

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER, AND
SHRI N.K. BILLAIYA ACCOUNTANT MEMBER

ITA No. 5511/DEL/2013
[Assessment Year: 2006-07]
&
ITA No. 5507/DEL/2012
[Assessment Year: 2007-08]

Shalimar Town Planners Pvt. Ltd
M-11, Middle Circle, Connaught Circus
New Delhi

Vs. The A.C.I.T
Central Circle - 23
New Delhi

PAN : AABCS 5851 R

[Appellant]

[Respondent]

Date of Hearing : 28.06.2018
Date of Pronouncement : 29.06.2018

Assessee by : Shri Ajau Bhagwani, CA

Revenue by : Shri S.S. Rana, CIT- DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

These two separate appeals by the assessee are preferred against two separate orders of the CIT(A)-XXXIII, New Delhi pertaining to A.Ys 2006-07 & 2007-08. Since common issues are involved in both these

appeals, they were heard together and are disposed by this common order for the sake of convenience and brevity.

2. The common grievance in both these appeals relates to the charging of interest u/s 234B of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] by invoking the provisions of section 154 of the Act.

3. Briefly stated, the facts of the case are that assessment was completed u/s 153C/153A/143(3) of the Act on 13.12.2009. Subsequently, on perusal of the record, the Assessing Officer noticed that interest u/s 234B of the Act has been short charged. To rectify the mistake, notice was served upon the assessee, giving it an opportunity of being heard in respect of the proposed rectification of mistake apparent on record. The assessee filed a detailed reply dated 31.10.2011 which reads as under:

"This is with reference to your notice u/s 154/155 of the Income Tax Act, 1961 dated 21.10.2011 for the rectification of mistake in charging interest under section 234-B in respect of assessment completed under section 153-A on

31.12.2009 for AY 2006-07. In the said notice, it is mentioned that the interest is to be levied with effect from 1.4.2006 to till the date of assessment completed on 31.12.2009 which works out to 57 months.

The provision of section 234B(3) clearly provides that in case of reassessment under section 153-A, the assessee shall be liable to pay simple interest @ 1% p.m. commencing on the day following the date of determination of total income under sub-section (1) of section 143 and ending on the date of reassessment under section 153-A.

Accordingly, the assessee is liable to pay interest for the period from the date of issue of intimation u/s 143(1) to 31.12.2009. The intimation u/s 143(1) was passed in the month of November 2007. Accordingly interest is to be charged from November 2007 to 31.12.2009 which works out to 26 months which is correctly/charged in the assessment order under section 153-A of Income Tax At, 1961

4. The contention of the assessee did not find any favour with the Assessing Officer who was of the opinion that the assessment for assessment year 2006-07 was made for the first time u/s 153C/153A of the Act on 31.12.2009, therefore, this assessment is the regular

assessment for the purpose of section 234B of the Act and since the interest was not properly charged as per the provisions of the Act, the order was rectified and the Assessing Officer computed the interest u/s 234B of the Act starting from 01.04.2006 and ending on 31.12.2009. The assessee carried the matter before the Id. CIT(A) but without any success.

5. Before us, the Id. counsel for the assessee vehemently stated that a debatable issue cannot be considered u/s 154 of the Act as the Hon'ble Karnataka High Court has decided this issue in favour of the assessee whereas the Hon'ble Punjab and Haryana High Court is in favour of the Revenue. A highly debatable issue cannot be considered for rectification u/s 154 of the Act.

6. Per contra, the Id. DR through his written submissions relied upon various judicial decisions claiming that the payment of interest u/s 234B and 234C of the Act is mandatory in nature.

7. We have carefully considered the orders of the authorities below and the judicial decisions relied upon by both the rival parties. It is

not in dispute that charging of interest u/s 234A, 234B and 234C of the Act is mandatory. But the issue before us is whether the same can be rectified u/s 154 of the Act. In our considered opinion, in the matter where two views are possible, as the Hon'ble Karnataka High Court is in favour of the assessee and the Hon'ble Punjab and Haryana High Court has decided this issue in favour of the Revenue, itself makes the issue highly debatable and in such circumstances, rectification u/s 154 of the Act is not permissible.

8. A similar view was taken by the coordinate Bench in the case of Countrywide Promoters Pvt. Ltd. 5509/DEL/2013. The relevant finding reads as under:

"7. On a careful consideration of the matter, we find that this Tribunal has been consistently taking the view that the chargeability of interest u/s 234B (1.) or 234B (3) in the facts and circumstances of the case is a debatable issue and it cannot be dealt with u/s 154 of the Act as has been held by the Hon'ble' Rajasthan High Court in CIT vs. Raipur Distillery Company Limited (supra). We do not find any reason to deviate from such consistent view and in view of the admission of the issue as substantial question of law in Vijay Kumar Saboo's case (supra), while respectfully following the ratio of Raipur Distillery Company's case (supra), we hold that such a debatable issue cannot be dealt with u/s 154 of the Act by the AO treating it as mistake apparent from the face of

the record. While respectfully following the decisions cited [supra] related by the assessee, we hold that the orders passed u/s 154 of the Act by the Assessing Officer and the order confirming the same by the Id. CIT cannot be sustained. With this view of the matter, we find that the said order have to be quashed. We do so."

9. Respectfully following the judicial precedent, both the appeals of the assessee are allowed.

10. In the result, both the appeals of the assessee are allowed.

The order is pronounced in the open court on 29.06.2018.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 29th June, 2018

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

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Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
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