

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

सुश्री सुचित्रा काम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

| Sl. No(s) | आयकर अपील सं/ ITA No(s) | निर्धारण वर्ष/ Assessment Year(s) | Appeal(s) by : | |
|---------------|-------------------------|--------------------------------------|--|--|
| | | | अपीलार्थी / Appellant | प्रत्यर्थी / बनाम/vs. Respondent |
| 1. | 272/Ahd/2021 | 1992-93 | Jethiben K. Patel Discretionary Trust, Nirma House, Near Income Tax Circle, Ashram Road, Ahmedabad - 380 009. (Gujarat) PAN: AAATJ 0260F (Assessee) | Dy. Commissioner of Income Tax, Circle - 2(1)(1), Ahmedabad. (Revenue) |
| Assessee by : | | | Shri Bandish Soparkar & Parin Shah, ARs. | |
| Revenue by : | | | Shri Ashok Natha Bhalekar, Sr. DR | |

सुनवाई की तारीख/Date of Hearing : 08/08/2024
घोषणा की तारीख /Date of Pronouncement: 28/08/2024

आदेश/O R D E R

PER MAKARAND V. MAHADEOKAR, AM:

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals) - National Faceless Appeal Centre - Delhi (hereinafter

referred to as "CIT(A)") passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), dated 26.08.2021. The said order of CIT(A) is directed against the order passed by the Assistant Commissioner of Income Tax, Circle 5(2)(1), Ahmedabad (hereinafter referred to as "AO"), under section 154 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the assessment year 1992-93, dated 06.03.2019.

Facts of the Case

2. The assessee is a discretionary trust engaged in various activities, and the issue under consideration is for the A.Y. 1992-93. The primary issue in this appeal concerns the grant of interest under section 244A of the Act, particularly regarding the additional interest claimed by the assessee for the delayed refund.

3. The original assessment order was passed by the Assessing Officer (AO), followed by rectification orders under section 154 of the Act. The assessee, dissatisfied with the amount of interest granted on the refund, filed a rectification application on 21.08.2017, requesting additional compensation for the delayed period in issuing the interest on the refund. The AO rejected this application, citing that there was no provision under the Act for granting such additional compensation.

4. The assessee subsequently filed an appeal before the CIT(A), which was dismissed. The assessee then preferred the present appeal before the Tribunal with following grounds of appeal:

1. *In law and in facts and circumstances of the Appellant's 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 Tax (Appeals) has grossly erred in rejecting appellant's contention to grant additional compensation on delayed grant of interest u/s.244A of I.T. Act.*
3. *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.*

The assessee also raised following additional ground:

In law and in facts and circumstances of the Appellant's case, alternatively, while calculating refund amount, the refund granted should be first adjusted against the interest refund due and thereafter against the tax refund due.

On the Grounds of appeal

5. Before us the Authorised Representative (AR) for the assessee argued that the AO had incorrectly calculated the interest due on the refund. The AR contended that the AO should have first adjusted the refund against the interest component and then against the tax component, as per the principles of equity and fairness.

6. The chronology of events leading up to this appeal, as presented by the AR along with supporting documents, is as follows:

- **20.12.1992:** The assessee filed its return of income (ROI) declaring an income of Rs.1.53 crores.
- **23.03.1993:** An intimation under section 143(1) was issued, computing the tax due at Rs.86.51 lakhs. However, a credit for self-assessment tax

(S.A. tax) of Rs.25 lakhs was not given, resulting in a refund due of Rs.4.77 lakhs.

- **31.03.1993:** The refund was adjusted against the demand for AY 1991-92, and an amount of Rs.2.85 lakhs was refunded.
- **24.4.1993:** The assessee filed an application under section 154, seeking credit for the S.A. tax.
- **22.06.1993:** An order under section 154 was passed, accepting the error and granting S.A. tax credit of Rs.25 lakhs.
- **26.08.1993:** Refund of Rs.25 Lacs issued.
- **21.03.1994:** A revised intimation under section 143(1) was issued, showing a refund due of Rs.29.77 lakhs.
- **27.10.1994:** An order under section 143(3) was passed, adding Rs.40,000 to the income, resulting in a demand of Rs.22,000.
- **22.02.1999:** The CIT(A) partially allowed the appeal, reducing the income to Rs.1.53 crores and the demand to Rs.596.
- **03.08.2004:** The assessee filed another application under section 154, seeking interest on the belated payment of the refund of Rs.25 lakhs issued on 26.08.1993.
- **07.07.2010:** The assessee filed yet another application under section 154 for non-grant of interest on the belated payment of the refund of Rs.25 lakhs.
- **25.04.2011:** An order under section 154 was passed, rejecting the assessee's application for rectification.
- **19.02.2016:** The CIT(A) allowed the assessee's appeal and directed the AO to grant interest on the delayed refund.
- **04.05.2016:** An order giving effect (OGE) to the CIT(A)'s order was passed, granting interest of Rs.4,00,000.
- **05.07.2016:** The refund of Rs.4,00,000 was issued to the assessee.

- **21.08.2017:** The assessee filed another application under section 154, arguing that the refund issued should first be adjusted against the interest component and then against the principal. Based on this computation, the assessee claimed that the revenue still owed Rs.12,14,242.
- **06.03.2019:** The AO passed an order under section 154, rejecting the assessee's application.
- **26.08.2021:** The CIT(A) dismissed the assessee's appeal, leading to the present appeal before the Tribunal.

7. The AR further submitted that the provisions of section 244A(1A) of the Act, introduced by the Finance Act, 2016, apply to the assessee's case. The AR also argued that this amendment is retrospective in nature. The AR relied on the decision of the coordinate bench in the case of *Tata Sons Pvt. Ltd.* [ITA No. 2362/Mum/2023, dated 06.12.2023], which held that additional interest under section 244A(1A) is applicable where there is a delay in granting the refund due to the assessee. The AR also placed reliance on the decision of this tribunal in case of *Nirma Ltd.* [(ITA Nos. 284 & 460/Ahd/2023)]

8. The Departmental Representative (DR) relied on the orders of the lower authorities and argued that the AO had correctly calculated the interest under section 244A of the Act. The DR contended that there is no provision in the Act for granting additional compensation as claimed by the assessee. The DR further argued that the provisions of section 244A(1A) of the Act do not apply retrospectively and cannot be invoked in the present case.

9. We have heard the submissions of both parties and perused the material on record. We have considered the order of CIT(A) who stated that

the assessee used the term "additional compensation," but the Act does not provide for such compensation under the given circumstances. The CIT(A) also stated that the Section 244A(1A) was introduced by the Finance Act, 2016, effective from 01.06.2016, allowing additional interest on refunds arising from orders under Section 250 if the refund is delayed beyond the time limit specified under Section 153(5) of the Act. On the timing of applicability of interest, the CIT(A) concluded that the order giving effect to the CIT(A)'s earlier order was passed on 04.05.2016, before the applicability of Section 153(5) and Section 244A(1A), therefore, these provisions do not apply to the appellant's case.

10. The primary issue for our consideration is whether the assessee is entitled to additional interest under section 244A(1A) of the Act and whether the AO correctly adjusted the refund against the interest component.

11. The CIT(A) had observed that section 244A(1A) was not applicable because the order giving effect to the CIT(A)'s order was passed before the introduction of section 153(5). However, this view does not hold merit as the law introduced by the Finance Act, 2016, is intended to be a remedial measure for delays occurring post 01.06.2016, irrespective of when the original order was passed. In the present case, the order giving effect to the CIT(A)'s order was passed on 04.05.2016, and the refund was granted on 05.07.2017. Therefore, the provisions of section 244A(1A) are applicable to the period from 01.06.2016 to 05.07.2017.

12. The decision in *Tata Sons Pvt. Ltd. (spra)* is directly applicable to this case. The co-ordinate bench in that case held that section 244A(1A) applies

prospectively from 01.06.2016 and is intended to compensate the assessee for delays in refund post this date. The Tribunal further held that the refund should be first adjusted against the interest component. While holding so the Tribunal emphasised that when an assessee pays a tax demand, the amount is first adjusted towards any interest due, and only the remaining balance, if any, is applied towards the tax payable. It also stated that there is no specific provision in Section 244A regarding the adjustment of a previously issued refund for calculating the interest owed by the revenue to the assessee on the refund due. Since the law is silent on this issue, the tribunal opined that fairness requires applying the same principles to refunds as are applied when collecting taxes. The tribunal criticized the revenue for potentially applying double standards and highlighted that the state should treat taxpayers with the same fairness and honesty it expects from them. It further noted that the Delhi High Court had already clarified this issue, which was followed by the Tribunal in earlier years in the assessee's own case. The assessee is not asking for interest on interest but merely for a fair method of adjusting refunds. This tribunal in the case of Nirma Ltd. (supra) also ruled in favour of the assessee emphasizing the need for consistent and fair treatment by the revenue in tax matters, particularly concerning the adjustment and calculation of interest on refunds.

13. In view of the above, we direct the AO to re-compute the interest under section 244A of the Act by first adjusting the refund against the interest component and thereafter against the tax component. The AO is also directed to grant additional interest under section 244A(1A) of the Act for the period from 01.06.2016 to 05.07.2017. The AO is directed to re-compute the interest and refund due to the assessee in accordance with the directions given above.

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

Order pronounced in the Open Court on 28th August, 2024 at Ahmedabad.

Sd/-

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 28/08/2024

PBN/*

आदेश की प्रतिलिपि अग्रेषित/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)-(NFAC)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad