

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 263/Mum/2023 (A.Y.2021-22)

M/s. Almonard Private Ltd.

305, 3rd Floor,

Kakad Chambers, Worli

Mumbai-400 018

PAN: AABCA0188R

..... Appellant

Vs.

DCIT, Circle-(6) (1) (1),

Aayakar Bhavan,

Mumbai-400 020

..... Respondent

Appellant by : Shri Mayur A. Shah
Respondent by : Shri Manoj Kumar Sinha, Sr. AR

Date of hearing : 05/04/2023
Date of pronouncement : 15/05/2023

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short 'NFAC') dated 02.01.2023 u/s. 250 of the

Income Tax Act, 1961 (for short 'the Act') for A.Y. 2021-22. The assessee has raised the following grounds of appeal:

"1. The Hon CIT (A) erred in holding that no appeal lies against the order u/s. 154 r.w.s. 143(1) of the Act challenging the mistakes in computing interest u/s. 234A / 234B of the Act. It is prayed that the challenge to the mistake in computing the interest u/s. 234A/ 234B of the Act be held to be appealable.

2) The Hon CIT(A) erred in holding that no appeal lies against the order u/s. 154 r.w.s. 143(1) of the Act challenging the liability to pay interest u/s. 234A of the Act. It is prayed that the challenge to the chargeability of interest u/s. 234A of the Act be held to be appealable.

3) The Hon CIT (A) erred in holding that the AO CPC is justified in charging interest u/s.234A of the Act at Rs. 4, 76, 160/- whereas no interest is chargeable. It is prayed that the interest charged u/s. 234A of the Act at Rs. 4, 76,160/- be directed to be deleted.

4) Notwithstanding the fact that interest u/s. 234A is not leviable in case the Hon Bench of the ITAT were to hold that the interest u/s. 234A is chargeable considering the facts of the case the CIT(A) erred in holding that the AO CPC was justified in charging interest u/s. 234A at Rs. 4,76 160/- as against interest computed in the income tax return at Rs. 1,13,502/- It is prayed that the interest levied in excess at Rs. 3,62, 658/- be directed to be deleted.

5) The Hon CIT(A) erred in holding that the AO CPC was justified in charging interest u/s. 234B at Rs. 1,5 99,888/- as against interest computed in the income tax return at Rs. 14,63,259/- It is prayed that the interest levied in excess at Rs. 1,36,629/- be directed to be deleted.

6) The appellant craves leave to amend, alter or modify any of the above grounds of appeal or to add fresh grounds of appeal, if found necessary."

1. Brief facts of the case are that Assessee Company filed its return of income for A.Y. 2021-22 on 19.02.2022. The due date of filing of income tax return has been extended to 15-03-2022 by virtue of board circular no. 01/2022, dated 11-01-2022. Return of the assessee

was processed u/s. 143(1) of the act vide intimation issued dated 26.10.2022 and amount of refund as claimed by the assessee amounting to Rs 17,28,670/- was reduced to Rs 12,29,380/-. This amount of difference arisen because of liability of interest as calculated by assessee vis-à-vis CPC Bengaluru. Assessee calculated interest u/s. 234A amounting to Rs 1, 13,502/- and Rs 14, 63,259/- u/s. 234B, whereas CPC calculated the same at Rs 4, 76,160/- and Rs 15, 99,888/- u/s. 234A and 234B respectively. Against this intimation assessee filed an application u/s. 154 of the act before the CPC Bengaluru. CPC Bengaluru vide its order u/s. 154 calculated the same figures vide its order dated 10-11-2022. Assessee being aggrieved filed an appeal before the Ld.CIT (A) in his order Ld.CIT (A) also confirmed the position taken by CPC Bengaluru u/s. 143(1).

2. Assessee being further aggrieved approached us through this appeal. We have gone through the original intimation issued u/s. 143(1), order passed u/s. 154, order of Ld.CIT (A) passed u/s. 250 and submissions of the assessee along with case laws relied upon. We observe that other than the issue of interest there is no grievance between the assessee and revenue. We have gone through the circulars of CBDT extending due date of filing the return u/s. 139(1) also. In this regard CBDT issued three circulars i.e. circular no. 9 /2021 circular no. 17/2021 and circular no.1/2022 vides dated 20.05.2021, 09-09-2021 and 11-01-2022 respectively. In all the circulars it is specifically mentioned through clarification 1 that extension of the dates shall not apply to explanation 1 to sec. 234A of the act in cases where the amount of tax on the total income as reduced by the amounts as specified in clauses i to vi of sub sec. 1 of sec. 234A, exceeds 1 Lakh rupees.

3. Assessee raised total 6 grounds out of that ground no. 6 never pressed. Ground no.1 and 2 are overlapping will be disposed off with a common finding. Ground no. 3, 4 and 5 are substantive ground relating to grievance of the assessee and will be disposed accordingly.

4. Ground no.1 and 2 pertains to the finding of Ld.CIT (A) that no appeal lies against the order u/s. 154 r.w.s 143(1) of the act challenging the mistakes in computing interest u/s. 234A and 234B of the act. In this regard we have gone through the provisions of sec. 246A and the same is reproduced herein below:

“246A. (1) any assessee [or any deductor] [or any collector] aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against—

- (a) *an order [passed by a Joint Commissioner under clause (ii) of sub-section (3) of section 115VP or an order] against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or sub-section (1B) of [section 143 or [sub-section (1) of section 200A or sub-section (1) of section 206CB, where the assessee or the deductor or the collector] objects] to the making of adjustments, or any order of assessment under sub-section (3) of section 143 or [except an order passed in pursuance of directions of the Dispute Resolution Panel [***] [or an order referred to in sub-section (12) of section 144BA]]] or section 144, to the income assessed, or to the amount of*

tax determined, or to the amount of loss computed, or to the status under which he is assessed;

*(b) an order made under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections 7[***] 8[except an order referred to in sub-section (12) of section 144BA];*

5. The relevant provisions as contained in section 246A (1) (a) and (c) reproduced (supra). Clearly defines the rights of the assessee to appeal before the Ld.CIT (A) u/s. 246(A). As per section 246(A) (1)(a) assessee can directly approach the office of Ld.CIT (A) against any intimation u/s. 143(1) where he is aggrieved with the adjustments made by concerned authorities. The Ld.CIT (A) in this case instead of going into hyper technical interpretation of sec. 246A, should appreciate the efforts and intents of the assessee where he proceeded u/s. 154 to resolve the issue at very first point instead of bothering the appellate system which is already burdened with work load. Notwithstanding the provisions of clause(a) even clause(c) also make assessee entitled to file an appeal against an order made u/s. 154 where an order refusing to allow the claim made by the assessee.

6. The order of Ld.CIT (A) was indulged into the unnecessary technicalities on such a small issue and rather the substantive issue was not addressed at all. In the whole order of 27 pages, we appreciate the efforts and legal acumen of the Ld.CIT (A) but despite of all the efforts and enrichment of our knowledge there is no

substantive disposal of appeal. Based on the provisions of sec. 246A as enumerated above we find force in the contentions of the assessee that in the present case, order passed u/s. 154 was duly entitled to be appealed before the Ld.CIT(A) as appealable order. **In the result of the above discussion and observation Ground no. 1 and 2 raised by the assessee are allowed for statistical purposes.**

7. Ground no. 3 and 4 pertains to charging of interest u/s. 234A. We have gone through the intimation passed u/s. 143(1), circulars of CBDT as mentioned (supra) and chart of payments made by assessee in the form of TDS, advance tax and self-assessment tax. In this regard it is observed that the original due date as per sec 139(1) was 31st October 2021 which was further extended through the board circulars till 15-03-2022. In these board circulars the due date of filing of return for the purposes of section 139(1) was extended as mentioned (supra) but the same extension is not applicable to the liability of the assessee as defined in explanation 1 to sec. 234A of the act. It is observed that assessee filed return on 19-02-2022 which is well within the due date for filing of return u/s. 139(1) r.w.circulars mentioned above. It is further observed that amount of Rs 55 lakhs, 50 lakhs and 32, 95,071/- were paid on 22-11-2021, 08-12-2021 and 31-12-2021 respectively. All the due payments were made within December but after original due date i.e. 31-10-2021. To apply sec. 234A twin conditions has to be fulfilled no. 1 delay in filing the return, which is not there in this case and there must be amount outstanding as per the original due date i.e. 31-10-2021. Observing these facts, we direct the jurisdictional AO to recalculate the amount of interest u/s. 234 A considering the payments made till 31-10-2021 and balance amount to be reduced as and when assessee made payments as mentioned (supra) after giving assessee a proper opportunity to substantiate his matter with appropriate evidences

and calculations. **In the result ground no. 3 and 4 of the assessee are allowed for statistical purposes.**

8. Ground no. 5 pertains to charging of interest u/s. 234B. As the facts and figures remain the same on this issue also we set aside the matter back to the file of jurisdictional AO and directed to be calculated after giving the proper opportunity to the assessee considering his evidence of payment and calculation of interest.

9. In the result appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 15th day of May, 2023.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 15/05/2023

Mahesh R. Sonavane

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy. /Asstt. Registrar)
ITAT, Mumbai