

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH MUMBAI**

BEFORE HON’BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

**ITA No. 4966/Mum/2024
(Assessment Year: 2010-11)**

Atul Properties 5 th Floor, Trade Avenue, Suren Road, Andheri (E) Mumbai – 400093	Vs.	ACIT, Circle – 24(1) Mumbai
PAN/GIR No. AAMFA3756F		
(Applicant)		(Respondent)

Assessee by	Ms. Arti Debnath a/w Mr. Shobhit Mishra
Revenue by	Shri vithal Machindra Bhosale, Sr. DR

Date of Hearing	24.12.2024
Date of Pronouncement	06.01.2025

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeal has been filed by the assessee challenging the impugned order 31.07.2024, passed u/s 250 of the Income Tax Act, 1961 (‘the Act’), by the National Faceless Appeal Centre, Delhi (‘Ld. CIT(A)’) for the assessment year 2010-11.

1. That on the facts and circumstances of the case and in law, the order passed by Ld. CIT(A) is bad in law.

2. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the order of Ld. AO wherein Ld. AO has granted short interest under Section 244A of the Act.

3. That on the facts and circumstances of the case and in law, the interest is not computed in the manner prescribed u/s Section 244A of the Act.

4. On the facts and circumstances of the case and in law, the refund earlier granted should firstly be adjusted against the interest amount due and then the residual refund should be adjusted against the principal amount. Thereafter, the interest should be computed u/s 244A on the remaining principal amount of refund. However, the Ld. AO as well as CIT(A) has not computed the interest in such a manner.

5. That on the facts and circumstances of the case and in law, the interest u/s 244A of the Act should be granted till the date of refund.

6. That the appellant craves, to leave, to add, alter all or any of the grounds of appeal.

2. All the grounds No. 1 to 6 raised by the assessee are interrelated and interconnected and relates to challenging the order of Ld. CIT(A) in confirming the order of Ld.AO in granting short interest u/s 244A of the Act. Therefore I have decided to dispose off these grounds through the present consolidated order.

3. After having heard the counsels for both the parties and after going through the documents placed on record, judgments cited before me and also the orders passed by the revenue authorities. I found that as per the facts of the present case, the assessee has filed the return of income and consequently assessment order u/s 143(3) of the Act was passed. Aggrieved by the order of assessment, the assessee

preferred appeal and Ld. CIT(A) granted substantial relief to the assessee.

4. Thereafter, AO passed an appeal effect order dated 12.09.2018 thereby granting tax refund of Rs. 10,69,15,940/-. The said refund included interest under Section 244A of the Act amounting to Rs. 2,72,69,863/-, according to the Ld.AR while granting this refund, the AO had not granted interest on self-assessment tax as well as the additional interest for delay in grant of interest.

5 Subsequently, the assessee filed rectification application along with the calculation sheet before the Ld. AO for grant of correct interest under Section 244A. On the basis of this application, rectification order dated 24.02.2021 u/s 154 of the Act was passed granting refund, but no further interest on the refund of Rs. 1,09,49,754/- was granted. And this order of AO was upheld by CIT(A) as well.

6. Now Before me, the Ld. AR submitted that this issue is squarely covered by various decisions of the Courts including that of ITAT in the case of ***M/s Indian Aluminum Co. Ltd Vs. DCIT ITA No. 236/Mum/2016*** for the A.Y 1995-96 decided on 30.10.2019. Apart from the above the Ld. AR drawn my attention to the findings of Hon'ble High Court of Delhi in the case of ***India Trade Promotion Organization Vs. CIT [2014] 361 ITR 646.***

7. On the other hand, Ld. DR relied on the orders passed by the revenue authorities.

8. After having gone through the submissions of both the parties, I find that the identical issue has already been decided by the Coordinate Bench and directed the AO to adjust the refund in question in accordance with the principles laid down by the Hon'ble Delhi High Court in the case of **India Trade Promotion Organization Vs. CIT** (supra), findings of the Coordinate Bench are as follows:

6. We have carefully gone through the entire relevant material on record in the light of the rival submissions of the parties including the cases relied upon by the Ld. counsel and the authorities below. As pointed out by the Ld. counsel in assessee's Appeals ITA No 2080,342 & 343/Mum/2013 for the assessment years 1996-97,2000-01 & 2001-02, one of the issues were identical to the issue raised by the assessee in the present appeal. The coordinate Bench after hearing the rival contentions allowed the said ground of appeal for statistical purposes and directed the AO adjust the refund in question in accordance with the principles laid down by the Hon'ble Delhi High Court in the case of India Trade Promotion Organisation vs. CIT, (supra). The findings of the coordinate Bench read as under:

"9. After considering the impugned order and also the order of the Hon'ble Delhi High Court, it is seen that the Hon'ble High Court after detail analysis and discussion has held that, when the revenue does not pay full amount of refund, but part of amount is paid, they will be liable to pay interest on the balance outstanding amount, which consist, of tax paid on the interest, which is payable till the payment of the part amount and interest payable on the principal amount, which remained outstanding thereafter. The Hon'ble High Court after analyzing the various decisions and also the relevant section 244A, had observed and held as under:-

"The words used in section 244A are "where refund of any amount becomes due and payable to the assessee under the Act", the assessee shall be entitled to receive in addition to the said amount simple interest calculated in the manner stipulated. The Legislature has not used the words "tax paid" or "the principal amount of tax paid". The words used by the Legislature are "any amount" and "said amount". The words are, therefore, much wider and broader than the tax amount, which is to be refunded. The words "any amount" would include within its scope and ambit the interest element, which has accrued and is payable on the date of the refund. Thus, when the Revenue does not pay full amount of refund but part amount is paid, they will be liable to pay interest on the balance outstanding amount. The balance outstanding amount may consist of the tax paid or the interest, which is payable till the payment of the part amount and interest payable on the principal amount, which remained outstanding thereafter....."

15 A reading of the aforesaid passage from the decision of the Supreme Court in R.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 the Revenue is liable to refund Rs.1 lakh to an assessee with effect from April 1, 2010, the said amount is refunded along with interest due and payable under section 244A on March 31, 2013, then no further interest is payable. However, if only Rs. 1 lakh is refunded by the Revenue on March 31, 2013, and the interest accrued on Rs. 1 lakh 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, ie, 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 March 31, 2013, the Revenue would be liable to pay interest on Rs. 1 lakh from April 1, 2010, till March 31, 2013, and thereafter on Rs.40,000. Further, interest payable on Rs. 60,000, which stands paid, will be quantified on March 31, 2013, and on this amount, i.e., interest amount quantified, the Revenue would be liable to pay interest under section 244A till payment is made.

The aforesaid manner of computation is not only applicable to cases where the 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 section 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 the 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 the 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 with law."

Thus, respectively following the aforesaid principle we direct the AO to adjust the refund in line of the principle laid down by the Hon'ble Delhi High Court. Accordingly, assessee's ground no. 3

and additional ground is treated as partly allowed for statistical purpose."

7. The coordinate Bench has dealt with the identical issue in assessee's own appeal for the assessment year 1996-97 and vide order dated 11.02.2015 the Tribunal has directed the AO to adjust the refund in accordance with the principle laid down by the Hon'ble Delhi High Court referred above. Since, there is no material change of facts in the present case and since the findings of the Ld. CIT(A) are not in accordance with the decision of the coordinate Bench of the Tribunal, we find merit in the contention of the Ld counsel for the assessee. Hence, respectfully following the decision of the coordinate Bench rendered in assessee's own appeal aforesaid allow the appeal of the assessee for statistical purposes and set aside the impugned order passed by the Ld. CIT(A). Accordingly, we direct the AO to adjust the refund in line of the principle laid down by the Hon'ble Delhi High Court in the case of India Trade Promotion Organisation vs. CIT, (supra).

In the result, appeal filed by the assessee for assessment year 1995-96 is allowed for statistical purposes.

9. Since the Coordinate Bench has dealt with the identical issue and directed the AO to adjust the refund in accordance with the principles laid down by the Hon'ble Delhi High Court referred above. Therefore, I find merit in the contention of the Ld. AR and hence respectfully following the Coordinate Bench decision in the case of **M/s Indian Aluminum Co. Ltd Vs. DCIT ITA No. 236/Mum/2016** decided on 30.10.2019, I allow the appeal of the assessee for statistical purposes and set aside the impugned order passed by the Ld. CIT(A). Accordingly, I direct the AO to adjust the refund in line of the principles laid down by Hon'ble High

Court of Delhi in the case of **India Trade Promotion Organization Vs. CIT** (supra).

10. In the result the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 06.01.2025.

Sd/-

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 06/01/2025

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai