

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.126/Ahd/2023  
(Assessment Year: 2011-12)

The Kalupur Commercial Co.op. Bank Ltd., Kalupur Bank Bhavan, Nr. Income Tax Circle, Ashram Road, Ahmedabad-380014	Vs.	Assistant Commissioner of Income Tax, Circle-1(1)(1), Ahmedabad
[PAN No.AAAAT9360R]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Bandish Soparkar, A.R.
<b>Respondent by:</b>	Shri Rignesh Das, Sr. DR

<b>Date of Hearing</b>	09.10.2024
<b>Date of Pronouncement</b>	06.11.2024

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre, (in short “NFAC”), Delhi, vide order dated 29.12.2022 passed for A.Y. 2011-12.

2. The Assessee has taken the following grounds of appeal:-

“(1) The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi has erred both in law and on facts of the case in passing the order u/s 250 of the IT Act for AY 2011-2 dtd. 29/12/2022.

(2) The learned CIT(A) has erred in confirming the order passed by the learned ACIT Circle (1)(1) Ahmedabad u/s 154 of the IT Act for AY 2011-12 dtd. 29/03/2021.

(3) The learned CIT(A) NFAC has erred in confirming the withdrawal of interest u/s 244A of the IT Act of Rs.25,55,064 for AY 2011-12.

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(4) *The learned CIT(A) NFAC has erred in not adjudicating grounds relating to charging of interest u/s 234A, 234B & 234C of the IT Act.*

(5) *Your appellant craves leave to add, alter, amend, omit or delete all or any of the grounds of appeal before the Appeal is finally heard and decided.”*

3. The brief facts of the case are that at the time of filing of return of income on 23<sup>rd</sup> September 2011, the assessee had calculated and paid self-assessment tax along with interest amounting to ₹17,33,02,399/-. The tax payments included ₹36,26,296/- as TDS, a sum of ₹16,00,00,000/- as advance tax, and a sum of ₹1,90,00,000/- as self-assessment tax, which was paid on 30<sup>th</sup> July 2011. **The return was processed under section 143(1) by the Centralized Processing Centre (CPC) on 7<sup>th</sup> August 2012, resulting in a refund of ₹93,20,690/-.** Thereafter, the case of the assessee was selected for scrutiny and finalized under section 143(3) of the Act on 5<sup>th</sup> March 2014, with the total income being determined at ₹60,34,00,130/-. A total tax demand of ₹18,91,01,922/- was raised, and after giving tax credit of ₹17,33,05,607/-, **a net demand of ₹1,67,28,380/- was raised, which was paid by the assessee.** The assessee appealed the decision, and the Commissioner of Income Tax (Appeals) [CIT(A)] passed an order on 19<sup>th</sup> April 2016. Based on this, the appeal effect was given through an order under section 250 of the Act, dated 30<sup>th</sup> June 2016, which reduced the total income to ₹57,36,92,629/-. Subsequently, the case was reopened, and a fresh order under section 143(3) read with section 147 of the Act was passed on 26<sup>th</sup> June 2018. In this order, the total income was determined at ₹57,57,86,310/- after making an addition of ₹20,93,683/-, with the total tax demand raised at ₹18,05,69,244/-. **After giving tax credit of ₹19,00,32,487/-, a refund of ₹94,63,243/- was determined. Additionally, interest under section 244A**

**amounting to ₹25,55,064/- was calculated, bringing the total refund to ₹1,20,18,310/-, including the interest.** However, based on the provisions of section 244A(1), the Assessing Officer was of the view that the interest under section 244A of the Act amounting to ₹25,55,064/- was not allowable to the assessee. The Assessing Officer was of the view that according to the law, interest is not payable if the refund amount is less than 1% of the tax determined. As such, the interest calculated under section 244A of the Act was deemed a mistake apparent from the record. To rectify this error, order under section 154 of the Act was passed, withdrawing the interest under section 244A to the extent of ₹25,55,064/-.

4. In appeal before CIT(Appeals), the assessee submitted that for the assessment year 2011-12, the appellant filed its return of income electronically on 23<sup>rd</sup> September 2011, declaring a total income of ₹56,03,46,653/- and paying ₹18,26,26,296/- in taxes, against a total payable tax of ₹17,33,02,399/-. As a result, it claimed a refund of ₹93,23,900/-. The refund of ₹93.23 lakh was partially adjusted against a demand for AY 2008-09, and the balance of ₹52,41,280/- was credited to the appellant's bank account, resulting in a total refund of ₹93,20,690/-, which was received without interest under section 244A. **The assessee provided Form 26AS to substantiate that no interest under section 244A was received on the refund.** Based on these facts, the assessee submitted that the rectification order under section 154 proposing to withdraw the interest is void. The return for AY 2011-12 was selected for scrutiny, and an order under section 143(3) was passed on 5th March 2014, raising a demand of ₹1.67 crore. **This demand was adjusted against a refund due for AY 2009-10.** Subsequently,

an appellate order under section 250 was passed by the CIT(A) on 3<sup>rd</sup> May 2016, granting substantial relief. As a result, the demand of ₹1.67 crore was converted into a refundable amount, and the assessee received ₹94.63 lakh in principal along with interest of ₹25.55 lakh under section 244A on 3<sup>rd</sup> October 2018. The assessee submitted that the interest of ₹25.55 lakh pertains to the refund of the demand adjusted against the order passed under section 143(3) and is in accordance with section 244A(1)(b), which allows interest on refunds of tax paid. The assessee submitted that the Assessing Officer (AO) incorrectly interpreted section 244A by only considering part of the provision and failed to apply the correct provisions. The AO wrongly concluded that no interest is payable if the refund is less than 10% of the tax, but this rule only applies to certain refunds and not to the refund in this case. Based on these facts, the assessee requested the CIT(Appeals) that the rectification order withdrawing the interest of ₹25.55 lakh be set aside and that the interest be rightfully retained by the assessee.

5. However, CIT(Appeals) dismissed the appeal of the assessee with the following observations:

*“On perusal of records it shows that, Appellant has paid following taxes:*

<i>TDS</i>	<i>Rs. 36,26,296/-</i>	
<i>Advance tax</i>	<i>Rs. 16,00,00,000/-</i>	
<i>Self assessments tax</i>	<i>Rs. 1,90,00,000/-</i>	<i>dated (30.07.2011)</i>
<i>Total</i>	<i>Rs. 18,26,26,296/-</i>	

*As submitted by the Appellant, the refund of Rs. 93,20,690/- was granted by the department after processing of the return. Further, Appellant received refund of Rs. 94,63,243/- after getting relief from CIT(Appeal) and Hon'ble ITAT. Thus, the total refund received by the Appellant is Rs. 1,87,83,933/- (Rs. 93,20,690 + 94,63,243). Self assessment tax paid by the Appellant u/s 140A of the IT Act is Rs. 1,90,00,000/-. Thus, it is very clear that whatever amount refunds have been arised is due to excess payment of self assessment tax on 30.07.2011. This means, had the Appellant not paid the self assessment tax of Rs. 1,90,00,000/-, it would not have got the refund of Rs. 1,87,83,933/-. It clearly shows that the provisions of clause (a) or (aa) of section 244A*

*(1) of the IT Act is applicable in the case of Appellant for getting interest on refund. Being more specific, clause (aa) section 244A (1) of the IT Act is especially applicable in the case of Appellant as the refund arises due to excess payment of self assessment tax as mentioned above. Thus, the proviso to this clause i.e. no interest under (aa) shall be payable, if the amount of refund is less than ten per cent of the tax as determined under sub-section (1) of sect/on 143 or on regular assessment, is very much applicable. In this case, the amount of refund is less than 10% of the tax determined after regular assessment. Therefore, the Appellant is not entitled for the interest on refund u/s 244A(1) of the IT Act.*

*Further, the appellant vide its submission claimed that as per the provisions of Section 244A(1)(b), the appellant is entitled to receive interest @ 0.5% comprising the period from the date on which the payment of tax to the date on the which the refund is granted. However, the Appellant failed to submit that as to how provisions of section 244A(1)(b) of the IT Act is applicable in the case of Appellant. Further, Appellant failed to submit that as to how the provisions of 244A(1)(a) & (aa) & its proviso are not applicable in the case of Appellant. The provisions of 244A(1)(a) & (aa) & its proviso come before the provisions of section 244A(1)(b) of the I T Act and whereas the provisions of 244A(1)(a) & (aa) & its proviso are more specific and applicable in the case of appellant. In view of these facts and circumstances I am considered view that the Appellant is not entitled interest u/s 244A(1) of the IT Act and therefore this ground of appeal is **dismissed**.”*

6. The assessee is in appeal before us against the order passed by CIT(Appeals) dismissing the appeal of the assessee. Before us, the ld. counsel for the assessee submitted that the reasoning provided by the CIT(A) on page 11 of the order is fundamentally flawed, as pointed out by the assessee. **On 7<sup>th</sup> August 2012, the refund of ₹93,20,690/- had been processed, leaving no situation of excess or short payment at that time.** The issue arose from the assessment order under section 143(3) dated 5<sup>th</sup> March 2014, **which created an additional tax demand of ₹1,67,28,380/-.** **The assessee duly paid this additional demand. The subsequent refund, which arose after the final demand of ₹18,05,69,244/- was determined through the reassessment order under section 143(3) read with section 147 dated 26<sup>th</sup> June 2018, was not a result of any overpayment of advance tax or self-assessment tax. Instead, the refund is directly linked to the excess**

**payment arising from the final demand determination, making the case fall under the provisions of section 244A(1)(b) of the Income Tax Act.** As per section 244A(1)(b), interest is payable on the refund arising from such overpayment, and thus, the assessee is entitled to receive interest on the refund. The CIT(A) has wrongly categorized the case under section 244A(1)(a), **which pertains to refunds arising from excess advance tax or self-assessment tax payments, whereas the current refund pertains to the additional payment made by the assessee following the assessment under section 143(3).** The assessee relied cites the case of **Punjab Chemical & Crop Protection [2015] 57 taxmann.com\_283 (P&H)**, which supports the position that interest is payable on such refunds under section 244A(1)(b). Therefore, the CIT(A)'s reasoning and conclusion that no interest is payable is incorrect and not in line with the applicable legal provisions and judicial precedents.

7. On going through the facts of the instant case, we are of the considered view that the interest granted to the assessee under Section 244A of the Act is not out of any excess payment of advance tax or self-assessment tax and such refund has arisen after final tax demand was determined at a figure of 18,05,69,244/- by order under Section 143(3) r.w.s. 147 of the Act dated 26.06.2018. In the case of **CIT vs. Punjab Chemical & Crop Protection Ltd. 57 taxmann.com 283 (Punjab & Haryana)**, the Punjab and Haryana High Court while passing the order, made the following observations:

***“11. It may be observed that in so far as nature of payment of tax is concerned, the tax deducted at source, advance tax and also tax paid by way of self assessment, after its adjustment in the tax liability of the assessee on regular assessment loses its original character and becomes tax paid in pursuance to the liability. Once that is so, it cannot be held that the assessee is only entitled to interest under Section 244A (1) (b) on tax***

**deducted at source or advance tax and not on self assessment tax paid under Section 140A of the Act which was found to be paid in excess. The assessee shall be entitled to interest under section 244A(1)(b) of the Act on the refund of self assessment tax as well.**

12. The Tribunal while adjudicating the issue had noticed as under:-

“6. We have considered the rival submissions carefully on this issue. Section 244A deals with the grant of interest on refund of any amount of tax which becomes due to the assessee in terms of the provisions of Act. **Clauses (a) and (b) of sub section (1) of section 244A deal with two different situations. Clause (a) deals with refund of taxes which have been paid under section 115 WJ or collected at source under section 206C or paid by way of advance tax or treated as paid under Section 199 of the Act. Clause (b) deals with refund of taxes in any other case. Clearly, in so far as the present case is concerned, the provisions of clause (a) are not attracted in as much as it is undisputed that the refund accruing to the assessee by the order of the Assessing Officer dated 12.12.2001 was not of taxes, which have been paid in the manner stated in clause (a). The tax refunded in the instant case has been paid as self assessment tax under section 140A of the Act and thus, as per assessee, clause (b) governs the field.** The revenue contends that Clause (b) is confined to situations where the tax refunded has been paid in terms of a notice of demand issued by the Assessing Officer under section 156. In our view, the implication of clause (b) as is understood by the department, is not borne out of the language of the statute. No doubt, self assessment tax is paid by an assessee on the basis of the income declared in the return. **Once the tax so paid gets adjusted against the tax determined by the Assessing Officer upon assessment, such self assessment tax takes the imprint of a tax paid in pursuance to an assessment.** Infact a similar issue was considered by the Ahmedabad Bench of the Tribunal in the case of Dhanvi Trading and Investment (P) Limited (supra) relevant portion of which we reproduce herein:-

*'So long as the self assessment tax possesses and retains the character of self assessment, there is no question of reckoning the same for the purposes of treating it as excess payment and allowing interest as envisaged under section 244A till the regular assessment is made under section 143 or 144, **it is only on the date the assessment is made that the deeming fiction contained under section 244A(2) comes into play and the self assessment tax is deemed to have been paid towards the regular assessment.** It is therefore, on the date of the regular assessment that the self assessment tax loses its identity and assumes the character of the tax paid for the purpose of quantification of any excess of tax payment in response to notice of demand issued under section 156. The explanation appended to section 244A(1) amply clarifies the position as explained above.'*

**From the above, it therefore, follows that tax paid under section 140A is also taken as paid in pursuance of an assessment after the completion of assessment.**

7. Moreover, the rationale of the provisions of section 244A has been a subject matter of review by the Hon'ble Jurisdiction High Court of Punjab and Haryana in the case of National Horticulture Board (supra). It has been opined that the rationale underlying the provision was to compensate the assessee for deprivation

of his property right which was by virtue of an unlawful collection of tax. Infact, tested on such anvil, interest under section 244A on refund of tax paid as self assessment tax cannot be considered as outside the purview of section 244A of the Act. The significance of the Explanation below Clause (b) is merely to stipulate the period for which the interest has to be granted. For the purpose of clause (b), the interest is payable for the period starting from the date of the payment of tax ending upto the date on which such refund is granted. **Therefore, in principle, we uphold the stand of the assessee that it was eligible for interest under section 244A(1)(b) on the refund accruing to it as a result of the order of the giving appeal effect on 12.12.2001.** However, while computing the eligible interest, it appears that the period was considered from 1st of April 1989 upto the date of refund. **Whereas in terms of clause (b) of Section 244A(1)(b) read with explanation thereof the period for which the interest can be granted is the date on which the self assessment tax was adjusted against the assessed income and upto the date of actual grant of refund.** Therefore, to this extent, we find that there was a mistake apparent in the order of the Assessing Officer dated 12.12.2001 by way of which interest under section 244A amounting to Rs.7,02,044/- was allowed to the assessee. We, therefore, set aside the order of lower authorities and direct the Assessing Officer to recompute the interest eligible to the assessee in the manner indicated above.”

13. Learned counsel for the assessee had made reference to plethora of judgments noticed in para 4 hereinbefore. A careful perusal of the said judgments clearly spells out that the issue in these judgments was different in the light of the factual matrix involved therein and in none of the cases, the issue whether the assessee was entitled to interest on refund of self assessment tax paid under Section 140A of the Act in terms of Section 244A or not, was under consideration. Thus, no advantage can be derived by the learned counsel for the revenue from the aforesaid pronouncements.

14. In view of the above, the substantial questions of law are answered accordingly and finding no merit in the appeal, the same stands dismissed.”

8. Accordingly, in light of the facts of the assessee’s case and the judicial precedents on the subject, the appeal of the assessee is allowed.

9. In the result, the appeal of the assessee is allowed.

**This Order pronounced in Open Court on 06/11/2024**

Sd/-

**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 06/11/2024  
TANMAY, Sr. PS

Sd/-

**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रहित/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, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad