

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 528/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2021-22)

Tata Rao Gali, Hyderabad
[PAN No. BXCPG4910R] Vs. Income Tax Officer
(INT. Taxn)-1, Hyderabad

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri K.C. Devdas and
Shri M. Poorna Chander Rao, ARs
राजस्व द्वारा/Revenue by: Shri Shakeer Ahamed, DR

सुनवाई की तारीख/Date of hearing: 12/12/2023
घोषणा की तारीख/Pronouncement on: 26/12/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 31/08/2023 passed by the learned Commissioner of Income Tax (Appeals)-10, Hyderabad ("Ld. CIT(A)"), in the case of Tata Rao Gali ("the assessee") for the assessment year 2021-22, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is an individual. He filed his return of income for the assessment year 2021-22 on 29/12/2021 by declaring an income of Rs. 1,45,89,089/- from capital gains and other sources and agriculture income of Rs. 3,49,984/-. The return was processed by the AO-CPC, Bengaluru, and intimation under section 143(1) Income Tax Act, 1961 ('the Act') was sent to the assessee on 02/06/2022 with a demand of Rs. 76,410/-. This demand was raised on account of variance in computation of interest under section 234A of the Act. Assessee filed a petition before AO-CPC, Bengaluru to rectify the same, but it was not considered by the AO-CPC, Bengaluru and levied the interest under section 234A of the Act and again issued the said intimation by reprocessing the very same intimation with a demand of Rs. 76,410/- raised due to levy of the said amount of interest.

3. Assessee preferred appeal before the learned CIT(A) and pleaded that vide Circular No.9/2021, dated 20/05/2021 and further by press release dated 09/09/2021, CBDT extended the due date for filing the return till 31/12/2021 from 31/07/2021. Though, the date of filing the return of income has been extended yet, the levy of interest under section 234A of the Act was made still leviable from the original date of filing i.e., 31/07/2021 if amount of self-assessment tax payable exceed Rs. 1,00,000/- as per the return of income that was so filed. According to the assessee, though this was the then prevailing legal position with reference to the prescribed due date for filing the return of income and payment of interest under section 234A of the Act, yet, in the case of the assessee, the assessee had duly computed the tax liability and paid the entire tax liability

on 27/09/2021 itself even though he was abroad at that time for some personal work, thereafter the assessee had returned to India and had filed his return of income on 29/12/2021 which date was again well within the extended due date specified for filing the return of income. Assessee accordingly pleaded that interest under section 234A of the Act was paid by the assessee on 27/09/2021 itself though the return was filed a bit late, but that too within the time allowed by the CBDT for filing of the returns.

4. Learned CIT(A) did not agree with this contention of the assessee and held that in order to have the benefit of the decision of the Hon'ble Supreme Court in the case of CIT vs. Prannoy Roy 309 ITR 231 (2009), though the assessee filed the return of income after the due date, he must have paid the taxes before the due date. Learned CIT(A) examined whether the payment of taxes by the assessee on 27/09/2021 was before the due date of filing of return of income in the light of the claim of the assessee under CBDT Circular No. 17/2021 [FNo. 225/49/2021/ITA-II], dated 09/09/2021, extending the due date for filing of the return of income to 31/12/2021 from 31/07/2021. Since the applicability of this circular extending the due date is restricted to the cases where the amount of tax on the total income as reduced by the amount as specified in clauses (i) to (vi) of that section not exceeding Rs. 1 lakh, and the interest computed in this case is about Rs. 1,27,350/-, assessee's case is not covered by the circular. On this premise, the learned CIT(A) dismissed the appeal.

5. Hence, the assessee filed this appeal before us and argued that the learned CIT(A) ignored the beneficial nature of the circular issued by the CBDT and, therefore, failed to read the impact of such circular in the light

of the ratio laid down by the decision of the Hon'ble Apex Court in the case of Prannoy Roy (supra). Learned AR submitted that within the time stipulated by the circular, the assessee paid the taxes due as on the date, mere filing of the return lately for the reasons beyond his control, assessee cannot be penalized.

6. Per contra, learned DR argued that if the assessee does not file the return of income before the due date therefor, interest under section 234A of the Act is mandatory by computing the same at 1% per month or part thereof, commencing from the date next to the due date till the filing of the return of income. Section 234 of the Act does not absolve the assessee of his liability to pay interest till the date of filing of the return and it does not stop the moment the assessee pays the taxes subsequent to the due date. According to the learned DR, interest is charged for default in filing return and does not cease or stop with payment of taxes, the focus being on the filing of the return of income.

7. We have gone through the record in the light of the submissions made on either side. But for the circular (supra), the due date for filing of return of income by the assessee was 31/07/2021. It is an admitted fact that the assessee paid the taxes on 27/09/2021, but filed the return of income on 29/12/2021. According to the assessee, vide Circular No. 17/2021, the due date for filing of the return of income stood extended till 31/12/2021 and in view of his payment of the taxes on 27/09/2021, his filing of the return before the extended due date is proper. The authorities below, however, did not concede this argument.

8. For the purpose of ascertaining the due date, it has become necessary to go through the Circular No. 17/2021. This circular reads that “the due date of furnishing of return of income for the assessment year 2021-22, which was 31st July 2021 under sub-section (1) of section 139 of the Act, as extended to 30th September, 2021 vide Circular No. 9/2021 dated 20/05/2021, is hereby further extended till 31/12/2021”. Clarification No. 1 of such circular, however, reads that such extension is restricted to the cases where the amount of tax on the total income as reduced by the amount as specified in clauses (i) to (vi) of that section not exceeding Rs. 1 lakh. Application of this clarification No.1 is the bone of contention between the parties.

9. Extension of due date under the circular is dependent upon the quantification of interest under section 234A of the Act which in turn is dependent upon the period commencing from the date next to the due date till the date of filing of return. The quantity of interest under section 234A of the Act is, therefore, variable depending upon the period for which it is computed. It, therefore, qualifies the extension of due date not only for various categories of assessees, but also to the same assessee at different dates. For the same assessee at a particular date such interest liability could be less than Rs. 1 lakh and at a later point of time, it could grow to exceed Rs. 1 lakh. Pertinent to note that quantification of interest liability under section 234A of the Act is not with reference to any particular date and, therefore, it goes on varying on different dates even before the stated due date of 31/12/2021. This variance does not suggest any nexus to the purpose of extension of due date in respect of any class

of assesseees or to any particular period of time. Certainly, it could not be the intention of the Board that the extension of due date would be in such a state of flux to create various due dates for various assesseees falling in the same category.

10. The purpose of issuing the circular as stated in the Preamble is that “on consideration of difficulties reported by the taxpayers and other stake holders in electronic filing of income tax returns and various reports of audits ...”. The anomalous situation created by clarification 1, leads to the inference that it does not address the difficulties of a class of people in general, but it extends the period for filing of the return till the interest liability does not exceed Rs. 1 lakh and thereafter, such extension will not be available to the very same assessee. In that sense, it makes the purpose of further extension of the due date is till 31/12/2021 redundant. The date as declared in the circular as 31/12/2021 loses its significance the moment the interest liability exceeds Rs. 1 lakh, and declaration of extension till 31/12/2021 becomes redundant. Redundancy cannot be attributed to the intention of CBDT to give extended time to the stakeholders for filing the return.

11. Availability of extended due date is, therefore, dependent upon the clarification 1 thereof which indeed instead of clarifying, had created the above said anomaly. To resolve this, we have to examine the clarification 1 in the light of the purpose and object of extending the due date. It is pertinent to note that the circular does not say that such issuance has any nexus with any small assesseees. It only says that considering the difficulties reported by the taxpayers and other stakeholders in electronic filing of

income tax returns, the due date for filing of the return of income for the assessment year 2021-22 was further extended till 31/12/2021. Clarification No. 1, therefore, does not fit into the purposes of the circular in extending time and on the other hand, it created a conflict in the shape of anomaly. In this situation, what is imperative is to read down clarification 1 inconsonance with the objective of the circular.

12. Extension of due date till such date as the interest liability exceeds Rs. 1 lakh will have the tendency to create various dates of due dates for various assessees and render the date given in the circular, namely, 31/12/2021 otiose. Such a result has no nexus either with the class of assessees because for the same class of assessees it is applicable at some time and it is not applicable at some time, or to the purposes for which the due date was extended. In such situation, going by the very purpose of extension of due date in consideration of the difficulties reported by the taxpayers and other stakeholder in electronic filing of income tax returns as a whole, in the absence of any indication as to its nexus with any consideration of a class of assessees, we resolve the conflict by reading down the condition in clarification 1 and hold that the extension of due date will prevail generally.

13. According to the assessee, as on the date of paying the taxes on 27/09/2021, the interest liability under section 234A of the Act was less than Rs. 1 lakh and, therefore, such payment of taxes shall be construed to be before the due date. At this stage, assessee placing reliance on the decision of Hon'ble Apex Court in the case of Prannoy Roy (supra), argues that the interest under section 234A of the Act could be levied only by way

of compensation to compensate the Revenue in order to avoid it from being deprived of the payment of tax on the due date and, therefore, such interest would be payable only in a case where tax has not been deposited prior to the due date of filing of the income tax return. In that sense learned AR submitted that when the assessee deposited the taxes on 27/09/2021, it was before due date because as on that date the interest liability under section 234A of the Act was less than Rs. 1 lakh and by that reason the due date stood extended till 31/12/2021. As an extension of this logic, he submitted that if the payment of tax by the assessee on 27/09/2021 and the return was filed on 29/12/2021 then there is proper compliance with the circular (supra) on the part of the assessee, in terms of the decision of the Hon'ble Apex Court in the case of Prannoy Roy (supra).

14. We are in agreement with the above submission of the learned AR. The clarification No. 1 of the circular is not clear as to the date on which the quantification of interest liability under section 234A of the Act has to be taken. But, when we read the circular as a whole in the light of the decision of the Hon'ble Apex Court in the case of Prannoy Roy (supra), the reasonable inference is that if the assessee deposits the taxes at a date at which the interest liability under section 234A of the Act, does not exceed Rs. 1 lakh, such an assessee is entitled to the extended period of due date and, therefore, any return of income filed thereafter will not fasten any additional interest liability.

15. With this view of the matter, we direct the learned Assessing Officer to verify whether the taxes paid by the assessee as on 27/09/2021 took

care of the interest liability till such date, and if it is so, to delete the addition made. Grounds of appeal are allowed accordingly.

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

Order pronounced in the open court on this the 26th day of December, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 26/12/2023

TNMM

Copy forwarded to:

1. Tata Rao Gali, Villa 49, Subishi Waterford Homes, Near ICFAI Business School, Mokila, K.V. Ranga Reddy, Hyderabad.
2. The Income Tax Officer (INT. Taxn)-1, Hyderabad.
3. CIT(IT & TP)-Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ITAT, HYDERABAD