

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

Before Shri Sanjay Arora, AM & Ms. Kavitha Rajagopal, JM

**ITA No.322/Coch/2023 : Asst.Year 2011-2012
(SA No.59/Coch/2023)**

Pallipuram Service Co-operative Bank Limited, Cherai ERnakulam 682 514 [PAN:AAAAP5798F]	vs.	The Income Tax Officer Non Corp Ward 2(5) Kochi.
(Appellant/Applicant)		(Respondent)

Appellant by:	Sri. Alan P Dev, Advocate
Respondent by:	Smt.J.M.Jamuna Devi, Sr. DR

Date of Hearing:	07.03.2024
Date of Pronouncement:	31.05.2024

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee arising out of the Order dated 20.03.2023 by the Commissioner of Income-tax (Appeals), Income Tax Department [CIT(A)], dismissing the assessee's appeal contesting the rectification of its assessment u/s.147 read with section 143(3) of the Income-tax Act, 1961 (the Act), dated 30.12.2016 for assessment year (AY) 2011-2012, vide rectification order u/s.154 dated 31.03.2019. The assessee has also filed a stay petition, also posted along with.

2. The brief facts of the case are that the assessee's assessment, noticing it had failed to file any return of income u/s.139 of the Act, was completed u/s.147 r/w s. 143(3) of the Act on 31.03.2019 at an income of Rs.8,62,333, raising a demand of Rs.4,55,650 u/s.156 on 30.12.2016, including interest u/s.234A at Rs.10,536 (DPB 26). Subsequently, it was discovered that the said interest, which had been levied for four months, i.e., from May, 2016 (the assessee's return in response to notice u/s.148(1) being due on 11.05.2016), to August, 2016 (the assessee filing the said

return u/s.148 on 22.08.2016), instead of 59 months, i.e., from October 2011 (the assessee being liable to file its return of income up to 30.09.2011), to August, 2016 (i.e., the actual filing of the return u/s. 148), it was show caused u/s.154 vide notice dated 05.07.2018. As it appears, no response thereto was filed by the assessee, which was required to be by 25.07.2018. Order u/s.154, charging additional interest u/s.234A(1) (corresponding to 55 months) in the sum of Rs.1,44,811 was accordingly passed on 31.03.2019. In appeal, the assessee raised the following ground:

‘The order of the ITO under section 154 is against the law. The time limit for AY 2011-12 has lapsed. Even though the ITO has passed order under section 154, the overall time limit under section 147 applies to the assessment year and hence the order of the ITO is against law.’

That is, charging the rectification order as time barred. The same was answered by the Id. CIT(A) in the negative. Adverting to sec.154, he held that an order there-under could be passed within four years of the order proposed to be amended, so that the impugned order was in time. Aggrieved, the assessee is in second appeal.

3. Before us, the assessee, while reiterating the said ground (vide Gd. 10 of its GoA – which though was not pressed), sought to raise an additional ground with reference to the maintainability of interest u/s.234A inasmuch as no direction in its respect was made by the Assessing Officer (AO) while passing the assessment order dated 30.12.2016, claiming, with reference to *NTPC Ltd. v. CIT* [1997] 7 SCC 489, that the Ground being sought to be raised being legal, with the relevant facts being not in dispute, it could be raised at any time. Reliance was placed by both the sides, *inter alia*, on decisions by the Apex Court on the merits of the case.

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

4.1 We find no substance in the assessee’s case. The Gd. as to the impugned order being time barred, raised before the Id. CIT(A), though finds mention in Gd.10 of the GoA before us, was not pressed. The same only needs to be stated to be rejected and, in any case, stands answered conclusively by the Id. CIT(A). The issue raised before

us per an additional Grd. is the maintainability of the levy in the absence of the direction by the AO in the assessment order for levy of interest u/s.234A. To begin with, the said legal ground could be raised only in appeal against the order dated 30.12.2016 charging the said interest without a direction to that effect in the assessment order. The rectification order only seeks to compute the same correctly, i.e., in accordance with the relevant provision of law inasmuch as the assessment made, though u/s. 147, is the first assessment and the return in response to notice u/s. 148(1), the first return. The said order having not been appealed against, had attained finality. The raising of this issue before us is not maintainable. Reference in this context be made to, inter alia, *Bhopal Sugar Industries Ltd. v. ITO* [1960] 40 ITR 618 (SC); *Hindustan Coco Cola Beverages v. CIT* [2007] 293 ITR 226 (SC).

Continuing further, it was nevertheless a common contention before us that the said ground is not maintainable in view of the law as clarified by the Apex Court per its decisions in *Mansarovar Commercial Pvt. Ltd. v. CIT* [2023] 453 ITR 661 (SC) and *CIT v. Bhagat Construction Co. Pvt. Ltd.* [2016] 15 SCC 738, rendered following its constitutional Bench decision in *CIT v. Anjum M.H.Ghaswala* [2001] 252 ITR 1 (SC), as also its subsequent decision in *Karanvir Singh Gossal* [2012] 349 ITR 692 (SC). Per the same, adverted to during hearing, it stands abundantly clarified that the matter admits of no two views; the charging of interest u/s.234A, as indeed u/ss. 234B and 234C, mandatory and compensatory in nature, is automatic. Decisions, holding to the contrary, viz. *Tej Kumari v. CIT* [2001] 247 ITR 210 (Pat) (FB); *CIT v. Ranchi Club Ltd.* [1996] 222 ITR 44 (Pat), do not represent good law. That being the case, the AO has no discretion in the matter. His failure, therefore, in not issuing the direction to charge interest in the assessment order, is to no consequence, and clearly a mistake, rectifiable u/s. 154.

Finally, we consider the aspect of computation of interest, on which, again, no issue was raised by the assessee. The assessment being for the first time, even as observed in *South Indian Bank Ltd. v. CIT* [2010] 325 ITR 517 (Ker), albeit in the

context of s. 234B, which is in *para materia*, as also by the Tribunal in *Mariamamma Joseph v. Asst. CIT* (in ITA No. 672/Coch/2022, dated 28.3.2024). The action of the AO is in clear conformity of the provision, admitting, again, no two views and, thus, liable to be rectified u/s. 154.

4.2 We having decided the appeal, the assessee's stay petition becomes infructuous.

4.3 We decide accordingly.

5. In the result, the appeal filed by the assessee is dismissed, and its stay petition, dismissed as infructuous.

Order pronounced on May 31, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Kavitha Rajagopal)
Judicial Member
Cochin, Dated: May 31, 2024

Sd/-
(Sanjay Arora)
Accountant Member

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