

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri Chandra Poojari, AM & Smt.Beena Pillai, JM

ITA No.728/Bang/2021 : Asst.Year 2012-2013
ITA No.729/Bang/2021 : Asst.Year 2013-2014
ITA No.730/Bang/2021 : Asst.Year 2014-2015
ITA No.731/Bang/2021 : Asst.Year 2015-2016
ITA No.732/Bang/2021 : Asst.Year 2016-2017
ITA No.733/Bang/2021 : Asst.Year 2017-2018
ITA No.734/Bang/2021 : Asst.Year 2018-2019

M/s.National Education Foundation, Global Academy of Technology, No.152, Ideal Homes Township, Rajarajeshwarinagar Bangalore – 560 098. PAN : AAATN2782J.	v.	The Deputy Commissioner of Income-tax, Central Circle 1(4) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.V.Chandrashekhar, Advocate
Respondent by : Dr.Manjunath Karkihalli, CIT-DR

Date of Hearing : 08.02.2022	Date of Pronouncement : 08.02.2022
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ORDER

Per Bench :

These appeals by the assessee are directed against various orders of the CIT(A), all dated 27.10.2021, for the assessment years 2012-2013 to 2018-2019. Since common issues are raised in these appeals, they were heard together and are being disposed of by this consolidated order for the sake of convenience.

2. For all these assessment years, the assessment orders were passed u/s 153C r.w.s. 143(3) r.w.s. 153D of the Income-tax Act, 1961 by the Deputy Commissioner of Income-tax, Central Circle 1(4), Bengaluru. Later on, it was noticed by

the A.O. that while passing the assessment orders, interest u/s 234A, 234B and 234D of the Act had not been charged and credit for the prepaid taxes had not been given. Accordingly, notices u/s 154 of the Act were issued by the A.O. for all these assessment years and subsequently order u/s 154 of the Act was passed by the A.O. Against which the assessee went in appeal before the CIT(A). The CIT(A) confirmed the orders of the A.O. *ex parte* as there was no compliance by the assessee to make representation before him though notice was served to the assessee on 30.09.2021 fixing the case for hearing on 08.10.2021. Second notice was also served to the assessee on 11.10.2021 by online fixing the case on 18.10.2021. However, there was no response from the assessee. Accordingly, the CIT(A) confirmed the orders of the A.O. *ex parte*. Against which the assessee is in appeal before the Tribunal for all these assessment years, raising following identical grounds:-

“1. The order of the learned Commissioner of Income-tax [Appeals]-11, Bengaluru, passed under Section 250 of the Act dated 27/10/2021, in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.

2. The Appellant denies itself liable to be taxed over and above the income returned by the appellant of Rs. NIL, on the facts and circumstances of the case.

3. The learned Commissioner of Income-tax [Appeals], is not justified in passing the appellate order, which is in haste and not affording sufficient and reasonable opportunity to the appellant, which is in grave violation of principles of natural justice and hence the order passed by the learned Commissioner of Income Tax (Appeals) required to be set aside as bad in law, on the facts and circumstances of the case.

4. The learned Commissioner of Income-tax [Appeals] failed to appreciate that the order of rectification passed by

the learned assessing officer under section 154 of the Act is bad in law in as much as the issue of levying interest under section 234 A & 234 B & 234 C of the Act, required a long drawn process of verification and consequently the learned Assessing Officer did not have any jurisdiction or power to review the assessment order under the facts and circumstances of the case.

5. *The learned Commissioner of Income-tax [Appeals], failed to appreciate the fact that the various parameters arising out of the record, cannot come within the purview of section 154 of the Act and further the said issue is a debatable issue. Reliance is placed on the decision of the Hon'ble Apex Court in T.S. Balaram, ITO Vs Volkart Bros & Others reported in 82 ITR 50, under the facts and circumstances of the case.*

6. *The learned Commissioner of Income-tax [Appeals] failed to appreciate that when the order of assessment passed under section 153C r.w.s. 143[3] r.w.s. 153D of the Act itself is challenged wherein the levy of interest is also challenged in the appeal preferred by the appellant, then the question of invoking the provisions of section 154 of the Act on the issue which is already a subject matter of appeal is impermissible and consequently the order of rectification passed by the learned assessing officer under section 154 of the Act requires to be cancelled, on the facts and circumstances of the case.*

7. *Without prejudice to the main grounds of appeal, the learned Commissioner of Income-tax [Appeals] ought not to have passed the appellate order for the impugned assessment year 2012-13 without adjudicating or passing the appellate order as regard to the appeal preferred by the appellant against the order of assessment passed under section 153C r.w.s. 143[3] r.w.s. 153D of the Act, which is still pending and the outcome of the appeal, will have a bearing on the present appeal preferred by the appellant, which is in grave violation, on the facts and circumstances of the case.*

8. *Without prejudice the learned Commissioner of Income-tax [Appeals] failed to appreciate that the appellant has the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies itself liable to be charged to interest under section 234 A, 234 B & 234 C of the Income Tax Act on the facts and circumstances of the case.*

9. *The learned Commissioner of Income-tax [Appeals] failed to appreciate that the levy of interest under section 234 A, 234 B & 234 C of the Act are also bad in law as the period,*

rate, quantum and method of calculation adopted by the learned assessing officer on which interest is levied are not discernible and are wrong on the facts of the case.

10. The Appellant craves leave to add, alter, substitute and delete any or all of the grounds of appeal urged above.

11. For the above and other grounds to be urged during the hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.”

3. At the time of hearing before us, the learned AR made a primary objection that the order was passed *ex parte* by the CIT(A) in all these assessment years, which was during the period of second wave of Covid Pandemic, and due to which the assessee could not represent its case. The learned AR, therefore, prayed that the issue may be remitted to the files of the CIT(A) by affording one more opportunity to represent its case.

4. The learned Departmental Representative did not have any serious objection for remitting the issue to the files of the CIT(A) for adjudication afresh.

5. We have heard rival submissions and perused the material on record. It is an admitted fact that the assessee was served with notice twice. However, the assessee could not represent its case due the second wave of Covid Pandemic. In our opinion, there was reasonable cause for non compliance of the notices issued by the CIT(A). Therefore, in the interest of justice and equity, one more opportunity should be granted to the assessee. Hence, we direct the CIT(A) to afford one more opportunity of hearing to the assessee to

represent its case and thereafter take a decision in accordance with law.

6. Since we have decided the legal issue, we refrain from going into the merits of other grounds of appeal raised by the assessee. It is ordered accordingly.

7. In the result, the appeals filed by the assessee are partly allowed.

Order pronounced on this 08th day of February, 2022.

Sd/-
(Beena Pillai)
JUDICIAL MEMBER

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Bangalore; Dated : 08th February, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-11, Bengaluru.
4. The Pr.CIT (Central) Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore