

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.851/Mum/2024
(Assessment Year :2012-13)**

Tata Chemicals Limited 24, Homi Mody Street Bombay House Fort, Mumbai-400 001	Vs.	Deputy Commissioner of Income Tax-2(3)(1) Mumbai 562, Aayakar Bhawan M.K. Road, Mumbai
PAN/GIR No.AAACT4059M		
(Appellant)	..	(Respondent)

Assessee by	Shri Vanish Bhansali
Revenue by	Shri Biswanath Das
Date of Hearing	30/05/2024
Date of Pronouncement	31/05/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 10/01/2024 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) r.w.s. 147.

2. The assessee has raised the following grounds:-

“The learned Deputy Commissioner of Income Tax (AO) erred in reopening the assessment u/s 148 of the Income Tax Act, 1961, without appreciating that:-

(i) Notice issued u/s 148 is bad in law, as it is not established that the reasons recorded are prior to the issuance of notice u/s 148.

(ii) The AO has not followed the procedure laid by the Supreme Court in the case of GKN Driveshafts reported in 259 ITR 19 (SC), in as much as the objections raised by the assessee have not been rejected.

(iii) There is reason to believe that income has escaped assessment, is not established.

(iv) The order passed u/s 143(3) r.w.s. 147 is uncalled for where the AO himself agreed that there is no income which has escaped assessment, accordingly the proceedings needed to be dropped.

2. Interest u/s 234B: The AO erred in enhancing interest u/s 234B of the Act for the period starting from date of passing order u/s 143(3) till the date of passing order u/s 147 dated i.e. from 31.01.2017 to 18.12.2019.

3. Ergo, assessee has challenged the validity of reopening u/s.147 and enhancing the levy of interest u/s.234B for the period starting from the date of passing of the original assessment order u/s.143(3) dated 31/01/2017 till the date of passing of order u/s.147 dated 18/12/2019.

4. The brief facts are that in the case of the assessee, return of income was filed for A.Y. 2012-13 on 30/11/2022 declaring total income of Rs.582,66,29,700/-. The said return was subject to scrutiny and assessment u/s.143(3) r.w.s. 144C(13) vide order dated 30/01/2017 post persence of DRP'S direction at an income of **Rs. 851,03,41,564/-** after making various addition / disallowance and TP adjustment. After completion of such an assessment completed u/s.143(3) / 144C(13), the case of the assessee was reopened u/s.147 based on certain information

that assessee has deposited some cash in the account of one M/s. Mandal Traders (Fertilizer Dealer) and amount of Rs.1,80,26,123/- was transferred through RTGS in the account of assessee company from the account of M/s. Mandal Traders. Accordingly, a notice u/s.148 was issued on 31/03/2019. During the course of reassessment proceedings, assessee submitted his explanation and replies alongwith evidences that there was genuine purchase made from the said party in response to various queries by the AO. Finally, AO after making relevant enquiries from the party, seeking records, explanation of the assessee and verification of account, no adverse inference was drawn with regard to alleged escaped income and assessee's income which was determined as per the original assessment order passed u/s.143(3) r.w.s. 144C(13) dated 30/01/2017 was accepted and there was no variation. The relevant conclusion of the AO reads as under:-

*“7. On perusal of assessee's submission and statement of bank account of M/s Mandal Traders for the relevant period, it is seen that assessee had sale transaction with the said party i.e. M/s Mandal Trader. Therefore, no adverse inference regarding escapement of income is drawn. **Hence, assessee's income as determined at Rs. 851,03,41,560/- under normal provision vide order u/s 143(3) r.w.s 144C(3) dated 30.01.2017 stands.**”*

5. Even though no variation in the income which has been assessed in the present order u/s.147 / 143(3) and the original assessment order dated 30/01/2017 u/s.143(3) r.w.s. 144C(13), ld. AO has calculated interest u/s.234B from the date of original

assessment order i.e. 30/01/2017 to 18/12/2019. Thus, assessee was aggrieved by such levy of interest u/s.234B.

6. Before the Id. CIT(A) assessee challenged the validity of reopening on the ground that, once Id. AO found that assessee's objection tenable that there is no escapement of income then he could not have passed the assessment order and should have dropped the proceedings u/s.147 / 148. Besides that, assessee also contended that once there is no variation from the original assessment order and same income has been accepted, then there is no question of levying of interest u/s .234B for three years till the date of re-assessment order. However, the Id. CIT(A) not only dismissed the assessee's objection u/s.148 but also the levy of interest for this period under Section 234B. The Id. CIT(A) had decided the issue completely on different footing altogether which reads as under:-

“6.2 I have perused the assessment order, grounds of appeal, submission filed by the appellant and arguments made during VC I find that Hon'ble Supreme Court of India in the case of CIT vs. Bhagat Construction Co Pvt Ltd in Civil Appeal No.1169 of 2006 vide order dated 06/08/2015 has held that the charging of interest u/s 234B is automatic when the condition of section 234B are met. As per the provisions of section 234B, if the advance tax paid is less than 90% of assessed tax then the interest u/s 234B is chargeable. The assessed tax is defined as tax on total income determined u/s 143(1) or regular assessment. In the present case, the AO has charged interest u/s 2348 on assessed tax from 1st April 2012 to the date of regular assessment as per the statutory provision. In view of the above discussion, the action of the AO of charging interest

is upheld and the ground of appeal raised by the appellant is dismissed.”

7. We have heard rival submissions and perused the materials available on record. It is seen that ld. AO has levied the interest for the period when there was no demand. The original demand was of Rs.52.68 Crores which was raised vide order u/s.143(3) r.w.s. 144C(13) dated 30/01/2017 which was already paid in the month of February 2017. The details of demand paid as per original assessment order are as under:-

	Particulars	Date of Order	Amount (Rs.)	
	Demand as per Order u/s 143(3)/144C(13)	30.01.2017		52,68,58,600
less:	Payments by way of following refund adjustments :-			
1)	2002-03 - refund order CIT(A) order dt. 20.03.2015, its OGE Dt. 27.02.2017	27.02.2017 (OGE order)	50,31,95,595	
2)	1987-88 - refund order IT AT order dt 16.05.2014, 's OGE dt. 22.02.2017	22.02.2017 (OGE order)	2,36,63.005	
	Balance Demand			0

8. Thus, there was no liability to pay interest u/s 234B thereafter. Once the ld. AO in his re-assessment order u/s.143(3) r.w.s. 147 has accepted the income as determined vide original

assessment order u/s.143(3) dated 30/01/2017; and there is no discussion in the order enhancing the interest u/s.234B between the period 31/01/2017 to 18/12/2019, then how interest can be charged for this period. Ld. CIT(A) has completely misunderstood the entire issue wherein he has held that charging of interest u/s. 234B is automatic and interest u/s.234B is to be assessed from 01/04/2012 to the date of regular assessment. Here the regular assessment was already completed 30/01/2017 and there was no variation in the re-assessment order dt. 18/12/2019, then where is the question of levying penalty of Section 234B for this period when assessee had already paid the entire demand arising out of order dated 30/01/2017 within the time limit of 30 days, i.e., by February 2017. Thus, there was no payment pending nor there is any variation in the income. Accordingly, we hold that assessee was not liable for charging of interest u/s.234B from the period 30/01/2017 to 16/12/2017. Thus, interest computed by the ld. AO in the re-assessment order is deleted.

9. In so far as the issue relating to Section 147 in ground No.1, once we have given relief on the only issue of levy of interest, then same is treated as purely academic.

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

Order pronounced on 31st May, 2024.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 31/05/2024

KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai