

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN**

Before Shri Sanjay Arora, Accountant Member and  
Shri Manomohan Das, Judicial Member

**ITA No. 672/Coch/2022**  
(Assessment Year: 2010-11)

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| Mariamamma Joseph<br>Hotel Floral Park<br>Gandhinagar<br>Kottayam 686008<br>[PAN:ACCPJ9135F] | vs. | Asst. CIT, Central Circle<br>Kottayam 686001 |
| (Appellant)  |     | (Respondent)                                 |

|                |                                 |
|----------------|---------------------------------|
| Appellant by:  | Shri Mathew Joseph, CA          |
| Respondent by: | Smt. J.M. Jamuna Devi, Sr. D.R. |

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|------------------------|------------|
| Date of Hearing:       | 16.01.2024 |
| Date of Pronouncement: | 28.03.2024 |

**ORDER**

Per: Sanjay Arora, AM

This is an Appeal by the Assessee agitating the Order dated 03.05.2022 by the Commissioner of Income Tax (Appeals)-3, Kochi [CIT(A)], partly allowing the assessee's appeal contesting the rectification of her assessment under section 153A read with sec. 143(3) of the Income Tax Act, 1961 (the Act) dated 28.03.2013 for Assessment Year (AY) 2010-11, vide rectification order u/s. 154 dated 14.02.2019.

2. The issue arising in the instant case is the manner of computing the interest liable to be levied u/s. 234B of the Act consequent to the appellate order dated 16/2/2016, i.e., on giving appeal effect, which in the instant case was vide order dated 04/5/2016. As per the assessee, her returned income of Rs. 10,84,900 on 13/10/2010, admitting tax liability of Rs. 2,28,114, stood processed, or deemed to be so, in October, 2010, or latest by March, 2012. Interest u/s. 234B(3), which is to be for the period following the date of processing up to the date of reassessment or, as

the case may be, recomputation, u/s. 153A in March, 2013, on the increase in the assessed tax, i.e., Rs. 15,36,914, would thus range from a period of 12 months (April, 2012 to March, 2013) to 29 months (November, 2010 to March, 2013) and, thus, vary from 1,84,428 to Rs. 4,45,700, i.e., depending on the time of processing her return u/s. 143(1). The same, computed at Rs. 6,45,503, was thus in excess. The amendment to s. 234B(3) by Finance Act, 2015, w.e.f. 01/6/2015, would not be applicable. As per the Assessing Officer(AO) interest on the differential tax of Rs. 15.37 lacs was to be worked from the first day of the assessment year, i.e., 01/4/2010, up to the date of reassessment/recomputation in March, 2013 and, thus, for a period of 36 months; the relevant part of his order reading as:

‘Further, regarding the calculation of interest u/s 234B(3), it may be noted that as per the provisions of section 2348(3), the interest is calculated on the amount by which the tax on the reassessment exceeds the tax on the original income for the period commences from 1st April of the assessment year and ends on the date of completion of the assessment. Here the difference of tax on the original assessment and tax determined u/s.153A comes to Rs.15,36,914/- (1765028-228114). However, in the proceedings dated 4/5/2016 interest u/s.234B(3) is calculated for a period of 42 months instead of the actual period of 36 months that commences from 1st April 2010 to March, 2013. The same is hereby rectified as per the proceedings annexed. Moreover, out of the excess tax over the tax on the original assessment, no credit for TDS, Adv. Tax or self-assessment tax is deemed to be given.’

The same stood confirmed in first appeal; the ld. CIT(A) holding as:

‘In the present case, assessment order u/s. 143(3) r.w.s. 153A was passed for the A.Y 2010-11 on 28.3.2013. The appellate order was passed on 16.2.2016. The order of the Assessing Officer merged with the appellate order dated 16.2.2016. The provisions of the Act, as they stood on 16.2.2016 are applicable to the appellant i.e., the provisions of section 234B(3) as amended w.e.f 1.6.2015 are applicable to the appellant. In the present case, according to the amended provisions of section 234B (3), interest is chargeable from 1.4.2010 to 31.3.2013 for a period of 36 months, and hence there is no error in the order dated 4.5.2016 as rectified by the order dated 14.2.2019. The appellant's grounds relating to interest u/s 234B(3) are rejected.’

Aggrieved, the assessee is in second appeal.

3. We have heard the parties, and perused the material on record.

3.1 Section 234B, in its relevant part, as it stood prior its amendment by Finance Act, 2015, w.e.f. 01/6/2015, reads as under:

**Interest for defaults in payment of advance tax.**

**234B.** (1) Subject to the other provisions of this section, where, in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of section 210 is less than ninety per cent of the assessed tax, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period from the 1st day of April next following such financial year to the date of determination of total income under sub-section (1) of section 143 and where a regular assessment is made, to the date of such regular assessment, on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax.

*Explanation 1.*—In this section, "assessed tax" means the tax on the total income determined under sub-section (1) of section 143 and where a regular assessment is made, the tax on the total income determined under such regular assessment as reduced by the amount of,—

- (i) any tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income;
- (ia) any relief of tax allowed under section 89;
- (ii) any relief of tax allowed under section 90 on account of tax paid in a country outside India;
- (iii) any relief of tax allowed under section 90A on account of tax paid in a specified territory outside India referred to in that section;
- (iv) any deduction, from the Indian income-tax payable, allowed under section 91, on account of tax paid in a country outside India; and
- (v) any tax credit allowed to be set off in accordance with the provisions of section 115JAA or section 115JD.

*Explanation 2.*—Where, in relation to an assessment year, an assessment is made for the first time under section 147 or section 153A, the assessment so made shall be regarded as a regular assessment for the purposes of this section.

(2) Where, before the date of determination of total income under sub-section (1) of section 143 or completion of a regular assessment, tax is paid by the assessee under section 140A or otherwise,—

- (i) interest shall be calculated in accordance with the foregoing provisions of this section up to the date on which the tax is so paid, and reduced by the interest, if any, paid under section 140A towards the interest chargeable under this section;
- (ii) thereafter, interest shall be calculated at the rate aforesaid on the amount by which the tax so paid together with the advance tax paid falls short of the assessed tax.

(2A) ...

(3) Where, as a result of an order of reassessment or recomputation under section 147 or section 153A, the amount on which interest was payable under sub-section (1) is increased,

the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the day following the date of determination of total income under sub-section (1) of section 143 and where a regular assessment is made as is referred to in sub-section (1) following the date of such regular assessment and ending on the date of the reassessment or recomputation under section 147 or section 153A, on the amount by which the tax on the total income determined on the basis of the reassessment or recomputation exceeds the tax on the total income determined under sub-section (1) of section 143 or on the basis of the regular assessment aforesaid.

(4) Where, as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264, the amount on which interest was payable under sub-section (1) or sub-section (3) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and—

(i) in a case where the interest is increased, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly;

(ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.

(5) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989 and subsequent assessment years.

FA, 2015 substitutes s. 234B(3), which, accordingly, since 01/6/2015, reads as under:

(3) Where, as a result of an order of reassessment or recomputation under section 147 or section 153A, the amount on which interest was payable in respect of shortfall in payment of advance tax for any financial year under sub-section (1) is increased, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April next following such financial year and ending on the date of the reassessment or recomputation under section 147 or section 153A, on the amount by which the tax on the total income determined on the basis of the reassessment or recomputation exceeds the tax on the total income determined under sub-section (1) of section 143 or on the basis of the regular assessment as referred to in sub-section (1), as the case may be.

3.2 Section 234B of the Act provides for levy of interest on the shortfall in advance tax, reckoned with reference to the tax liability as determined either u/s. 143(1) or on regular assessment. Adjustments thereto for the tax already deposited/collected; tax relief allowed u/s. 89, etc., as listed in *Explanation 1* thereto, is to be deducted therefrom to arrive at the assessed tax, with reference to which interest is charged for the period of delay. The same is from the first day of the relevant assessment year – inasmuch as advance-tax can be paid latest up to the last date of the relevant previous year, to the date of processing or, as the case may be, regular

assessment of income (s. 234B(1)). Clearly, that per regular assessment, inasmuch as it substitutes the income and tax as determined on processing, is to be adopted where both exist. So, however, where assessment is made for the first time by way of an assessment u/s. 147 or u/s. 153A, the same is to be regarded as a regular assessment for the purpose of this provision (*Explanation 2* to s. 234B(1)). Of course, credit is allowed, in computing interest, for the tax paid by way of self-assessment, i.e., on own violation, after the close of the previous year (s. 234B(2)). The principal amount on which interest is charged may undergo an increase on account of reassessment/recomputation u/s. 147/153A, which is to be therefore given effect to. Accordingly, s. 234B(3) provides for an additional levy of interest for the period following the date of processing or, as the case may be, assessment, *to the date of such reassessment/recomputation*. This stands amended since 01/6/2015, so that the additional tax would also carry interest for the period beginning the first day of the assessment year, to the date of its determination, making it at par with s. 234B(1). Finally, s. 234B(4) provides for further change therein on account of variation in the principal amount as determined under revision or appellate proceedings. The period for which interest stands charged, be it u/s. 234B(1), or even u/s. 234B(3), is not impacted.

3.3 In the facts of the instant case, income stands assessed in the first instance vide order u/s. 153A on 28.03.2013, which therefore is to be regarded as per regular assessment. The interest charged u/s. 234B upon this assessment is only u/s. 234B(1). The same, thus, and correctly, is for the 36-month period, from April, 2010 to March, 2013. The only adjustment in the said interest is to be upon passing the appellate order u/s. 250(6) on 16/2/2016, i.e., by allowing the assessee credit for the reduction in tax, as originally assessed (Rs.83,35,990), to that pursuant to the appellate order (Rs.60,58,729), i.e., in terms of s. 234B(4). The same, as afore-said, has no bearing on the period for which interest stands levied. Accordingly, the only

change in the interest as originally charged would be on passing the appellate order, while giving appeal effect thereto, on account of the quantum of 'assessed tax'; the income having been reduced from Rs.83,35,990 to Rs.60,58,729. The same has no implication as regards the period of interest, which shall continue to be for the period of 36 months, i.e., the period beginning with the assessment year to the date of original assessment in March, 2013. We observe no dispute in its respect. *What, then, pray, is the controversy about?*

3.4 Interest stands charged on assessment u/s. 153A dated 28.03.2013, being the first assessment either u/s. 147 or there-under, u/s. 234B(1) r/w *Explanation 2* thereto, for a period of 36 months, i.e., from 01.04.2010 (the first day of the relevant assessment year) to March, 2013 (i.e., upto the month of assessment). There being no subsequent assessment, either u/s. 147 or u/s. 153A, there is no occasion to charge interest u/s. 234B(3). *Reference thereto is thus wholly misplaced.* The only change subsequent thereto is in the appellate proceedings, and which would, as afore-stated, not impact the period for which the interest stands to be levied u/s. 234B, but only, in view of the modification in the assessed income and, thus, the assessee's tax liability and, consequently, the assessed tax, i.e., the principal sum on which interest for shortfall is to be levied (s. 234B(4)). All that the law therefore provides is for the corresponding increase or, as the case may be, decrease in the interest chargeable u/s. 234B with reference to the revised principal sum, substituting tax liability with that determined in the appellate/revisionary proceedings. Sheer force of logic would also dictate the same inasmuch as interest could only be charged, on the change in the principal sum, for the same period for which it was earlier charged/payable. It is this that admits the rectification in the interest payable u/s. 154. Section 234B(3) would, as afore-noted, come into play only in the case where an assessment u/s. 147/153A is not made for the first time, while it is so in the instant case.

3.5 Interest shall accordingly be charged on the assessed tax computed with reference to the assessee's tax liability as determined pursuant to the appellate proceedings for the 36-month period, i.e., April, 2010 to March, 2013. The assessee's case is thus without basis on facts or in law. The AO is directed accordingly. If and where, however, we may add, the computation of interest chargeable u/s. 234B consequent to this order is at variance with that already computed by him, he shall provide opportunity to the assessee to raise objection/s, if any, and take same into account in his final computation. This is with a view to ensure that the interest u/s. 234B is charged to the assessee strictly in terms of this order, eschewing another round of litigation, which was wholly avoidable in view of the law in the matter being trite and well-settled. We decide accordingly.

4. In the result, the assessee's appeal is decided on the aforesaid terms.

*Order pronounced on March 28, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963*

Sd/-  
(Manomohan Das)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Cochin, Dated: March 28, 2024  
n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar  
ITAT, Cochin