

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"E" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 4784/MUM/2024  
(Assessment Year: 2011-2012)**

**Hindustan Petroleum Corporation Limited**

17, Jamshedji Tata Road,, Mumbai - 400020,  
Maharashtra.

[PAN:AAACH1118B]

..... **Appellant**

**Deputy Commissioner of Income Tax  
Circle 1(1)(1), Mumbai**

Aayakar Bhavan, Maharishi Karve Road  
Mumbai – 400020, Maharashtra.

Vs

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Ms. Aarti Sathe  
Ms. Aasavari Kadam  
For the Respondent/Department : Shri Hemanshu Joshi

**Date**

Conclusion of hearing : 02.12.2024  
Pronouncement of order : 30.12.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. The present appeal preferred by the Assessee is directed against the order, dated 25/07/2024, passed by the Additional/Joint Commissioner Income Tax (Appeal) - 1, Hyderabad [hereinafter referred to as 'the **CIT(A)**'] under Section 250 read with Section 254 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 28/02/2014, passed under Section 143(3) of the Act for the Assessment Year 2011-12.
2. The Assessee has raised following grounds of appeal :

"1. On the facts and in the circumstances of the case, the Id.

*CIT(A) erred in passing the impugned order on the ground that since Form-5 under DTVSVS was issued to the appellant (pertaining to different appeal), the appeal filed on 02/05/2018 (for not granting interest on refund as per provisions of law) shall be deemed to have been withdrawn without considering the fact that appeal dated 02/05/2018 was not surrendered under DTVSVS.*

2. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in not granting interest on refunds, despite our submission on following facts/grounds:-*
  - a. *Notice under section 156 has not provided reasons/justification for not granting interest on refund. The interest on refund should have been given strictly as per provisions of section 244A. It is to be noted that refund has arisen mainly on account of adjustment of refund order of earlier years (Assessment Year 2007-08 dated 30.04.2013 and Assessment Year 1995-96 dated 19.08.2014) and hence neither of limitation as stipulated before or after change in provisions effective 01/06/2016 applicable on the issue.*
  - b. *The Id. Assessing Officer erred in not granting interest under Section. 244A(1A) @ 3 percent per annum for delay in giving effect to the order u/s.250 within specified period of 3 months. The Assessing Officer has failed to appreciate the fact that proviso of 10 percent limit is not applicable for Section 244A (1A) .”*

3 Heard the rival submission and perused the material on record.

4 The facts as emerging from the record are that this the second round of litigation.

4.1. Assessment was framed on the Assessee for the Assessment Year 2011-12 vide Assessment Order, dated 28/02/2014, passed under Section 143(3) of the Act. In appeal preferred by the Assessee against the aforesaid Assessment Order, the CIT(A) granted partial relief vide order dated 31/08/2016. The appeal preferred by the Assessee against the aforesaid order of the CIT(A) was disposed off by the Tribunal vide a common order, dated 04/10/2021, on the ground that the Appellant had opted to settle the dispute under

“Vivad Se Viswas Scheme 2020”.

5 On 13/03/2018, the Assessing Officer passed order giving effect to the, order dated 31/08/2016, passed by the CIT(A). Against the aforesaid order giving effect passed by the Assessing Officer, the Assessee preferred an appeal before the CIT(A) which was dismissed by the CIT(A) vide order dated 04/07/2022, on the ground that the issues raised by the Appellant in the appeal before the CIT(A) were settled under the “Vivad Se Viswas Scheme 2020”. The Appellant challenged the aforesaid order passed by the CIT(A) before the Tribunal contending that the aforesaid order passed by the CIT(A) was premised upon incorrect understanding of the fact since the issue settled in “Vivad Se Viswas Scheme 2020” were those which were challenged before the Tribunal and not those which were decided in favour of the Appellant by the CIT(A). The Tribunal disposed off the aforesaid appeal vide order, dated 28/09/2022, the relevant extract of the which reads as under:

*"1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 04.07.2022, passed by the learned CIT(A), National Faceless Appeal Centre, on the following grounds:-*

- 1. On the facts and in the circumstances of the case and in law, the Respondent has erred in disposing off the Appeal mechanically under the pretext of the year concerned is covered under Direct Tax Vivad se Vishwas Act, 2020 (DTVSVS). Respondent failed to appreciate that non-payment of correct interest w/s. 244A and 244A(1A) is not a disputed tax under DT VSVS, hence, could not be covered under the said Act.*
- 2. On the facts and in the circumstances of the case and in law, the Respondent erred in not deciding the following grounds of appeal on merits:-*
  - a. Notice under section 156 has not provided reasons/justification for not granting interest or refund. The interest on refund should have been*

*given strictly as per provisions of Sec 244A Appellant further submits that refund has arisen mainly on account of adjustment of refund order of earlier years (AY 2007-08 dated 30.04.2013 and AY 1995-96 dated 19.08.2014) and hence neither of limitation as stipulated before or after change in provisions effective 01/06/2016 applicable on the issue.*

*b. Whether AO is right in law on facts for not granting interest u/s 244A(1A) @ 3 percent per annum for delay in giving effect to the order u/s. 250 within specified period of 3 months. The AO has failed to appreciate that fact that proviso of 10 percent limit is not applicable for Section 244(1A).*

- 3. Appellant also craves leave to make further submissions at the time of hearing.*
  - 4. Appellant also craves leave to add to alter amend or modify the abovementioned grounds.*
- 2. When this appeal was taken up for hearing, it was noticed that while the learned CTT(A), in the impugned faceless appellate proceedings, has summarily dismissed the appeal on the ground that the matter is settled under the Vivad se Vishwas Scheme 2020, this appeal challenges the correctness of factual element embedded in this decision inasmuch as it is claimed that the issue in appeal was not covered by any settlement under the Vivas se Vishwas Scheme 2020. There is no detailed findings on this aspect in the impugned order, and the assessee had no opportunity to explain to the learned CIT(A) the correct factual and legal position.*
  - 3. In response to a suggestion from the bench, learned representatives have fairly agreed that the matter should be remitted to the file of the learned CIT(A) so that the assessee has a fair and reasonable opportunity of explaining the position, and so that the learned CIT(A) may dispose of the appeal by adjudicating upon the plea of the assessee by way of a speaking order, in accordance with law and after giving a fair and reasonable opportunity to the assessee.*
  - 4. Keeping in view the above discussions, as also entirety of the case, we hereby remit the matter to the file of the learned*

*CIT(A) for adjudication de novo. The learned CIT(A) will first decide the issue as to whether the matter is covered by the VsVs Settlement or not, by way of a speaking order, in accordance with the law and after affording a reasonable opportunity of hearing to the assessee. He will thereafter decide the matter, if necessary, on merits. Ordered, accordingly.*

5. *In the result, the appeals are allowed for statistical purposes in the terms indicated above. Pronounced in the open court today on the 28th day of September, 2022."*

6 Now pursuant to the above order of the Tribunal, the CIT(A) has again passed order under Section 250 read with Section 254 of the Act on 25/07/2024. Again the appeal preferred by the Appellant has been dismissed by the CIT(A) as withdrawn on the same ground that the issue raised therein stands settled under "Vivad Se Viswas Scheme 2020". We note that the order passed by the CIT(A) neither makes any reference to the order, dated 28/09/2022, passed by the Tribunal in ITA No1912/Mum/2022 [*appeal against order dated 04/07/2022 passed by the CIT(A)*] nor does it provide reasons for arriving at the aforesaid conclusion. Since the CIT(A) has not implemented the directions issued by the Tribunal vide the aforesaid order dated 28/09/2022, the impugned order, dated 25/07/2024, passed by the CIT(A) is set aside with the directions to decide the grounds raised by the Assessee in appeal before the CIT(A) on merits. It is clarified that the CIT(A) shall, first, adjudicate the grounds raised by the Assessee in appeal before the CIT(A) on merits. Thereafter, in case the CIT(A) is of the view that the issue raised is covered under DTVSVS 2020 Scheme, the CIT(A) shall give a separate reasoning/finding on the same. Thus, in order to ensure quietus to the grievance of the Assessee, the CIT(A) is directed to adjudicate upon both the aforesaid aspects. The Appellant is directed to provide a copy of the present order to the CIT(A). The Jurisdictional Assessing Officer is also directed to place a copy of the present order before the CIT(A). In terms of the aforesaid, Ground

No. 1 raised by the Assessee is allowed for statistical purposes, while all the other grounds raised are dismissed as having been rendered infructuous.

- 7 In result, the appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 30.12.2024.

**Sd/-**  
**(Om Prakash Kant)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 30.12.2024  
*Milan,LDC*

**आदेश की प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai