

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No. 423/M/2023
Assessment Year: 2021-22**

Colin Mario Rebello, 501-502, Building-1, Joanna Co-operative Society Ltd, Manuel Gonsalves Road, Bandra West, Mumbai-400050	Vs.	ITO, Ward-23(1)(1), Mumbai
(Appellant)		(Respondent)
PAN: AAAR5626F		

Present for:

Assessee by : Ms. Ritu Punjabi, Adv
Revenue by : Mr. Ram Prakash Rastogi, Sr. DR

Date of Hearing : 15.05.2023

Date of Pronouncement : 19.05.2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Colin Mario Rebello (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 20.12.2022 passed by National Faceless Appeal Centre, Delhi, (hereinafter referred to as CIT(A)] qua the assessment year 2021-22 on the grounds inter-alia that :-

"1. The learned Assessing Officer erred in charging interest of Rs. 1,15,930 under section 234A for the period September 2021 to December 2021 without giving credit for the taxes paid in August 2021.

2. The learned Assessing Officer erred in charging excess interest of Rs. 1,15,930 under section 234A without

complying with the directions of the Hon. Supreme court in the case of CIT V. Prannoy Roy 309 ITR 231 (2009).

3. The learned Assessing Officer erred in charging excess interest under section 234A without fully appreciating the facts of the case and considering that the taxes have been paid so no compensatory interest can be charged under section 234A for the subsequent period. It is submitted that the constitutional validity of section 234A has been upheld only on the ground of it being compensatory to compensate the government for delayed receipt of taxes. Any charge of compensatory interest for the period when taxes are already paid would be unfair, against the spirit of the law, and amount to unjust enrichment by the government.

4. The learned Assessing Officer erred in charging excess interest of Rs. 1,15,930 under section 234A without giving me an opportunity of being heard which is a mandatory requirement as per settled law for any non compensatory interest to be charged.

5. I am a senior citizen and in view of the Covid 19 pandemic situation, I pray that any delay in filing of the appeal may kindly be condoned particularly in view of the general extension by the Hon. Supreme Court up to 31.03.2022.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are: the assessee being a salaried employee in a public sector undertaking, filed his return of income declaring total income of Rs. 1,10,40,120/- on 03.12.2021, which was processed by the CPC u/s 143(1) of the Income Tax Act, 1961 (for short ‘the Act’) by charging interest u/s 234A of the Act to the tune of Rs. 1,15,930/- for the period 01.08.2021 to 03.12.2021 for the delay in furnishing the return of income.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has dismissed the same. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly, the assessee has paid self assessment tax of Rs. 2900,000/- on its total income paid in the month of August 2021 along with interest computed at Rs. 29426/-. It is also not in dispute that the assessee has filed return of income for AY 2021-22 on the extended date in the month of December 2021.

6. The Id CIT(A) has also declined to agree with the contention of the assessee that when tax has been paid within the prescribed period interest u/s 234A is not chargeable on the ground that the self assessment tax was paid by the assessee in the month of August 2021 and not before 31st July 2021 and furthermore, tax liability of the assessee exceeds Rs. 1 lakhs after TDS and advance tax if any to be paid.

7. We are of the considered view that this issue is no more res integra having already been decided by the Hon'ble Supreme Court in case of CIT Vs. Pranoy Roay 309 ITR 231 (2009)

8. The CBDT has also issued a Circular No. 2/2015 dated 10.02.2015 clarifying that *“no interest u/s 234A of the Act is chargeable on the amount of self assessment tax paid by the assessee before the due date of filing of return of income.”*

9. Hon'ble Delhi High Court in case of CIT Vs. Anand Prakash 179 Taxmann 44 also dealt with the identical issue in the light of the decision rendered by Hon'ble Supreme Court in case of Dr. Pronoy Roy by returning findings as under:-

"11. We have examined the decisions cited by the counsel on both sides and after considering the submission made by them, we agree with the learned counsel for the revenue that the levy under section 234B of the said Act is compensatory in nature and is not in the nature of penalty. We may also note the decision of the Bombay High Court in the case of CIT v. Kotak Mahendra Finance Ltd. [2004] 265 ITR 119. wherein the Bombay High Court observed that it was well-settled that interest under section 234B was compensatory in character and that it was not penal in nature. Another decision which would be relevant is of a Division Bench of this Court in the case of Dr. Prannoy Roy v. CIT [2002] 254 ITR 755. In that case, the provisions of section 234A were in issue. The question before the court was whether interest could be charged under section 234A when, though the return had not been filed in time, the tax had been paid. The argument raised on behalf of the revenue that the payment of tax did not strictly comply with the meaning of advance tax and would therefore, have to be disregarded for the purpose of charging interest under section 234A, was rejected. The Court also held that interest under section 234A was compensatory in nature and unless any loss was caused to the revenue, the same could not be charged from the assessee."

10. Moreover it is settled principle of law that interest u/s 234A is a compensation to the revenue for deprivation of the amount of tax due, for the period it is not paid. In the instant case when the assessee has paid self assessment tax along with interest due well before the date of filing the return of income but interest paid beyond the date of depositing the self assessment tax in the month of August 2021. The Id CIT(A) has declined to give relief on the ground that self assessment tax was paid in August 2021, though filed its return in December 2021 (as per extended date for filing the return upto to 31 December 2021) further interest u/s 234A is not allowable upto the date of self assessment tax paid by the assessee.

10. In view of what has been discussed above, we are of the considered view that interest u/s 234A is liable to paid till the date of self assessment tax, which is already paid by the assessee along with interest and not beyond the said date. So in view of the matter, order passed by the Id CIT(A) is hereby set aside and the AO is directed to delete the interest charged by him.

11. Resultantly, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 19.05.2023.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 19.05.2023.

* Ajay Kumar Keot, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.