



ITA No.6226/Mum/2018
Shri Ashwin S. Mehta
Assessment Year: 1993-94

आयकर अपीलीय अधिकरण “ऐ” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.6226/Mum/2018
(निर्धारण वर्ष / Assessment Year: 1993-94)

DCIT-Central Circle-4(1) Central Range-4 R.No.1916, 19 th Floor, Air India Building, Nariman Point, Mumbai-400 021.	बनाम/ Vs.	Shri Ashwin S. Mehta 32, Madhuli, Dr. A.B. Road Worli, Mumbai-400 018.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ABAPM-2121-M		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Dhaval Shah- Ld. AR
Revenue by	:	Dr. P. Daniel - Ld.Spl. Counsel

सुनवाई की तारीख/ Date of Hearing	:	09/11/2020
घोषणा की तारीख / Date of Pronouncement	:	10/11/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as ‘AY’] 1993-94 contest the order of Ld. Commissioner of Income-Tax (Appeals)-52, Mumbai, [in short referred to as ‘CIT(A)’], *Appeal No.CIT(A)-52/IT-59/DCIT-4(1)/17-18* dated 10/08/2018. The effective grounds raised by the revenue read as under: -



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- a. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in law in restricting the meaning of regular assessment without appreciating the fact that assessment order dated 17.12.2007 was passed u/s 143(3) rws 254 of the Act is also regular assessment.
- b. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that interest u/s 234A & 234B is to be computed till the date of original assessment and not till the date of fresh assessment without appreciating that provisions of section 234-A & 234B provides interest computation till the date of regular assessment u/s 143(3) under which the fresh assessment order was passed.
- c. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that interest u/s 220(2) is to be computed from the date of fresh assessment order without appreciating the fact that the issues of addition made in original assessment order and fresh assessment order are same, hence, assessee was in default from the date of original assessment order and no new material evidence has been furnished by assessee in fresh assessment proceedings so as to challenge its default.
- d. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that for interest u/s 220(2) the date of fresh assessment order is to be considered, however, for interest u/s 234A & 234B, the fresh assessment would not be considered as regular assessment, thereby, bringing complete anomaly and arbitrariness in its order.

The Ld. AR for assessee, at the outset, sought dismissal of the revenue's appeal in terms of order of Tribunal in assessee's own case in revenue's appeal for AY 1992-93, ITA No.3118/Mum/2018 order dated 16/07/2019 rendered on similar facts and circumstances. A copy of the order has been placed on record. It has further been submitted that the assessee has accepted the verdict that the rectification application was time barred and did not prefer any further appeal. The Ld. Spl. Counsel for Department, Dr. P.Daniel, relied on the orders of Ld. AO.

2. In the above background, we find that in terms of Sec.154, the assessee sought rectification of assessment order passed u/s 143(3) r.w.s. 254 on 17/12/2007. In this application, the assessee contested wrongful charging of interest u/s 234A & 234B. The assessee contended that the interest should be charged only up-to the date of original



assessment only. The Ld. AO rejected the same on merits and also on the ground that there was no mistake apparent from record and more than 4 years had already lapsed since the passing of the said order u/s 143(3) r.w.s. 254 of the Act. In the rectification order, the Ld. AO further held that without prejudice to his view that the interest u/s 234A & 234B has to be charged up-to the due date as per the fresh assessment order, even if the view of the assessee was to be accepted that this interest should be charged till the due date as per the original assessment order, then interest u/s 220(2) was to be levied from the date of original assessment order. The Ld. AO also held that interest u/s 234C was to be levied in the case of the assessee for deferment of advance tax on the basis of assessed income.

3. Upon further appeal, Ld. CIT(A) held the rectification order to be bad in law in terms of Sec. 154(7) since 4 years had already lapsed since the passing of the order against which rectification was sought by the assessee. Therefore, the grounds, on merits, would become infructuous. Having said so, Ld. CIT(A) proceeded to delve into the merits of the issue also. It was observed that Ld. AO while computing interest u/s 234A & 234B, computed the same only up-to 29/03/1996 i.e. the date of the original assessment which was contradictory to the stand of Ld. AO. Similarly, interest u/s 220(2) was computed from the date of original assessment order which was without prejudice view of AO.

4. Regarding interest u/s 234A & 234B, the Ld. CIT(A), relying upon appellate orders in the case of other family members of the assessee, held that the issue was debatable and therefore, it could not be subject matter of rectification u/s 154. Since Ld. AO had himself charged interest



u/s 234A & 234B up-to the date of original assessment order only, the ground thus raised by the assessee were dismissed as well as held to be infructuous since the order u/s 154 was held to be bad in law.

Regarding interest u/s 234C, the action of Ld. AO in charging the same on the basis of assessed income was upheld. But the grounds raised were held to be infructuous since the order u/s 154 was held to be bad in law.

Regarding charging of interest u/s 220(2), the without prejudice view of Ld. AO was held to be not justified and ground raised by the assessee was allowed on merits. However, the ground was also held to be infructuous since order u/s 154 was held to be bad in law.

Aggrieved, the revenue is in further appeal before us.

5. Upon due consideration, we find that similar was the appeal of revenue for AY 1992-93 which was adjudicated by Tribunal vide its order dated 16/07/2019 as follows: -

5. We have perused the cited order of Tribunal rendered in cross-appeals in assessee's own case for AY 1992-93 passed in the matter of assessment framed u/s 143(3) r.w.s. 254 of the Act. We find that the issue of charging of interest u/s 234A, 234B, 234C & 220(2) has already been delved into by the co-ordinate bench, in para 61.1 of the order. In the said para, the revenue authorities have been directed to follow the order passed in the case of Late Harshad S. Mehta vide para nos. 29 to 30.10 and charged interest accordingly. In para 30.10 of the order, it has been held that interest u/s 220(2) was to be charged from the date of default of fresh demand notice issued after the fresh assessment made in consequent of the orders of the appellate authorities. Similarly, the issue of charging of interest u/s 234A, 234B & 234C has also been dealt with by the coordinate bench, in other paras. Since a view has already been taken by the coordinate bench in the matter, refraining from delving into the issues any further, we direct Ld. AO to follow the cited order of the Tribunal.

We also find that issue of charging of interest u/s 234A, 234B, 234C & 220(2) has already been dealt with by the co-ordinate bench of the Tribunal in assessee's own case vide para nos. 70 & 70.1 of ITA



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No.6120/Mum/2017 common order dated 14/01/2019 and finally held as under: -

70.1 We have already adjudicated the issues of charging interest u/s.234A, 234B, 234C & 220(2) of the Act vide this order in the case of Late Harshad S. Mehta vide paras nos. 29 to 30.10 and in the case of Jyoti Mehta vide Para No.46.1 and in assessee's own case for AY 1992-93 vide para No.61.1 above. Here, also we direct the AO to follow the order in the case of Harshad S. Mehta above and charge interest accordingly. These grounds are decided accordingly."

Accordingly, it would be suffice on our part to direct Ld. AO to follow the aforesaid directions of the Tribunal while computing the interest.

6. In the result, the appeal stands dismissed.

Order pronounced in the open court on 10th November, 2020.

Sd/-

(Amarjit Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 10/11/2020
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**