

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA Nos. 284 & 460/Ahd/2023
Assessment Year : 1993-94 & 1998-99

Nirma Limited, Nirma House, Ashram Road, Ahmedabad-380009 PAN : AAACN 5350 K	Vs.	Dy. Commissioner of Income-tax, Circle 3(1)(1), Ahmedabad Now, Dy. Commissioner of Income-tax, Central Circle 2(2), Ahmedabad
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(Appellant)		(Responent)
Assessee by :		Shri Bandish Soparkar, AR
Revenue by:		Ms. Saumya Pandey Jain, Sr DR

सुनवाई की तारीख/Date of Hearing : 26/03/2024
घोषणा की तारीख /Date of Pronouncement: 03/04/2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present two appeals have been filed by the same assessee against separate orders passed by the Id. Commissioner of Income-Tax (Appeals)-12, Ahmedabad [hereinafter referred to as "CIT(A)" for short] dated 02.03.2023 and 07.03.2023, pertaining to the Assessment Years (AY) 1993-94 & 1998-99 respectively, under Section 250(6) of the Income-tax Act, 1961 [hereinafter referred to as the "Act" for short].

2. It was stated that the issue arising in both the appeals was identical; and therefore, both the appeals were taken up together for adjudication.

3. The Id. Counsel for the assessee stated that the solitary issue/ dispute in both the appeals relates to the adjustment of part income-tax refund

received by the assessee against the total outstanding refund, comprising of principal/ tax and interest - with the assessee contending that the refund be adjusted first against the interest component outstanding and then against the principal/tax, while the Department's contention was to the contrary. The result of the entire exercise would be the effect on the quantum of interest to which the assessee would be entitled u/s 244A of the Act on the outstanding principal so remaining after adjustment of the part refund received. That if, as pleaded by the Id. Counsel for the assessee, the part refund received is first adjusted against the interest component of refund, the principal component remaining would be larger in quantum as opposed to the situation in which, apropos the contention of the Revenue, the part refund is adjusted first against principal and then against interest outstanding. As a consequence of which, if the assessee's contention is accepted, its entitlement to interest on the principal outstanding in terms of Section 244A of the Act would be more.

4. There are two years before us in the case of the same assessee, i.e. AYs 1993-94 and 1998-99. The facts with respect to both the assessment years are as under:-

AY 1993-94

5. On 01.05.2019, the Assessing Officer passed order assessing the income at Rs.2,93,61,076/-, giving effect to the ITAT's order. The demand notice issued as a consequence stated a refund of Rs.6,28,89,345/- to be given to the assessee. The calculation of the same reveals that the refund calculated on account of the relief granted by the ITAT was Rs.6,63,36,222/- comprising of tax refund of Rs.4,60,52,921/- and interest thereon Rs.2,02,83,300/-. That thereafter adjustment against the said refund was made of outstanding

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demand of various assessment years ,which was adjusted both against tax and interest outstanding , and after adjustment of tax refund so, on the remaining tax refund further interest u/s 244A of the Act was granted , thus resulting in total refund of Rs.6,28,89,345/- comprising of tax refund of Rs.2,07 57,601/- and interest of Rs.4,21, 31,744/- .On 25.07.2019, the Revenue issued full and final refund of Rs.6,28,89,345/-.

6. The assessee does not dispute the factum of refund of Rs.6,63,36,222/- computed on the relief granted to the assessee by the ITAT in quantum proceedings comprising of tax refund of Rs.4,60,52,921/- and interest thereon Rs.2,02,83,300/-. What the assessee is aggrieved with is the adjustment of demands of various assessment years, which as per the assessee ought to be adjusted against the interest refund entirely. And as per the assessee therefore he is entitled to a total refund of Rs.8,96,87,702/- on the date refund of Rs.6,28,89,345/- was issued to the assessee, i.e 25/07/2019, and further interest on the shortfall of refund therefore of Rs.68,33,581/-. As per the assessee therefore the total refund works out to Rs.9,65,21,283/- comprising of tax refund Rs.3,97,33,225/- and balance interest of Rs.5,67,88,058/-.

7. In sum and substance, therefore, the dispute is regarding the adjustment of part refund granted by way of adjustment of refund against outstanding demand for various A.Y's, which while the Department has adjusted by reducing both the interest and the tax component of outstanding refund in a particular proportion, the case of the assessee is that the adjustment ought to be made entirely against outstanding refund of interest. As a consequence while the refund computed by the department and granted to the assessee of Rs.6.28 Crs comprises of tax Rs.2.07 Crs and interest of

Rs.4.21 Crs, as per the assessee, the refund works out to Rs.9.65 Crs comprising of tax Rs.3.97 Crs and interest Rs.5.67 Crs.

AY 1998-99

8. The facts pertaining to AY 1998-99 are that, in pursuance to order passed u/s 154 of the Act on 30.05.2016, the income of the assessee was assessed at Rs.72,22,89,780/- . Subsequently, on 11.10.2017, the Hon'ble High court granted relief to the assessee to the extent of Rs.25,90,06,699/-. On 04.04.2018, the order giving effect to the High Court order was passed assessing the income of the assessee at Rs.46,41,25,441/-. Refund was not issued for a long time upto 01.12.2003 when the assessee ultimately filed a writ petition in the High Court which was allowed by the High Court vide order passed on 20.02.2023, directing the Revenue to issue refund of Rs.17,15,34,707/- + interest in two weeks. On 07.03.2023, the Id. CIT(A) passed order directing the Assessing Officer to issue refund as per the Hon'ble High Court's order. However, on the ground raised by the assessee seeking adjustment of the refund first against the interest component and thereafter against the tax component, the Id. CIT(A) dismissed the same. The Assessing Officer issued refund of Rs.21,80,45,001/- on 10.03.2023 which, the assessee contests, is correct amount and it is not aggrieved by the same, however, he has stated that on account of the order of the Id. CIT(A) ,dismissing the assessee's plea of adjustment of refund first against interest and thereafter against principal, the Assessing Officer may reduce the refund already granted.

9. Having stated so, the plea of the Id. Counsel for the assessee before us was this that the issue has been settled repeatedly in favour of the assessee by various decisions of the ITAT, beginning from the decision of the ITAT

Mumbai Bench in the case of **Union Bank of India Vs. ACIT**, reported in [2016] 72 taxmann.com 348 (Mumbai), followed consistently by the other benches of the ITAT in the cases of...

- Grasim Industries Ltd. Vs. DCIT, in ITA Nos. 473, 474 & 1120, 1121/Mum/2016, order dated 11.11.200, reported in [2021] 123 taxmann.com 312 (Mumbai-Trib);
- Tata Sons Private Limited Vs. DCIT, in ITA No.2362/Mum/2023, order dated 06.12.2023, reported in [2023] 157 taxmann.com 329 (Mumbai - Trib.)
- Karsanbhai Kacharabhai Patel HUF Vs. ITO, in ITA No.183/Ahd/2022, order dated 21.12.2022; and
- Nirma Limited Vs. DCIT, in ITA No.2049/Ahd/2017, order dated 30.06.2023.

Copies of all the orders were placed before us.

10. The ld. DR, however, relied on the order of the ld. CIT(A) in assessee's appeal pertaining to AY 1998-99, and submitted that if the contention of the assessee is agreed to, it would result in :-

- (i) the assessee being granted interest on the same principal for a particular period twice or interest on interest which is not allowable as per the provisions of Section 244A(1) of the Act;
- (ii) that the provisions of Section 244A nowhere provide that a refund issued earlier shall be first adjusted against the entire interest and then the balance be adjusted against the principal amount;
- (iii) the decision of the Hon'ble Apex Court in the case of CIT Vs. Gujarat Fluro Chemicals, SLP (C) No.11406 of 2008, order dated 18.09.2018, categorically held that interest can be claimed only as per law laid down in this regard, and if the assessee's plea is accepted, it would tantamount to interest on interest; it would be in violation of the order of the Hon'ble Apex Court.

11. The Id. DR has also filed submissions in writing before us, contending that interest being in the nature of compensation for use of money borrowed, or retained, or not paid to the person to whom it is due; therefore, once the money is paid back to the assessee, no question of further payment of any compensation for deprivation of income-tax refund payable will arise. She has also referred to the provisions of the Indian Contract Act, Section 59 to 61 dealing with the appropriation of payments, and summarized the same stating that, as per the said provisions, it is the debtor who has first right to intimation of debt at the time of payment; if the debtor fails to intimate the same, then the right goes to the creditor and if the creditor fails to intimate, then it goes to the law itself, according to which, the refund should be appropriated proportionately. Her submissions in this regard are reproduced hereunder:-

"No. Sr.DR/(ITAT)-1/'A' Bench/Nirma Ltd./2023-24

Dated :04/01/2024

To

*The Deputy/Assistant Registrar,
Income-tax Appellate Tribunal (ITAT),
'A' Bench, 3rd Floor, Abhinav Arcade,
Ashram Road, Ahmedabad*

Sir,

Sub: Appellate Proceedings before the Hon'ble ITAT, 'A' Bench, Ahmedabad in the case of Nirma Ltd. for A.Y. 1993-94 & 1996-99 in ITA No. ITA 284 / A / 23 & 460 / A / 23 -Forwarding of report-reg

Ref: Hearing held before the Hon'ble ITAT, 'A' Bench, Abad on 22/12 / 2023 (HEARD)

Kindly refer to the above.

2. Your attention is kindly drawn to the fact that The Lrd. AO has passed an Order for refund of Rs. 6,28,89,345 by giving effect to the ITAT's order on 01.05.2019 for A.Y.1993-94. However, the Assessee has claimed for short payment reason being (1) Payment toward refund Amount has not been adjusted firstly against Interest on Refund.

The Ld. CIT(A) has dismissed ground of the Assessee stating that "first reduce the entire refund granted from the interest part only" by stating as unacceptable and against the provision of law.

3. In this regard, certain salient facts are as under:

- (a) Interest has been jurisprudentially defined as the price paid for money borrowed, or retained, or not paid to the person to whom it is due, generally expressed as a percentage of amount in one year. It is in the nature of the compensation allowed by law or fixed by parties, for use or forbearance or damage for its detention.
- (b) In the context of the present case, interest would be the compensation payable by on direction of Hon'ble ITAT Order, for the retention or deprivation of Income Tax Refund Payable to the Assessee. Therefore, once the money was paid to the Assessee, interest as compensation for deprivation of Income Tax Refund Payable will not arise.
- (c) As per the Indian Contract Act, 1872,

Appropriation of payments:

- 59 *Application of payment where debt to be discharged is indicated.- Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.*

Illustrations

- (a) *A owes B, among other debts, 1,000 rupees upon a promissory note which falls due on the first June. He owes B no other debt of that amount. On the first June, A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note*
- (b) *A owes to B, among other debts, the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment*

- 60 *Application of payment where debt to be discharged is not indicated.-*

Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits

- 61 *Application of payment where neither party appropriates.-*

Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably

As per the above, under the appropriation of a contract, the debtor has the first right to intimate appropriation of a debt at the time of payment if he fails to exercise his right, this right then goes on the creditor and if the creditor also fails to exercise his

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right the appropriation will be done in order of time by the law itself. In case of debts of equal standing, each will be appropriated proportionately.

4. In the case of the Assessee, Hon'ble ITAT has directed to the Lrd. AO to give effect of Order. Accordingly, The Lrd. AO has passed order for refund for Rs. 6,28,89,345/- for A.Y.1993-94. Thus, the Assessee being Creditor has exercised his right toward the Principal Amount of Refund and Interest thereon from the Revenue being Debtor. Now, when the Revenue owes a certain amount to the assessee (Say Rs. X as principal amount and another amount say Rs. Y as interest thereon then these are in nature of two separate debts), then when any amount is released to the assessee in pursuance of this obligation, then according to the above reading, the repayment of debt has to be appropriated proportionately.

Under the Appropriation of debt as per the Contract Act,

- *Revenue being 'Debtor' has first right to intimation of a debt at the time of payment,*
- *If Debtor fails to intimate, then this right goes on the Assessee being Creditor,*
- *If Creditor fails to intimate, then this right goes on the law itself.*
- *Any debt in term of IT Refund and Interest thereon consequently are equal standing,*
- *Thus, each refund issued has to be appropriated proportionately.*

In case of silence of the law in force, it is hence justified to proportionately apportion the payment on account refund between Principal Amount of Refund and Interest thereon proportionately for the just and equity of provision of law. The said fact has also been confirmed by the Lrd. AO in para 5.4 of Appellate Order dated 02.03.2023.

Your honor is kindly requested to consider above mentioned facts while pronouncing the order in the case and oblige.

Yours faithfully,

Sd/-

(SAUMYA PANDEY JAIN)

*Senior Departmental Representative,
(ITAT)-1, 'A' Bench, Ahmedabad"*

12. We have heard the contentions of both the parties. The issue in dispute before us is the manner of adjustment of part refund granted to the assessee, whether first against interest component of refund as argued by the Ld. Counsel for the assessee or otherwise as per the Revenue.

13. It is an admitted fact that the issue of adjustment of refund against outstanding principal/ tax and interest has already been decided by the ITAT in the decisions as cited by the Id. Counsel for the assessee before us as noted above. This issue was first decided by the Mumbai Bench of the Tribunal in the case of Union Bank of India (supra), wherein it was held as under:-

"3.4 We have gone through the facts of this case and submissions made by both sides, provisions of law as well as judgments placed before us. It is noted that the only issue to be decided by us is that while granting the refund in pursuance to the appeal effect order, whether the amount of refund granted earlier should be adjusted first against the interest component of the earlier refund and thereafter the balance amount should be adjusted against the principal component of tax in the refund granted earlier order OR vice-versa as has been done by the AO. It is noted that this issue is not coming for the first time before the Tribunal as the same has arisen for A.Ys. 1988-89, 2001-02 & 2005-06. Copies of the orders were placed before us and it was contended by the Id. Counsel that the Tribunal had already decided this issue in favour of the Tribunal therefore, before proceeding further we find it appropriate to first reproduce and discuss the reasoning given by the Tribunal in earlier years. The relevant part of order dated 23.06.2014 is reproduced hereunder for the sake of ready reference:

"4. Undisputedly for A.Y. 1988-89 the assessee is entitled to refund of Rs. 14.07 crores as per assessment order and interest payable thereon works out to Rs. 1.58 crores; thus total refund due is Rs. 15.65 crores. The Assessing Officer granted refund of Rs. 12.03 crores. The dispute between the Assessing Officer and the assessee is with regard to adjustment of refund; according to the assessee refund should first be adjusted against interest payable and only the balance amount shall be adjusted against tax refundable and in this process the balance refund due would work out to Rs. 3,52,28,442/- on which the assessee is entitled to interest u/s. 244A of the Act whereas the Assessing Officer calculated the balance refund due at Rs. 2,03,99,541/-(tax component) and Rs. 1,58,28,901/-(interest component). Reason for such calculation was that according to the Assessing Officer no interest is payable on interest due in which event, even if there is substantial delay in interest payable, the assessee can be made to wait unendingly without payment of interest. Though, before the Assessing Officer as well learned CIT (A), the assessee's claim of interest u/s. 244A is not properly focused but sum and substance of the assessee's case before us is that in the event of adjustment of refund against interest due to the assessee tax refund due shall work out to Rs. 3.62 crores on which the assessee would be entitled to get interest u/s. 244A of the Act. In this regard the assessee relied upon the order of Hon'ble Delhi High Court in the case of India Trade Promotion Organisation v. CIT ([361 ITR 646](#)) wherein the Court observed that under Explanation to section 140A(1) of the Act, when an assessee is duty bound to pay the outstanding tax, amount paid by the assessee shall first be adjusted against interest payable and the

balance shall be adjusted against tax payable, the same procedure needs to be followed in respect of refund due to the assessee i.e., the amount shall first be adjusted towards interest payable and balance, if any, shall be adjusted towards tax payable (in the instant case tax refundable to the assessee).

5. Learned counsel, appearing on behalf of the assessee, pleaded accordingly. On the other hand learned Departmental Representative submitted that the assessee is not entitled to interest on interest. However with regard to the plea of the assessee that it does not amount to payment of interest on interest but only adjustment of the refund from the Revenue against interest component first and thereafter against tax component, in which event u/s. 244A assessee is entitled to interest on the tax component, learned Departmental Representative could not place any decision contrary to the decision of Hon'ble Delhi High Court cited by learned counsel for the assessee.

6. We have carefully considered the rival submissions. As rightly pointed out by the assessee Hon'ble Delhi High Court rightly explained that the amount refunded by the Revenue has to be adjusted towards interest payable to the assessee and the balance, if any, shall be adjusted towards tax. On this principle there is no contrary decision placed before us, we therefore agree, with the plea of the assessee and direct the Assessing Officer accordingly."

3.5 From the perusal of the above, it is noted by us that the Tribunal has relied upon the judgment of Hon'ble Delhi High Court in the case of India Trade Promotion Organisation (supra), wherein it was inter-alia held that in a situation where only part amount is refunded by the department, then payment of interest on the balance amount due from the department to the assessee, on a particular date, does not amount to payment of interest on interest. Their lordships, taking support from the judgment of Hon'ble Supreme Court in the case of CIT v. HEG Ltd. [\[2010\] 324 ITR 331/189 Taxman 335](#), observed as under:

'14. Matter was taken by the Revenue before the Supreme Court in the case of HEG Limited and the SLP was granted and civil appeal was registered. The Supreme Court thereupon answered the question against the Revenue in the following words:-

Therefore, this is not a case where the assessee is claiming compound interest or interest on interest as is sought to be made out in the civil appeals filed by the Department.

The next question which we are required to answer is - what is the meaning of the words "refund of any amount becomes due to the assessee" in Section 244A? In the present case, as stated above, there are two components of the tax paid by the assessee for which the assessee was granted refund, namely TDS of Rs. 45,73,528 and tax paid after original assessment of Rs. 1,71,00,320. The Department contends that the words "any amount" will not include the interest

which accrued to the respondent for not refunding Rs. 45,73,528 for 57 months. We see no merit in this argument. The interest component will partake of the character of the "amount due" under Section 244A. It becomes an integral part of Rs. 45,73,528 which is not paid for 57 months after the said amount became due and payable. As can be seen from the facts narrated above, this is the case of short payment by the Department and it is in this way that the assessee claims interest under Section 244A of the Income-Tax Act. Therefore, on both the aforesaid grounds, we are of the view that the assessee was entitled to interest for 57 months on Rs. 45,73,528/-. The principal amount of Rs. 45,73,528 has been paid on December 31, 1997 but net of interest which, as stated above, partook of the character of "amount due" under Section 244A."

15. A reading of the aforesaid passage from the decision of the Supreme Court in HEG Limited (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. '

3.6 *The facts of the case before us are similar in the sense that here also only part amount was refunded in the first phase by the department and when the balance amount was paid by the department in the second phase, the assessee was entitled for interest on the balance amount of refund due. Thus, from the aforesaid observations of Hon'ble Delhi High Court, we can say that it is not a case of payment of interest*

on interest. Thus, in view of these facts and aforesaid judgments, Ld Counsel contended that Ld. CIT (A) had wrongly applied the judgment of Hon'ble Supreme Court in the case of Gujarat Fluoro Chemicals (supra), since it was not applicable on the facts of this case.

3.7 Further, it was also held by Hon'ble High Court that the department ought to follow the same procedure and rules while collecting tax and while issued refunds. We have gone through the provisions of section 140A(1); explanation to the aforesaid section provides as under:

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

3.8 Thus, from the perusal of the above, it is clear that where the amount of tax demanded is paid by the assessee then it shall first be adjusted towards interest payable and balance if any whatever tax payable. 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 (i.e. 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 taxes 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 unauthorisedly 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 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."

14. In the said decision, the ITAT has noted the issue to be squarely covered in favour of the assessee by the decision of the Hon'ble Delhi High Court in the case of India Trade Promotion Organisation Vs Commissioner of Income Tax (2014) 361 ITR 646(Delhi) wherein the Hon'ble High court dismissed the contention of the Revenue that adjustment of part refund against interest first, as pleaded by assessee, would result in any way in paying interest on interest. Further the Hon'ble court took note of the fact that there is no provision in law for manner of adjustment of part refund granted. And taking into account the provisions of section 140A of the Act requiring self-assessment tax paid short by the assessee to be first adjusted against interest outstanding and then against tax, and also the provisions of section 220 of the Act charging interest on the portion of outstanding demand of tax including interest, the hon'ble court held that the same principle would follow if Revenue defaults in full payment of refund. The Hon'ble High court also noted that since section 244A of the Act debars payment of interest on interest refund, it held that part refund needs to be adjusted against interest first otherwise the assessing Officer/ Revenue would refund the principal amount and not pay the interest component u/s 244A for an unlimited period with impunity and without any sanction which would tantamount to allowing a premium on non-compliance with the law.

15. Taking note of the decision of the Hon'ble Delhi High Court as above, the ITAT held that there is no case of payment of interest on interest in such circumstances and accordingly held that the decision of the Hon'ble apex court in the case of Gujarat Fluoro Chemicals (supra) did not apply.

16. Since the issue has been so decided in favour of the assessee by the Hon'ble Delhi High Court and no other contrary decision of either the jurisdictional High Court or the Hon'ble apex court has been brought to our notice, we have no hesitation in allowing the assessee's appeal directing interest to be allowed on all outstanding after adjustment of part refund.

17. Considering the contentions made by the Revenue before us we find no merit in the same. The first contention of the Ld. DR is that interest being in the nature of compensation for amount outstanding and not paid, whatever is once paid, there is no question of any interest being payable thereon. The Ld. DR, we find, has simplified the issue to an extent which is not acceptable. It is not so black and white as stated by the Ld. DR from what we understand of her submissions. According to Ld. DR, whatever is refunded is towards the principal, and there is no question, therefore, of paying any interest on the amount refunded; but that exactly is the controversy before us, i.e. whether the amount refunded should go to be adjusted first the principal and then the interest or vice-a-versa. Therefore, this contention of the Ld. DR, we find, is of no consequence and is dismissed.

18. The other contention of the Ld. DR that the provisions of Indian Contract Act be applied, according to which, as per her submissions, where neither the debtor who has the first right, nor the creditor who has the second right of intimation of usage of the refund, exercise this right, then the amount

refunded is to be appropriated proportionately between the principal and interest. This contention also merits no consideration since as observed by the Hon'ble Delhi High court in the case of India Trade Promotion (supra) it would result in the Revenue enjoying a premium for its non-compliance since it is not required to pay interest on interest and apportioning any amount of part refund to tax refund outstanding will be to the unjust benefit of the Revenue. Therefore, in all fairness, equity and good conscience, as held by the ITAT Mumabi Bench in the case of Union Bank of India Vs. ACIT (supra), the part refund should first go to be adjusted against the interest component and then against the principal component. The provisions of Indian Contract Act, as pointed out by the Id. DR, cannot be applied in the present situation considering the situation existing in the present case that the assessee is not entitled to interest on interest. In view of the above, we have no hesitation in acceding to the plea of the assessee that the refund granted to it be first adjusted against the interest component of the refund outstanding and thereafter against the principal component. The grounds raised by the assessee are allowed and both the appeals of the assessee are accordingly allowed.

19. In effect, both the appeals of the assessee are allowed.

Order pronounced in the Court on 3rd April, 2024 at Ahmedabad.

Sd/-

**(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Sd/-

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 03/04/2024

*bt**

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

True Copy

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad