IN THE INCOME TAX APPELLATE TRIBUNAL

JODHPUR BENCH, JODHPUR

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

AND

SHRI MANISH BORAD, ACCOUNTANT MEMBER

40/Jodh/2019
(ASSESSMENT YEAR- 2014-15)

Shri Lalit Johri 65-A, Bank Colony, Rai Ka Bagh, Jodhpur	Vs	The ACIT Central Circle-2 Jodhpur
(Appellant)		**(Respondent)**
PAN NO. AGFPJ 5542 H		

Assessee By	Shri Rajindra Jain, CA
Revenue By	Shri S.M. Joshi, JCIT-DR
Date of hearing	20/03/2023
Date of Pronouncement	22 /03/2023

ORDER

PER: SHRI MANISH BORAD, AM

This is an appeal filed by the assessee against the order of the ld. CIT(A)-2, Udaipur dated 26-12-2018 for the assessment year 2014-15 raising therein following grounds of appeal.

> ''1. That the appellate order dated 26-12-2018 passed by the ld. CIT(A), confirming order dated 31-10-2017 passed u/s 154 by the ACIT, Central Circle-2, Jodhpur is bade in law and on facts.
>
> 2. That the ld. CIT(A) in the facts and circumstances of the case erred in confirming the action of the AO for charging interest of Rs.7,83,201/- u/s 234A vide order dated 31-10-2017 passed u/s 154 although the return in response to notice u/s 153A was filed in said notice period.

2.1 Brief facts of the case are that the assessee was required to file an appeal u/s 139(1) of the Act for the assessment year 2014-15 on or before 30-09-2014. A search was conducted on Notice 8-05-2014. Notice u/s 153A of the Act was issued on 13-02-2015 requiring the assessee to file ROI for the assessment year 2009-10 to 2014-15 within 30 days of receipt of the notice u/s 153A. The assessee filed return of u/s 153A for the A.Y. 2014-15 under consideration on 12-03-2015 with the time period allowed by notice u/s 153A. Accordingly, assessment u/s 153A r.w.s. 143(3) of the Act was finalized on 23-12-2016 at a total income of Rs.3,84,500/-. During the course of assessment proceedings, the AO noted that interest u/s 234A had been undercharged and thereafter notice u/s 154 was issued to the assessee on 25-10-2017. None appeared in response to the notice u/s

154. Order u/s 154 of the Act was passed on 31-102017 wherein interest u/s 234A was levied for the period 3-09-2014 till 12-03-2015.

2.2 In first appeal, the ld. CIT(A) confirmed the levy of interest of Rs.7,83,201/- u/s. 234A of the Act by observing as under:-

> ‘’6. I have considered the submissions of the assessee, the relevant position of law and material on record.
>
> 6.1 Essentially, the claim of the assessee is that in the facts of this case, charge of interest u/s 234A would commence from the expiry of the period allowed in the notice u/s 153A and from the due date u/s 139(1).
>
> 6.2 The statute is unambiguous on the above issue. The facts in which charge of interest u/s 234A would commence from the expiry of the period allowed in the notice u/s 153A(and not from the due date u/s 139(1), are expressly spell out in sub section (3) of Section 234A. The said sub-section reads as under:-
>
> 3) Where the return of income for any assessment year, required by a notice u/s 148 or Section 153A issued after the determination of income under sub-section (1) of Section 143 or after the completion of an assessment under sub-section (3) of Section 143 or Section 144 or Section 147, is furnished after the expiry of the time allowed under such notice, or is not furnished, the assessee shall be liable to pay simple interest at the rate of one per cent for every month comprised in the period

commencing on the day immediately following the expiry of the time allowed as aforesaid, and –

(a) where the return is furnished after the expiry of the time aforesaid, ending on te date of furnishing the return, or

(b) where no return has been furnished, ending on the date of completion of the reassessment or recomputation under section 147 [for reassessment under section 153A]

On the amount by which the tax on the total income determined on the basis of such reassessment or recomputation exceeds the tax on the on the total income determined [under sub-section (1) of section 143 or] on the basis of the earlier assessment aforesaid.

6.3 On a reading of the above sub section (3) of Section 234A, it is clear that the charge of interest u/s 234A would commence from the due date for filing of return as specified in the notice u/s 153A in cases where the notice u/s 153A is issued after the determination of income under sub-section () of Section 143 or after the completion of an assessment under sub-section (3) of section 143 or section 144 or section 147.

6.4 Since in the instant case, notice u/s 153A for the A.Y. 2014-15, under consideration, has ben issue prior to passing of any intimation/ order u/s 143(1)/ 143(3)/144/147, the provisions of sub section (3) Section 234A do not apply8. The provisions of sub section 1 section 234A, would be applicable and charge of interest u/s 234A would commence from the due date u/s 139(1). Accordingly, the levy of interest of Rs,7,83,201/- u/s 234A is hereby confirmed.''

2.3 During the course of hearing, the ld. AR of the assessee prayed that in the assesse's case a search u/s 132 of the Act was conducted on 8-05-2014 and thereafter the assessment was completed us 153A r/w section 143(3) of the I.T. Act, 1961. After carrying out the search, the ACIT, Central Circle-2, Jodhpur assuming jurisdiction issued notices u/s 153A(1)(a) of the Act on 13-02-2015 for six assessment years including the assessment year 2014-15 giving a period of 30 days after service of the notice to file the return of income ad accordingly, the return of income for the A.Y. 2014-15 was filed on 12-03-2015. The ld. AR further submitted that it is an admitted fact that the return u/s 153A was submitted well within the notice period and there was no delay in filing the said return. Thus the grounds raised by the assessee is to be allowed.

2.4 On the other hand, the ld.DR supported the order of the AO.

2.5 We have heard both the parties and perused the materials available on record. In this case, it is noted that the search was conducted on 08-05-2014 in the case of the assessee during the assessment year 2014-15. The due date of filing of filing the return of

income u/s 139(1) of the Act did not expire. The moment search was conducted, the provisions of Section 153A of the Act comes into action. Section 153A of the Act is reproduced as under:-

> ''Section 153A (1) Notwithstanding anything contained in section 139, section 147, section 148, section 1549, section 151 and section 153 in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall –
>
> (a) Issue notice to such person requiring him to furnish within such period as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years [and for the relevant assessment year or years] referred to in clause (b) in the prescribed for and verified n the prescribed manner and setting forth such other particulars as may be prescribed and provision of this Act shall so far as may be, apply accordingly as if such return were a return required to be furnished under section 139
>
> (b) Assess or reassess the total income of six assessment years immediately8 preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made [and for the relevant assessment year or years.''

From going through the above provisions, we observe that sub-section (1) of Section 153A starts with the word ''Notwithstanding anything contained in Section 139..... and thus since search has been conducted and section 153A of the Act comes into operation, the provisions of other sections referred in 153A (1) i.e section 139 and others as mentioned above loses its operation. Notice u/s 153A of the Act was issued on 13-02-2015 requiring the assessee to file ROI for

the A.Y. 2009-10 to 2015-15 within 30 days of receipt of te notice The assessee filed the return of income u/s 153A for the A.Y. 2014-15 on 12-03-2015 i.e. with the time allowed by notice u/s 153A of the Act. It may be worthwhile to mention that the limitation for default in filing of the return u/s 153A would start from the expiry of the time allowed by the AO in the notice u/s 153A and the assessee filed the return within the time allowed by notice u/s 153A of the Act and, therefore, there is no delay in filing the return of income by the assessee as provided u/s 153A of the Act. No interest is levibale u/s 234A of the Act. We, therefore, set aside the findings of the ld. CIT(A) findings of the ld. CIT(A) allow the grounds raised by the assessee.

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

Order pronounced in the open Court on 22/03/2023.

Sd/-	Sd/-
(KUL BHARAT) JUDICIAL MEMBER	(MANISH BORAD) ACCOUNTANT MEMBER

Dated : 22/03/2023

*Mishra

Copy to:

1. The Appellant
2. The Respondent
3. The CIT

5. The DR
6. Guard File

Assistant Registrar

Jodhpur Bench

Section 153A (1) Notwithstanding anything contained in section 139, section 147, section 148, section 1549, section 151 and section 153 in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall –

(a) Issue notice to such person requiring him to furnish within such period as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years [and for the relevant assessment year or years] referred to in clause (b) in the prescribed for and verified n the prescribed manner and setting forth such other particulars as may be prescribed and provision of this Act shall so far as may be, apply accordingly as if such return were a return required to be furnished under section 139

(b) Assess or reassess the total income of six assessment years immediately8 preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made [and for the relevant assessment year or years

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year failing within such six assessment years [and or the relevant assessment year or years]