, and not date of issue of refund. Hence, this ground is dismissed.

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

11. The Ld. AR before me filed a paper book running from pages 1 to 32 and contended that the interest should be given to the assessee u/s 244A of the Act till the refund is issued to the assessee and not up-to the date of grant of refund.

12. On the other hand, the Ld. DR before me vehemently supported the order of the authorities below.

13. I have heard the rival contentions of both the parties and perused the materials available on record. The Hon'ble SC in the case of **Sandvik Asia Ltd. Vs. CIT reported in 280 ITR 643 has held as under:**

Interest on refund was granted to the appellant after a substantial lapse of time and hence it should be entitled to compensation for this period of delay. The High Court has failed to appreciate that while charging interest from the assessee, the Department first adjusts the amount paid towards interest so that the principle amount of tax payable remain outstanding and they are entitled to charge interest till the entire outstanding is paid. But when it comes to granting of interest on refund of taxes, the refunds are first adjusted towards the taxes and then the balance towards interest. Hence as per the stand that the Department takes they are liable to pay interest only up to the date of refund of tax while they take the benefit of assessee's funds by delaying the payment of interest on refunds without incurring any further liability to pay interest.

13.1 In view of the above, we can safely hold that interest has to be granted to the assessee up-to the date of actual payment of refund and not merely up-to the date of grant of refund. In other words, the assessee in the given case shall be entitled of interest up-to 15/04/2020, i.e. the date on which the refund was issued to the assessee. Hence, the ground of appeal of the assessee is allowed.

14. The second issue raised by the assessee is that the Ld. CIT(A), erred in not granting interest provided u/s 244A(1A) of the Act, from June 2016 till the date of issue of refund.

15. The assessee before the Ld. CIT(A), submitted as under:

1. It is submitted that interest u/s. 244A(1A) of I.T. Acts was not granted by Id. Assessing Officer on principal refund of Rs. 68.325 /- from June 2016 till the date of issue of refund. Hon'ble CIT(A) passed appellate order vide appeal No. CIT(A)/GNR/80/200-01 dated 30-01-2003. The effect thereof was given by the Ld. Assessing Officer vide order dated 20-06-2019 and refund was issued on 15-04-2020 ie after a period of 17 years

2. It is to be noted that interest u/s 244A(1A) of the I.T. T. Act Act is to be granted from June 2016 up to the date of issue of refund. Your kind attention is invited to section 244A(1A) of I.T. Act which provides as under.

"(1A) In a case where a refund arises as a result of giving 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 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."

3. It is requested to direct Assessing officer to grant interest u/s. 244A(1A) of the I.T. Act on refund on refund Rs. 68,325/- from June 2016 till the date of issue of refund.

16. However, the Ld. CIT(A), rejected the contention of the assessee by observing as under:

1. It is submitted that interest u/s. 244A(1A) of I.T. Acts was not granted by Id. Assessing Officer on principal refund of Rs. 68.325 /- from June 2016 till the date of issue of refund. Hon'ble CIT(A) passed appellate order vide appeal No. CIT(A)/GNR/80/200-01 dated 30-01-2003. The effect thereof was given by the Ld. Assessing Officer vide order dated 20-06-2019 and refund was issued on 15-04-2020 ie after a period of 17 years

2. It is to be noted that interest u/s 244A(1A) of the I.T. T. Act Act is to be granted from June 2016 up to the date of issue of refund. Your kind attention is invited to section 244A(1A) of I.T. Act which provides as under.

"(1A) In a case where a refund arises as a result of giving 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 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."

3. It is requested to direct Assessing officer to grant interest u/s. 244A(1A) of the I.T. Act on refund on refund Rs. 68,325/- from June 2016 till the date of issue of refund.

6.6.2 The appellant's submissions have been duly considered. It may, however, be noted that as per the wording and provisions of Section 244A, interest is to be computed upto date of grant of refund, and not date of issue of refund. Hence, this ground is dismissed.

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

18. The Ld. AR before me reiterated the contentions raised before the Ld. CIT(A). On the other hand, the Ld. DR vehemently supported the order of the authorities below.

19. At the outset, I note that the issue raised in ground number 3 is identical to the issue raised by the assessee in ground number 2 as discussed above. Therefore, the finding given in the ground number 2 shall be applicable to the ground number 3 as well. The appeal of the assessee pertaining to ground number 2 has been adjudicated vide paragraph number 12 of this order in favour of the assessee. Thus, respectfully following the same the ground number 3 of the assessee is also allowed.

Coming to the additional grounds of appeal, reproduced above, raised by the assessee.

20. At the outset, I note that the additional grounds of appeal raised by the assessee are pure legal in nature and all the necessary facts are already available on record in the order of the Ld. CIT(A). Accordingly, I admit the additional ground of appeal raised by the assessee in view of the judgment of the Hon'ble SC in the case of NTPC Ltd. reported in 229 ITR 383 where it was held as under:

The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner (Appeals) takes too narrow a view of the powers of the Tribunal. Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings there is no reason why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

21. The common issues raised in all the additional grounds of appeal of the assessee is that the Ld. CIT(A), erred in directing the AO to verify the claim of the assessee and decide the issue as per the provision of law. It was submitted by the

Ld. AR that the Ld. CIT(A) has no power to remit back the matter to the AO under the statue. Therefore, the Ld. CIT(A), was under the obligation to adjudicate the issue raised by the assessee on merit. On the contrary, the Ld. DR contended that the issues raised in the additional grounds of appeal have duly been adjudicated by the Ld. CIT(A) and upon adjudication, restored the issue to the file of the AO for limited purpose i.e. verification/computation of interest as per the provision of law. Thus, it was contended by the Ld. DR that the issues have not been set-aside to the file of the AO for *de-novo* assessment/verification.

22. I have heard the rival contentions of both the parties and perused the materials available on record. On perusal of the order of the Ld. CIT(A), I note that all the issues were duly adjudicated by the Ld. CIT(A), in his order and thereafter the issue was set-aside to the AO only for the purpose of verification and computation of interest under the provision of law. Therefore, I am not convinced with the argument of the Ld. AR that the Ld. CIT(A) has exceeded his power granted under the statue by restoring the issue to the file of the AO for fresh assessment. Thus, I do not find any merit in the argument advanced by the Ld. AR for the assessee. Accordingly, all the issues raised by the assessee in the additional grounds of appeal are hereby dismissed.

23. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the Court on 03/01/2023 at Ahmedabad.

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

Ahmedabad; Dated
Manish

(True Copy)
03/01/2023