

आयकर अपीलीय अधिकरण, "ई" न्यायपीठ, मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

श्री बी. आर. बास्करन, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य के समक्ष
BEFORE SHRI B.R.BASKARAN, AM AND
SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.5388/Mum/2014,
I.T.A. No.5389/Mum/2014 & I.T.A. 5390/Mum/2014,
I.T.A.5391/Mum/2014, I.T.A.5392/Mum/14 & 5393/Mum/14 &
I.T.A.5394/Mum/2014
(निर्धारण वर्ष / Assessment Year: 1985-86, 1986-87, 1988-89, 1989-90,
1992-93,1994-95 & 1996-97)

M/s. Tata Sons Ltd. Bombay House, 24, Homi Modi Street, Fort, Mumbai - 400001	बनाम/ Vs.	Assistant Commissioner of Income Tax 2(3) R. No. 552, 5 th Floor, Aayakar Bhavan, M.K.Road, Mumbai - 400020
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आयकर अपील सं/ I.T.A. No.5395/Mum/2014,
I.T.A. No.5396/Mum/2014 & I.T.A. 5373/Mum/2014,
I.T.A.5374/Mum/2014, I.T.A.5375/Mum/14 & 5376/Mum/14 &
I.T.A.5377/Mum/2014
(निर्धारण वर्ष / Assessment Year: 1985-86, 1986-87, 1988-89, 1989-90,
1992-93,1994-95 & 1996-97)

Dy. Commissioner of Income Tax 2(3) R. No. 552, 5 th Floor, Aayakar Bhavan, M.K.Road, Mumbai - 400020	बनाम/ Vs.	M/s. Tata Sons Ltd. Bombay House, 24, Homi Modi Street, Fort, Mumbai - 400001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAC4060A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Dinesh Vyas
Department by:	Shri Chandrajit Singh

सुनवाई की तारीख / Date of Hearing: 22.03.2016
घोषणा की तारीख /Date of Pronouncement: 01.04.2016

आदेश / ORDER

PER BENCH:

These cross appeals are directed against the orders passed by Commissioner of Income Tax (Appeals)-6, Mumbai [hereinafter referred to as the "CIT(A)"] and they relate to the A.Y.1985-86, 1986-87, 1988-89, 1989-90, 1992-93, 1994-95 and 1996-97. All these appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. In all these years, the Assessing Officer passed rectification order u/s.154 of the Income Tax Act, 1961(in short "the Act") withdrawing a portion on interest granted to the assessee u/s. 244A of the Act on the refund arising upon giving effect to the appellate order.

3. The assessee was aggrieved by the rectification order passed by the Assessing Officer and hence filed appeals before learned CIT(A) challenging validity on rectification order and also challenged the withdrawal of interest already granted to the assessee. The learned CIT(A) upheld the validity of rectification order. With regard to the contentions raised by the assessee on merits, the learned CIT(A) directed the Assessing Officer to follow the decision rendered by him for A.Y.1990-91. Aggrieved by the order passed by learned CIT(A) in upholding the validity on

rectification proceedings, the assessee has filed the appeals before us. Aggrieved by the order of learned CIT(A) in directing the Assessing Officer to accept the claim of the assessee, the revenue has filed these appeals before us.

4. The brief facts relating to the issue are that the assessee became entitled to higher refund than originally granted to it. The assessing officer, while computing the interest payable on the enhanced amount of refund, reduced the tax portion as well as interest element from the total refund due and accordingly computed interest on the remaining amount. According to the assessee, the interest element should not be deducted and only the tax portion of the refund alone should be deducted and accordingly the interest should be granted on the enhanced refund. Though the AO originally accepted the submissions of the assessee, but by passing the impugned rectification orders, he reduced the amount of interest already granted u/s 244A of the Act.

5. The learned AR submitted that the Assessing Officer had originally granted refund to the assessee along with interest. Subsequent to the passing of order by Income Tax Appellate Tribunal, the refund due to the assessee got enhanced. While, calculating the interest payable on the enhanced refund, the Assessing Officer deducted the interest already granted to the assessee from the tax portion of the refund due and accordingly computed the interest on the amount so reduced. In the original proceeding the Assessing Officer had accepted the claim of the

assessee that the tax portion of the refund already granted alone should be deducted from the total refund arising upon giving effect to the order passed by Income Tax Appellate Tribunal and accordingly granted interest. However the assessing officer, thereafter, passed the impugned rectifications orders u/s. 154 of the Act and reduced the amount of interest already paid u/s. 244A of the Act from the tax portion of refund due and the same has resulted in reduction of the interest due to the assessee. He submitted that the AO should have deducted only tax portion of refund already granted from the tax portion of total refund due.

6. The learned AR submitted that an identical issue was confirmed by the co-ordinate bench of Tribunal in the case of JCIT Vs. Tata Power Co. Ltd. (ITA No.6863/Mum/11 dated 06.03.2013), wherein the Tribunal had confirmed the order of learned CIT(A) in upholding that the interest element of refund granted earlier should not be deducted from the refund arising while giving effect to the order of the Appellate Authorities. The learned AR submitted that the Tribunal has passed the order on 06.03.2013 and the Assessing Officer has passed the impugned orders on 13.08.2013. Hence on the date of passing of impugned rectifications orders the issue was debatable one. By placing reliance on the decision of Hon'ble Supreme Court rendered in the case of T.S.Balram ITO Vs. Volkart Bros. 82 ITR 50(SC), the learned AR submitted that the debatable issue will not fall under the definition of 'mistakes apparent from record' and hence such

issues cannot be rectified u/s. 154 of the Act. Accordingly he submitted that the order of Ld CIT(A) in upholding the rectification proceedings u/s 154 of the Act should be quashed.

7. The learned AR also submitted that the decision rendered by the co-ordinate bench of Tribunal in case of Tata Power Co. Ltd. (Supra) has since been upheld by the Hon'ble Jurisdictional Bombay High Court in his decision dated 07.07.2015 rendered in the case of CIT Vs Tata Power Co. Ltd. in ITA No.1560/M/2013. Accordingly, the learned AR submitted that the orders passed by learned CIT(A) on merits have to be upheld, since they are in accordance with the decision rendered by the Hon'ble Jurisdictional Bombay High Court.

8. On the contrary the learned DR placed strongly reliance on the assessment order.

9. We have heard the parties and perused the record. We find merit in the submission of the assessee that the issue sought to be rectified u/s. 154 of the Act is a debatable issue, since an identical issue has been decided in favour of the assessee by the co-ordinate bench of Tribunal Tata Power Co. Ltd. (Supra). The very fact that an identical issue has travelled up to the level of Tribunal would show that the said issue is a debatable one. The Hon'ble Supreme Court in the case of T.S.Balram ITO Vs. Volkar Bros.(supra) has held that the decision taken on a debatable point of law shall not constitute a mistake apparent from record. Accordingly we are of the view that the impugned rectification orders are liable to be

quashed. Accordingly we set aside the order of Ld CIT(A) and quash the impugned rectification orders.

10. Even on merit we notice that claim of the assessee is supported by the decision of Hon'ble Bombay Court rendered in the case of Tata Power Co. Ltd. (Supra). It is also pertinent to note that the decision rendered by the Co-ordinate bench of Tribunal in the case of Tata Power Co. Ltd (supra) was available on the date of passing of impugned rectification orders. Accordingly, we are of the view that the assessee wins on merits also and accordingly we do not find any merit in the appeals filed by the revenue.

11. In the result, all the appeals filed by the Assessee are allowed and appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 1st April, 2016.

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 1st April, 2016

Sd/-

(B.R.BASKARAN)

लेखा सदस्य / ACCOUNTANT MEMBER

MP

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / 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