

आयकरअपीलीयअधिकरण, ' सी'न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवंश्री एस.आर. रघुनाथा, लेखा सदस्यके समक्ष  
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 1807 & 1808/CHNY/2024

निर्धारण वर्ष/Assessment Years :2015-16 & 2016-17

**Shri Gnanasekaran,** **The Assistant Commissioner**  
21, Thirowpathi Amman Koil Street , Vs. **of Income Tax,**  
Cuddalore-607 002. Central Circle -1(1)  
**PAN: ACVPG-5138-J** Chennai.  
(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Assessee by : Shri P.M.Kathir, Advocate  
प्रत्यर्थीकीओरसे/Revenue by : Shri R.Clement Ramesh Kumar, CIT

सुनवाई की तारीख/Date of Hearing : 21.08.2024  
घोषणा की तारीख/Date of Pronouncement : 21.08.2024

**आदेश /O R D E R**

**PER BENCH:**

Both these appeals by the assessee are arising out of separate orders passed by the Commissioner of Income Tax (Appeals), CIT(A), Chennai-18, in Order No.ITBA/APL/S/250/2024-25/1065679544(1) / ITBA/APL/S/250/2024-25/1065679637(1) both dated 14.06.2024. The assessments were framed by the Asst. Commissioner of Income Tax, Central Circle-1(1), Chennai for the assessment years 2015-16 & 2016-17 u/s. 153A of the Income Tax Act, 1961 (hereinafter the 'Act') vide separate orders both dated 31.03.2022. Since facts and issues involved in these appeals are common, both these appeals are heard together

and being disposed off by this common order for the sake of convenience.

2. The first common issue in these two appeals of the assessee for the assessment years 2015-16 and 2016-17 is as regards to order of the Ld.CIT(A) upholding levy of interest u/s.234A of the Act by the Assessing Officer. For this, the assessee has raised the following ground :-

*“The CIT(A) erred in upholding the levy of interest u/s. 234A. He ought to have seen that the AO ought to have calculated interest only from the date of issuance of notice u/s. 153A till the filing of return in response thereto.”*

3. The brief facts are that a search and seizure operation u/s.132 of the Income Tax Act, 1961 (hereinafter 'Act') was conducted on 18.03.2021 at the business and residential premises of the assessee. The assessee is a non-filer. The Assessing Officer issued notice u/s.153A on 10.12.2021 for the relevant assessment year 2015-16, in consequent to search conducted u/s.132 of the Act dated 18.03.2021. Consequently, the assessee filed his return of income for the relevant assessment year 2015-16 on 23.02.2022. While framing assessment u/s.153A of the Act, vide order dated 31.03.2022, the Assessing Officer in the computation of income and tax thereon charged interest u/s.234A of the Act amounting to Rs.27,924/- for default in furnishing

return of income u/s.139(1) of the Act. Aggrieved, the assessee preferred appeal before the CIT(A).

4. The CIT(A) observed that interest chargeable for delay in filing of return of income as well as short payment of advance tax are mandatory u/s.234A and 234B of the Act. For this, the CIT(A) has recorded his finding as under:-

*“4.1 A search u/s 132 was conducted on 18.03.2021. It is seen that the assessee has not filed the returns of income for the impugned AYs and has filed the returns only in response to notice u/s 153A, It is seen from the assessment order that incriminating materials (loose sheets) were seized from the assessee's residence vide ANN/PVD/GG/LS/S during the course of search u/s 132 on 18.03.2021. The assessee has questioned AO on assuming jurisdiction under the provisions of the IT Act and relied on circular 10/2012 dt: 31.12.2012.*

*4.2 The appellant has not disputed that search has taken place in his case u/s 132. Once search takes place, the AO automatically derives jurisdiction u/s 153A for assessing or reassessing income for the last six years prior to the year of search. The appellant has not provided any valid reason to show that the AO has no jurisdiction. The quoting of the CBDT circular is only in case of assesseees for whom the competent authority has relaxed the applicability of 153A for all years except for the year of search as per rule 112F. No such relaxation has been afforded to the appellant.*

*4.3 The AO has completed the assessment by accepting the return of income for both the AYs. The tax calculation as submitted by the assessee and that determined by the AO is the same.*

	As per assessee		As per department	
A.Y	2015-16	2016-17	2015-16	2016-17
Total income	574011	511310	574011	511310
Tax	35846	22930	35846	22930

*The difference in demand payable is on account of computation of interest u/s 234A and 234B. The interest is chargeable for delay in filing the return of income as well for short payment of advancement tax. The chargeability of interest u/s 234A and 234B is mandatory for defaults. There is no tax charged u/s 115JC as alleged by the appellant.*

*5. In result, the appeals for the AYs 2015-16 and 2016-17 are dismissed.*

Aggrieved, now the assessee is in appeal before the Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. We noted that interest u/s.234A of the Act is to be charged from the due date of filing of return of income u/s.139(1) of the Act, but the assessee is a non-filer and no original return of income for the relevant assessment year 2015-16 was filed by the assessee. However, in the present case the facts are that search was conducted u/s.132 of the Act by the Income Tax department on the business and residential premises of the assessee on 18.03.2021 and in consequent to the same, a notice u/s.153A was issued to the assessee for the relevant assessment year 2015-16 on 10.12.2021. In response to the notice, the assessee has filed return of income u/s.153A of the Act on 23.02.2022. As per the notice u/s.153A of the Act, time allowed for furnishing of return was 15 days, it means, the assessee has to file return of income on or before 25.12.2021, but actually, the assessee filed return of income only on 23.02.2022. Thereby, there was delay in filing of return of income in response to notice u/s.153A of the Act. But, whether this constitute a default in term of section 139(1) from the due date for

filing of original return of income or proceedings are in response to notice u/s.153A of the Act in consequent to search conducted u/s.132 of the Act on 18.03.2021.

6. We have gone through provisions of section 234A of the Act and provision of section 234A(3) deals with the issue and relevant section reads as under:-

234A (1).....

(2).....

*“(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 re-assessment or re-computation 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 re-assessment or re-computation exceeds the tax on the total [income determined under sub-section (1) of section 143 or on the basis of the earlier assessment aforesaid.”*

7. Even, the provisions of section 153A, when the procedure for assessment in a case of search or requisition is prescribed clear the doubt that once notice u/s.153A is issued, then the assessee files his return of income in response to the same, the same is to be treated as

return, as if, such return was required to be furnished u/s.139 of the Act. In term of provisions of section 153A(1)(a), it is clear that return furnished u/s.153A in response to notice u/s.153A of the Act, is to be treated as if, such return is furnished u/s.139 of the Act. The relevant provisions of section 153A(1) (a) reads as under:-

Sec. 153A(1) .....

*“Sec.153A(1)(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139.”*

8. The relevant issue is now no longer *res integra*, as this issue was considered by the co-ordinate Bench of this Tribunal in the case of ACIT Vs. V.N.Devadoss reported in (2013) 32 taxmann.com 133 (Chennai Trib), wherein the Tribunal had considered exactly identical issue which read as under:-

*“45. The second common issue raised in all these appeals is regarding levy of interest under section 234A. The case of the Revenue is that the Commissioner of Income-tax (Appeals) has erred in directing the Assessing Officer to charge interest under section 234A from the date of expiry of the notice period given in the notices under section 153A without noting that charging of interest under section 234A is compensatory and that as per the provisions of section 80AC, the assessee ought to have filed returns of income within the due date under section 139(1) and hence the provisions of section 234A(l) is applicable. It is also the case of the Revenue that the Commissioner of Income-tax (Appeals) has failed to note that the order of the Income-tax Appellate Tribunal, B-Bench, Chennai in*

*the case of Dr. V. Jayakumar v. Asstt. CIT [2011] 10 taxmann.com 141/46 SOT 68 (Chennai) (URO) is not applicable to these cases since the facts are distinguishable. In the case of Dr. V Jayakumar (supra), the assessee had paid taxes much before filing the return, whereas in the present cases the assesseees have paid taxes under section 140A. The returns of income filed by the assesseees on 23-9-2011 cannot be equated with the returns of income required to be filed under section 139(1). It is the case of the Revenue that the assesseees have committed default both under sections 234A(l) and 234A(3). It is true that the jurisdictional Tribunal at Chennai in its order rendered in the case of Dr. V. Jayakumar (supra) has held that interest is chargeable under section 234A from the date of expiry of the notice period given to the assessee under section 153A. It is because the return filed under section 153A would be deemed to be a return of income under section 139 as per the express language of the provisions of section 153A(l)(a) and therefore the return of income filed under section 153A also is to be processed under section 143(1) and the income determined thereof. These are all consequences of search conducted under section 132 and the issuance of notice under section 153A. Once a recomputation in the assessment order under section 153A is done, the interest chargeable under section 234A would have to be reckoned from the date of determination of income under section 143(1), read with section 153A to the date of the recomputation of income under section 153A, read with section 143(3). This position is in tune with the law stated in section 234A(3). Therefore we find that the Commissioner of Income-tax(Appeals) is justified in holding that the interest under section 234A is chargeable from the date of expiry of the notice period given under section 153A to the date of completing the assessment under section 143(3). This issue is decided in favour of the assesseees.”*

9. The provisions of clause(a) to sub-section (1) of section 153A made it clear that assessment in case of search, notice is to be issued to searched person u/s.153A(1) of the Act requiring him to furnish return of income within such period as may be specified in the notice and assessee will file return of income in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed. This provision also makes it clear that provisions of section 153A of the Act so far as made, may be apply accordingly as if, such

return of income as required to be furnished u/s.139 of the Act. It means that requirement of provision is that return is to be treated as return filed u/s.139 of the Act i.e., return filed by the assessee u/s.153A(1) of the Act. Hence, this provision for this purpose is to be considered as *pari-materia* to section 139 of the Act, and hence, in our view, interest u/s.234A is to be charged from the end of the month i.e time limit as specified in the notice issued u/s.153A of the Act. Hence, in the present case, interest is to be charged for the months of January & February, 2022 only i.e., for two months. We direct the Assessing Officer accordingly. The first ground raised by the assessee is allowed.

10. The first ground of appeal raised by the assessee in ITA No. 1808/Chny/2024 for the assessment year 2016-17 is exactly identical to the issue which we have already considered in ITA No.1807/Chny/2024 for the assessment year 2015-16 i.e levy of interest u/s.234A. The reasons given by us in the preceding paragraphs of ITA No.1807/Chny/2024 shall *mutatis mutandis* apply to this appeal as well. Therefore, for the similar reasons, we direct the Assessing Officer to charge interest from the month of January & February, 2022 only i.e., for two months. Ordered accordingly.

11. The second common issue in the appeal of the assessee for assessment year 2015-16 is as regards to the order of the CIT(A)

upholding levy of interest u/s.234B of the Act by the Assessing Officer.

For this issue, the assessee has raised the following ground:-

*“The CIT(A) erred in upholding the levy of interest u/s. 234B. He ought to have seen that the AO ought to have calculated interest only from the date of issuance of notice u/s. 153A till the assessment after giving credit for the taxes”*

12. The facts are narrated on the above ground which need not be repeated. Admittedly, the return of income was filed by the assessee in response to notice issued u/s.153A of the Act, consequent to search conducted in the residential and business premises of the assessee u/s.132 of the Act on 18.03.2021. The assessment was completed u/s.153A of the Act on 31.03.2022 and interest u/s.234B for default in payment of advance tax was charged for an amount of Rs.30,072/-. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) confirmed the action of the Assessing Officer and his finding recorded is already extracted in the earlier part order of ITA No.1807/Chny/2024 on the issue of interest u/s.234A of the Act in para no.4 hereinabove.

13. According to the AR, interest charged u/s.234B was calculated without considering the self-assessment tax paid for an amount of Rs.49,092/- and which has been paid on 31.03.2019. The only limited plea of the assessee before us is that interest is to be recomputed in term of the provisions of section 234B(2) of the Act, after considering the

payment made by the assessee on account of self-assessment tax. When this was pointed out to Ld.CIT DR, he only stated that matter can be referred back to the Assessing Officer for recomputation as per law.

14. We have heard rival contentions and gone through facts and circumstances of the case. We find that interest is to be charged only after giving effect to the self-assessment tax paid for Rs.49,092/- on 31.03.2019, after verification by the Assessing Officer and accordingly we decide the levy. In term of above, this appeal of the assessee is partly allowed.

15. We find that identical issue of interest u/s.234B has been raised by the assessee for assessment year 2016-17 also. Therefore, the reasons mentioned in para 14 of this order shall *mutatis mutandis* apply to this appeal as well. Hence, we direct the Assessing Officer to decide the levy accordingly, for the assessment year 2016-17 also.

16. Both the appeals of the assessee are partly allowed.

Order pronounced in the open court on 21<sup>st</sup> August, 2024

Sd/-

(एस.आर. रघुनाथ)  
**(S.R. RAGHUNATHA)**

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)  
**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,  
दिनांक/Dated : 21.08.2024  
*DS*

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त /CIT, Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF.