

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND  
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकरअपीलसं./ITA No.: 572/Chny/2023

&

**CO No: 26/Chny/2023**

निर्धारणवर्ष / Assessment Year: 2010-11

Income Tax Officer,  
Ward (1),  
Hosur.

Shri. Gafoor Munawar Basha,  
v. 4A, Rahima Transport, Mosque  
Street, Denkanikottai,  
Krishnagiri – 635 107.

**[PAN: AJKPM-0156-G]**

(अपीलार्थी/Appellant)

(Cross Objector)

अपीलार्थीकीओरसे/Appellant by : Shri. AR V Sreenivasan, Addl. CIT

Respondent/Cross Objector by : Shri. P.M. Kathir, Advocate

सुनवाई की तारीख/Date of Hearing : 18.12.2023

घोषणा की तारीख/Date of Pronouncement : 29.12.2023

**आदेश / O R D E R**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal filed by the revenue and cross objection filed by the assessee are arising out of the orders of Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC) in Appeal No. ITBA/NFAC/S/250/2022-23/1051244096(1), dated 24.03.2023. The assessment was framed by the Income-tax Officer, Ward(1), Hosur for the assessment year 2010-11 dated 13.12.2018, u/s. 143(3)

r.w.s. 147 of the Income-tax Act, 1961 (hereinafter referred to as "the Act").

2. At the outset, Id. Counsel for the assessee stated that he has raised a jurisdictional issue in its Cross Objection and hence first Cross Objection should be taken up for hearing. The only issue in this Cross Objection raised by assessee is that, charging of interest u/s. 234A, 234B & 234C of the Act is highly debatable and that cannot be rectified by the Assessing Officer while acting u/s. 154 of the Act. For this jurisdictional issue, assessee in its Cross Objection has raised seven grounds which are argumentative and exhaustive. Hence, we are not reproducing.

3. Brief facts are that the assessee did not file its return of income u/s. 139(1) or 139(4) of the Act. Subsequently, notice u/s. 148 of the Act dated 30.03.2017 was issued and case was reopened for framing assessment. The assessee filed return of income for assessment year 2010-11 on 05.08.2017 declaring taxable income at Rs. 1,59,870/-. Accordingly, assessee's case was selected for scrutiny assessment by issuing notice u/s. 143(2) of the Act and in response to the same assessment

was completed by assessing income of Rs. 5,35,520/-. As per the assessment order framed u/s. 143(3) r.w.s. 147 of the Act dated 13.12.2018, the Assessing Officer in its computation charged interest u/s. 234A of the Act at Rs. 2,664/- and accordingly tax demand was computed. Subsequently, audit party pointed out that there is short charging of interest u/s. 234A and RAP audit objection was made that interest is to be levied for 85 months from 01.08.2010 to 31.08.2017, instead of 4 months charged in the assessment order framed u/s. 143(3) r.w.s. 147 of the Act. Hence, Assessing Officer issued notice u/s. 154 of the Act dated 18.09.2020, intimating assessee that there is a mistake apparent from the record in the assessment order while calculating interest u/s. 234A of the Act, which is proposed to be rectified by passing an order u/s. 154 of the Act. The assessee contested the rectification application by letter dated 28.09.2020, that in the assessment order interest has already been charged u/s. 234A of the Act and rightly computed. The Assessing Officer in his rectification order passed u/s. 154 r.w.s. 143(3) r.w.s. 147 of the Act dated 19.01.2021, recomputed the interest and charged the interest for 81 months and thereby raised demand notice for

an amount of Rs. 53,938/- which is subject matter on dispute now before us.

4. Aggrieved against this rectification order, the assessee preferred an appeal before the CIT(A). The CIT(A) on merits deleted disallowance by observing that as per provisions of Act and provisions of section 234A of the Act, it is clear that the return of income for any assessment year, required by a notice u/s. 148 of the Act issued after the determination of income under sub-section (1) of section 143 or after the completion of an assessment under sub-section (3) of 143 or section 147, is furnished after an expiry of the time allowed under such notice, or is not furnished, the assessee shall be liable to pay simple interest @ 1 percent for every month or part of a month comprised in the period commencing on the day immediately following the expiry of the time allowed. Accordingly, the CIT(A) deleted disallowance charged by rectification order amounting to Rs. 53,938/-. The assessee before the CIT(A) raised the issue that charging of interest u/s. 234A of the Act is highly debatable, as the period for which interest u/s. 234 of the Act is to be levied for the return filed in response to notice u/s. 148 of the Act. But the CIT(A)

by going through simple provisions of section 234A(1)(b) of the Act, deleted charging of interest and did not adjudicate the jurisdictional issue.

5. Now before us, aggrieved revenue filed appeal before the Tribunal on merits against deletion of charging of interest u/s. 234A by the CIT(A) and in Cross Objection assessee also came in appeal raising the jurisdictional issue that interest u/s. 234A of the Act cannot be levied while acting u/s. 154 of the Act, as the same constitutes debatable issue.

6. We have heard rival contentions and gone through facts and circumstances of the case. We noted that now Id. Counsel for the assessee filed a copy of one Tribunal judgment in the case of Ms. Priti Pithawala vs ITO, [2003] 129 Taxman 79 (Mum), wherein the chargeability of interest u/s. 234A in case of return filed u/s. 147 r.w.s. 148 of the Act was under dispute. This is one of the view of the Tribunal. Even Hon'ble Delhi High Court in the case of CIT vs. Salora International Limited (2010) 329 ITR 568 (Del) held that charging of interest u/s.234B and 234C of the Act by the Id. AO, as a consequence of the order passed u/s.154 of the Act, was a

debatable issue which a AO could not do by invoking the provisions of Sec. 154 of the Act. Hence, while acting u/s.154 of the Act, interest u/s.234A of the Act in the present case cannot be charged. Hence, this jurisdictional issue of the assessee's cross objection is allowed,

7. Since we have adjudicated the jurisdictional issue raised by the assessee and allowed in his favour, we need not to go into other issues either raised by the assessee in his CO or that of the Revenue's appeal.

8. In the result, appeal filed by the revenue is dismissed and Cross Objection filed by the assessee is allowed.

Order pronounced in the Court on 29<sup>th</sup> December, 2023 at Chennai.

**Sd/-**  
(मंजुनाथ. जी)  
**(MANJUNATHA. G)**  
लेखासदस्य/**Accountant Member**

**Sd/-**  
(महावीर सिंह)  
**(MAHAVIR SINGH)**  
उपाध्यक्ष/**Vice President**

चेन्नई / Chennai;

दिनांक / Dated : 29.12.2023

**JPV**

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF