

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

**Before Shri Satbeer Singh Godara, Judicial Member &
Shri Amarjit Singh, Accountant Member**

ITA Nos.217 to 219/Coch/2023
Assessment Years: 2005-06, 2008-09 &2009-10

Ramani Radhakrishnan Santhimadam, Vadakkekara North Paravur Kochi – 683 513 PAN : ABHPR5804P.	v.	The Assistant Commissioner of Income-tax, Central Circle- 2 Ernakulam.
(Appellant)		(Respondent)

Appellant by : Shri Mathew Joseph, CA
Respondent by : Smt. V. Swarnalatha, Sr. D.R.

Date of Hearing : 12.08.2024	Date of Pronouncement : 12.08.2024
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ORDER

Per Bench :

These assessee's three appeals arise against orders of the CIT(A) -3, Kochi in proceedings u/s. 250 of the Income Tax Act, 1961 (the Act) as below: -

Sr. No.	ITA No.	AY	DIN & Order No.	Date
1	217/Coch/2023	2005-06	ITBA/APLS/S/250/2022-23/1049276432(1)	31.01.2023
2	218/Coch/2023	2008-09	ITBA/APLS/S/250/2022-23/1049279765(1)	31.01.2023
3	219/Coch/2023	2009-10	ITBA/APLS/S/250/2022-23/1049280246(1)	31.01.2023

Heard both the parties. Case files perused.

2. Learned counsel submits at the outset that the assessee does not wish to press for her identical grounds relating to quantum addition(s) of unexplained investment(s), etc in all these three appeals. Her only case before us is that she restricts her grievances raised in all the three appeals to the limited extent of charging/computation of sections 234A and 234B interest, as the case may be. Learned counsel further refers to this tribunal's recent order in assessee's group case(s) in ITA No. 220 to 223/Coch/2023 dated 06.08.2024 namely Santhimadam Agrofarm Trust restoring the very issue(s) to the Assessing Officer as under: -

“8. In so far as grounds 5 to 8, regarding the crucial date for charging the interest, the issue was covered by the order of this Tribunal, in the case of Santhimadom Ayurnikethan Health Resort & Research Institute (supra) wherein similar issue came up for consideration and the coordinate bench of the Tribunal after considering the judgement of the Hon'ble Karnataka High Court in the case of Mahesh Investments reported in [2020] 429 ITR 284 (Kar), which was relied on by the Id. CIT(A) for rejecting the claims of the assessee, has remitted the issue with the following findings: -

“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 estoppel 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 Id. 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."

Respectfully following the above said findings of the coordinate bench, we remit the interest issue to the file of the AO to decide the issue afresh by taking note of the above order of the Tribunal. In fine Ground nos. 5- 8 are partly allowed for statistical purposes."

3. The Revenue has not seriously contested the instant identical issue(s) relating to interest u/ss. 234A & 234B of the Act one this tribunal has already taken the call. We therefore restore the issue of computation of interest(s) u/ss. 234A & 1234B back to the Assessing Officer to decide the same afresh as per law in all these three cases. Ordered accordingly.

4. To sum up, assessee's instant three appeals in ITA Nos. 217 to 219/Coch/2023 are partly allowed for statistical purposes in the above

terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on this 12th Day of August, 2024.

**Sd/-
(Amarjit Singh)
Accountant Member**

**Sd/-
(Satbeer Singh Godara)
Judicial Member**

Cochin ; Dated : 12th August, 2023.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Concerned.
4. The CIT Concerned.
5. The DR, ITAT, Cochin.
6. Guard File.

Asst. Registrar/ITAT, Cochin