

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.841/DEL/2021
(Assessment Year : 2013-14)**

Abha Bansal,
103B, The Aralias,
DLF Golf Link City Phase V,
Gurgaon – 122 001 (Haryana).

vs.

ACIT, Central Circle 2,
Faridabad.

(PAN : AANPB8695H)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Gautam Jain, Advocate
Shri Ankit Kumar, Advocate
REVENUE BY : Shri Kanv Bali, Sr. DR

Date of Hearing : 18.09.2024
Date of Order : 14.11.2024

ORDER

PER S.RIFAUR RAHMAN,AM:

1. This appeal is filed by the assessee against the order of Id. Commissioner of Income-tax Appeals-3, Gurgaon (hereinafter referred to 'Ld. CIT (A)' dated 31.03.2021 for A Y 2013-14.
2. Brief facts of the case are, assessee filed its return of income declaring income at Rs.107,78,28387/- on 30.09.2013. The case was selected for scrutiny through CASS. Notices under section 143(2) and 142 (1) of the Income-tax Act, 1961 (for short 'the Act') along with questionnaire were

issued and served on the assessee. In response, Id. AR of the assessee attended and submitted relevant information as called for. After considering the submissions of the assessee, the assessment was completed by accepting the returned income of the assessee.

3. The issue under consideration is relating to rectification application filed by the assessee u/s 154 of the Act. The relevant facts relating to the above are, the assessee has revised its return of income on 26.04.2014. The assessee was a partner in firm, M/s M3M India Holdings which was liable to tax audit under section 44AB of the Act and assessee being a working partner of the abovesaid firm was liable to furnish his return of income on or before 31.12.2013. However, the return processed by CPC u/s 143 (1) dated 28.04.2014 holding that the due date for filing the return falls on 05.08.2013 and wrongly charged interest u/s 234A, 234B and 234C. The case of the assessee was selected for scrutiny and notice u/s 143(2) was issued to the assessee. The rectification rights were then transferred from CPC Bangalore to the Assessing Officer. After considering the facts on record, the Assessing Officer has not made any adverse inference while completing the assessment u/s 143(3) of the Act. Even though assessee has filed rectification application for the abovesaid mistake apparent on record u/s 154 of the Act, however no such rectification order was passed. Vide letter-cum-order-cum-

communication dated 13.02.2020, the assessee was intimated about the rejection of section 154 application dated 27.01.2020.

4. Against the abovesaid rejection of application, assessee preferred an appeal before the ld. CIT (A), in absence of rectification order u/s 154 of the Act and also further follow up by the assessee with the department, with the prayer that assessee preferred to file an appeal before the ld. CIT (A). After considering the submission of ld. AR for the assessee, ld. CIT (A) dismissed the appeal filed by the assessee.
5. Against the abovesaid order, assessee IS ill appeal before us raising following grounds of appeal :-

"1. That the Ld. Assessing Officer's & Worthy CIT (A) order are contrary to law and facts of the case.

2. That the learned CIT (Appeals) has erred in law and facts of the case in upholding the order of the Ld. A.O. rejecting the rectification application so filled by the assessee under section 154 of the Income Tax Act, 1961

2.1 That the Ld. CIT(Appeals) has erred in law in adjudicating the case ex-parte without appreciating that the Ld. A.O. had disposed the letter cum application u/s 154 of the Act dated without cogent reasons thus making the order bad in law.

2.2 Ld. CIT(Appeals) had erred in law and facts in adjudicating the case ex-parte without appreciating the fact that no adverse inference was taken in the assessment order so passed in the case of assessee u/s 143(3) of the Act.

2.3 That the ld. CIT (Appeals) has erred in law in adjudicating the case ex-parte without appreciating the fact

that no disposal of rectification application u/s 154 dated 22.04.2016 was done by the office of Ld. A.O.

2.4 That the Ld. CIT(Appeals) has erred in law in adjudicating the case ex-parte without appreciating the fact that the bank account of the assessee was wrongfully attached by the Department for the recovery of impugned demand for which no adverse inference was drawn firstly, in the assessment order u/s 143(3) and secondly, no disposal was given for the rectification application dated 22.04.2016 u/s 154.

3 That the CIT (Appeals) erred in law and facts in appreciating that the assessee was a partner in the firm M/s M3M India Holdings whose accounts were liable to be audited u/s 44AB of the Act and accordingly, the last date for filing the income tax return of the assessee was 30.09.2013 and the assessee had filed his return on dated 30.09.2013 i.e. on the due date. Therefore, charging of interest u/s 234 A,B,C of the Act in accordance with the provisions of the Act was unlawful and deserve to be quashed.

4 That the Ld. CIT(Appeal) completely ignored that the assessee had filled a revised return on 24.04.2014 against which the assessment was concluded UIS 143(3) taking the cognizance of such return and a demand notice so issued to the assessee u/s 156 of the Act bears nil demand.

5. That the Ld. CIT(Appeals) erred on the law and facts in upholding the actions of Ld. A.O. in recovery of the impugned demand which had been created suo-motto without even passing an order u/s 154 of the Act or even providing opportunity of being heard to the assessee.

6 That the Ld. CIT(Appeal) violated the principles of natural justice in not affording a reasonable opportunity of being heard to the assessee especially in the times of COVID 19 pandemic and proceeded ahead to dispose of the appeal ex-parte.

7 The appellant craves leave to add to or amend the aforesaid grounds before disposal of the appeal.

Prayer : It is therefore prayed that, impugned order passed by the Ld. CIT(Appeals) u/s 250(6) of the Act dated 31.03.2021 be set aside and relief may be granted to the assessee. "

6. At the time of hearing, ld. AR for the assessee submitted that similar issue was considered by the coordinate Bench in the case of Pankaj Bansal vs. ACIT vide ITA No.858/Del/2023 dated 10.04.2024, brought to our notice relevant findings of the Bench.
7. On the other hand, ld. DR for the Revenue relied on the findings of the lower authorities.
8. Considered the rival submissions and material placed on record. We observed that similar issue was already considered by the coordinate Bench in the case of Pankaj Bansal (supra) and the relevant findings of the Bench are as under :-

"4. This return was processed by the ld CPC u/s 143(1) of the Act on 28.04.2014 accepting the return of income but interest u/s 234A of the Act in the sum of Rs.22,35,232/- was charged together with few modifications in calculation of interest u/s 234B and 234C of the Act. According (old CPC, due date of assessee for filing return of income u/s 139(1) would be 05.08.2013 being the extended due date u/s 139(1) of the Act for AY 2013-14 and not 31.10.2013. Accordingly, interest u/s 234A was levied. It is a fact that the partnership firm M3M India holdings was indeed subjected to tax audit for AY 2013-14. Further, the return filed by the said partnership firm or AY 2013-14 was duly processed by the CPC u/s 143 (1) of the Act on 16.04.2014, wherein the due date of return was clearly mentioned as 31st October 2013. Hence, the ld CPC while preparing the intimation u/s 139(1) of the Act for the firm liable for tax audit had accepted the due date as 31.10.2013, whereas the same ld. CPC while framing the intimation u/s 143(1) of the Act in the hands of the assessee had considered that due date of

the assessee as on 05.08.2013 (ignoring the fact that assessee is a partner in a firm which is liable for tax audit) and charged interest u/s 234A of the Act on the premise that assessee is a partner in a firm not liable u/s 44AB of the Act. As per provisions of section 139(1) of the Act, the due date for the partnership firm not liable for tax audit would be 05.08.2013 for the year under consideration and the due date for partnership which is eligible for tax audit would be 31.10.2013. This is very clear from Explanation to section 139 of the Act, which defines the expression "due date". Hence, the department in the hands of the firm i.e. M3M holding had accepted the fact that it is liable for tax audit and accordingly had accepted the due date of filing of return of income u/s 139(1) of the Act to be 31.10.2013. Hence, the department cannot take the divergent stand for the assessee herein by holding that the firm in which assessee is a partner is not liable for tax audit u/s 44AB of the Act and consequently, the due date for assessee would get advanced to 05.08.2013, instead of 31.10.2013. In view of this, we have no hesitation to direct the ld AO to delete the chargeability of interest u/s 234A of the Act in the sum of Rs.22,35,232/- in the instant case. The chargeability of interest u/s 234B of the Act is consequential in nature. The grounds raised by the assessee are disposed of in the above mentioned terms."

9. Respectfully following the above decision, we are inclined to allow the grounds raised by the assessee.
10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 14th day of November, 2024.

**Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER**

**sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated: 14.11.2024
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI