

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA Nos. 2388 to 2390/Mum/2022
(Assessment Years: 1991-92 to 1993-94)

Bhupendra C. Dalal 42, Chitrakoot, Altamount Road, Mumbai-400 026	Vs.	The Asst. Comm. Of Income Tax, Central Circle-4(4), 1922, 19 th Floor, Air India Building, Nariman Point, Mumbai-400 021
(Appellant)		(Respondent)
PAN No. AABPD3308H		

Assessee by	:	Shri Vipul Joshi, Adv. Shri Bhupendra C. Dalal, Ms. Simoni Chouhan, Adv.
Revenue by	:	Dr. P. Daniel (Spl. Counsel)

Date of hearing:	13.07.2023
Date of pronouncement :	18/07/2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No. 2388/Mum/2022 is filed by Mr. Bhupendra C. Dalal (assessee / appellant) for A.Y. 1991-92 against the appellate order passed by the Commissioner of Income-tax (Appeals)-52, Mumbai for A.Y. 1991-92 on 26th July, 2022. By this consolidated appellate order, the appeal filed by the assessee for A.Ys. 1991-92, 1992-93 and 1993-94 filed against the assessment order passed under Section 143(3) read with section 254 of the Income-tax Act, 1961 (the Act) all dated 20th November, 2017, were dismissed for statistical purposes. ITA No.



2389/Mum/2022 and ITA No. 2390/Mum/2022 are respectively filed for A.Y. 1992-93 and 1993-94.

02. Assessee has raised identical grounds of appeal in all these three appeals. Thus, the ground raised in ITA No.2388/Mum/2022 for A.Y. 1991-92 are as under:-

"NATURAL JUSTICE

1.1 In the facts and the circumstances of the case, and in law, the appellate order framed by the Learned Commissioner of Income-tax (Appeals) 52, ["Ld. CIT (A)"] be held as bad and illegal, as:

(i) The same is framed in breach of the principles of natural justice, and

(ii) The same is passed without application of mind to the facts and the submissions brought on record by the Appellant.

(iii) The same is passed without providing an opportunity of personal hearing.

WITHOUT PREJUDICE TO THE ABOVE

2. LEVY OF INTEREST U/S 220 (2) OF THE ACT

2.1 The Ld. CIT (A) erred in dismissing in limine the ground raised by the Appellant with respect to levy of interest u/s 220 (2) of the Income tax Act, 1961["the Act"], as not maintainable.

2.2 While doing so, the Ld. CIT (A) erred in:

(i) Basing his action on surmises, suspicion and conjecture;

(ii) Taking into account irrelevant and extraneous considerations; and

(iii) Ignoring relevant material and considerations as submitted by the Appellant

2.3 It is submitted that in the facts and the circumstances of the case, and in law, no such action was called for.

2.4 Without prejudice to the above, it is submitted that in the facts and the circumstances of the case and in law, the appeal on this ground was maintainable and, further, the interest u/s 220 (2) was not chargeable.

3. QUANTIFICATION OF INTEREST U/S 220 (2)

3. Without prejudice to the above, the Learned CIT (A) erred in dismissing the ground in respect to the quantification of such interest not being in accordance with the law, as not requiring adjudication

3.2 While doing so, the Ld. CIT (A) erred in:

(i) Basing his action on surmises, suspicion and conjecture;

(ii) Taking into account irrelevant and extraneous considerations, and

(iii) Ignoring relevant material and considerations as submitted by the Appellant

3.3 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.

3.4 Without prejudice to the above, it is submitted that in the facts and the circumstances of the case and in law, the appeal on this ground was maintainable and, further, the

quantification of the interest u/s 220 (2) was not in accordance with the law.

WITHOUT PREJUDICE TO THE ABOVE

4. LEVY OF INTEREST U/S 234A, B, C OF THE ACT

4.1 The Ld. CIT (A) erred in dismissing in limine the ground raised by the Appellant with respect to levy of interest u/s 234A, B, C of the Income tax Act, 1961["the Act), as not maintainable.

4.2 While doing so, the Ld. CIT (A) erred in:

(i) Basing his action on surmises, suspicion and conjecture;

(ii) Taking into account irrelevant and extraneous considerations; and

(iii) Ignoring relevant material and considerations as submitted by the Appellant

4.3 It is submitted that in the facts and the circumstances of the case, and in law, no such action was called for.

4.4 Without prejudice to the above, it is submitted that in the facts and the circumstances of the case and in law, the appeal on this ground was maintainable and, further, the interest u/s 234A, B, C was not chargeable.

5. QUANTIFICATION OF INTEREST U/S 234 A, B, C.

5.1 Without prejudice to the above, the Learned CIT (A) erred in dismissing the ground in respect to the quantification of such interest not being in accordance with the law, as not requiring adjudication.

5.2 While doing so, the Ld. CIT (A) erred in:

(i) Basing his action on surmises, suspicion and conjecture;

(ii) Taking into account irrelevant and extraneous considerations; and

(iii) Ignoring relevant material and considerations as submitted by the Appellant

5.3 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.

5.4 Without prejudice to the above, it is submitted that in the facts and the circumstances of the case and in law, the appeal on this ground was maintainable and, further, the quantification of the interest u/s 234A,B,C was not in accordance with the law.

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6. The Appellant craves leave to add, alter, delete or modify all or any the above ground at the time of hearing."

03. Briefly the facts of the case shows that the assessee was engaged in the business of broker of government and other securities and was also a trader in share at Bombay Stock Exchange. Assessee is also a 'notified person' as per the Special Court (Trial of offences relating to Transactions in Securities) Act, 1992. Therefore, a custodian is appointed. Assessee was subjected to search by CBI on 22nd June, 1992 and by Income Tax Department on 16th October, 1992. A special auditor under Section 142(2A) of the Act, were also appointed and the reports were considered.
04. In the first round of assessment on 30th March, 1994, the assessment travelled up to the Co-ordinate Bench and co-ordinate Bench set it aside back to the file of the learned Assessing Officer with certain

directions. Subsequently, second round of assessment proceeding was completed by the learned Assessing Officer on 31st December, 2017, which travelled in cross appeals before the co-ordinate Bench. By order dated 9th December, 2006, the cross appeals were decided, wherein the appeal of the assessee was partly allowed and appeal of the learned Assessing Officer was dismissed. As there were certain directions in the appeal of the assessee, the learned Assessing Officer was directed to reframe, reconsider certain issues. Accordingly, the respective notices were issued and submissions were considered. The learned Assessing Officer accordingly, passed the assessment order under Section 143(3) read with section 254 of the Act on 20th November, 2017, determining the total income of the assessee at ₹83,65,243/-. Accordingly, the learned Assessing Officer allowed a further relief to the assessee of ₹51,55,72,659/- for A.Y. 1991-92. The learned Assessing Officer revised the income, directed to give credit for tax paid and also directed to charge interest under Section 234A, 234B and 234C and 220(2) of the Act.

05. Similarly, for A.Y. 1992-92, on almost identical facts, the total income of the assessee was assessed at ₹6,62,73,993/-, wherein the relief was allowed by the learned Assessing Officer of ₹348,38,92,880/- by passing an assessment order under Section 143(3) read with section 254 of the Act on 20th November, 2017. The learned Assessing Officer also directed to charge interest under Section 234A, 234B and 234C and 220(2) of the Act.
06. Similarly, for A.Y. 1993-94, the assessment under Section 143(3) read with section 254 of the Act was passed on 20th November, 2017, determining the total income of the assessee at ₹7,40,45,859/-, wherein the relief allowed by the Tribunal of ₹29,45,35,838/- was granted and consequently, interest under Section 234A, 234B and 234C and 220(2) of the Act was charged.



07. Against Assessment of all these three years, assessee preferred appeal before the learned CIT (A) on 29th January, 2018. The learned CIT (A) passed the consolidated Appellate order on 26th July, 2022.
08. The only ground of appeal raised by the assessee was against levy of interest under Section 234B & C of the Act and under Section 220(2) of the Act. Admittedly, both these interest were charged in the assessment order passed under Section 143(3) read with section 254 of the Act. The assessee made detail submission before the learned CIT (A). The learned CIT (A) questioned the maintainability of these appeals because assessee is not challenging any addition or deletion to the total income of the assessee i.e. the assessed income but merely challenging the chargeability or excessiveness of interest charged under Section 234A, 234B, 234C and 220(2) of the Act. The learned CIT (A) held that the provision of Section 246A of the Act does not cover orders passed under provisions of these sections as appealable orders. Accordingly, these appeals are not maintainable before him. With respect to the levy of interest under Section 220(2) of the Act, he further held that levy of such interest is academic and mandatory and therefore, also these appeals are not maintainable and are dismissed in limine without going into the merits of the case. Thus, he dismissed all these three appeals for statistical purposes by passing a consolidated order dated 26th July, 2022.
09. Learned Authorized Representative Mr. Vipul Joshi, has raised several contentions on the maintainability of the appeal and also extensively referred to various judicial precedents and legal arguments after submitting detailed paper books that interest cannot be charged under Section 234A, 234B, 234C and under Section 220(2) of the Act. He therefore submitted that the co-ordinate Bench should decide these issues on the merits and delete interest so charged under various sections.
010. The learned special counsel vehemently submitted that under Section 246A of the Act, there is no mention of various sections as

appealable orders under which interest so charged is challenged by the assessee. He therefore specifically stated that when the right of appeal being a 'statutory right' is not provided in the statute, there is no infirmity in the order of the learned CIT (A) in not admitting the appeal of assessee holding it to be non-maintainable. On the merits of the case, he submitted that issue is squarely covered against the assessee and in favour of Revenue in view of the decision of Division Bench in CIT Vs. Divine Holdings Pvt. Ltd. (2012) 209 taxman 467, wherein it has been categorically held that interest under Section 234A, 234B and 234C can be levied on assessee, who is a notified party under the Special Court Act. He further submitted that subsequently in another decision of the Hon'ble Bombay High Court in CIT Vs. Cascade Holdings Pvt. Ltd. 364 ITR 84, Hon'ble HC has taken an identical view. Accordingly, the learned Special Counsel submitted that on the merits of the case, the issue is squarely covered against the assessee.

011. The learned Authorized Representative vehemently tried to distinguish the above decision and stated that when the assessee did not know anything about taxable income at all and did not have any control and dominion over such income, and funds also remains with custodian, in fact, it is the learned Assessing Officer who should have asked the custodian to remit amount of advance tax in case of the assessee at the time of each of advance tax installment payable. On maintainability, he submitted that assessee is challenging the order passed under Section 143(3) of the Act. Therefore, according to him the appeal is maintainable and on merits the issue deserves to be decided in favour of the assessee.
012. We have carefully considered the rival contentions and perused the orders of the lower authorities. Admittedly, in this case, the assessment orders for all these three years are passed under Section 143(3) read with section 254 of the Act. In the assessment order itself, the learned Assessing Officer has charged interest under Section 234A, 234B, 234C and also interest under Section 220(2) of



the Act. Admittedly, the appeal is a statutory right. If the statute does not confer any right on the assessee to file the appeal, same cannot be filed. In view of this, the issue is to be decided whether the appeal filed by the assessee is maintainable or not. According to the provisions of Section 246A of the Act any assessee who is aggrieved by 'Specified orders' may appeal to the Commissioner Appeal. Therefore, the basic condition to section 246A pre supposes that there has to be an order listed in Section 246A (1) of the Act. There are approximately 28 types of the orders listed. The second condition is that assessee must be aggrieved by those orders. Admittedly, in this case, the order of assessment passed under Section 143 (3) of the Act. Therefore, specified order is assessment order passed under Section 143(3) of the Act. This order is listed in section 246A (1) (a) of the Act. Therefore it is one of the specified orders against which appeal can be preferred before the LD CIT (A). In this assessment order, the learned Assessing Officer has charged interest under Section 234A, 234B, 234C and also under Section 220(2) of the Act. The assessee is aggrieved by part of the order passed under Section 143(3) read with section 254 of the Act, wherein the learned Assessing Officer has charged interest under Section 234A, 234B, 234C and also 220(2) of the Act. Therefore, there is a specified order i.e. order under Section 143(3) of the Act by which assessee is aggrieved and therefore, assessee is entitled to file an appeal in the present case before the learned CIT (A) u/s 246A (1) (a) of the Act . It is not the case of the Revenue that assessment order is not specified order under Section 246A (1) of the Act and assessee is not aggrieved with that. Therefore, we are not in agreement with the order of the learned CIT (A) that the appeals of the assessee are not maintainable. The learned CIT (A) therefore, should have decided the issue on its merit. Therefore, we categorically hold that the appeals filed before the learned CIT (A) for all these assessment years were wrongly dismissed holding it to be not maintainable. According to us, same is maintainable and those are liable to be decided on the merits of the case.



013. We refrain to comment anything on the merits of the issue because the learned CIT (A) has not considered the issues on the merits at all.

014. In view of this, we set aside all these three appeals back to the file of the learned CIT (A) with a direction to

- (1) assessee to file all its submissions, pleading, etc. before the learned CIT (A) within 30 days of this order.
- (2) The learned CIT (A) to decide the issue on its merits within 90 days from the date of this order.

Accordingly, all these three appeals are decided only on the ground no.2.1 and 4.1 of the grounds of appeal. These two grounds are allowed for statistical purposes in all these three appeals.

015. All other grounds of appeal are kept open to be decided by the learned CIT (A).

016. Accordingly, all these three appeals are allowed for statistical purposes.

Order pronounced in the open court on 18/07/2023.

Sd/-
(KAVITHA RAJAGOPAL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 18/07/2023

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,



True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai