IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C",MUMBAI

BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER)
AND
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)

I.T.A. No.2080/Mum/2023 - 1997-98
I.T.A. No.2081/Mum/2023 - 2002-03

Deputy Commissioner of Income-tax-3(4), Mumbai 29th Floor, Centr-1, World Trade Center, Cuffe Parade, Mumbai-400 005, Maharashtra- 400 005	vs	M/s IDBI Bank Ltd 7th Floor, IDBI Tower, WTC Complex,Cuffe Parade, Mumbai **PAN : AABCI8842G**
APPELLANT		**RESPONDENT**

Present for the Assessee	Shri. C Naresh
Present for the Department	Shri Prashant Kumar Gupta (CIT DR)

Date of hearing	16/10/2023
Date of pronouncement	30/10/2023

O R D E R

Per Padmavathy S (AM):

These appeals of the Revenue are against the order of the Commissioner of Income-tax, National Faceless Appeal Centre, Delhi [in short, 'the CIT(A)'] dated 03/04/2023 for A.Y. 1997-98 and 2002-03.

2. The only issue contended in both the appeals is the direction given by the CIT(A) to the Assessing Officer with regard to the manner which the adjustment of refunds granted is carried out for computing of interest under section 244A of the Income Tax Act (the Act).

3. The brief facts pertaining to AY 1997-98 are that the assessee filed the original return of income on 28/11/1997 declaring total income of Rs.918,92,18,700/-. Subsequently, a revised return was filed on 30/03/1999 declaring total income at Rs.905,24,80,790/-. The case was selected for scrutiny and the assessment under section 143(3) was completed vide order dated 25/02/2000 assessing the income of the assessee at Rs.13216,623,26,540/-. Aggrieved, the assessee filed an appeal before the CIT(A), who upheld the additions against which the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 21.06.2019 granted relief to the assessee on three grounds and remanded two of grounds back to the assessing officer The assessing officer passed an order under section 143(3) r.w.s.254 dated 29.07.2021 giving effect to the order of the Tribunal whereby the assessed income was revised to Rs.921, 37,88,870. The assessee filed an appeal before the CIT(A) against the said order of the assessing officer stating that the Assessing Officer in the order giving effect had not correctly granted interest under section 244A. The assessee submitted before the CIT(A) that Assessing Officer had granted interest under section 244A by artificially splitting the refund granted into interest and tax and adjusting the same from interest and tax refund resulting in reduced interest under section 244A being granted.

4. The CIT(A) relied on the decision of the co-ordinate bench in the case of DCIT- 2(1)(1) vs Bank of Baroda (IT Nos 1646 & 2565/Mum/2017 dated 20/12/2018) held that the method of computation for granting interest under section 244A for the refund due to the assessee is not in accordance with the prevailing jurisprudence of the issue, directed the Assessing Officer to examine the computation of refund in accordance with the directions given by the co-ordinate bench in the case of Bank of Baroda (supra). The revenue is in appeal before the Tribunal against the order of the CIT(A).

5. The main contention of the ld DR is that the manner in which the assessee is seeking to adjust the refund would result granting of interest on interest and that the Hon'ble Supreme Court in the case of CIT vs. Gujarat Flouro Chemicals Ltd (2014) 42 taxmann.com 1 has held that there cannot be any interest on interest. The ld DR drew our attention to the relevant observations of the said decision which is extracted below –

> *"4. We would first throw light on the reasoning and the decision of this Court on the core issue in Sandvik Asia Ltd.'s case (supra). The only issue formulated by this Court for its consideration and decision was whether an assessee is entitled to be compensated by the Income Tax Department for the delay in paying interest on the refunded amount admittedly due to the assessee. This Court in the facts of the said case had noticed that there was delay of various periods, ranging from 12 to 17 years, in such payment by the Revenue. This Court had further referred to the several decisions which were brought to its notice and also referred to the relevant provisions of the Act which provide for refunds to be made by the Revenue when a superior forum directs refund of certain amounts to an assessee while disposing of an appeal, revision etc.*
> *5. Since, there was an inordinate delay on the part of the Revenue in refunding the amount due to the assessee this Court had thought it fit that the assessee should be properly and adequately compensated and therefore in paragraph 51 of the judgment, the Court while compensating the assessee had directed the Revenue to pay a compensation by way of interest for two periods, namely; for the Assessment Years 1977-78, 1978-79, 1981-*

82, 1982-83 in a sum of Rs.40,84,906/- and interest @ 9% from 31.03.1986 to 27.03.1998 and in default, to pay the penal interest @ 15% per annum for the aforesaid period.

6. In our considered view, the aforesaid judgment has been misquoted and misinterpreted by the assessees and also by the Revenue. They are of the view that in Sandvik Asia Ltd.'s case (supra), this Court had directed the Revenue to pay interest on the statutory interest in case of delay in the payment. In other words, the interpretation placed is that the Revenue is obliged to pay an interest on interest in the event of its failure to refund the interest payable within the statutory period.

7. As we have already noticed, in Sandvik Asia Ltd.'s case (supra) this Court was considering the issue whether an assessee who is made to wait for refund of interest for decades be compensated for the great prejudice caused to it due to the delay in its payment after the lapse of statutory period. In the facts of that case, this Court had come to the conclusion that there was an inordinate delay on the part of the Revenue in refunding certain amount which included the statutory interest and therefore, directed the Revenue to pay compensation for the same not an interest on interest.

8. Further it is brought to our notice that the Legislature by the Act No. 4 of 1988 (w.e.f. 01.04.1989) has inserted Section 244A to the Act which provides for interest on refunds under various contingencies. We clarify that it is only that interest provided for under the statute which may be claimed by an assessee from the Revenue and no other interest on such statutory interest."

6. The Ld.DR further submitted that the Delhi High Court in the case of CIT vs Indian Farmer Fertilizer Co-operative (2016) 71 taxmann.com 37 (Delhi), where it is held that the ruling of the Supreme Court in the case of CIT vs. Gujarat Flouro Chemicals Ltd (supra), should be followed as opposed to the ratio laid down in the case of CIT vs HEG Ltd (2010) 324 ITR 331 which has been followed in the decision of the coordinate bench in the case of Bank of Baroda (supra). Accordingly, the Ld.DR submitted that the decision of the co-ordinate bench cannot be applied in assessee's case since there is a ratio laid down by the higher court that there cannot be any interest on interest on refunds granted to the assessee. The Ld.DR thus submitted that the method of adjusting the tax as

computed by the Assessing Office is the right way since the same would not result in interest on interest and, therefore, should be upheld.

7. The Ld.AR, on the other hand, submitted that the ratio laid down by the Supreme Court in the case of Gujarat Flouro Chemicals Ltd (supra) and Delhi High Court in the case of Indian Farmer Fertilizer Cooperative (supra) are with respect to entitlement of the assessee to any amount for delayed payment of interest under section 244A, i.e. interest on interest under section 244A. However, in assessee's case, the issue is the manner in which the assessing Officer has adjusted the refund due separating tax and interest and computing interest under section 244A. The Ld.AR therefore, argued that the issue is clearly distinguishable and the ratio laid down by the Hon'ble Supreme Court and Delhi High Court cannot be directly applied in assessee's case. Accordingly, the Ld.AR submitted that the CIT(A) has correctly followed the decision of the co-ordinate bench in Bank of Baroda's case which is exactly on the issue under consideration.

8. We heard the parties and perused the materials on record. The refund originally granted to the assessee as of 14.06.2001 was Rs.294,46,70,773 which included Rs.256,23,57,925 towards tax and interest up to 14.06.2001 of Rs.38,23,12,848. The assessing officer reworked the refund by adjusting the refund of Rs.8,19,70,880 (which included an interest of Rs. 1,05,36,544) while giving effect to the order of the Tribunal in a certain manner which the assessee is contending that it is resulting in short grant of interest under section 244A. The manner in which the assessing officer has adjusted the refund in the order giving effect (OGE) and the manner in which assessee the assessee contending that the refund should be adjusted is tabulated below for ease of reference –

Particulars	**Refund as adjusted by the assessing officer**		**Assessee's contention on how refund to be adjusted**	
Refund due				
- Tax	**A**	256,23,57,925	**A**	256,23,57,925
- Interest	**B**	38,23,12,848	**B**	38,23,12,848
Total Refund	**C**	**294,46,70,773**	**C**	**294,46,70,773**
Refund granted in OGE				
- Tax	**D**	7,14,34,336	**D**	7,14,34,336
- Interest	**E**	1,05,36,544	**E**	1,05,36,544
Total Refund	**F**	**8,19,70,880**	**F**	**8,19,70,880**
Refund adjusted				
- Tax	**(A – D) = G**	249,09,23,589	**A = G**	256,23,57,925
- Interest	**(B – E) = H**	37,17,76,304	**(B – F) = H**	30,03,41,968
Amount eligible for interest u/s.244A	**G**	**249,09,23,589**	**G**	**256,23,57,925**

9. It is clear from the above table that the manner of adjusting the refund as claimed by the assessee does not result in interest on interest but is resulting in the short grant of interest under section 244A i.e. As per assessing officer's working the amount on which interest under section 244A would be calculated is Rs. 249,09,23,589 whereas the assessee is claiming that the interest should be calculated on Rs. 256,23,57,925. Therefore in our considered view there is merit in the submission of the ld AR that the ratio laid down by the Hon'ble Supreme Court in the case of Gujarat Flouro Chemicals Ltd (supra) and Delhi High Court in the case of Indian Farmer Fertilizer Cooperative (supra) are not applicable in assessee's case. Having said that we notice that the decision of coordinate bench Bank of Baroda (supra) is squarely on the issue of manner of adjusting the refund due where the Tribunal has observed that –

> *"5. We have heard the rival submissions. We find that the Id AO had calculated interest u/s 244A of the Act for the period 1.4.95 to 4.7.97 on the refund determined at Rs 200,87,14,868/- and arrived at the interest figure of*

Rs 56,24,40,163/-. Hence at this stage, the assessee was entitled for entire refund of Rs 257,1 1,55,031/-. As against this figure, only a sum of Rs 148,78,12,496/- was actually granted to the assessee. Hence at this stage, a sum of Rs 108,33,42,535/- (2571155031-1487812496) becomes due to the assessee by the revenue. Hence this sum of Rs 108.33 crores automatically partakes the character of principal/tax portion of amounts payable by the revenue to the assessee on which interest is eligible. There is no need to segregate the refunds granted into tax portion and interest portion and subsequently reduce the tax portion of the refund alone from the refund originally determined for calculation of interest u/s 244A of the Act for the period subsequent to 4.7.199/-. This action of the Id AO , in our considered opinion, is against the spirit of the provisions of the scheme of taxation. The provisions of section 140A of the Act specifically provides that any part payment of taxes paid by the assessee would first be appropriated towards the interest portion thereon and thereafter remaining would get adjusted towards the tax portion, meaning thereby, the exchequer should never be deprived of its legitimate dues payable by the assessee in time The same analogy would equally apply when the refund is to b< granted to the assessee with interest u/s 244A of the Act. In the instant case, the entire confusion had arose due to the fact tha the full amount of refund as determined by the Id AO was nc actually granted to the assessee, thereby making the assesse eligible for further interest for the future periods. We find that this aspect had been duly dealt with by the co-ordinate bench this tribunal elaborately in the case of Union Bank of India ACIT reported in (2016) 72 taxmann.com 348 dated 11.8.20 wherein the solitary ground taken up by the assessee before the tribunal was with regard to granting lesser amount of interest u/s 244A of the Act by the Ld AO while computing refund arising as a result of passing impugned order for giving effect CIT(A)'s order (i.e appeal effect order) for Rs 64.53 crores against correct amount of Rs 65.73 crores as claimed by assessee. We find that the issue before us is exactly similar the question raised before this tribunal in the case of Union Bank of India supra except with variance in figures and dates. Hence the decision rendered in the case of Union Bank of Ii supra would apply with equal force for the assessee before The relevant operative portion of the decision in the cas Union Bank of India are reproduced below.-

***3.2** During the course of hearing before us, Ld. Counsel strongly relied upon the orders of the Tribunal in assessee's own case for A.Y. 1988-89 (ITA No. 571/Mum/2013) and A.Y. 2001-02 (ITA NO. 574/Murn/2013) disposed by the order dated 23.06.2014 and also upon the order dated*

22.07.2015 in ITA No. 918/Mum/2014 for A.Y. 2005-06. It was further submitted by him that this issue stands squarely covered in favour of the assessee by the judgment of Hon'ble Delhi High Court in the case of India Trade Promotion Organisation v. CIT12014] 361 ITR 646/12013] 38 taxmann.com 233 which has been considered by the Tribunal while deciding this issue in favour of the assessee. It was also submitted that the assessee is not claiming interest on interest; and the only prayer of the assessee is to make adjustment of the refund issued earlier in the same manner as tax paid by the assessee to the department is treated in view of explanation to section 140A(1) of the Act, wherein it has been provided that the tax paid by the assessee shall first be adjusted against the interest payable and the balance if any shall be adjusted against tax payable, and the same procedure needs to be followed in respect of refund to the assessee.

3.3 *Per Contra, Ld. DR fairly submitted that u/s. 140A (I), the procedure prescribed is clear that amount paid by the assessee shall first be adjusted against interest payable and then balance amount shall be adjusted with the tax payable. It was contended that similar procedure has not been prescribed u/s. 244A. It was also contended that in view of judgment of Hon'ble Supreme Court in the case of Gujarat Fluoro Chemicals (supra), Ld. CIT (A) has rightly declined to follow the order of the Tribunal for earlier years.*

3.4 *We have gone through the facts of this case and submissions made by both sides, provisions of law as well as judgments placed before us. It is noted that the only issue to be decided by us is that while granting the refund in pursuance to the appeal effect order, whether the amount of refund granted earlier should be adjusted first against the interest component of the earlier refund and thereafter the balance amount should be adjusted against the principal component of tax in the refund granted earlier order OR vice-versa as has been done by the AO. It is noted that this issue is not coming for the first time before the Tribunal as the same has arisen for A.Ys. 1988-89, 2001-02 & 2005-06. Copies of the orders were placed before us and it was contended by the Ld. Counsel that the Tribunal had already decided this issue in favour of the Tribunal therefore, before proceeding further we find it appropriate to first reproduce and discuss the reasoning given by the Tribunal in earlier years. The relevant part of order dated 23.06.2014 is reproduced hereunder for the sake of ready reference:*

*"**4**. Undisputedly for A.Y. 1988-89 the assesses entitled to refund of Rs. 14.07 crores as per assessm order and interest payable thereon works out :o Rs. '. crores; thus total refund due is Rs. 15.65 crores. Assessing Officer granted refund of Rs. 12.03 crc The dispute between the Assessing Officer and **the** assessee is with regard to adjustment of refund: according to the assessee refund should first be adjusted against interest payable and only the balance amount shall be adjusted against tax refundable and in this process the balance refund due would work out to Rs. 3,52,28.442/- on which the assessee is entitled to interest u/s. 244A of the Act whereas the Assessing Officer calculated the balance refund clue at Rs. 2,03,99,541/'-(tax component) and Rs. 1,58,28,901/- (interest component). Reason for such calculation was that according to the Assessing Officer no interest is payable on interest due in which event, even if there is substantial delay in interest payable, the assessee can be made to wait unendingly without payment of interest. Though, before the Assessing Officer as well learned CIT (A), the assessee's claim of interest u/s. 244A is not properly focused but sum and substance of the assessee's case before us is that in the event of adjustment of refund against interest due to the assessee tax refund due shall work out to Rs. 3.62 crores on which the assessee would be entitled to get interest u/s. 244A of the Act. In this regard the assessee relied upon the order of Hon'ble Delhi High Court in the case of India Trade Promotion Organisation v. CIT (361 ITR 646) wherein the Court observed that under Explanation to section 140A(1) of the Act, when an assessee is duty bound to pay the outstanding tax, amount paid by the assessee shall first be adjusted against interest payable and the balance shall be adjusted against tax payable, the same procedure needs-to be followed in respect of refund due to the assessee i.e., the amount shall first be adjusted towards interest payable and balance, if any, shall be adjusted towards lax payable (in the instant case tax refundable to the assessee).*

5. Learned counsel, appearing on behalf of the assessee, pleaded accordingly. On the other hand learned Departmental Representative submitted that the assessee is not entitled to interest on interest. However with regard to the plea of the assessee that ii does not amount to payment of interest on interest but only adjustment of the refund from the Revenue against interest component first and thereafter against tax component, in which event u/s. 244A assessee is entitled to interest on the tax component, learned Departmental Representative could not place any decision contrary to the decision of Hon'ble Delhi High Court cited by learned counsel for the assessee.

6. We have carefully considered the rival submissions. As rightly pointed out by the assessee Hon'ble Delhi High Court rightly explained that the amount refunded by the Revenue has to be adjusted towards interest payable to the assessee and the balance, if any, shall be adjusted towards tax. On this principle there is no contrary decision placed before us, we therefore agree, with the plea of the assessee and direct the Assessing Officer accordingly."

3.5 *From the perusal of the above, it is noted by us that the Tribunal has relied upon the judgment of Hon'ble Delhi High Court in the case of India Trade Promotion Organisation (supra), wherein it was inter-alia held that in a situation where only part amount is refunded by the department, then payment of interest on the balance amount due from the department to the assessee, on a particular date, does not amount to payment of interest on interest. Their lordships, taking support from the judgment of Hon'ble Supreme Court in the case of CIT v. HEG Ltd. [2010] 324 ITR 331/189 Taxman 335, observed as under:*

'14. Matter was taken by the Revenue before the Supreme Court in the case of HEG Limited and the SLP was granted and civil appeal was registered. The Supreme Court thereupon answered the question against the Revenue in the following words:-

Therefore, this is not a case where the assessee is claiming compound interest or interest on interest as is sought to be made out in the civil appeals filed by the Department.

The next question which we are required to answer is -what is the meaning of the words "refund of any amount becomes due to the assessee" in Section 244A? In the present case, as stated above, there are two components of the tax paid by the assessee for which the assessee was granted refund, namely TDS of Rs. 45,73,528 and tax paid after original assessment of Rs. 1,71,00,320. The Department contends that the words "any amount" will not include the interest which accrued to the respondent for not refunding Rs. 45,73,528 for 57 months. We see no merit in this argument. The interest component will partake of the character of the "amount due" under Section 244A. It becomes an integral part of Rs. 45,73,528 which is not paid for 57 months after the said amount became due and payable. As can be seen from the facts narrated above, this is the case of short payment by the Department and it is in this way that the assessee claims interest under Section 244A of the Income-Tax Act. Therefore, on both the

afore-stated grounds, we are of the view that the assessee was entitled to interest for 57 months on Rs. 45,73,52 S -The principal amount of Rs. 45,73,528 has been paid :'. December 31, 1997 but net of interest which, as stated above, partook of the character of "amount due" under Section 244A."

15. A reading of the aforesaid passage from the decision of the Supreme Court in HEG Limited (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 Revenue is liable to refund Rs. 1 lac to an assessee witr, effect from 1st April, 2010, the said amount is refundec along with interest due and payable under Section 244/ on 31st March, 2013, then no further interest is payable.

However, if only Rs. 1 lac is refunded by the Revenue 01 31st March, 2013 and the interest accrued on Rs. 1 la under Section 244A is not refunded, the Revenue would b 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 remain unpaid, i.e, the interest element, which should have bee refunded but is not paid. In another situation where pa, payment is made, Section 244A would be still applicable i the same manner. For example, if Rs. 60,000/- was pai on 31st March, 2013, Revenue would be liable to pa interest on Rs. 1 lac from 1st April, 2010 till 31st Marci 2013 and thereafter on Rs. 40,000/-. Further, intere. payable on Rs. 60,000/-, which stands paid, will I quantified on 31st March, 2013 and on this amount, i.e interest amount quantified, Revenue would be liable TO pc interest under Section 244A till payment is made. .....

***3.6** The facts of the case before us are similar in the sen that here also only part amount was refunded in the fit phase by the department and when the balance amount w paid by the department in the second phase, the assess was entitled for interest on the balance amount of refund due.*

Thus, from the aforesaid observations of Hon'ble Delhi High Court, we can say that it is not a case of payment of interest on interest. Thus, in view of these facts and aforesaid judgments, Ld Counsel contended that Ld. CIT (A) had wrongly applied the judgment of Hon'ble Supreme Court in the case of Gujarat Fluoro Chemicals (supra), since it was not applicable on the facts of this case.

3.7 *Further, it was also held by Hon'ble High Court that the department ought to follow the same procedure and rules while collecting tax and while issued refunds. We have gone through the provisions of section 140A(1); explanation to the aforesaid section provides as under:*

"Explanation - Where the amount paid by the assessee under this sub-section falls short of the aggregate of the tax and interest as aforesaid, the amount so paid shall first be adjusted towards the interest payable as aforesaid and the balance, if any, shall be adjusted towards the tax payable."

3.8 *Thus, from the perusal of the above, it is clear 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 whatever tax payable. Now, if we go through section 244A, we find that no specific provision has been brought on the statute with respect to adjustment of refund issued earlier for computing the amount of interest payable by the revenue to the assessee on the amount of refund due to the assessee. Thus, the law is silent on this issue. Under these circumstances, fairness and justice demands that same principle should be applied while granting the refund as has been applied while collecting amount of tax. The revenue is not expected to follow double standards while dealing with the tax payers. The fundamental principle of fiscal legislation in any civilized society should be that the state should treat its citizens (i.e. tax payers in this case) with the same respect, honesty and fairness as it expects from its citizens. It is further noted by us that Hon'ble Delhi High Court has already decided this issue in clear words which has been followed by the Tribunal in assessee's own case in the earlier years. It is further noted by us that assessee is not asking for payment for interest on interest. It is simply requesting for proper method of adjustment of refund and for following the same method which was followed by the department while making collection of taxes. Under these circumstances, we find that judgment of Hon'ble Supreme Court in the case of Gujarat Fluoro Chemicals (supra) is not applicable on the facts of the case before us and thus Ld. CIT (A) committed an error in not following the decisions of the*

Tribunal of earlier years in assessee's own case as well as judgment of Hon'ble High Court in the case of India Organization (supra).

3.9 *Before parting with, we are reminded of a recent judgment of Hon'ble Supreme Court in the case of L'nic-India v. Tata Chemicals Ltd. 12014] 363 ITR / 822 Taxman 225/43 taxmann.com 240 wherein Hon'ble Court has discussed at length about moral and legal obligation of the department to refund the amount of* ***tax*** *collected from the tax, payers which was more than the amount actually due as per law, along with interest. Some of the useful observations are reproduced hereunder for the sake of better clarity in deciding the issue before us:*

'37. A "tax refund" is a refund of taxes when the tax liability is less than the tax paid. As per the old section an assessee was entitled for payment of interest on the amount of taxes refunded pursuant to an order passed under the Act, including the order passed in an appeal. In the present fact scenario, the deductor/ assessee had paid taxes pursuant to a special order passed by the assessing officer/ Income Tax Officer. In the appeal filed against the said order the assessee has succeeded and a direction is issued by the appellate authority to refund the tax paid. The amount paid by the resident/ deductor was retained by the Government till a direction was issued by the appellate authority to refund the same. When the said amount is refunded it should carry interest in the matter of course. As held by the Courts while awarding interest, it is a kind of compensation of use and retention of the money collected unauthorizedly by the Department. When the collection is illegal, there is corresponding obligation on the revenue to refund such amount with interest in as much as they have retained and enjoyed the money deposited. Even the Department has understood the object behind insertion of Section 244A, as that, an assessee is entitled to payment of interest for money remaining with the Government which would be refunded. There is no reason to restrict the same to an assessee only without extending the similar benefit to a resident/ deductor who has deducted tax at source and deposited the same before remitting the amount payable to a non-resident/foreign company.

38. Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the aforesaid amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing

Statute. Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party which ex aequo et bono ought to be refunded, the right to interest follows, as a matter of course.'

3.10 *It is noted from, the observations of the Hon'ble Supreme Court that it has been observed that whatever money has been received by the department, it ought to be refunded ex aequo et bono. It is a Latin phrase which means 'what is just and fair' or 'according to equity and good conscience'. Something to be decided ex aequo et bono is something that is to be decided by principles of what is fair and just. A decision-maker who is authorized to decide ex aequo et bono is not bound by legal rules but may take account of what is just and fair. Thus, if we decide the issue before us ex aequo et bono, then it would be decided by the principles of what is fair and just and not necessarily as per strict rule of law. Thus, since the statute itself has already prescribed a particular method of adjustment in explanation to section 140A(1), then justice, fairness, equity and good conscience demands that same method should be followed while making adjustment for refund of taxes, especially when no contrary provision has been provided. Under these circumstances and aforesaid discussion, we find that the judicial propriety demands that order of the Tribunal of earlier years must be followed and therefore we direct the AO to re-compute the amount of interest u/s. 244A by first adjusting the amount of refund already granted towards the interest component and balance left if any shall be adjusted towards the tax component. Thus, with these directions, the appeal of the assessee is allowed.*

5.1. Respectfully following the aforesaid decision of this tribunal which had elaborately considered the decision of Hon'ble Delhi High Court in the case of India Trade Promotion supra and few Apex Court cases , we are inclined to accept the plea of the assessee. Hence we hold that the assessee would be

entitled for interest on the unpaid refunds in accordance with the principle laid out in the aforesaid decision of Murnbai Tribunal . of Union Bank of India supra. The Id AO is hereby -. compute the interest on refund u/s 244A of the Act as per plea of the assessee. Accordingly, the grounds raised assessee are allowed and that of the revenue are dismissed."

10. The ratio laid down is that the amount of interest u/s. 244A is to be calculated by first adjusting the amount of refund already granted towards the interest component and balance left if any shall be adjusted towards the tax component. Accordingly we hold that the manner in which the assessing officer has adjusted the refund is not correct and that the assessee would be entitled for interest on the unpaid refunds in accordance with the principle laid out in the aforesaid decision of Tribunal. The assessing officer is directed to compute interest under section 244A as per the claim of the assessee after giving a proper opportunity of being heard.

11. The facts pertaining to assessment year 2002-03 is identical where in the assessing officer has adjust the refund in the same manner as in AY 1997-98. Therefore our decision in AY 1997-98 is mutatis mutandis applicable for AY 2002-03. It is ordered accordingly.

Order pronounced in the open court on 30/10/2023

(VIKAS AWASTHY)	PADMAVATHY S.
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt :30th October, 2023

Pavanan

<u>प्रतिलिपि अग्रेषितCopy of the Order forwarded to</u> :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar / Senior Private Secretary
ITAT, Mumbai