

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH " B", PUNE

BEFORE SHRI I C SUDHIR, JUDICIAL MEMBER  
AND SHRI G.S. PANNU, ACCOUNTANT MEMBER

ITA No 1436/PN/07  
(Asstt. Year: 1996-97)

Dy. Commissioner of Income-tax, .. Appellant  
Cir.3, Pune

Vs.

The United Western Bank Ltd., .. Respondent  
172/4 Raviwar Peth,  
Satara PAN AABCT0177D

**Appellant by: Smt Meethali Madhusmitha**  
**Respondent by: Shri C H Naniwadekar**

**Date of hearing : 07.12.2011**  
**Date of Pronouncement : 08.12.2011**

**ORDER**

**PER G.S. PANNU, AM**

This appeal by the Revenue arises out of the order of the Commissioner of Income-tax (Appeals)-II, Pune dated 10.07.2007 which, in turn, has arisen from an order dated 16.1.2007 passed by the Assessing Officer under section 154 of the Income-tax Act, 1961 (in short "the Act") pertaining to the assessment year 1996-97.

2. This appeal was earlier dismissed by the Tribunal vide its order dated 17.9.12009 for want of clearance from the Committee on Disputes. Subsequently, the Hon'ble Bombay High Court vide its order in Income-tax Appeal No. 2634 of 2010 dated 12.7.2011 has set aside the order of the Tribunal and has held that the clearance from the COD is not mandatory, following the judgment of the Hon'ble Apex Court in the case of Electronics Corporation of India Ltd. V. Union of India 51 DTR 193. As a result, thereof, the captioned proceedings have been listed for hearing.

3. Although Revenue has raised multiple Grounds of appeal, but essentially the grievance of the Revenue is against the action of the Commissioner of Income-tax (Appeals) in deleting the interest of Rs 27,56,821/- levied on the assessee following the provisions of section 234D of the Act.

4. In brief, the factual background giving rise to the impugned dispute can be summarized as follows. By a letter dated 18.12.2006, it was pointed out by the assessee that a refund of Rs 6,78,32,796/- was received by it on 1.4.2006 in consequence of the order of the Tribunal, Pune Bench, in ITA No 205/PN/99 dated 20.4.2005. The assessee noticed a mistake in the above refund insofar as the refund was granted by the Assessing Officer as if the relief was given by the Tribunal in respect of the additions made under section 143(3) of the Act while in fact the decision of the Tribunal was to the effect of reduction/withdrawal of additional tax levied under section 143(1A) of the Act. According to the assessee, as the issue before the Tribunal was regarding the scope of section 143(1A), the order giving effect to the order of the Tribunal passed by the Assessing Officer was incorrect. The Assessing Officer discussed the entire history of the case in the order under section 154 of the Act and came to a conclusion that there was a mistake apparent from record insofar as the refund of Rs 6,78,32,796/- was incorrectly given. The assessing Officer, therefore, proceeded to rectify the mistake, but at the same time, charged the assessee with interest of Rs 27,56,821/- under section 234D of the Act from 1.4.2006 to 18.12.2006, i.e. till the date of passing the order under section 154 of the Act. Subsequently, the assessee moved an application dated 5.1.2006 against the order under section 154 passed by the Assessing Officer stating that interest under section 234D levied by the Assessing Officer was not tenable. The

Assessing Officer, however, rejected the said application. Against the same, assessee went in appeal before the Commissioner of Income-tax (Appeals), who directed deletion of the interest under section 234D of the Act levied by the Assessing Officer. Against the order of the Commissioner of Income-tax (Appeals), Revenue is in appeal before us.

5. Before us, the learned representative for the Respondent adverted to a preliminary issue relating to the applicability of section 234D for the instant assessment year and submitted that the same has been adjudicated in favour of the assessee by the Hon'ble Delhi High Court in the case of Director of Income-tax v. Jacobs Civil Incorporated 330 ITR 578 (Del). It is sought to be made out that apart from other Grounds, one of the reasons for deletion by the Commissioner of Income-tax (Appeals) of the interest charged by the assessing Officer under section 234D is the proposition that the provisions of section 234D were not applicable for the instant assessment year, and the same has been since upheld by the Hon'ble Delhi High Court in the case of Jacobs Civil Incorporated (supra). On this proposition, the learned CIT-Departmental Representative, appearing for the Revenue, has not brought any contrary decision to our notice, although on other aspects of the matter the action of the Assessing Officer is sought to be defended.

6. Having heard the rival submissions on the short point relating to the applicability of section 234D of the Act in the instant assessment year, we proceed to dispose of the appeal as follows. Section 234D of the Act provides for charging of interest on excess refund granted to the assessee. Section 234D has been inserted by the Finance Act, 2003 with effect from 1.6.2003. Consequently, it is made out by the



