

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL
MEMBER AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1259/PUN/2023
निर्धारण वर्ष / Assessment Year : 2011-12

Samata Shikshan Prasarak Mandal Paranda, C/o. Adhyapak Vidyala, Paranda, Osmanabad- 413502. Maharashtra. PAN: AAHTS3344N	V s	The Income Tax Officer, Exemption Ward, Nanded.
Appellant/ Assessee		Respondent /Revenue

Assessee by	None.
Revenue by	Shri B.S.Rajpurohit – DR
Date of hearing	18/12/2023
Date of pronouncement	29/12/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of Ld.Commissioner of Income Tax (Appeal)(NFAC) dated 29.09.2023 for A.Y.2011-12, emanating from Assessing Officer's order under section 154 of the Act dated 24.05.2021 enhancing the interest under section 234A of the Act. The Assessee has raised following grounds of appeal:

"1. CIT(Appeals) has erred in NOT holding the Assessing

Officer's Order as Bad in Law as the issue of chargeability of Interest u/s 234A is debatable. Appellant prays to cancel the Order u/s 154 passed by Assessing Officer, as assessee was not liable to file the Return u/s 139(40).

2. *CIT(Appeals) has erred in not cancelling the Order instead of directing Assessing Officer to re-compute the same after factoring directions given in the Quantum Appeal.*

3. *CIT(Appeals) has erred in alleging assessee's submission and reproducing wrong submission. Appellant prays to cancel the order, as it is nonapplication of mind by CIT(Appeals), while passing the Order is beyond doubt.*

4. *CIT(Appeals) has erred in being Unjust and unfair, Appellant prays for Just and Equitable Relief.*

5. *Appellant prays to add, alter, amend, take additional grounds, submit additional evidence, and/or withdraw the ground/s, during appellate Proceedings."*

Submission of Id.Authorised Representative(Id.AR) :

2. The case was called twice, no one appeared on behalf of the assessee.

Submission of Id.Departmental Representative(Id.DR) :

3. The Id.DR for the Revenue relied on the order of Assessing Officer(AO) and Id.CIT(A)[NFAC]. The Id.DR also filed copy of the decision of Hon'ble Supreme Court in the decision of CIT Vs. Anjum M.H. Ghaswala & Ors i[2001] 119 Taxman 352 (SC).

Findings & Analysis :

4. We have heard Id.DR for the Revenue and perused the records. In this case, the AO has passed an order under section 154 of the Act with reference to assessment order under section 143(3) r.w.s 147 of the Act dated 26.10.2018. The AO held that interest under section 234E of the Act should have been calculated from the due date of filing original return which was 31.07.2007. Accordingly, AO charged interest under section 234E of the Act. In this case, assessee had not filed original return of income. Return of Income was filed in response to the notice under section 148 of the Act on 06.07.2018. Aggrieved by the order of the AO, assessee filed appeal before the Id.CIT(A). On perusal of the Form No.35, it is observed that assessee has raised following grounds of appeal :

“1. Assessing Officer has erred passing the Order u/s. 154 Charging Interest u/s. 234A. Same may please be cancelled as to without jurisdiction.

2. Assessing Officer has erred in passing Order u/s. 154 charging Interest u/s. 234 A. When Assessee Trust was not liable to file the Return u/ s. 139, In fact was not required to file the Return u/s. 139. Section 139(4C) is amended to file Returns covered u/s 10(23C)(iiiab) from A.Y. 2016-17. Same may please be cancelled.

3. Assessing Officer has erred in passing Sec. 154 Order on issue which is at least debatable. Same may please be cancelled.

4. Income of the Assessee Trust in not liable to tax u/s. 10(23C)(iiiab), Therefore no interest is chargeable.

5. Assessee Trust denies its liability to Interest u/s. 234A.

6. *Appellant prays for just and equitable relief.*

7. *Appellant craves leave to add, alter, amend, clarify, explain and/or withdraw the ground/s as occasion may demand.”*

5. The ld.CIT(A)[NFAC] held as under :

“6.1 The impugned appeal pertains to rectification order passed by the learned AO for levy of interest U/s 234A of the IT Act. In this regard, the appellant has raised multiple grounds of appeal which are collectively adjudicated as under.

6.2 The appellant had filed a separate appeal against quantum issue which is adjudicated separately vide order dated 27th September, 2023 bearing DIN ITBA/NFAC/S/250/2023-24/1056599225(1). Wherein the learned AO is directed to compute addition to total income (if any) after allowing permissible expenses incurred by the appellant by assessing it as an AOP.

6.3 In respect of interest U/s 234A, it is held that its consequential in nature and shall be levied accordingly. In view of this, the learned AO is directed to recompute the tax and interest liability of the appellant after factoring directions given in the quantum appeal as mentioned above.

6.4 Accordingly, the appeal of appellant is dismissed.”

5.1 Thus, it can be observed that ld.CIT(A)[NFAC] has not adjudicated the grounds of the assessee rather the ld.CIT(A)[NFAC] has not properly adjudicated the main issue i.e. interest under section 234A of the Act.

5.2 The Hon’ble Bombay High Court in the case of Pr.CIT(Central) *Vs. Premkumar Arjundas Luthra (HUF Bombay)*/[2017] 297 CTR 614 (Bombay) has held as under :

Quote, “8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act.

Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) is coterminous with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open

to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251(1)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act.” Unquote.

6. We have already reproduced the order of Id.CIT(A) and it can be very well observed that Id.CIT(A)[NFAC] has not adjudicated the grounds of appeal raised by the assessee in Form No.35. The Hon'ble Bombay High Court has categorically observed that Id.CIT(A)[NFAC] has to adjudicate the grounds of appeal raised by assessee. In these facts and circumstances of the case, we set-aside the order of Id.CIT(A)[NFAC] to the file of Id.CIT(A) for denovo adjudication after giving opportunity of hearing to the assessee. The assessee shall provide all the necessary document required by the Id.CIT(A). Accordingly, grounds of appeal raised by the assessee are allowed for statistical purpose.

7. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 29th Dec, 2023.

Sd/-
(S S GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 29th December, 2023/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.