

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री मंजुनाथ. जी, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
**BEFORE SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER
AND SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER**

आयकर अपील सं./ITA Nos.: **867 & 868/Chny/2023**

निर्धारण वर्ष / Assessment Years: 2020-21

Apollo Pharmacies Limited,
19, Bishop Gardens,
Raja Annamalaipuram,
Chennai – 600 028.

Deputy Commissioner of
v. Income Tax,
Corporate Circle -1(1),
Chennai.

[PAN: AAPCA-5954-P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. Suraj Nahar, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri. Clement Ramesh Kumar, CIT

सुनवाई की तारीख/Date of Hearing

: 01.11.2023

घोषणा की तारीख/Date of Pronouncement

: 01.11.2023

आदेश / O R D E R

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

These two appeals filed by the assessee are directed against common order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 10.07.2023 and pertains to assessment year 2020-21.

2. The brief facts of the case are that, the assessee filed its return of income for the assessment year 2020-21 on 15.02.2021, declaring a total income of Rs. 1,04,20,68,830/-.

The return was processed u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") by CPC on 14.12.2021 and accepted total income declared by the assessee, with a demand notice of Rs. 5,78,43,140/-, towards interest payable u/s. 234A, 234B and 234C of the Act. Thereafter, the case was selected for scrutiny and the assessment has been completed u/s. 143(3) of the Act on 27.09.2022. In the demand notice, a demand of Rs. 6,25,75,750/- has been raised, on account of interest payable u/s. 234A, 234B and 234C of the Act. The assessee has filed appeals against order passed u/s. 143(1) & 143(3) of the Act, before the Id. CIT(A) and challenged levy of interest. During appellant proceedings, the appellant has submitted a copy of petition filed u/s. 119(20)b/119(2)(c) of the Act, to the Chairman, CBDT, for waiver of interest and requested the Id. CIT(A) to keep in abeyance the appeal proceedings until further orders from the Chairman, CBDT. The Id. CIT(A), after considering relevant facts and also taking note of request made by the appellant, in light of petition filed before the Chairman, CBDT, rejected arguments of the assessee and upheld interest charged u/s. 234A, 234B and 234C of the Act.

Aggrieved by the CIT(A) order, the assessee is in appeal before us.

3. The Ld. Counsel for the assessee, referring to copy of petition filed before the Chairman, CBDT, dated 02.03.2021 submitted that, the appellant has filed a petition for waiver of interest u/s. 234A, 234B and 234C of the Act, and the same is pending for disposal. Further, the appellant has requested the Id. CIT(A) to keep in abeyance the appeal proceedings, till the petition filed by the appellant before the Chairman, CBDT is disposed off. Although, the appellant has requested to keep in abeyance the appeal proceedings, but the Id. CIT(A) rejected request of the assessee and dismissed appeals filed by the assessee. Therefore, he submitted that the appeals may be set aside to the file of the Id. CIT(A) to give reasonable opportunity of being heard to the appellant and also to take into account cognizance of petition filed by the assessee u/s. 119(20)(b)/119(2)(c) of the Act, before the Chairman, CBDT.

4. The Id. CIT-DR, Shri. Clement Ramesh Kumar, supporting the order of the CIT(A) submitted that, levy of interest u/s. 234A, 234B and 234C of the Act, is mandatory and consequential in nature and it depends upon total income

computed by the Assessing Officer. Although, the assessee has declared huge taxable income, but could not pay required amount of advance tax on or before the prescribed date, further, the appellant had also not paid self-assessment tax as per provisions of section 140A of the Act. Therefore, the Assessing Officer, after considering relevant facts has rightly levied interest u/s. 234A, 234B and 234C of the Act. The Id. CIT(A), after considering relevant facts rightly sustained demand raised by the Assessing Officer and their order should be upheld.

5. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee has challenged interest charged u/s. 234A, 234B and 234C of the Act, in the order passed by the Assessing Officer u/s. 143(1) & 143(3) of the Act. The assessee had also filed a petition u/s. 119(20)(b)/119(2)(c) of the Act, before the Chairman, CBDT, for waiver of interest u/s. 234A, 234B and 234C of the Act. However, the assessee has made a request before the Id. CIT(A), to keep in abeyance the appeal proceedings till the time Chairman, CBDT, disposes petition filed u/s. 119(20)(b)/119(2)(c) of the Act. But the Id.

CIT(A), rejected the pleading of the assessee and also upheld interest levied u/s. 234A, 234B and 234C of the Act. The assessee is not disputing levy of interest u/s. 234A, 234B and 234C of the Act, but the only request of the Ld. Counsel for the assessee is that, it is expecting a favorable decision from the Chairman, CBDT, on waiver of interest u/s. 234A, 234B and 234C of the Act. Therefore, till such time, the appeal proceedings should have been kept in abeyance by the Id. CIT(A). Therefore, requested to set aside the appeals to the file of the Id. CIT(A), to give sufficient time to the assessee to pursue its application before the Chairman, CBDT and thereafter, to dispose off the appeals by the Id. CIT(A) in accordance with law. The Id. CIT-DR, strongly opposed the pleading of the Ld. Counsel for the assessee, on the ground that charging interest u/s. 234A, 234B and 234C of the Act, is mandatory and consequential in nature and depends upon total income computed by the Assessing Officer, after taking into account advance tax, if any, paid by the assessee and delay in payment of such advance tax. Therefore, there is no reason to set aside the appeals to the file of the CIT(A), because the Id. CIT(A) has decided the issue on merit and upheld interest charged u/s. 234A, 234B and 234C of the Act.

We do agree with the arguments of the Id. CIT-DR, that charging interest u/s. 234A, 234B and 234C of the Act, is mandatory and consequential in nature and it depends upon total income of the assessee, advance tax if any paid for the relevant period and delay in payment of such advance tax etc., and there is no dispute on this issue. In fact, we are not going to examine the issue of computation of interest u/s. 234A, 234B and 234C of the Act, at this stage. But, fact remains that the appellant has filed a petition u/s. 119(20)(b)/119(2)(c) of the Act, before the Chairman, CBDT, and the petition filed by the assessee is pending for adjudication. We do not know reasons given by the assessee for waiver of interest and further, whether the Chairman, CBDT, will consider the application filed by the assessee favorably or not. However, when there is a petition filed by the assessee before the Chairman, CBDT, is pending for disposal, and further the assessee is requesting to keep in abeyance the appeal proceedings till disposal of its petition, in our considered view, the CIT(A) ought to have given sufficient time to the appellant to pursue its application filed before the Chairman, CBDT and keep the appeals in abeyance till disposal of petition by Chairman, CBDT. Since, the Id. CIT(A) disposed

off appeal filed by the assessee without considering the outcome of the petition filed by the assessee before the Chairman, CBDT, in our considered view, these appeals needs to go back to the file of the Id. CIT(A). Thus, we set aside the order passed by the Id. CIT(A) and restore the issue to the file of the CIT(A) and direct the CIT(A) to reconsider the issue after considering the outcome of petition filed by the appellant u/s. 119(20)(b)/119(2)(c) of the Act before the Chairman, CBDT. Needless to say, the assessee shall pursue its petition filed before the Chairman, CBDT, with due diligence so as to complete the proceedings without any delay.

6. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 01st November, 2023 at Chennai.

Sd/-

(मनोमोहन दास)

(MANOMOHAN DAS)

न्यायिक सदस्य/Judicial Member

Sd/-

(मंजुनाथ. जी)

(MANJUNATHA. G)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 01st November, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF