IN THE INCOME TAX APPELLATE TRIBUNAL
Kolkata Bench, Kolkata
(Bench – "A")

BEFORE SHRI N. V. VASUDEVAN, JUDICIAL MEMBER AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

I.T.A. No.50/Kol/2009
Assessment year 2002-03

D.C.I.T, Circle– 3, Kolkata	-Vs-	M/s. The Peerless General Finance & Investment Co. Ltd. [PAN : AABCT3043L]
(Appellant)		(Respondent)

For the Appellant	Shri Rajat Subhra Biswas, CIT DR
For the Respondent	Shri S. K. Tulsiyan, Advocate
Date of Hearing	**30.05.2017**
Date of Pronouncement	02.06.2017

ORDER

Per M. Balaganesh, AM

1. This appeal preferred by the revenue is against the order passed by the Learned Commissioner of Income Tax (Appeals) [in short ld CITA] vide Appeal No. 152/CIT(A)-I/Cir-3/07-08 dated 30.09.2008 for the Asst Year 2002-03 against the order of assessment determining refund u/s 251/143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') dated 10.7.2006.

2. The first issue to be decided in this appeal is as to whether the ld CITA was justified in directing the ld AO to grant interest on refunds u/s 244A of the Act on

the unpaid portion representing tax as well as interest, in the facts and circumstances of the case.

3. The brief facts of this issue is that the ld AO passed an order u/s 143(3) of the Act for the Asst Year 2002-03 on 18.3.2005. The assessee filed an appeal against the said order and the ld CITA granted certain relief in his order dated 10.5.2006. The ld AO thereafter passed an order u/s 251/143(3) of the Act on 10.7.2006 in pursuance of the order of the ld CITA in Appeal No. 109/CIT(A)-III/AC, Circle-3/04-05 dt 10.5.2006. In the said order, the ld AO determined the revised total income at Rs 47,47,72,019/- and determined the amount due (refundable) to the assessee at Rs 106,01,09,259/-. The ld AO while determining the amount due to the assessee did not grant any interest u/s 244A of the Act in the said order.

3.1. Later the ld AO passed an order u/s 154/251/143(3) of the Act dated 13.9.2006 wherein after adjustment of refund of Rs 106,01,09,259/- with the outstanding demands in the file for Asst Years 2001-02 and 2003-04, he granted interest u/s 244A of the Act at Rs 6,10,69,725/- and determined the amount due (refundable) to the assessee at Rs 6,10,69,725/-.

3.2. The ld CITA passed an appellate order in Appeal No. 80/CIT(A)-1/Cir-3/07-08 dated 22.1.2008 in the context of deduction of certain provisions while computing the book profits u/s 115JB of the Act by placing reliance on special bench decision of this Tribunal in the case of Usha Martin Industries Ltd reported in 104 ITD 249 (Kol) (SB).

3.3. Later the ld AO passed an order u/s 251/154/154/251/143(3) of the Act dated 22.4.2008 (enclosed in pages 24 to 25 of the Paper Book filed by the ld AR) wherein he finally determined the amount refundable (due to assessee) at Rs 7,42,18,259/- after due consideration of interest u/s 244A of the Act. This order

was passed in pursuance of the order of the ld CITA in Appeal No. 80/CIT(A)-1/Cir-3/07-08 dated 22.1.2008.

3.3.1 Later this order dated 22.4.2008 was sought to be rectified by the ld AO vide his order passed u/s 154/154/154/251/143(3) of the Act dated 30.6.2008 wherein the amount refundable (due to assessee) was determined at Rs 7,14,02,332/- by calculating interest u/s 244A of the Act only at Rs 10,18,29,380/- as against interest u/s 244A of the Act earlier granted at Rs 10,46,45,307/-. The reason for this reduction as adduced by the ld AO in his order dated 30.6.2008 , among others, was that the refund of excess tax amount as well as the interest amount u/s 244A has become due on giving effect to the order of CIT(A) and the same are to be paid together, the question of any delay in payment of interest amount does not arise. This order is enclosed in pages 26 to 30 of the Paper Book filed by the ld AR.

3.3.2. The assessee preferred an appeal before the ld CITA against this rectification order dated 22.4.2008 questioning the action of the ld AO in reducing the interest u/s 244A of the Act. The ld CITA confirmed the action of the ld AO vide Appeal No. 67/CIT(A)-I/Circle-3/08-09 dated 2.11.2011 which is enclosed in pages 31 to 33 of the Paper Book filed by the ld AR.

3.3.3. The assessee preferred further appeal before this tribunal against the order of the ld CITA dated 2.11.2011. The Tribunal allowed the appeal of the assessee vide order in ITA No. 1706/Kol/2011 dated 11.7.2013 (enclosed in pages 34 to 37 of the Paper Book filed by the ld AR) wherein it was held as under:-

> *4. In view of the above, we find the ground of interest on unpaid interest by the AO vide his order dated 22.04.2008 is keeping in view the judgement of this Tribunal in ITA No. 585/K/2006 for the AY 2000-01 dated 28.02.2007 in its own case even the dispute regarding grant of interest on unpaid*

interest is covered by the decision of Hon'ble Supreme Court in the case of Sandvik Asia Ltd (Supra). Even on merits, Hon'ble M.P. High Court in the case of CIT vs H.E.G. Ltd (2009) 310 ITR 341 has held that the provisions of section 244(1A) and 244A are almost similar and in case of granting of interest on unpaid interest is applicable in terms of section 244A of the Act. This decision of Hon'ble M..P. High Court in the csae of H.E.G. Ltd was approved by Hon'ble Supreme Court by dismissing the appeal of the department as reported in 324 ITR 331. In such circumstances, we are of the view that this is a debatable issue and assessing officer has no jurisdiction to exercise power of rectification u/s 154 of the Act. Hence, on jurisdictional issue, we allow the appeal of the assessee.

3.3.4. The revenue preferred an appeal against this tribunal order dated 11.7.2013 before the Hon'ble Calcutta High Court. The Hon'ble Calcutta High Court disposed off the appeal in G.A.No. 222 of 2014 dated 16.1.2015 in CIT vs The Peerless General Finance & Investment Co. Ltd (enclosed in Pages 38 to 45 of the Paper Book filed by the ld AR) held as under:-

We are, as such, of the opinion that the learned Tribunal was justified in reversing the order passed in exercise of section 154 by the Assessing Officer.

In that view of the matter the first question is answered in the affirmative. The second question need not be answered for the purpose of disposal of the appeal.

Thus, the appeal is disposed of.

3.4. Hence the entire series of proceedings could be summarized in the following sequence of events :-

18.3.05 - Order of AO u/s 143(3)

10.5.06 - Order of CITA in Appeal No. 109/CIT(A)-III/AC.Cir-3/04-05

10.7.06 - Order of AO u/s 251/143(3) giving effect to the CITA order dated 10.5.06 determining refund of Rs 106,01,09,259/-

13.9.06 - Order of AO u/s 154/251/143(3) wherein refund determined was Adjusted with outstanding demands and interest u/s 244A granted At Rs 6,10,69,725/-

22.1.08 - Order of CITA in Appeal No.80/CIT(A)-1/Cir-3/07-08 in the context of deduction of certain provisions while computing the book profits u/s 115JB of the Act

22.4.08 - Order of AO u/s 251/154/154/251/143(3) determining finally the Amount refundable at Rs 7,42,18,259/- including interest u/s 244A Giving effect to the order of CITA dated 22.1.08

30.6.08 - Order of AO u/s 154/154/154/251/143(3) seeking to rectify the order dated 22.4.08 passed by him. In this order, he reduced the Amount refundable to Rs 7,14,02,332/-.

30.9.08 - Order of CITA in Appeal No. 152/CIT(A)-I/Cir.3/07-08 (Impugned order before us) directing the ld AO to grant interest on Unpaid interest u/s 244A . This appeal was against the order of the AO u.s 251/143(3) dated 10.7.06 wherein interest u/s 244A was Denied.

2.11.11 - Order of CITA in Appeal No. 67/CIT(A)-I/Circle-3/08-09 Confirming the action of the AO's rectification order dated 22.4.08 wherein interest u/s 244A was denied by AO.

11.7.13 - Order of ITAT in ITA No. 1706/Kol/2011 granting interest on Unpaid interest. This order is passed by ITAT against the CITA Order dated 2.11.11

16.1.15 - Order of High Court on the appeal preferred by the revenue Against the ITAT order dated 11.7.13. The High Court Concurred with the view of the Tribunal.

4. The revenue had preferred an appeal before us against the order of the ld CITA in Appeal No. 152/CIT(A)-I/Cir-3/07-08 dated 30.9.08 wherein the ld CITA had directed the ld AO to grant interest on unpaid interest by the department treating the same as amount due to the assessee and thereby the assessee is entitled for

interest u/s 244A of the Act on the same. The revenue has raised the following grounds before us:-

> *1. That on the facts and in the circumstances of the case ld. CIT(A) erred in allowing the claim of the assessee in respect of interest on interest..*
>
> *2. That on the facts and in the circumstances of the case ld. CIT(A) failed to consider the remand report inasmuch as distinction between old provisions of section 214,243 & 244 and the new provision of section 244A of the Act is concerned.*
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> *3. That on the facts and in the circumstances of the case ld. CIT(A) failed to consider the fact that the decisions on the basis of which the claim of interest on interest was granted were distinguished from the present case in the remand report.*
>
> *4. That on the facts and in the circumstances of the case ld. CIT(A) erred in overlooking the fact that the decisions in the cases of Sandvik Asia Ltd., 280 ITR 643 (SC), Narendra Doshi, 254 ITR 606 (SC) etc. dealt with the provisions of sections 214,243 &,244 of the Act, which existed prior to AY 1989- 90, while in the present case refund was issued u/s 244A of the Act.*

5. We have heard the rival submissions and perused the materials available on record. The ld AR argued that the unpaid interest partakes the character of the principal amount due to the assessee. In this regard, it would be pertinent to reproduce the provisions of section 244A of the Act which are as under:-

> ***Interest on refunds.***
>
> ***244A.*** *(1) Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely :—*
>
> ……

5.1. The ld AR placed reliance on the decision of the *Hon'ble Supreme Court in the case of CIT vs H.E.G. Ltd reported in (2010) 324 ITR 331 (SC)* wherein the

phrase ' refund of any amount becomes due to the assessee' found in section 244A of the Act has been explained in detail.

5.2. The ld AR further placed reliance on the decision of *Hon'ble Gujarat High Court in the case of D.J.Works vs DCIT reported in 195 ITR 227 (Guj)*. This was subsequently followed by *Hon'ble Gujarat High Court in the case of Chimanlal S.Patel vs CIT reported in 210 ITR 419 (Guj)*. He stated that both these decisions were accepted by the department by not preferring further appeal before the Hon'ble Supreme Court. He argued that it was held in D.J.Works case supra as below:-

D.J.Works vs DCIT – 195 ITR 227 (Guj)

> ***6.*** *Section 214(1) itself recognizes in principle liability to pay interest on the amount of tax paid in excess of the amount of assessed tax and which is retained by the Government. Interest on excess amount is payable at the rate of 15 per cent from the first day of the year of assessment to the date of regular assessment. It would, thus, appear that the Legislature itself has considered it fair and reasonable to award interest on the amount paid in excess, which has been retained by the Government. We do not see any reason why the same principle should not be extended to the payment of interest which has been wrongfully withheld by the Assessing Officer or the Government. It was the duty of the Assessing Officer to award interest on the excess amount of tax paid by the petitioner while giving effect to the appellate order and granting refund of the excess amount. If the excess tax paid cannot be retained without payment of interest, so also the interest which is payable thereon cannot be retained without payment of interest. Once the interest amount becomes due, it takes the same colour as the excess amount of tax, which is refundable on regular assessment. Therefore, in our opinion, though there is no specific provision for payment of interest on the interest amount for which no order is passed at the time of passing the order of refund of excess amount and which has been wrongfully retained, interest would be payable at the same rate at which the excess amount carries interest. In other words, the amount payable by way of interest would carry simple interest at the rate of 15 per cent per annum from the date it became payable to the date it is actually paid. The decisions, which were cited at the Bar do not have direct bearing on the above question and, therefore, we do not propose to refer to or deal with them. On general principle we are of the opinion that the Government is liable to pay interest, at the rate applicable to excess amount refunded to the assessee, on the interest amount which had become due*

under section 214(1). In the light of the above discussion, this petition must succeed.

5.3. We find that the ld DR placed reliance on the decision of the *Hon'ble Supreme Court in the case of CIT vs Gujarat Fluoro Chemicals reported in (2013) 358 ITR 291 (SC)* wherein it was held that the assessee would be entitled only for interest as provided for under the statute and no other interest on such statutory interest. In response to this, the ld AR defended the same by stating that the appeal in Gujarat Fluoro Chemcials was directed against the judgement of the Hon'ble Gujarat High Court dated 3.7.2007 . That in the said impugned order, the High Court relying on the *Supreme Court decision of Sandvik Asia Ltd [280 ITR 643 (SC)]* concluded that the assessee was entitled to compensation by way of interest on delayed refund as had been withheld by the revenue, and on the same a running interest of 9% per annum wa applicable u/s 244A. That, when in appeal before the Supreme Court, the Division Bench therein, sought a clarification of the said co-ordinate bench decision in Sandvik Asia Ltd supra , and thereon referred the matter to a larger 3 judge bench. In reference, the said 3 judge bench in CIT vs Gujarat Fluoro Chemicals reported in (2013) 358 ITR 291 (SC) clarified Sandvik Asia Ltd (supra) with respect to the following issue:-

"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"

That on the same, the ld 3 judge bench opined as below:-

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.*

5.4. He stated that vide the above clarification, the Hon'ble 3 Judge bench of the Supreme Court had made it clear that :

a) Sandvik Asia Ltd supra had in fact been misquoted, for what Sandvik Asia Ltd essentially holds is that in light of the inordinate delay in refunding the due amount (that was inclusive of the incurred statutory interest), a compensation (in the form of interest) on the same was to be paid to the aggrieved assessee.

b) And that the above is in no manner a payment of interest on interest.

5.5. Accordingly, he argued that the decision of the Hon'ble Supreme Court in Gujarat Fluoro Chemicals supra is in no manner contrary to the decisions as rendered in Sandvik Asia Ltd supra. The ld AR further argued on the principles

of *per incuriam* and the principles of binding precedents by placing reliance on various decisions which are not reproduced herein for the sake of brevity.

5.6. The ld AR further argued that the *Hon'ble Supreme Court in the case of Union of India vs Tata Chemicals reported in 363 ITR 658 (SC)* wherein the Court had opined that, 'Section 244A grants a substantive right to interest that is not procedural, and that the statutory obligation to refund carried with it the right to interest as a matter of course'. Thus the assessee, holds the substantive right to interest u/s 244A on a refund that is due to him / her, and that such a refund, encompasses an amount that would be inclusive of interest accrued due to the delay in awarding such refund.

5.7. The ld AR also placed reliance on the decision of the *Hon'ble Delhi High Court in the case of India Trade Promotion Organisation vs CIT reported in 361 ITR 646 (Del)* and stated that this decision best elucidates the law on point, wherein by relying on H.E.G. Ltd [324 ITR 331 (SC)] , the Division Bench of the Delhi High Court, opined as follows:-

> *7. The question really is in case the Revenue does not make payment of interest element, which had accrued and had become payable on the date when the tax amount is refunded, whether they would be liable to pay interest under Section 244A on the said amount. One can casually or loosely call it as interest on interest but in reality payment of interest on the said amount occurs because of non-payment of the total amount refundable, which is due and payable to the assessee, inter alia, consisting of the tax, which had to be refunded and the interest accrued on the delayed refund of the tax. It is not uncommon and in the commercial world and even in civil suits while computing interest under Section 34 of the Code of Civil Procedure, 1908 the principal amount and the interest due are added and treated as the primary amount in the decree drawn. Interest becomes due and payable on this primary amount. In other words, interest stands capitalised. We further note that it is not a case of compounding of interest as understood except once, i.e., on the date when it is quantified, i.e., when part refund payment is made by the Revenue. Therefore, it will be wrong to call it and treat it as compounding of interest.*

9. *The words used in the 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 H.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 Revenue is liable to refund Rs. 1 lac to an assessee with effect from 1st April, 2010, the said amount is refunded along with interest due and payable under Section 244A on 31st March, 2013, then no further interest is payable. However, if only Rs. 1 lac is refunded by the Revenue on 31st March, 2013 and the interest accrued on Rs. 1 lac 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, i.e., 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 31st March, 2013, Revenue would be liable to pay interest on Rs. 1 lac from 1st April, 2010 till 31st March, 2013 and thereafter on Rs. 40,000/-. Further, interest payable on Rs. 60,000/-, which stands paid, will be quantified on 31st March, 2013 and on this amount, i.e., interest amount quantified, Revenue would be liable to pay interest under Section 244A till payment is made.*

5.8. The ld AR argued by placing reliance on the aforesaid decisions and arguments that assessee is entitled for interest u/s 244A of the Act on the unpaid interest and the unpaid interest partakes the character of the principal amount due to the assessee as the section 244A of the Act states ‘any amount due to the

assessee'. Accordingly he prayed for non-interference in the order of the ld CITA in this regard.

6. We find that the case laws relied upon hereinabove are very well founded and supports the case of the assessee. We find that the impugned dispute before us is squarely addressed by the *co-ordinate bench of Mumbai Tribunal in the case of Union Bank of India vs ACIT reported in (2016) 72 taxmann.com 348 (Mumbai Trib) dated 11.8.2016* which had duly considered the aforesaid decisions and had held as under:-

> ***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 assessee 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:*
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> > *"4.……*
> >
> > *5……*
> >
> > *6. ……"*
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> ***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. 45,73,528/-. The principal amount of Rs. 45,73,528 has been paid on 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 with effect from 1st April, 2010, the said amount is refunded along with interest due and payable under Section 244A on 31st March, 2013, then no further interest is payable.

However, if only Rs. 1 lac is refunded by the Revenue on 31st March, 2013 and the interest accrued on Rs. 1 lac 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, i.e, 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 31st March, 2013, Revenue would be liable to pay interest on Rs. 1 lac from 1st April, 2010 till 31st March, 2013 and thereafter on Rs. 40,000/-. Further, interest payable on Rs. 60,000/-, which stands paid, will be quantified on 31st March, 2013 and on this amount, i.e., interest amount quantified, Revenue would be liable to pay interest under Section 244A till payment is made. . . . . '

3.6 *The facts of the case before us are similar in the sense that here also only part amount was refunded in the first phase by the department and when the balance amount was paid by the department in the second phase, the assessee 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 Trade Promotion Organisation (supra).

3.9 *Before parting with, we are reminded of a recent judgment of Hon'ble Supreme Court in the case of Union of India v. Tata Chemicals Ltd. [2014] 363 ITR 658/822 Taxman 225/43 taxmann.com 240 wherein Hon'ble Supreme 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.*

4. *In the result, the appeal filed by the assessee is allowed.*

6.1. Respectfully following the aforesaid co-ordinate bench decision of Mumbai Tribunal which had duly considered the various decisions on the impugned issue, we hold that the assessee indeed is entitled for interest on unpaid interest and accordingly dismiss the grounds raised by the revenue in this regard.

6.2. We also find that the Hon'ble Calcutta High Court vide its order dated 16.1.2015 in assessee's own case for the very same asst year i.e AY 2002-03 had upheld the order of the ld AO dated 22.4.2008 granting interest u/s 244A of the Act . The subsequent rectification proceedings and the consequent appellate orders thereon have been reversed by the Hon'ble Calcutta High Court in assessee's own case. Hence the revenue should not have any grievance in the impugned appeal before us as the ld CITA had addressed the entire issue in the same lines in which the Hon'ble High Court had addressed the issue. In our considered opinion, if at all the revenue is aggrieved against the order of the Hon'ble Calcutta High Court dated 16.1.2015 , they should have preferred Special Leave Petition before the Hon'ble Supreme Court. We feel that the revenue should not be aggrieved by preferring an appeal before us against the order of the ld CITA dated 30.9.2008. Hence the revenue appeal deserve to be dismissed on that count also.

6.3. Hence we hold that the grounds raised by the revenue vide Grounds 1 to 4 deserve to be dismissed for more than reason as stated above.

7. The next issue to be decided in this appeal is as to whether the ld CITA was justified in directing the ld AO to exclude the provision for dimunition in value of investments amounting to Rs 29,81,59,433/- and provision for Non-Performing Assets amounting to Rs 19,57,60,485/- while computing the book profits u/s 115JB of the Act, in the facts and circumstances of the case.

7.1. During the course of hearing, the ld AR fairly admitted that the assessee had challenged the retrospective amendment in this regard brought in section 115JB of the Act by way of a Writ Petition before the Hon'ble Calcutta High Court in W.P. No. 1069 of 2010 and the same was dismissed by the Hon'ble Court vide its order

dated 3.5.2017. Accordingly, he fairly agreed with the decision of the ld AO in this regard. Hence the Ground Nos. 5 to 7 raised by the revenue are allowed.

8. The Ground Nos. 8 & 9 raised by the revenue are general in nature and does not require any specific adjudication.

9. In the result, the appeal of the revenue is partly allowed.

Order pronounced in the Court on 02.06.2017.

Sd/- **Sd/-**

[N. V. Vasudevan]
Judicial Member

[M. Balaganesh]
Accountant Member

Dated :02.06.2017
{RS SPS}

Copy of the order forwarded to:

1. Appellant/Revenue –D.C.I.T, Circle -3, Kolkata.
2. Assessee/Respondent- M/s. The Peerless General Finance & Investment Co. Ltd., 3, Esplanade East, Kolkata – 700 069.
3. CIT(A)- Kolkata
4. CIT – , Kolkata
5. CIT(DR), Kolkata Benches, Kolkata

True copy

By Order

Senior Private Secretary
Head of Office, DDO, Kolkata Benches, Kolkata.