

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT
AND SMT.SUCHITRA R. KAMBLE, JUDICIAL MEMBER

ITA No. 894/Ahd/2019
Assessment Year : 2008-09

Shri Balkrishna P. Trivedi HUF By Karta Riddhish B. Trivedi, 10 SBI Society, Ambawadi, Ahmedabad-380015 PAN : AAAHT 1746 C	Vs	Assistant Commissioner of Income-tax, Circle 5(2), Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Hardik Vora, AR
Revenue by :		Smt. M.M. Garg, Sr DR

सुनवाई की तारीख/Date of Hearing : 29/06/2022
घोषणा की तारीख /Date of Pronouncement: 13/07/2022

आदेश/O R D E R

PER P.M. JAGTAP, VICE-PRESIDENT :

This appeal filed by the assessee is directed against the order of the learned Commissioner of Income-tax (Appeals)-5, Ahmedabad ("CIT(A)" in short) dated 20.03.2019 and the solitary issue involved therein relating to charging of interest under Section 234B of the Income-tax Act, 1961 ("the Act" in short) is raised by way of the following grounds:-

- 1.1. *The Hon'ble CIT(A) has erred in confirming interest of Rs.24,39,103/- charged u/s 234B of the Act as against interest of Rs.9,84,716/- chargeable as per the provisions as per Section 234B of the Act.*
- 1.2. *The appellant respectfully submit that as per provisions of Section 234B(4) of the Act, in the case when order is passed u/s 263 of the Act, interest has to be charged upto the date of original assessment order. Therefore in the appellant case interest u/s 234B of the Act should be charged from 01.04.2008 to 30.09.2010 only. The Assessing Officer has charged the same from 01.04.2008 to 24.03.2014.*
- 1.3. *The appellant therefore submits that interest u/s 234B of the Act be charged at Rs.9,84,716/-.*

2. We have heard the arguments of both the sides and also perused the relevant material available on record. As agreed by learned representatives of both the sides, the solitary issue involved in this appeal of the assessee relating to the period for which the interest under Section 234B of the Act is chargeable is squarely covered in favour of the assessee by the decision of Co-ordinate Bench of this Tribunal rendered in the case of ACIT vs. Sallauddin M. Kadri, reported in [2011] 11 taxmann.com 459 (Ahd Trib.) wherein a similar issue was decided by the Tribunal vide paragraph Nos. 9 and 10 as under :-

"9. After hearing both the parties and perusing the record, we find that the section 234B reads as under :-

"234B(1) -Subject to the other provisions of this section, where, in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of section 210 is less than ninety per cent of the assessed tax, the assessee shall be liable to pay simple interest at the rate of 2 per cent for every month or part of a month comprised in the period from the 1st day of April next following such financial year to the date of determination of total income under sub-section (1) of section 143 and where a regular assessment is made to the date of such regular assessment on an amount equal to the assessed tax or as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax."

It is clear from the above that interest u/s. 234B is leviable for the period from the 1st day of April next following such financial year to the date of determination of income u/s. 143(1) and where a regular assessment is made u/s. 143(3) till the date of such regular assessment order.

10. Now coming to the provisions of sub-section (4) of section 234B on which reliance has been placed by the Revenue reads as under :-

"(4) Where, as a result of an order u/s. 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-

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section (1) or sub-section (3) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and –

- (i) in a case where the interest is increased, the AO shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly;
- (ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded."

It is clear from the above that sub-section (4) of section 234B only says that interest payable u/s. 234B(1) shall be increased or reduced but it has not specified the period for which it will be levied, since the period already stands specified in section 234B (1) reproduced earlier. It is further noted that assessee's case falls u/s. 234B(1) and not u/s. 234(B)(3) as there is regular assessment u/s. 143(3) and no re-assessment and re-computation u/s. 147 or 153(A) or the Act. Hence the period of charging interest u/s. 234B would be as specified under section 234B(1) i.e. 1st day of April next following financial year to the date of the regular assessment order passed u/s. 143(3). On the identical facts there is a direct decision of the Tribunal, Delhi Bench in the case of Freightship Consultants (P.) Ltd. (supra) wherein relying on the case laws in the case of Modi Industries Ltd. v. CIT [1995] 216 ITR 759/82 Taxman 377 (SC) and CIT v. Anjum M.H. Ghaswala [2001] 252 ITR 1/119 Taxman 352 (SC) following was held :–

"It is mandatory for the AO to charge interest under s.234B of the Act and after the decision of ITAT, he is duty bound to increase or reduce the same as per the order of the Tribunal which he has charged while passing the assessment order and upto the date of the assessment order and not up to the date of the order passed by him in consequence of the order passed by the Tribunal."

The case laws relied on by the ld. DR are distinguishable on facts. In the case of- Akbar Travels of India (P.) Ltd. (supra) (ii) Sahitya Mudranalaya (supra) and (iii) Hindustan Bulk Carriers (supra) relied on by him the issue before the courts was chargeability and computation of interest u/s. 234 consequent upon settlement of case by the Settlement Commission.

In the case -the South Indian Bank Ltd. (supra), the issue before the court was charging of interest u/s. 234B(3) of the Act.

In view of the above, the ld. CIT (A) was quite justified in holding that in this case interest u/s. 234B should be charged for the periods 1.4.1997 to 31.3.2000 i.e the date of the regular assessment u/s. 143(3) and therefore the order passed by him is hereby upheld."

3. Respectfully following the decision of the Co-ordinate Bench of this Tribunal in the case of Sallauddin M. Kadri (supra), we set aside the impugned order passed by the learned CIT(A) and direct the Assessing Officer to charge interest under Section 234B of the Act for the period from 01.04.2008 to 30.09.2010 when the regular assessment under Section 143(3) of the Act was completed by the Assessing Officer.

4. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 13th July, 2022 at Ahmedabad.

Sd/-

Sd/-

(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

(P.M. JAGTAP)
VICE-PRESIDENT

Ahmedabad, Dated 13/07/2022

SR

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 प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

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आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad