

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, AHMEDABAD**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. Nos. 140 to 143/Ahd/2023  
(Assessment Years: 1981-82 to 1984-85)

Minor Baku Dineshbhai Amin Oral Specific Deferred Family Trust Nirma House, Ashram Road, Ahmedabad-380009	Vs.	Income Tax Officer Ward-5(3)(1), Ahmedabad (Formerly ITO, Ward- 5(2)(2), Ahmedabad)
[PAN No.AAETM0563C]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Shri Hemanshu Shah, C.A.
<b>Respondent by :</b>	Shri Ramesh Kumar, Sr. D.R.

<b>Date of Hearing</b>	04.07.2023
<b>Date of Pronouncement</b>	07.07.2023

**ORDER**

These four appeals filed by the same assessee are against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi on 12.01.2023 for A.Ys. 1981-82 to 1984-85.

2. As all the grounds of appeal are identical in all the appeal except the figure so we are only raised the grounds of ITA No. 140/Ahd/2023 for A.Y. 1981-82 as under:

“1. In law and in facts and circumstances of the Appellant case, the learned Commissioner of Income-tax (Appeals) has erred in points of law and facts.

2. In law and in facts and circumstances of the Appellant case, the learned Commissioner of Income-tax (Appeals) has erred in not condoning delay in filing appeal before Ld CIT (A).

3. In law and in facts and circumstances of the Appellant case, the learned Commissioner of Income-tax (Appeals) has grossly erred in dismissing the ground of not granting interest of Self-Assessment Tax of Rs. 27,500/-.

4. *In law and in facts and circumstances of the Appellant case, the learned Commissioner of Income-tax (Appeals) has grossly erred in not dealt with ground no 3 of segregating the refund issued into tax refund and interest refund and adjusting the tax refund from tax due and interest refund from interest refund due instead of adjusting the entire refund granted first against the interest refund due and thereafter against the tax refund due.*

5. *In law and in facts and circumstances of the Appellant case, the learned Commissioner of Income-tax (Appeals) has grossly erred in dismissing the ground of not granting interest u/s. 244A(1A) of I.T. Act from June 2016 to Sept.2018.*

6. *Your appellant reserves the right to add, alter, amend all or any of the above grounds of appeal as may be advised from time to time.”*

3. Firstly we are taking ITA No. 140/Ahd/2023 for A.Y. 1981-82 as the facts in all the appeals are identical. The assessee is a beneficiary of S. K. Patel Family Trust having 3% beneficiary interest. S. K. Patel Family Trust has 34 such beneficiaries having beneficiary interest and the main trust i.e. S. K. Patel Family Trust has filed its declaration under Kar Vivad Samadhan Scheme (in short “KVSS”) for A.Y. 1981-82 and the same was accepted by the Department. In view of these facts, the main trust being covered under KVSS, the assessee claimed that for the A.Y. 1981-82, 1982-83, 1983-84, 1984-85, income becomes NIL as per the order under Section 154 dated 22.08.2000 relevant for all these assessment years. Consequently, assessee’s income becomes NIL in these years and relevant refund was issued by the Revenue. Aggrieved against the correctness of computation with the applicable credit for self-assessment tax / advance tax etc. for these years, the assessee filed an appeal before the CIT(A) on 16.11.2000 for all these assessment years. The CIT(A) disposed of the assessee’s appeal vide order dated 07.02.2003 for A.Y. 1983-84 and common order dated 30.01.2003 for A.Y. 1981-82, 1982-83 and 1984-85. In the appellate order, the CIT(A)

directed the Assessing Officer on the issue of interest on the refund granted for fresh verification as per the contention of the assessee for the relevant credits of self-assessment tax / advance tax etc. as per the payments made in these years. Considering these facts of case as applicable to assessee for all these four years and keeping in view the overall facts of assessee's request under Section 154 and order of the Hon'ble High Court / Tribunal, the Assessing Officer passed a detailed order under Section 154 on various dates for each assessment years.

4. Being aggrieved by the order under Section 154 of the Act the assessee filed appeal before the CIT(A). The CIT(A) dismiss the appeal of the assessee.

5. The Ld. A.R. submitted that the CIT(A) erred in dismissing the ground of non-granting interest on self-assessment tax of Rs. 27,500/- which is allowable to assessee as held by the Hon'ble Gujarat High Court in case of CIT vs. Gujarat State Warehousing Corporation 256 ITR 596. The Ld. A.R. submitted that interest on advance tax Rs. 37,000/- from April 1981 to March 1983 was not granted to the assessee. Interest on self-assessment tax paid at Rs. 27,500/- on 26.06.1981 was not granted from June 1981 to September 2000. The Ld. A.R. submitted that as per the Hon'ble High Court and Tribunal interest on advance tax was granted to the assessee, however, interest on self-assessment tax paid at Rs. 27,500/- on 26.06.1981 was not granted from June 1981 to September 2000. But the assessee is entitled for the same. The Ld. A.R. submitted that the assessee is paid self-assessment tax of Rs. 27,500/- on

26.06.1981, therefore interest under Section 254A of Income Tax Act should have been granted from the date of payment of tax till the date of issue of refund i.e. from June 1981 to September 2000. Thus, the Ld. A.R. prayed that Ground No. 3 be allowed.

6. The Ld. D.R. relied upon the rectification order under Section 154 of the Act and order of the CIT(A). The Ld. D.R. further submitted that the assessee's plea for grant of any specific interest for a specific period that being date of payment of self-assessment tax during the year and up to September 2000 pleaded by the assessee in the grounds of appeal before the CIT(A) was not justifiable in order to acceptable as per strict interpretation of provision of Income Tax Act as applicable to credit for self-assessment tax for these assessment years.

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that as per the Hon'ble Gujarat High Court the claim of the assessee therein in respect of interest on self-assessment tax was allowed in respect of Section 244(1A) / 214(1A) on payment of tax made under Section 140A of the Income Tax Act. The calculation table given by the assessee which is reproduced in order of the CIT(A) at Page 18 & 19 has given the clear picture as to how the correct amount of refund on principal amount and refund of interest as per the said calculation has to be taken into account in consonance with the claim of the assessee as per Section 234B of the Act. Therefore, the Assessing Officer is directed to recalculate the amount the refund

alongwith interest under Section 244A of the Act up to the date of issue of return. Thus, Ground No. 3 of the assessee is partly allowed.

8. As regards Ground No. 4 the Ld. A.R. submitted that the CIT(A) erred in segregating the refund issue into tax refund and interest refund and adjusting the tax refund from tax refund due and interest refund from interest refund due, instead of adjusting the entire refund granted first against the interest refund due and thereafter against the tax refund due. The Ld. A.R. submitted that as per the calculation refund was issued on 27.09.2000 amounting to Rs. 1,55,422/- was reduced as principal tax refund at Rs. 67,547/- and interest on refund at Rs. 87,875/- resulting into balance refundable amount of Rs. 57,345/- consisting of principal refund at Rs. 33,715/- and interest at Rs. 23,630/- as per the revenue's working. But the Ld. A.R. submitted that as per the assessee's working refund of Rs. 1,55,422/- has to be first adjusted against interest received i.e. Rs. 1,82,405/-. Thus, the Ld. A.R. submitted that the Assessing Officer should be directed to calculate the same as per the interest under Section 234B thereby firstly deducting the payment against interest and balance towards principal tax and the same ratio should be applied.

9. The Ld. D.R. relied upon the order of the CIT(A).

10. Heard both the parties and perused all the relevant material available on record. From the explanation to Section 140A(1) of the Act where the amount paid by the assessee under the said sub-section fall short of the aggregate of the tax interest and fee as aforesaid, the amount

so paid shall first be adjusted to the fee payable and thereafter towards the interest payable as aforesaid and the balance if any shall be adjusted towards the tax pay. Thus, the explanation to Section 140A(1) has given the proportionate ratio as to how the interest should be taken into account. Thus, we direct the Assessing Officer accordingly to take into account the contention of the assessee and calculate as per the provisions of the income tax statute. Thus, Ground No. 4 is partly allowed.

11. As regards Ground No. 5 the additional interest is to be granted where refund arising out of appeal effect is delayed beyond the time prescribed under the Act and therefore, addition interest under Section 244A(1A) of the Act should have been granted by the Assessing Officer as well as by the CIT(A).

12. The Ld. D.R. relied upon the order of the CIT(A).

13. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that here there was a clear delay in refund and therefore, the assessee is entitled for additional interest under Section 244A(1A) of the Act and therefore, the Assessing Officer is directed to grant the same inconsonance with the additional interest at 3% per annum from June 2016 till the date on which refund is issued i.e. September 2018. Thus, Ground No. 5 is partly allowed.

14. Ground Nos. 1 and 2 are general in nature. Hence, not adjudicated at this juncture.

15. Thus, ITA No. 140/Ahd/2023 is partly allowed.

16. As regards ITA No. 141/Ahd/2023, 142/Ahd/2023 and 143/Ahd/2023 are identical in nature and the grounds are also identical hence the reasoning and finding given hereinabove in ITA No. 140/Ahd/2023 for each of the grounds will be applicable and hence all these appeals are partly allowed.

17. In result all the four appeals filed by the assessee are partly allowed.

**This Order pronounced in Open Court on**

**07/07/2023**

Sd/-  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Ahmedabad; Dated 07/07/2023

TANMAY, Sr. PS

**TRUE COPY**

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad