IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Sanjay Arora, Accountant Member and
Ms. Kavitha Rajagopal, Judicial Member

ITA Nos. 916 to 919/Coch/2022
(Assessment Years: 2005-06, & 2007-08 to 2009-10)

Santhimadom Ayurnikethan Health Resort & Research Institute Trust ThekkeNaluvazhi, North Paravur Ernakulam – 683 513 [PAN: AAFTS8296K]	vs.	The Assistant Commissioner of Income-tax, Central Circle-2 Ernakulam.
(Appellant)		(Respondent)

Appellant by: Shri Mathew Joseph, CA
Respondent by: Smt. J.M. Jamuna Devi, Sr. DR

Date of Hearing : 12.02.2024		Date of Pronouncement: 02.05.2024

O R D E R

Per Sanjay Arora, AM:

This is a set of four Appeals by the Assessee agitating the part-allowance of it's appeals contesting it's assessments under section 153A (r/w s. 153C) r/w ss. 144 and 254 of the Income Tax Act, 1961 (the Act), dated 31.07.2014, for four years, being Assessment Years (AYs.) 2005-06, 2007-08 to 2009-190, of even date, i.e., 31/7/2014, by the Commissioner of Income Tax (Appeals)–3, Kochi (CITA), vide a common order dated 20.06.2022.

2. The appeals are delayed by a period of 27 days, which stands duly explained by the assessee-appellant per it's condonation petition dated 10.10.2022, and the accompanying affidavit of even date. As explained therein, the appellant was facing a very difficult situation, with his office ransacked, resulting in the service of the impugned order on his Chartered Accountant, the learned counsel before us, on

15.07.2022. It was braving this hostile situation that the assessee filed the appeal albeit with a delay of 27 days. We find the reasons as genuine and *bona fide* and, accordingly, condoning the delay, admit the appeal for being decided on merits.

3. It was, at the outset, submitted by Shri Joseph, the learned counsel for the assessee, that only the grounds of appeal in relation to levy of interest u/ss. 234A and 234B of the Act are being pressed. And toward which he would take us through the appeal memo for each of the years under appeal, specifying the Grounds being not pressed, viz. Grounds 1 to 3, for AY 2005-06. The issue, he would continue, which stands discussed by the ld. CIT(A) at paras 5.6 through 5.14 of his order, is covered by the Tribunal's order in a group case (*Santhimadom Herbal City Trust v. Asst. CIT*, in ITA Nos. 920 & 921/Coch/2022, dated 14.11.2023). Though the same is w.r.t. sec. 234A only, the issue is common, the provision of s. 234B r/w *Explanation 2* thereto being *pari materia*. Smt. Devi, the ld. Sr. DR, would rely on the impugned order, though concede that if, as stated, covered, the Tribunal may follow the same. The hearing was closed at this stage.

4. We have heard the parties, and perused the material on record, as well as considered the legal position in the matter, including the order by the Tribunal in *Santhimadom Herbal City Trust*(supra).

4.1 We begin by recounting the facts of the case in brief. Assessment/s in the first instance was made u/s. 153C r/w s. 144 on 28.12.2010. The Tribunal, in appeal, set aside the assessment for fresh consideration vide it's order dated 10.07.2013 (in ITA Nos. 223 to 227/Coch/2013 / copy on record); the relevant part of which reads as:

'4.1 In the case of V N Radhakrishnan, a similar contention was raised by the department that the assessee has not cooperated with the AO. This Tribunal found that the AO has given only 2 hearings for producing the documents. The Tribunal further found that the assessee was not given any fair opportunity; therefore, the issue was restored to the file of the AO. Since the addition made in the present appeal is connected with the assessment of V N Radhakrishnan, this Tribunal is of the considered opinion that all these three appeals are to be restored to the file of the AO for reconsideration in the light of the finding that

may be recorded in the case of V N Radhakrishnan. In other words, the finding that may be recorded in the case of Dr V N Radhakrishnan and Smt. RamaniRadhakrishnan may be relevant for completing the assessment in the case of the present assesses. Therefore, this Tribunal is of the considered opinion that the issue needs reconsideration along with the assessment of V N Radhakrishnan and Smt. RamaniRadhakrishnan. Accordingly, the order of the CIT(A) is set aside and the issue is restored back to the file of the AO for reconsideration. *The AO shall consider the issue afresh on the basis of the material that may be produced by the assessee and thereafter decide the issue in accordance with law and after giving reasonable opportunity to the assessee*.' (emphasis, ours)

4.2 Fresh assessments, allowing due opportunity of hearing to the assessee, were accordingly made by the Assessing Officer (AO) on 31.07.2014. In the view of the assessee, interest u/ss. 234A and 234B is to be, therefore, beginning with the date of commencement of the period of interest, as prescribed, on which there is no dispute, is chargeable up to December, 2010, i.e., on the basis of the date of the original assessment (28.12.2010). The Revenue's stand, on the contrary, is that the same exists no longer and, therefore, interest, leviable up to the date of regular assessment, is upto July, 2014.

4.3 Next we may visit the relevant provisions of law, which read as under:

Interest for defaults in furnishing return of income.

234A. (1) Where the return of income for any assessment year under sub- section (1) or sub-section (4) of section 139, or in response to a notice under sub-section (1) of section 142, is furnished after the due date, or is not furnished, 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 date immediately following the due date, and,—

(*a*) where the return is furnished after the due date, ending on the date of furnishing of the return; or

(*b*) *where no return has been furnished, ending on the date of completion of the assessment under section 144*,

on the amount of the tax on the total income as determined under sub-section (1) of section 143, and where a regular assessment is made, on the amount of the tax on the total income determined under regular assessment, as reduced by the amount of,—

(*i*) advance tax, if any, paid;

(*ii*) any tax deducted or collected at source;

(*iia*) any relief of tax allowed under section 89;

(*iii*) any relief of tax allowed under section 90 on account of tax paid in a country outside India;

(*iv*) any relief of tax allowed under section 90A on account of tax paid in a specified territory outside India referred to in that section;

(*v*) any deduction, from the Indian income-tax payable, allowed under section 91, on account of tax paid in a country outside India; and

(*vi*) any tax credit allowed to be set off in accordance with the provisions of section 115JAA or section 115JD.

Explanation 1.—In this section, "due date" means the date specified in sub-section (1) of section 139 as applicable in the case of the assessee.

Explanation 2.—In this sub-section, "tax on total income as determined under sub-section (1) of section 143" shall not include the additional income-tax, if any, payable under section 143.

Explanation 3.—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.

Explanation 4.—[* * *]

(2) The interest payable under sub-section (1) shall be reduced by the interest, if any, paid under section 140A towards the interest chargeable under this section.

(3) Where the return of income for any assessment year, required by a notice under section 148 or section 153A 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 section 143 or section 144 or section 147, is furnished after the expiry of the time allowed under such notice, or is not furnished, 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 immediately following the expiry of the time allowed as aforesaid, and,—

(*a*) where the return is furnished after the expiry of the time aforesaid, ending on the date of furnishing the return; or

(*b*) where no return has been furnished, ending on the date of completion of the reassessment or recomputation under section 147 or reassessment under section 153A,

on the amount by which the tax on the total income determined on the basis of such reassessment or recomputation exceeds the tax on the total income determined under sub-section (1) of section 143 or on the basis of the earlier assessment aforesaid.

Explanation.—[* * *]

(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 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount of tax on which interest was payable under sub-section (1) or sub-section (3) of this section 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. (*emphasis, ours*)

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,— . . .

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 assess ment for the purposes of this section.

(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 or an order of the Settlement Commission under sub-section (4) of section 245D, 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."

4.3 The terms of the provisions are plain. Section 234A provides for levy of interest for not filing the return of income in time, so that it crystallizes on the due date of it's filing and, interest period, accordingly, commences from the date following the said date, continuing upto the date of filing the return or, in case of non-filing, the date of determination of income u/s. 143(1) or, where followed by regular assessment – defined u/s. 2(40) to mean an assessment u/s. 143(3) or s. 144, the said date. An assessment u/s. 147 or s. 153A, where made for the first time, is to be regarded as the regular assessment. Where an assessment is modified in appeal or revision, increasing or decreasing the assessee's tax liability, interest being compensatory in character, i.e., w.r.t. the shortfall in the payment of tax, is modified proportionately. Interest u/s. 234B is toward shortfall in the payment of advance-tax, which can be latest by the end of the relevant previous year. Interest, accordingly, becomes chargeable from the first day of the relevant assessment year up to the date, similarly, of tax determination u/s. 143(1) or, as the case may be, regular assessment, which includes an assessment u/s. 147 or s. 153A where made for the first time. This is of course subject to being modified consequentially on a change in the tax liability in revision or appeal. Credit, further, in computing this interest, is to be allowed for the tax deposited during the default period, i.e., for which interest is being charged.

4.4 The primary facts of the case are not in dispute. No return/s was furnished under any provision of the Act, with that on 31.12.2010 being *non est*. There has accordingly been no processing of return/s u/s. 143(1), or even assessment/s u/s. 143(3)/144. The assessment/s dated 28/12/2010 is the first assessment/s, which accordingly is to be regarded as the regular assessment/s referred to in ss. 234A(1) and 234B(1) r/w *Explanation 3* and *2* respectively thereto. The issue arising in the instant case is if interest chargeable u/s. 234A or u/s. 234B is, commencing with the date prescribed, on which there is no dispute, up to the date of the first assessment/s dated 28/12/2010, since set aside, as the assessee contends, or the second

assessment/s dated 31/7/2014, as does the Revenue. That is, is the interest chargeable only u/s. 234A(1) / 234B(1), or is the same to be, though charged there-under in the first instance, further modified u/s. 234A(4) / 234B (4) – the provisions being cited together as the same are *pari materia*. The issue arises as the second assessment/s is only consequent to the directions by the Tribunal, directing fresh assessment/s upon setting aside the impugned/first assessment/s. Interest, in either case, is to be charged *only* up to the date of the *regular assessment*, which may though, in appeal/revision, undergo a change pursuant to change in the assessed tax, the principal sum on which the compensatory interest gets computed, i.e., to factor in the change in the tax, plus or minus, as determined earlier per regular assessment. The issue, thus, boils down to ascertaining the date of the 'regular assessment'.

4.5 The issue came up, in the context of s. 234A, before this Bench in *Santhimadom Herbal City Trust* (supra), wherein, after noting the primary facts, which are in agreement with the instant case, it held as:

'5.3 The primary facts are not in dispute. No return/s was furnished under any provision of the Act, with that on 31.12.2010 being non-est. There has accordingly been no processing of return/s u/s. 143(1), or even assessment/s u/s. 143(3). The assessment/s dated 28/12/2020 is the first assessment/s, which accordingly is to be regarded as the regular assessments referred to in sec.234A(1)(b). Accordingly, the interest chargeable would be u/s.234A, from 01.8.2007 (01.8.2008) to 28.12.2010.

The amendment to an assessment pursuant to an order, *inter alia*, u/s.254, as in the instant case, only impacts interest u/s. 234A(1) in terms of the principal sum, on variation, downward or upward, in assessed tax. The same would not operate to extend the period for which the interest is charged, which gets crystallized on the completion of regular assessment for the first time. True, the original assessment/s stands set aside, but the same is accompanied by a direction to frame a fresh assessment/s, which thus is in consequence thereof. *The order u/s.254(1), it may be noted, has not led to the obliteration of the demand raised earlier, but only in scaling it down, as envisaged u/s.234A(4), and which revision could be upward as well*. Whether the said set aside was at the instance of the assessee – who was responsible by its conduct for the same, or the Revenue, is immaterial for the purpose of levy of interest u/s.234A, which is only towards the delayed filing of the return. *And which default, and with enough justification, receives closure by law on the completion of the assessment in the first instance*. The only thing therefore relevant from the stand point of charge of this interest with reference to the subsequent proceedings is the revision in the assessed tax and, accordingly, the concomitant interest liability. Sec.

234A(4) only contemplates revision in the amount charged or chargeable, even if nil, as where the first assessment yields a nil assessed tax. *We accordingly, for the reasons stated, find no merit in the Revenue's case*. As regards the decision in *Mahesh Investments* (supra), the relevant part of which is reproduced at para 5.12 of the impugned order, the same in fact supports the assessee's case. (emphasis, ours)

The Tribunal, thus, held in favour of the interest being charged up to the date of the first assessment/s, even if set aside later, as the default of non-filing the return had, with sufficient justification, received a closure in law on the assessment being made and, consequently, a demand, even if nil, being raised thereat. This demand, it argued, is not obliterated on the assessment being subject to appeal/revision, though may undergo a change pursuant thereto. Evidently, the *basis* of it's decision is the regular assessment, which marks the termini point up to which interest could be levied, with further changes therein being only w.r.t. a change/s in demand. *There is, thus, an underlying presumption as to an assessment and, concomitantly, a demand, even if nil, subsisting pursuant to it being set aside*. That is, an assessment, despite it being set aside, continues to be a valid assessment in law, with a defined demand attributable thereto. No case law, or judicial precedents, stand adverted to, or drawn strength from, by the Tribunal in issuing it's decision, even as it refers to the decision in *Mahesh Investments v. Asst. CIT* [2021] 123 taxmann.com 6 (Kar) [277 Taxman 161 / [2020] 429 ITR 284 (Kar)) as being supportive of the assessee's case.

4.6 The Apex Court in *ITO v. Seghu Buchiah Setty* [1964] 52 ITR 538 (SC) held that there was not much difference between annulment and set aside of an order inasmuch as both wipe out the original order; in it's words:(pg. 544)

'There is not much difference between annulling an order and setting it aside; both wipe out the original order.'

In the facts of the case the issue was as to whether the demand notice per the original order survived on the demand being subsequently reduced in appellate proceedings, and which was, we emphasize, without a 'set aside', much less total, of the original order. The issue arose in the context of the assessee being or, not being, in default,

which could only be in respect of an undischarged valid demand notice. The majority view held it as not inasmuch as the AO had to issue fresh notice for recovery of the reduced demand, and which he had not. The order of reduction, in it's opinion, must necessarily have the effect of setting aside the original order as a whole. The relevance of this, inasmuch as the law, per sub-sections (4) of ss. 234A / 234B, itself contemplates consequential amendment in interest, i.e., corresponding to the change in demand, *is that the charge of interest could only be pursuant to a valid demand notice, the basis of which is a valid assessment order*. Reference here may also be drawn to sub-section (1A) of sec. 220, inserted on the statue w.e.f. 01/10/2014, validating the notice of demand till the disposal of the appellate process:

'1A) Where any notice of demand has been served upon an assessee and any appeal or other proceeding, as the case may be, is filed or initiated in respect of the amount specified in the said notice of demand, then, *such demand shall be deemed to be valid* till the disposal of the appeal *by the last appellate authority or disposal of the proceedings*, as the case may be, and any such notice of demand shall have the effect as specified in section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 (11 of 1964).' (emphasis, ours)

Whether the said provision, inapplicable in the instant case inasmuch as the notices of demand stand issued much prior to 01/10/2014, would save the same is to be seen. The Hon'ble Court was, however, unanimous in that a *set aside of an assessment would result in an obliteration of the demand*; the same being in fact not an exception inasmuch as no debt can in that case be said to be due; the relevant part of the dissenting judgment reading as:

'There would be only one exception to this rule, i.e., when the order of assessment is wholly set aside. But that is not a real exception, for against the assessee no steps can be taken because there is no debt due by him.' (pg. 558)

That is to say, and even as the majority view would hold, there was no difference of opinion as to an annihilation of the assessment, and the consequent demand, on a complete set aside, as obtains in the instant case. Reference, next, may be made to another larger bench decision by the Apex Court in *Kunwar Trivikram Narain Singh v. State of Uttar Pradesh* [1965] 57 ITR 17 (SC). In the facts of the case, an

assessment, quashed in appellate proceedings for want of jurisdiction, was restored, directing the assessing authority to assess in accordance with law, on a review of the appellate order in pursuance to an application moved in terms of the amending Act changing retrospectively the definition of the assessing authority, so that the assessment as made was by a competent authority, and not jurisdictionally infirm. The result of a review of his order and its set aside by the Collector, the Hon'ble Court observed, was that the proceedings before the Additional Collector were restored. The effect, like-wise, of the review of the appellate order by the Tribunal vide it's order dated 10/7/2013, is that the said order is set aside, and the assessment proceedings restored before the AO, who is to accordingly proceed as per it's order. In *Suptd. (Central Excise) v. Pratap Rai* [1978] 114 ITR 231 (SC), the appellate authority, observing lack of principle of natural justice, vacated, without prejudice, the adjudication by an order levying penalty. The challenge to a fresh notice issued in the penalty proceedings was found misconceived by the Apex Court. As explained by it, where an order passed in appeal vacates the order of the first Tribunal on purely technical grounds and expressly states that it was being passed without prejudice, which means an order not on the merits of the case, such an order does not debar fresh proceedings which may be justified under the law. It is necessary for the court interpreting an order of this kind to give full and complete effect to the exact words used by the authorities and not to draw a sweeping conclusion merely from the fact that no explicit direction has been made by the appellate authority. The parallel with the instant case is easy to draw. The Tribunal sets aside the assessment as it had done so in an earlier in a connected case, findings in which it considers would be relevant for assessment in the instant case. The set aside in the former case/s was on finding a lack of adequate opportunity to the assessee-appellant. That is, the finding forming the basis of the impugned assessment/s as infirm was the want of proper findings in the connected case suffering for lack of natural justice. Whenever an order is struck down as invalid, being in violation of the principles of

natural justice, it went on to explain, there is no final decision of the cause and fresh proceedings are left open. All that is done is that the order assailed by virtue of its inherent defect is vacated but the proceedings are not terminated. We advert to this decision for the principle involved; there being no dispute that the proceedings were in the instant case restored before the AO with definite findings by the Tribunal. Rather, where the set aside was itself a subject matter of further appeal, it was held in *CIT v. P.N. Krishna Kumar* [2002] 254 ITR 31 (Ker) that the Tribunal was, in appeal, to decide the question of the validity of the impugned order notwithstanding that the final assessment had been made inasmuch as there cannot be two assessments and, two, the appeal proceedings are only a continuation of the assessment proceedings. We can multiply examples; the case law in the matter being legion, but it is not necessary in view of the law being well-settled that the original assessment (order) on it's set aside obtains no longer. Why, the Tribunal in some cases has gone to the extent of saying that in the absence of specific directions while setting aside, the assessing authority cannot proceed further in the matter of assessment (*Dy. CIT v. Jaya Publications* [2010] 123 ITD 53 (Chenn); *Jaya Prakash v. ITO* [2022] 192 ITD 316 (Bang)). *.As such, whether accompanied by a direction/s by the appellate authority for fresh assessment or otherwise, the original order, since set aside, obtains no longer, and neither can any demand, consequently, be attributed thereto, which could be said to have been modified in appeal.*

4.7 We may at this stage advert to the decision in *Mahesh Investments* (supra), relied upon by the Revenue before us (refer para 5.12 of the impugned order), even as the assessee had in *Santhimadom Herbal City Trust* (supra), found opposite by the Tribunal. The said decision, as its reading shows, states that even where set aside and, thus, effaced, it is 'the original assessment' that shall be regarded as "the regular assessment" for reckoning the period of interest, which in that case was u/s. 234A of the Act. The decision does not, however, dwell on how an assessment

which obtains no longer, could be deemed as valid, with it being at the same time trite law that it is the operative principle, the *ratio decidendi* of the decision, that has precedent value (*The Mavilayi Service Cooperative Bank Ltd. & Ors. v. CIT* [2021] 431 ITR 1 (SC); *Sree Bhagavathi Textiles Ltd. v. CIT*[2000] 244 ITR 496 (Ker)). The only opinion therefore on record is that by the Tribunal in *Santhimadom Herbal City Trust* (supra), which we have, for the reasons afore-stated, found as not commending itself for adoption, with there being no estoppel against law. The Tribunal, in rendering it's said decision, did not consider the legal import of a 'set aside', judicially well-settled, w.r.t. judicial precedents or otherwise, also apparent from the fact of it observing the demand subsisting, and not obliterated, despite a set aside of the source (assessment) order, as explained in *Seghu Buchiah Setty* (supra). The decision in *Mahesh Investments* (supra) is, however, rendered following the decision in *Modi Industries Ltd. v. CIT* [1995] 216 ITR 759 (SC). The conflict of judicial opinion, noticed by and settled by the Hon'ble Apex Court in this case was essentially on this aspect. That is, 'the date of the regular assessment', being an assessment u/s. 143 or 144 (r/w ss. 2(8) and 2(40)), where the same is subsequently set aside for fresh assessment. Despite it being subsequently set aside, the Hon'ble Court held it to be the date of the original order. The reason that found favour with the Hon'ble Court, as a reading of it's detailed judgment shows, is that once the tax paid, either by way of advance tax or TDS, is, upon assessment, adjusted against tax liability of the assessee, it looses it's character as advance-tax or TDS. The issue arose in the context of s. 214, providing for interest payable by the Government on refund of advance tax, where paid in excess. The refund to the assessee of such excess, it explained, is of the tax. This change in character was not stand altered on the assessment being subsequently set aside. The interest to the assessee would thus, irrespective of fate of the assessment, only be up to this date, which of course is subject to increase or decrease corresponding to the change in the assessee's tax liability consequent to rectification, reassessment, revision or appeal (s. 214(1A)).

The interest being compensatory, it argued, he could not be penalized for the delay in 'assessment'. That is to say, the advance-tax stands mutated to tax on regular assessment, and subsequent changes therein would only alter the quantum of the tax that would stand to be paid to or, as the case may be, recovered from the assessee, with interest. The Hon'ble Court traversed the provisions of law to find the same as indicative of only the first assessment as being regular assessment for the purpose of Chapters XVII (Collection and recovery of tax) and XIX (Refunds) of the Act.

4.8 The matter, however, does not end here. Sections 214 and 215, providing for interest payable to and by the assessee on excess or, as the case may be, shortfall of advance tax, are operative only upto AY 1988-89. Section 234A provides for interest on delay in furnishing the return of income, either absolutely or belatedly, and ss. 234B and 234C for shortfall in the aggregate/individual installments of advance-tax, stand inserted under Part F (Interest chargeable in certain cases) in Chapter XVII w.e.f. 01.04.1989, i.e. AY 1989-90 onwards. Sections 243 and 244, providing for refunds under sections, *inter alia*, s. 214, were again, only up to AY 1988-89, and found expression, in a modified form, in s. 244A, under the same Chapter, w.e.f. AY 1989-90. Further, the following *proviso* was added to s. 240, w.e.f. 01.04.1989:

'**Provided** that where, by the order aforesaid,—

(a) an assessment is *set aside or cancelled* and an order of *fresh assessment is directed* to be made, the refund, if any, shall become due only on the making of such fresh assessment;

(b) the assessment is annulled, the refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee.' (emphasis, ours)

Is it then indicative of the demand being therefore kept in suspension for the interim? A declaration that a refund could arise only out of a legally valid assessment? Also, the refund of prepaid taxes, including advance-tax, is to w.e.f. that date bear interest upto the date of refund. The impact of the said legislative changes, having a bearing in the matter, would have to be examined; the Act providing separately for refund in a category of cases where, as in the instant case, the tax liability is determined afresh

on a set aside of the original assessment. The issue of determination of tax liability per a regular assessment and, consequently, interest payable to the assessee, where in excess (s. 244A r/w s. 240), or by the assessee where short (ss. 234B and 234C), are interrelated, and have to be read harmoniously, consistent with the scheme of the Act, even as explained in *Modi Industries Ltd*. (supra). The other change we observe, and which may also be indicative of the legislative mind, is the insertion of sub-section (1A) in s. 244A. *The import these changes would have to be examined*.

4.9 We next consider the argument as to the impugned assessment/s being barred by time in terms of s. 153B, found invalid per para 5.14 of the impugned order. No specific time limit, as u/s. 153, is stated as provided therein for an assessment made pursuant to the directions by an appellate authority *qua* an assessment u/s. 153A. How, we wonder, could this argument be raised in the instant proceedings, which also explains non-consideration of the said argument adopted in *Santhimadom Herbal City Trust* (supra), to which one of us is a party. The AO, after all, is, in framing the assessment/s on 31/7/2014, only complying with the direction/s by the Tribunal, which has since attained finality (refer: *Bhopal Sugar Industries Ltd. v. ITO* [1960] 40 ITR 618 (SC)). The challenge, therefore, ought to be to the Tribunal's order dated 10/7/2013 vide which directions for fresh assessment were made. This is as in that case no such directions could be given on 10/7/2013 inasmuch as the notice u/s. 153A r/w s. 153C for all the years under reference was issued on 19/3/2010. Further, would that therefore mean that the assessment/s, made on 31/7/2014, and in fact accepted on quantum, is valid if the interest u/ss. 234A/B is charged up to December, 2010! That apart, even assuming no specific time limit in s. 153B for such a contingency, that may not by itself imply that the ensuing assessment is barred by time. Reference in this context be made to *CIT v. National Traders* [1980] 121 ITR 535 (SC). The impugned assessments are thus valid in law, and the only issue that therefore survives is the period of interest u/ss. 234A/B.

In Sum:

4.10 The issue in the instant case pertains to the termini point for reckoning the period of interest u/ss. 234A and 234B, where the original assessment stands set aside in the appellate proceedings for fresh assessment. The original demand surviving no longer, the Revenue claims the subsequent assessment as the regular assessment, while the assessee claims it to be the first one. The issue stands considered by the Tribunal in *Santhimadom Herbal City Trust* (supra). The said decision, however, does not consider and, accordingly, issues no finding *qua* the legal effect of a 'set aside', while the same is the basis of the Revenue's objection, found valid on the basis of settled jurisprudence in the matter. True, the Tribunal in *Santhimadom Herbal City Trust* (supra) does speak of no obliteration of demand consequent to an assessment being set aside, but the question of the status of the assessment, a regular assessment, i.e., consequent to it's set aside, remains unanswered, with it being axiomatic that a demand could arise only w.r.t. a legally valid assessment. Why, much less a total set aside, even on a partial one, as where the set aside, for fresh assessment, is *qua* one or more grounds of appeal, it is difficult to say as to what is the demand that survives the set aside, which would only be on it being confirmed, deleted – wholly or partially, or enhanced. This restrains us from following the said order; there being no estopple against law. There is equally no finding in *Mahesh Investments* (supra), relied upon by the assessee, as indeed by the Revenue, whose reliance though, we agree with the assessee, is misplaced. As explained in *CIT vs. Prakash Chand Lunia* [2023] 454 ITR 61 (SC), for a precedent to be binding there has to be a conscious consideration of an issue involved (also see: *Hussain Bhai & Ors. v. CIT* [1966] 64 ITR 456 (Cal)). The decision in *Modi Industries Ltd*. (supra), however, settles the issue *qua* the 'date of regular assessment', clarifying it to be for the purpose of determination of interest payable to or, as the case may be, by the assessee, i.e., ss. 214, 215, also adverting to ss. 243 and 244 of the Act. The said provisions are no longer operative, with, further,

there being legislative changes, the legal import of which is to be judicially determined. The decision in *Mahesh Investments* (supra), and by the Tribunal in *Santhimadom Herbal City Trust* (supra), stand rendered *de hors* the same. There being no consideration of the changed legal scenario, we only consider it fit and proper to restore this issue, i.e., computation of interest u/ss. 234A & 234B, back to the file of the ld. CIT(A) for a consideration afresh, who shall adjudicate thereon per a speaking order after allowing adequate opportunity of hearing to the parties before him, in accordance with law, considering all the decisions that may be relied upon by them, or that he may wish to rely upon, confronting them therewith. All contentions *qua* this issue, whether raised and considered in this order or not, are, without reservation, open to both the sides. We may not be construed as having expressed any final view in the matter, save as to the instant appeals, as indeed the assessments from which they arise, as being maintainable. Two, we may clarify that the nature of levy as mandatory, as well as compensatory, and of the default being a continuing one, is not in dispute, so that demand, where paid, would automatically close the interest, even as found in *CIT v. Pranoy Roy* [2009] 309 ITR 231 (SC). The compensatory aspect, which also prevailed with the Apex Court in *Modi Industries Ltd*. (supra), stands met by the extant law providing for interest up to the date of grant of interest; a statutory confirmation of the interest being compensatory. The dispute concerns only the aspect of 'date of regular assessment' in the given facts and circumstances of the case, and the law in the matter. We decide accordingly.

5. In the result, the assessee's appeals are allowed for statistical purposes.

Order pronounced on May 02, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-	Sd/-
(Kavitha Rajagopal)	(Sanjay Arora)
Judicial Member	Accountant Member

Cochin; Dated: May 02, 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