

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.858/Del/2023
(Assessment Year: 2013-14)**

Shri Pankaj Bansal, 103B, The Aralias, DLF Gold Link, DLF City, Phase-V, Gurgaon, Haryana (Appellant) PAN:ANHPB5602R	Vs. ACIT, Central Circle-2, Faridabad (Respondent)
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Assessee by : Shri Gautam Jain, Adv
Shri Lalit Mohan, CA
Shri Parth Singhal, Adv

Revenue by: Ms. Nimisha Singh, CIT DR

Date of Hearing 02/04/2024
Date of pronouncement 10/04/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.858/Del/2023 for AY 2013-14, arises out of the order of the Id. Commissioner of Income Tax (Appeals)-3, Gurgaon [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 10719/2019-20 dated 24.01.2023 against the order of assessment passed u/s 154 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 13.03.2020 by the Assessing Officer, DCIT, Central Circle-II, Faridabad (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal before us:-

"1. That the learned Commissioner of Income Tax (Appeals)-3, Gurgaon has erred both in upholding the determination of net tax liability at Rs. 2,51,327/- in an intimation dated 28.4.2014 u/s 143(1) of the Act by rejection of application for rectification dated 22.4.2016 in an order cum communicated dated 13.2.2020 u/s 154 of the Act.

1.1 That while dismissing the appeal of the appeal the learned Commissioner of Income Tax (Appeals) has failed to appreciate that due date of the filing of the return in the case of the appellant was 30.9.2013 and not 5.8.2013 since appellant was partner of M/s M3M India Holding whose accounts were liable to be audited u/s 44AB of the Act

1.2 The finding that "appellant was the partner of the firm whose accounts were not liable to be audited u/s 44AB of the Act" is factually incorrect, legally misconceived and wholly untenable.

1.3 That also the conclusion that "AO has charged interest u/s 234A,B,C of the Act while passing the order u/s 143(3) of the Act for the year under consideration in the case of the appellant" is not in accordance with law, contrary to facts on record and thus misconceived

2. That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts, and in law in upholding the determination of levy of interest of Rs. 22,35,232/- u/s 234A of the Act, Rs. 67,22,139/- u/s 234B of the Act and Rs. 51,18,325/- u/s 234C of the Act aggregating to Rs. 23,63,37,317/- as against aggregate interest computed of Rs. 23,60,85,991/- in the return of income filed by the appellant

3. That the learned Commissioner of Income Tax (Appeals) has passed the impugned order without granting any fair, meaningful and proper opportunity to the appellant and thus is in violation of principles of natural justice."

3. We have heard the rival submissions and perused the material available on record. The assessee is a partner of M3M India holdings (firm). The assessee was under the bonafide belief that the said partnership firm which is engaged in the profession of providing manpower services, was liable for tax audit u/s 44AB of the Act. Accordingly, the due date for filing of return for the partnership firm u/s 139(1) of the Act would be 31.10.2013 for AY 2013-14. Since, the firm's due date is 31.10.2013 u/s 139(1) of the Act, the partner's due date for filing the income tax return i.e. the assessee herein also would be 31.10.2013. In the instant case, the assessee had filed its return of income u/s 139(1) of the Act on 30.09.2013 in accordance with the aforesaid mandate of law, declaring total income of ₹107,91,39,910/- and paying total tax of ₹23,60,85,990/- comprising of TDS and self assessment tax. The said tax liability of ₹23,60,85,990/- was determined by the assessee by calculating the tax of ₹22,22,61,621, interest u/s 234B of ₹67,05,696/- and interest under section 234C of the Act of ₹71,18,675/-.

4. This return was processed by the Id CPC u/s 143(1) of the Act on 28.04.2014 accepting the return of income but interest u/s 234A of the Act in the sum of ₹22,35,232/- was charged together with few modifications in calculation of interest u/s 234B and 234C of the Act. According to Id. CPC, due date of assessee for filing return of income u/s 139(1) would be 05.08.2013 being the extended due date u/s 139(1) of the Act for AY 2013-14 and not 31.10.2013. Accordingly, interest u/s 234A was levied. It is a fact that the partnership firm M3M India holdings was indeed subjected to tax audit for AY 2013–14. Further, the return filed by the said partnership firm for AY 2013-14 was duly processed by the CPC u/s 143(1) of the Act on 16.04.2014, wherein the due date of filing of return was clearly mentioned as 31st October 2013. Hence, the Id CPC while preparing the intimation u/s 139(1) of the Act for the firm liable for tax audit had accepted the due date as 31.10.2013, whereas the same Id CPC while framing the intimation u/s 143(1) of the Act in the hands of the assessee had considered that due date of the assessee as on 05.08.2013 (ignoring the fact that assessee is a partner in a firm which is liable for tax audit) and charged interest u/s 234A of the Act on the premise that assessee is a partner in a firm not liable u/s 44AB of the Act. As per provisions of section 139(1) of the Act, the due date for the partnership firm not liable for tax audit would be 05.08.2013 for the year under consideration and the due date for partnership which is eligible for tax audit would be 31.10.2013. This is very clear from Explanation to section 139 of the Act, which defines the expression "due date". Hence, the department in the hands of the firm i.e. M3M holding had accepted the fact that it is liable for tax audit and accordingly had accepted the due date of filing of return of income u/s 139(1) of the Act to be 31.10.2013. Hence, the department cannot take the divergent stand for the assessee herein by holding that the firm in which assessee is a partner is not liable for tax audit u/s 44AB of the Act and consequently, the due date for assessee would get advanced to 05.08.2013, instead of 31.10.2013. In view of this, we have no hesitation to direct the Id AO to delete the chargeability of interest u/s 234A of the Act in the sum of ₹22,35,232/- in the instant case. The chargeability of interest u/s 234B of the Act

is consequential in nature. The grounds raised by the assessee are disposed of in the above mentioned terms.

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

Order pronounced in the open court on 10/04/2024.

-Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

-Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Dated:10/04/2024
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi