

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

**BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAJ KUMAR CHAUHAN, JM**

ITA No. 3573/Mum/2023
(Assessment Year: 2004-05)

DCIT Circle 3(4)
R.No. 559, 5th Floor,
Aaykar Bhavan, M.K. Road,
Mumbai-400 020

(Appellant)

Vs.

IDBI Bank Ltd.
7th Floor,
IDBI Tower WTC Complex
Cuffe Parade,
Mm 400005

(Respondent)

PAN No. AABCI8842G

Assessee by : Shri C Naresh, AR
Revenue by : Ms Madhu Malati Ghosh, CIT
DR

Date of hearing: 23.04.2024
Date of pronouncement : 08.05.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the Deputy Commissioner of income tax Circle – 3 (4), Mumbai (the learned AO) for assessment year 2004 – 05 against appellate order passed by the National faceless appeal Centre (NFAC) Delhi (the learned CIT – A) dated 7/8/2023 wherein appeal filed by the assessee against order under section 143 (3) read

with section 254 Of The Income Tax Act, 1961 dated 23/11/2022 passed by the learned AO was partly allowed.

02. The learned assessing officer is aggrieved with that and has preferred appeal raising following grounds: –

“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 244A(1) of the Act as per law by relying on the Hon'ble ITAT's decision in the case of Bank of Baroda & Union Bank of India ignoring the decision of Hon'ble Division Bench of Delhi High Court in the case of CIT vs. Indian Farmer Fertilizer Co-operative case [2016] 71 taxmann.com 37 (Delhi) wherein it was 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 244A(1) of the Act following the Hon'ble ITAT's decision in the case of Bank of Baroda & Union Bank of India which is based on 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 any of the decisions on which the Hon'ble ITAT relied on in the case of Bank of Baroda?*

4. *"Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the mandatory interest due u/s. 244A(1A) of the Act without appreciating the facts that section 244A[IA] and 153(5) of the Act were added by the legislature on 01.06.2016."*

03. Brief facts of the case shows that the assessee is a bank, tribunal order in ITA number 3908/M/2009 and 3760/M/2009 dated 2 January 2020 and miscellaneous Application order in ITA number 180/M/2020 dated September 25, 2020 was passed and consequent to that an order giving effect was passed by the learned assessing officer on 23/11/2022 wherein the revised total loss of the assessee is determined at ₹ 2,567,904,797.



04. Assessee is aggrieved with that order for the reason that according to the assessee the interest under section 244A of Rs 46.44 crores is receivable whereas the learned assessing officer has granted such interest of ₹ 38.14 crores. This difference has resulted on account of the learned AO not granting interest on the amount of refund due after adjusting the refund already granted by segregating the refund due into interest and tax and not granting interest on the total amount of balance refund due of tax after adjusting the refund granted as against the specific provisions of section 244A of the act.
05. The learned CIT – A on appeal, allowed the claim of the assessee as assessee argued that the issue is squarely covered by the decision of the ITAT in case of DCIT versus bank of Baroda and Union Bank of India versus ACIT as well as the order of CIT in assessee's own case for assessment year 99- 2000. The learned CIT – A agreed with the argument of the assessee and directed the AO to examine the computation of refund including interest under section 244A of the act in accordance with the directions given by the ITAT Mumbai in case of bank of Baroda in ITA number 1646 and 2565/M/2017 dated 20/12/2018.
06. The second issue raised by the assessee before him that assessee is entitled to the mandatory additional interest under section 244A (1A) of the act when the order giving effect was not passed within the time limit specified under section 153 (5) of the act. The assessee submitted that order giving effect of the ITAT order dated 2/1/2020 and MA order dated 25/9/2020 was passed on 23/11/2022 by the learned assessing officer. Therefore mandatory interest due as per the provisions of section 244 (1A) should be granted to the appellant. The learned CIT – A considered the provisions of section



244 (1A) of the act and held that the order giving effect dated 2/1/2020 and MA order dated 25/9/2020 was passed on 23/11/2022. Therefore assessee is entitled to additional interest. He directed the learned assessing officer to verify receipt of the order under section 254 of the income tax act in the office of the principal chief Commissioner and then directed the AO to give additional mandatory and consequential interest at the rate of 3% per annum with effect from the expiry of three months from the date of receipt of the order of ITAT under section 254 by the respective authorities till the date of giving effect to the order of the ITAT. Thus the appeal of the assessee was allowed for statistical purposes.

07. The learned assessing officer is aggrieved with the same and has preferred this appeal. The learned departmental representative reiterated the grounds of appeal and submitted that the learned CIT – A is incorrect in directing the learned assessing officer to grant interest under section 244A (1) of the act and as well as the additional interest under section 244A (1A) with respect to the provisions of section 153 (5) of the act which were added by the legislature on 1/6/2016. It was stated that the impugned assessment year is 2004 – 05 and therefore the amendment that has been made with effect from 1/6/2016 could not have been applied by the learned CIT – A to grant relief to the assessee.
08. The learned authorized representative vehemently supported the order of the learned CIT – A. He submitted that the issue is squarely covered in favour of the assessee by the decision of the coordinate bench in case of bank of Baroda in ITA number 1646/M/2017 dated 20/12/2018 and the decision of the Union Bank of India dated 29/8/2023 in ITA number 945/M/2023. He further referred to the



provisions of the income tax act and stated that assessee is entitled to the above interest. He further stated that the refund that has been granted by the learned assessing officer should have been reduced first from the interest payable to the assessee and not out of the tax refundable to the assessee. He further stated that that as there is no such methodology laid down under the act but analogy may be drawn from the provisions of section 140-A of the act. He referred to the provisions of section 140A to show that explanation to that section provides that whenever a taxes, fees and interest is payable by the assessee, the amount so paid shall first be adjusted towards the fee, thereafter towards the interest and thereafter should be adjusted towards the tax payable. Therefore there is a methodology and chronology of adjustment of payment made by the assessee to the income tax department , therefore same methodology and chronology should also be available to the assessee in absence of any contrary specific provision under the act. On the second issue he referred to the provisions of section 153 (5) of the act to show that when there is appeal effect is required to be given, it should be granted within three months from the end of the month in which the order for which an effect is to be given is received. He referred to the provisions of section 244A (1A) of the act to show that when such appeal effect order is not passed within the stipulated time under section 153 (5) of the act the assessee shall be entitled to receive in addition to the interest payable under subsection (1) and additional interest on such amount of refund at the rate of 3% per annum for the period beginning from the date following the date of expiry of the time allowed under that section to the date on which the refund is granted. He states that the above section 244A (1A) was inserted by the finance act 2016 with effect from 1/6/2016.

Therefore, any appeal effect order which is passed after that date i.e. 1/6/2016 the above provisions of section 244A (1A) of the act is applicable. The learned CIT – A has merely directed the assessing officer to verify the dates and then compute the interest allowable to the assessee. Therefore, there is no infirmity in the order of the learned CIT – A.

09. We have carefully considered the rival contention and perused the orders of the lower authorities. The issue involved in ground number 1 – 3 of the appeal of the learned AO is that when a refund is due to the assessee which is comprising of tax and interest and when part of that refund amount is granted, whether such a refund so granted is to be adjusted first against interest portion comprising in that refund or tax portion comprising therein. If, the adjustment is made first towards the tax portion, the interest due to the assessee when subsequent amount of refunds are granted, would be less. If the adjustment is made first towards the interest portion, and when the subsequent refunds are granted, the interest portion payable to the assessee would be higher for the simple reason that in that circumstances that tax portion remains intact. This tax portion which remained intact would result into further interest thereon. There is no provision under the income tax act which is shown by either that there is a specified chronology for adjustment of refund granted to the assessee. However it is shown to us that when the tax is payable by the assessee, there is a specific chronology provided under the provisions explanation to section 140A of the act. It provides that where the amount paid by the assessee as self assessment falls short of the aggregate of the tax, interest and fee, the amount so paid shall first be adjusted towards the fee payable, and thereafter towards the



interest payable and the balance if any shall be adjusted towards the tax payable. Honourable Delhi High Court in case of India trade promotion Organization versus CIT (2014) 361 ITR 646 in paragraph number 15-16 has held as under:-

"15. A reading of the aforesaid passage from the decision of the Supreme Court in *H.E.G. 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.

16. The aforesaid manner of computation is not only applicable to cases where Revenue has to pay interest on refund, but is equally applied when an assessee is in default and interest is payable under Section 220(2) of the Act. Interest payable under Section 234B and 234C become part of the demand notice issued under Section 156 and it is on this amount, i.e., the tax payable plus interest payable under Sections 234B and 234C that interest under Section 220(2) is calculated from the date mentioned in the notice of demand till the date of actual payment. Under Explanation to Section 140A(1), it is stipulated where the amount paid by an assessee under self-assessment falls short of the aggregate amount of tax and interest aforesaid, the amount paid shall first be adjusted towards the interest payable and the balance, if any, shall be adjusted towards the tax payable. The interpretation given by us follows the same principle,



when Revenue defaults and makes part payment of the amount refundable. The aforesaid interpretation also ensures that the Assessing Officer/Revenue refund the entire amount, which is due and payable, including interest payable under Section 244A. It discourages part payment. There is no other provision under the Act under which an Assessing Officer/Revenue can be made liable to pay interest when part payment is made and the entire amount, which is refundable is not paid to the assessee. Otherwise the Assessing Officer/Revenue can refund the principal amount and not pay the interest component under Section 244A for an unlimited period with impunity and without any sanction, which would amount to granting premium to a non-compliance of law. In the present case, the interest component was withheld for the period ranging between 9 to 13 years."

010. The above decision has been considered by the coordinate bench in case of bank of Baroda in ITA number 1646/M/2017 dated 20/12/2018 in paragraph number 5 and further relying on the decision of the coordinate bench in Union Bank of India versus ACIT (2016) 72 taxmann.com 348 has also held that the assessee would be entitled for interest on the unpaid refunds in accordance with the principle laid down in the decision of Union Bank of India. The principle that emerges is that in absence of any specific provision of priority of setting of tax refund due and interest refund due out of the total refund when part of the refund is granted to the assessee, it should be treated in a similar manner in which the



outstanding tax and interest is to be adjusted when assessee pays part payment of such outstanding sum.

011. The learned AO has raised that Supreme Court in CIT versus Gujarat Flora chemicals (2013) 358 ITR 291 has categorically held that it is only that interest provided for under the statute which may be claimed by the assessee from the revenue and no other interest on such statutory interest is payable. On careful consideration of the above argument we find that it is not the case of the assessee to claim interest on interest or claim of any interest which is not provided in the act. Assessee is merely saying that when out of the total refund due comprising of interest and the tax, if part of the amount is refunded, it should be adjusted in a similar manner in which when part taxes paid are adjusted by revenue against tax and interest. We find that when part taxes are paid by the assessee, it is first adjusted against the interest payable and then against tax due, similarly when the part refund is granted to the assessee, it should be first adjusted towards the outstanding interest and then against the tax payable.
012. In view of the above facts we do not find any infirmity in the order of the learned CIT – A in directing the assessing officer to compute the interest after verification considering the above decisions. Accordingly ground number 1 – 3 of the appeal are dismissed.
013. Ground number 4 is against the direction of the learned CIT – A in allowing the mandatory interest under section 244A (1A) of the act. Admittedly in this case order under section 143 (3) read with section 254 of the act was passed on 23/11/2022. As on that date there is a provision of granting of interest to the assessee under section 244A



(1A) of the act. Therefore, despite the assessment year being 2004 – 05, the assessee is entitled to the additional interest under that section. This issue is already decided by the coordinate bench in case of Union Bank of India in ITA number 945/M/2023 for assessment year 2008 – 09 per order dated 29/8/2023. The ground before the coordinate bench was identically worded and the finding of the bench in paragraph number 6 of that order clearly covers the issue in favour of the assessee. Thus ground number 4 of the appeal is dismissed.

014. In the result, appeal filed by the learned AO in ITA number 3573/M/2023 for assessment year 2004 – 05 is dismissed.

Order pronounced in the open court on 08.05.2024.

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 08.05. 2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai