

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH MUMBAI
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 159/MUM/2024
Assessment Year: 1997-98

Joint Commissioner of Income Tax- 3(4), Mumbai	Vs.	Reliance Industries Ltd., Reliance Corporate Park, Thane Belapur Road, Ghansoli, Navi Mumbai-400701 (PAN : AAACR5055K)
(Appellant)		(Respondent)

ITA No. 3057/MUM/2024
Assessment Year: 1997-98

Reliance Industries Ltd., 3 rd Floor, Maker Chamber IV, 222, Nariman Point, Mumbai – 400 021 (PAN : AAACR5055K)	Vs.	Deputy Commissioner of Income Tax- 3(4), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Nimesh Vora, Advocate
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 02.07.2024
Date of Pronouncement : 30.08.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

These two appeals filed by the Revenue and assessee are against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi,

vide order no. ITBA/NFAC/S/250/2023-24/1057921678(1), dated 14.11.2023 passed against the assessment order by Deputy Commissioner of Income Tax, LTU, Mumbai, u/s. 154 of the Income-tax Act (hereinafter referred to as the "Act"), dated 28.05.2018 for Assessment Year 1997-88.

2. Grounds taken by the Revenue in ITA No. 159/Mum/2024 are reproduced as under:

(i) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(MA) is justified in accepting the plea of assessee regarding revision of interest u/s 244A ignoring the fact that the AO has issued notice u/s 154 of the Act giving opportunity to assessee and the assessee had given its NOC before passing rectification order u/s 154 of the Act before revising the interest u/s 244A of the Act ?

(ii) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the assessee's appeal and allowed the grounds of assessee that the refund arising out of the order giving effect to order of appellate authority shall first be adjusted against interest payable to the assessee and balance, if any, shall be adjusted towards tax payable, for the purpose of calculating interest u/s 244A of the Income tax Act, 1961?

*(iii) Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in directing the AO to compute refund and interest u/s 244A as per plea of assessee ignoring the fact that any such calculation of Interest u/s 244A would amount to paying of compound interest Le. interest on interest which is not allowed by the law?
law, the learned CIT(A):*

2.1. Grounds taken by the assessee in ITA No.3057/Mum/2024 are reproduced as under:

"1. Erred in directing the learned AO to verify the appellant's claim with regard to the method of working of interest u/s 244A of the Act, without giving any clear finding as to how the interest u/s 244A of the Act needs to be computed.

2. Erred in not directing the AO to compute the interest u/s 244A of the Act by first adjusting the amount of refund already granted towards the interest due to the appellant and balance left, if any, to be adjusted towards the tax component.

3. The sole issue involved in the appeal filed by the Revenue is in respect of adjustment of refund arising out of the order giving effect to the order of appellate authority, which whether should be first adjusted against interest payable to the assessee and balance if any, to be adjusted towards tax payable for the purpose of calculating interest u/s. 244A of the Act or other-wise.

3.1. In ground no.3, Revenue has contested that direction given by the ld. CIT(A) to the ld. Assessing Officer for computing refund and interest u/s. 244A would amount to paying compound interest, i.e., interest on interest to the assessee, even though assessee had given its NOC before passing of rectification order u/s. 154 of the Act.

3.2. Assessee is in appeal on the same issue raising the ground that ld. CIT(A) has not given a clear finding as to how the interest u/s. 244A needs to be computed, i.e., by first adjusting the amount of refund already granted towards the interest due to the assessee and balance left if any, to be adjusted towards the tax component.

4. Brief facts of the case are that assessee is a public limited company which filed its original Return of Income on 28.11.1997, declaring loss of Rs.319,36,76.510/-. Income u/s 115JA was returned at Rs 104,58,23,820/-. Return of Income was revised on 30.03.1999 reporting income u/s 115JA at Rs. 1,04,58,23,820/- and loss was reduced to Rs. 176,36,94,892/-. Assessment u/s 143(3) was finalised vide order dated 30.03.2000, determining taxable income at Rs. NIL/- and book profit u/s Section 115JA at Rs. 104,58,23,820/-. On appeal by assessee to CIT(A) and ITAT, an order giving effect to ITAT order was passed on 28.04.2014, determining loss under normal provisions of Rs. 58,03,11,052/- and Book Profit u/s 115JA at Rs. 104,28,23,825/-

instead of correct income at Rs. 104,58,23,825/-. Further as per the aforesaid order giving effect interest u/s 244A was computed at Rs. 3,84,53,894/-.

4.1. Thereafter notice u/s 154 dated 21.02.2017 was issued suo motto by the ld. Assessing Officer to the assessee for rectifying a mistake apparent from record wherein the Book Profit u/s 115JA was to be computed at Rs. 104,58,23,825/- instead of Rs 104,28,23,825/- as stated in the order giving effect dated 28.04.2014. Assessee vide letter dated 28.02 2017 submitted a reply stating that it had no objection to the proposed rectification of book profit u/s 115JA.

4.2. Assessee claims that there was no approval given by it towards rectification of interest u/s 244A, which was carried out unilaterally by the AO without giving any notice/opportunity as per the provisions of Section 154(3) of the Act. Ld. Assessing Officer in his order u/s 154 dated 28.05 2018 has rectified the book profit u/s 115JA and computed the same at Rs 104,58,23,825/-. However, further to the aforesaid rectification, ld. AO also reduced interest u/s 244A to Rs. 3,08,72,267/- instead of Rs. 3,84,53,894/- computed in the earlier order dated 28.04.2014. Thus the AO withdrew interest u/s 244A of Rs 75,81,627 (3,84,53,894 -3,08,72,267) which according to the assessee is without giving any notice/providing any opportunity of being heard.

4.3. Ld. Assessing Officer while computing interest u/s 244A at Rs. 3,08,72,267/- has adjusted the refunds already granted, first towards the outstanding taxes which were due to be refunded and then the balance towards interest receivable by the assessee. According to the assessee, the method of working of interest by the AO is incorrect and

interest u/s 244A should be computed by first adjusting the amount of refund already granted towards the interest component and balance left, if any, to be adjusted towards the tax component

5. Before us, ld. Counsel for the assessee referred to notice issued u/s. 154 of the Act, dated 21.02.2017, wherein at para 2, particulars of mistake proposed to be rectified mentions “*due to arithmetical mistake total income was computed at Rs.10428.23 lakhs instead of correct income of Rs.10458.23 lakhs*”. He thus, pointed out that there is no mention about rectification of computing the interest u/s. 244A. He also referred to the reply furnished by the assessee vide its letter dated 28.02.2017, whereby assessee submitted its no objection for the proposed rectification mentioned in the said notice. For ease of reference, both the copy of notice u/s. 154 and reply furnished by the assessee are reproduced below:



Office of the
Asstt. Commissioner of Income-Tax (LTU)-2
29th floor, Centre-1, World Trade Centre, Cuffe Parade
Mumbai 400005 Phone:-022-22167160
Email:abhishek.k.singh1@incometax.gov.in
Mobile No. 9969232646

No.-ACIT(LTU)-2/u/s 154/2016-17

Date:21.02.2017

NOTICE UNDER SECTION 154/155 OF THE INCOME-TAX ACT, 1961

PAN AAACR5055K

To
The Principal Officer,
Reliance Industries Ltd.,
3rd floor, Maker Chamber-IV,
222, Nariman Point, Mumbai-400 021.

1. The order giving effect to ITAT order for the assessment year 1997-98 made on 28.04.2014 requires to be amended as there is a mistake apparent from the record within the meaning of Section 154/155 of the Income Tax Act, 1961. The rectification of the mistake as per particulars given will have the effect of enhancing the assessment/reducing the refund/increasing your liability.
2. If you wish to be heard, you are requested to appear in person or through an authorized representative in my office on **28.02.2017 at 11.30 A.M.** Alternatively, you may send a written reply so as to reach me on or ~~before the date mentioned~~ above.

Particulars of mistake proposed to be rectified.

Due to arithmetical mistake total income was computed at Rs. 10428.23 lakh instead of correct income of Rs. 10458.23 lakh.



(Abhishek K. Singh)
ACIT (LTU)-2, Mumbai

28th Feb, 2017

To,
The Asst. Commissioner of Income Tax-LTU-2
29th Floor, Centre-I
World Trade Centre
Cuffe Parade
Mumbai – 400 005



Dear Sir,

Sub : Notice u/s.154/155 of the Income-tax Act,1961 (Act)**PA No. : AAA CR 5055 K****Assessment Year ('AY') : 1997 - 1998**

Please refer to the notice No.-ACIT(LTU)-2/u/s 154/2016-17 dated 21.02.2017
on the proposed rectification u/s.154/155 of the IT Act.,

In this connection we wish to submit that we have no objection for the proposed
rectification mentioned in the notice.

Thanking you,

Yours faithfully,
for **Reliance Industries Limited**

A handwritten signature in black ink, appearing to be "V. S. P.", written over a faint circular stamp.

Authorised Signatory

6. In this context, ld. CIT, DR through her written synopsis submitted that upward revision in income was bound to have consequential effect on the calculation of interest u/s. 244A of the Act and therefore the proposed resultant change in interest u/s. 244A was not specifically mentioned in the notice u/s. 154 of the Act.

6.1. On this aspect of the issue before us, we note that, the proposed rectification initiated by the ld. Assessing Officer was in respect of computing the correct total income on account of order giving effect of the ITAT order, alone. Assessee gave its no objection on the said proposed rectification. There is no whisper, both in the notice nor in the reply furnished by the assessee about any change/rectification towards interest u/s. 244A, which had a downward effect on account of calculation carried out by the ld. Assessing Officer. We note from sub-section (3) of section 154 that an amendment which has the effect of enhancing an assessment or reducing a refund shall not be made unless a notice is given to the assessee of the intention of the authority to do so and the assessee had been allowed a reasonable opportunity of being heard.

6.2. In the present case, before us, as observed in the above paragraphs, there is no whisper about the proposition for amendment to interest due to the assessee u/s. 244A which has been reduced by the ld. Assessing Officer. According to us, such an amendment to interest u/s. 244A is without giving an opportunity to the assessee. In this connection, it is submitted that the impugned order u/s 154 specifically mentions the below:

“4. Further, on perusal of record it is also seen that while computing the tax liability on income as per order giving effect to the order of ITAT dated

28.04.2014, interest u/s 244A of the Act was excess granted by Rs. 73,98,822/-. As the mistake is apparent from record, the same is hereby rectified u/s 154 of the Act.”

6.3. From the above para, it is clear that the rectification of interest u/s 244A is qua the order giving effect to the order of ITAT order dated 28.04.2014 and not the impugned order u/s 154 dated 28.05.2018 and thus it is not mere recalculation of interest due to change in total income as contended by the ld. Sr.DR.

7. On the contention of the Revenue that the direction of the Ld. CIT(A) to first adjust refund granted towards interest u/s. 244A and balance towards principal tax refundable would tantamount to paying of compound interest, i.e., interest on interest. Assessee submitted a comparative working showing adjustment of refund issued to the assessee on, both as claimed by the assessee and as claimed by the Revenue. The narrative of the said working furnished by the assessee in its written submission is reproduced hereunder:

“a. Principal tax of Rs 5,27,73,546 was refundable to the Assessee as on 01.04.1997. Interest u/s 244A of the Act of Rs 63,32,826 has been computed on this principal tax amount from 01.04.1997 to 27.03.1998.

A refund of Rs 4,10,29,814 was issued to the Assessee on 27.03.1998, against total refund due of Rs 5,91,06,372 (i.e. principal amount of Rs 5,27,73,546 and interest u/s 244A of the Act of Rs 63,32,826).

The Assessee adjusted the refund issued first towards interest u/s 244A of the Act of Rs 63,32,826 and balance towards principal tax of Rs 3,46,96,988 (i.e. Rs 4,10,29,814-Rs 63,32,826). Thus, as on 27.03.1998, no interest u/s 244A of the Act was due to be paid to the Assessee. Further, principal tax of Rs 1,80,76,558 (i.e. Rs 5,27,73,546-Rs 3,46,96,988) was pending to be issued to the Assessee.

b. As per the Department, entire refund of Rs. 4,10,29,814 was adjusted towards Principal amount of tax. Thus, as on 27.03.1998, balance principal amount of tax due to the assessee was Rs. 1,17,43,732 and interest due u/s 244A of Rs. 63,32,826 will also continue to remain outstanding.

c. The next refund was issued to the Assessee on 13.04.2000 of Rs 33,11,083, against total refund due of Rs 2,25,95,697 (i.e. principal amount of Rs

1,80,76,558 and interest thereon u/s 244A of the Act of Rs 45,19,139 computed from 01.04.1998 to 13.04.2000).

The entire refund issued of Rs 33,11,083 has been adjusted against interest 244A of the Act.

Thus, as on 13.04.2000, principal tax of Rs 1,80,76,558 and balance interest u/s 244A of the Act of Rs 12,08,056 (i.e. Rs 45,19,139-Rs 33,11,083) was pending to be issued to the Assessee.

d. From 01.05.2000, the Assessee computed further interest u/s 244A of the Act on the principal tax of Rs 1,80,76,558, The Assessee has NOT computed interest u/s 244A of the Act on balance interest of Rs 12,08,056 which was pending to be issued to the Assessee.

7.1. Based on the above working and submission, assessee contended that adjustment of refund first towards interest payable and balance towards principal portion of tax, if any, does not tantamount to paying of compound interest, as alleged by the Revenue. On principles of equity, assessee drew analogy from the provision contained in explanation to section 140A(1) to fortify its contention u/s. 244A. It was submitted that 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.

7.2. Thus, from the above, it was submitted 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, towards tax payable.

Assessee placed reliance on several judicial precedents and submitted that the issue is no longer *res integra* as the Tribunal has consistently decided this issue in favour of the assessee after taking into consideration, decisions by higher forums.

(1) *Union Bank of India v ACIT (2016) 162 ITD 142 (Mum ITAT) (refer Pg 11 to 18)*

In this case, the division bench of the Mumbai ITAT after considering the decision of SC in case of Gujarat Fluoro Chemicals (supra) followed the decision of Delhi HC in case of India Trade Promotion Organisation (supra) and held that adjustment of refund shall be first towards interest receivable u/s 244a and balance towards principal amount of tax and same does not result into payment of interest on interest. (refer para 3.8 of the decision)

(2) *Grasim Industries Ltd V DCIT (2021) 188 ITD 675 (Mum ITAT) (refer Pg 19 to 23)*

In this case, the division bench of the Mumbai ITAT following the decision of Union Bank of India (supra) held that the refund granted shall be first appropriated or adjusted against correct amount of interest and consequently, the short fall of refund is to be regarded as shortfall of tax and that shortfall should then be considered for the purpose of computing further interest payable to the assessee u/s.244A of the Act till the date of grant of such refund. (refer para 8 of the decision)

(3) *Tata Sons (P) Ltd V DCIT (2023) 204 ITD 802 (refer Pg 24 to 29)*

In this very recent decision, the division bench of the Mumbai ITAT following the decision of Union Bank of India (supra), Grasim Industries Ltd (supra) and Delhi HC decision in case of India Trade Promotion Organisation (supra) has reiterated the same view. (refer para 8 of the decision)

8. Per Contra, Ld. CIT, DR placed on record her written submission contending that there was no contravention of any statutory provisions of the Act in calculation of interest u/s.244A. According to her, the methodology put forth by the assessee leads to payment of interest in excess to the legitimate dues, since interest on interest is paid to the assessee. She placed reliance on the decision of Hon'ble Supreme Court in the case of CIT vs. Gujarat Fluoro Chemicals [2014] 42 taxmann.com1(SC) where the Hon'ble Court had categorically held that only the amount which the assessee is aggrieved by delayed

payment can legitimately claim interest under the statute and that no other interest on such statutory interest is payable.

9. We have heard the rival contentions and perused the material placed on record. We have also gone through the written submissions placed by both the parties before us including the detailed working of computation of interest u/s. 244A, both as contented by the assessee and as by the Revenue. We find that assessee has raised the ground before us stating that refund granted to the assessee is to be first adjusted against the correct amount of interest due on that day and thereafter the leftover portion should be adjusted with the balance tax. This is more so when the refunds were issued to the assessee in parts. According to the assessee, ld. Assessing Officer has reduced the interest only to the extent it was determined at the point of issuance of the earlier refunds, thus leading to larger adjustment of the refund towards the tax component as against the interest component.

9.1. We also take note of the analogy drawn by the assessee in terms of explanation to section 140A(1). We note that there is no such specific provision u/s. 244A with respect to adjustment of refund, already issued for computing amount of interest payable to assessee on the amount of refund due. The law is silent on this issue. In our mind, under these circumstances, it would be just and fair that the same principle is applied while granting the refund, as is applied while collecting the tax.

9.2. On the reliance placed by the ld. CIT, DR in the case of decision of Gujarat Fluoro Chemicals (supra), assessee had distinguished it by submitting that Hon'ble Supreme Court had held that assessee shall be compensated due to prejudice caused to the assessee on account of

inordinate delay in payment of interest of refund which cannot be equated with interest on interest. It further held that in view of insertion of section 244A, assessee shall be granted the interest on refund as provided by the statute only. According to the assessee, it is not claiming interest on interest but its claim is that the part refund granted shall be first adjusted against interest due u/s. 244A on the date of grant of refund and balance shall be adjusted against the principal amount of tax due. Hence, the said decision is distinguishable.

10. We have perused the judicial precedents referred by assessee as quoted above and notice that Coordinate Benches have consistently held after taking into consideration the decision relied upon by the Id. CIT (DR) that Id. Assessing Officer is required to adjust the interest component first and then the taxes for the purpose of calculating interest u/s. 244A of the Act. Following the Rule of Consistency, we hold that assessee is entitled to interest on the unpaid refund in accordance with the principle laid down in the aforesaid decisions relied upon by the assessee. According to us, the manner in which the Id. Assessing Officer has adjusted the refund is not correct. Assessee has furnished detailed working of the manner in which the interest u/s. 244A ought to have been computed by the Ld. Assessing Officer. We thus, direct the Id. Assessing Officer to compute the interest u/s. 244A as claimed by the assessee in its detailed working, placed on record. Needless to say, that assessee be given reasonable opportunity of being heard to represent its case and make any further submission, if so required.

11. Accordingly, grounds raised by the assessee in this regard are allowed and those raised by the Revenue are dismissed, since arising in the cross appeals by the two.

12. In the result, appeal of the assessee is allowed and that of the Revenue is dismissed.

Order is pronounced in the open court on 30 August, 2024

Sd/-
(Narender Kumar Choudhry)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 30 August, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai