

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, MUMBAI**

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 580/MUM/2024  
(Assessment Year: 2018-19)**

**Oasis Landmarks LLP,**

M/s. Kalyaniwalla & Mistry LLP,  
Esplanade House, 2<sup>nd</sup> Floor,  
29, Hazarimal Somani Marg,  
Fort, Mumbai - 400001  
[PAN: AADFO9657Q]

..... **Appellant**

**The Deputy Commissioner of Income  
Tax, Centralized Processing Centre,  
Bengaluru,**

Circle 41(2)(1), Kautilya Bhavan,  
G Block, Bandra Kurla Complex, Bandra  
East, Mumbai 400051

Vs

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Shri Jeet Kamdar  
For the Respondent/Department : Shri H.M. Bhatt &  
Shri Raj Singh Meel

**Date**

Conclusion of hearing : 29.08.2024  
Pronouncement of order : 21.11.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Assessee has challenged the order, dated 13/12/2023, passed by the Additional/Joint Commissioner of Income Tax (Appeals) - 1, Vadodara [hereinafter referred to as the '**CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as '**the Act**'] whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Intimation Order, dated 21/10/2019, passed under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as '**the Act**') for the Assessment Year 2018-19.

2. The Assessee has raised following grounds of appeal:

*"This Appeal is against the Order dated December 13, 2023, of the Commissioner of Income Tax (Appeals), Addl./JCIT (A)-1, Vadodara, and relates to the Assessment Year 2018-19.*

1. *The Appellant LLP objects to the tax determined payable.*
2. *The Assessing Officer and the learned Commissioner of Income-tax (Appeals) erred in holding that self assessment tax paid on April 30, 2018 and September 28, 2018, is to be apportioned first towards interest. The Appellant LLP submits that the Assessing Officer and the learned Commissioner of Income Tax (Appeals) are misreading and misconstruing the provisions of Section 140A read with Section 234B of the Act. Having regard to the facts and circumstances of the case and the provision of law, the Appellant LLP submits that the Assessing Officer be directed to re-compute the said interest correctly.*

3. The relevant facts in brief are that the Appellant filed the return of income for the Assessment Year 2018-19 on 28/09/2018, declaring Total Income at INR.29,91,68,010/- which was processed under Section 143(1) of the Act and Intimation Order, dated 21/10/2019, was issued to the Appellant accepting the total Income as returned by the Appellant. However, a demand of INR.2,52,635/- was raised upon the Appellant on account of the following:

- (a) The Appellant had claimed the credit of tax deducted at source aggregating to INR.65,73,910/- in the return of income. However, at the time of the processing of the return the credit of tax deducted at source granted to the Appellant was restricted to INR.64,90,810/-. Thus, the Appellant was not granted the credit of tax deducted at source amounting to INR.83,100/-
- (b) Interest under Section 234B of the Act was computed in the intimation issued under Section 143(1) of the Act at INR.6,33,077/- as against the interest of INR.4,67,729/- computed by the Appellant. Thus, additional demand of

INR.1,65,348/- was raised upon the Appellant.

- (c) An additional demand of INR.4,198/- was also raised in relation to interest under Section 234C of the Act.
4. The Appellant preferred appeal before the CIT(A) against the Intimation Order, dated 21/10/2019, which was disposed off as partly allowed. The CIT(A) granted partial relief by issuing directions in relation to the verification/grant of credit of tax deducted at source of INR 83,100/-. However, the CIT(A) declined to grant any relief in relation to additional interest levied under Section 234B and 234C of the Act.
  5. Being aggrieved, the Appellant has preferred the present appeal before the Tribunal on the grounds reproduced in paragraph 2 above. The solitary issue raised in the present appeal pertains to the computation and levy of interest under Section 234B of the Act.
  6. We note that Section 234B of the Act providing for levy of interest for default/delay in payment of advance tax was introduced by the Direct Tax Laws (Amendment Act), 1987 with effect from 01/04/1989. For proper implementation of the new scheme of assessment introduced by the Direct Tax Laws (Amendment Act), 1987 [for short 'the Amendment Act'] it was necessary that the assessee should also pay interest due under the provisions of the Sections 234A, 234B and 234C of the Act along with the self-assessment tax before filing the return of income. Therefore, Section 140A(1) of the Act was also amended to make it mandatory for an assessee to pay, before furnishing the return, tax together with interest for delay in furnishing the return or any default/delay in payment of the advance tax. Further, an 'Explanation' was also inserted in the said Section 140A(1) to clarify that where the assessee pays only part of the amount due at the time of filing the

return, such payment shall first be adjusted towards the interest payable, and balance, if any, shall be adjusted towards the tax payable. The aforesaid position becomes clear on perusal of the relevant extract of the Circular No. 549 of 1989, dated 31/10/1989, issued by the Central Board of Direct Taxes explaining the provisions contained in Direct Tax Laws (Amendment) Act, 1987 [as amended by Direct Tax Laws (Amendment) Act, 1989].

*"DIRECT TAX LAWS (AMENDMENT) ACT, 1987-III*

*4.16 For delay in filing the return of income and for delay or default in payment of advance tax, mandatory interest is now payable under the provisions of new sections 234A to 234C inserted by the Amending Act, 1987. Further, under the new scheme of assessment also being introduced by the Amending Act, 1987 (refer para 5.2 of these Explanatory Notes), if the tax and interest due on the basis of returned income have been correctly paid, the return will be accepted as such and no further action on it will be necessary. For successful implementation of the new scheme of assessment, it is necessary that the assessee should also pay interest due under the provisions of the new sections 234A to 234C along with the self-assessment tax before filing the return of income. The Amending Act, 1987 has, therefore, amended sub-section (1) of section 140A to make it mandatory for a person to pay before furnishing the return, tax together with interest payable under any provisions of the Act for delay in furnishing the return or any default or delay in payment of advance tax. Proof of payment of such tax and interest is to be attached with the return. Further, an Explanation has been inserted in the said sub-section (1) to clarify that where the assessee pays only part of the amount due at the time of filing the return, such payment shall first be adjusted towards the interest payable, and balance, if any, shall be adjusted towards the tax payable"*

7. On perusal of order impugned passed by the CIT(A) we note that while confirming the levy/computation of interest as made in the Intimation Order, dated 21/10.2019, issued under Section 143(1) of the Act, the CIT(A) had concluded that for the purpose of computing interest under Section 234B(2) of the Act the payments made by an assessee after the first day of April of the relevant Assessment Year should be first appropriated towards interest under Section 234B payable/outstanding and thereafter, the balance towards regular tax.

8. In appeal before us, mounting a challenge to the above conclusion drawn by the CIT(A), the Learned Authorised Representative for the Appellant vehemently contended that payment made by the Appellant after 1<sup>st</sup> April of the Assessment Year should be treated as payment towards regular tax as there was no default in payment of interest under Section 234A, 234B and 234C of the Act at the time of filing the return of income. It was further submitted that the provisions contained in Explanation to Section 140A(1) of the Act would be attracted only at the time of filing return of income and not thereafter. Reliance in this regard was placed by the Learned Authorised Representative for the Appellant on the following decisions of the Tribunal:
- (a) DCIT Vs. Great Eastern Shipping Co. Ltd.  
AY 1998-99, ITA. No.2282/Mum/2005, dated 09/04/2008
  - (b) DCIT SR – 6, Mumbai Vs. Oriental Aromatics Pvt. Ltd.,  
AY 1992-93, ITA No.9024/Mum/1995, dated 29/07/2002
  - (c) DCIT Special Range -6, Mumbai Vs. Hind Rectifiers Ltd.  
AY 1994-95, ITA No.4456/Mum/1998, dated 01/07/2003
  - (d) Patson Transformers Ltd Vs. DCIT, Special Range – VIII Vs.  
AY 1992-93 & 1993-94, ITA No.1941 & 1942/AHD/1998, dated  
07/11/2005
9. Per contra the Learned Departmental Representative supported the order passed by the CIT(A) by placing reliance on the Explanation to Section 140A(1) of the Act and submitted that any payment (including an adhoc payment) made by the assessee after 1<sup>st</sup> April of the Assessment Year was in the nature of self assessment tax which should first be appropriated towards interest and thereafter, towards tax.
10. We have given thoughtful consideration to the rival submission, applicable provisions and the judicial precedents cited during the

course of the hearing.

11. We are, in the present appeal, concerned with the method of computation of interest under Section 234B(2) of the Act for default/delay in payment of advance tax. Section 234B of the Act, as applicable at the relevant time, reads as under:

*"234B. (1) Subject to the other provisions of this section, where, in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of section 210 is less than ninety per cent of the assessed tax, 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 from the 1st day of April next following such financial year to the date of determination of total income under sub-section (1) of section 143 and where a regular assessment is made, to the date of such regular assessment, on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax.*

*Explanation 1.— In this section, "**assessed tax**" means the tax on the total income **determined under sub-section (1) of section 143** and where a regular assessment is made, the tax on the total income **determined under such regular assessment** as reduced by the amount of,*

- (i) any tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income;*
- (ii) any relief of tax allowed under section 90 on account of tax paid in a country outside India;*
- (iii) any relief of tax allowed under section 90A on account of tax paid in a specified territory outside India referred to in that section;*
- (iv) any deduction, from the Indian income-tax payable, allowed under section 91, on account of tax paid in a country outside India; and*
- (v) any tax credit allowed to be set off in accordance with the provisions of section 115JAA58[or section 115JD].*

*Explanation 2.—Where, in relation to an assessment year, an assessment is made for the first time under section 147 or section*

153A, the assessment so made shall be regarded as a regular assessment for the purposes of this section.

*Explanation 3.—In Explanation 1 and in sub-section (3) "tax on the total income determined under sub-section (1) of section 143" shall not include the additional income-tax, if any, payable under section 143.*

(2) Where, before the date of determination of total income under sub-section (1) of section 143 or completion of a regular assessment, tax is paid by the assessee under section 140A or otherwise:

- (i) interest shall be calculated in accordance with the foregoing provisions of this section up to the date on which the tax is so paid, and **reduced by the interest, if any, paid under section 140A towards the interest chargeable under this section;**
- (ii) thereafter, interest shall be calculated at the rate aforesaid on the amount by which the tax so paid together with the advance tax paid falls short of the assessed tax"

*(Emphasis Supplied)*

12. A perusal of Section 234B of the Act shows that Section 234B(1) of the Act deals with a general method of calculating interest for default/delay in payment of advance tax as it provides for levy of interest for the period commencing from 1<sup>st</sup> April next following the relevant previous year to the date of determination of total income under Section 143(1) of the Act or regular assessment, as the case may be. The amount on which interest for the aforesaid period is to be calculated is the 'assessed tax' or the amount by which the advance tax paid falls short of the 'assessed tax'. The expression 'assessee tax' has been defined in Explanation 1 to Section 234B of the Act to mean tax on total income computed under Section 143(1)/143(3) of the Act as reduced by the tax deducted at source, any tax relief allowed under Section 90/90A of the Act etc. Thus, the basis of computation of 'assessed tax' or shortfall in the 'assessed tax', as the case may be, is tax on total income computed under Section 143(1) of the Act or on regular assessment. Section

234(B)(2) of the Act provides for calculation of interest in cases where the tax is paid before determination of total income under Section 143(1) or before the completion of regular assessment. As per Section 234B(2)(i) of the Act, the interest is to be calculated in the manner provided for Section 234B(1) of the Act upto the date of payment and thereafter, the interest so computed is to be reduced by the interest, if any, 'paid' under Section 140A of the Act towards the interest chargeable under Section 234B of the Act. The bone of contention in the present appeal is the computation of the aforesaid interest under Section 234B of the Act paid under Section 140A of the Act which in turn impacts the computation of interest under Section 234B(2) of the Act.

13. This takes us to Section 140A of the Act which reads as under:

*"140A. (1) Where any tax is payable on the basis of any return required to be furnished under section 115WD or section 115WH or section 139 or section 142 or section 148 or section 153A or, as the case may be, section 158BC, after taking into account:*

- (i) the amount of tax, if any, already paid under any provision of this Act;*
- (ii) any tax deducted or collected at source;*
- (iii) xx xx*
- (iv) xx xx*
- (v) xx xx*

*the assessee shall be liable to pay such tax together with interest and fee payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return and the return shall be accompanied by proof of payment of such tax, interest and fee*

*Explanation.—Where the amount paid by the assessee under this subsection falls short of the aggregate of the tax, interest and fee as aforesaid, the amount so paid shall first be adjusted towards the fee payable and thereafter towards the interest payable as aforesaid and the balance, if any, shall be adjusted towards the tax payable.*

(1A) For the purposes of sub-section (1), interest payable under section 234A .....

(1B) For the purposes of sub-section (1), interest payable under section 234B shall be computed on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid falls short of the assessed tax.

Explanation. For the purposes of this sub-section, "assessed tax" means the **tax on the total income as declared in the return as reduced by the amount of:**

- (i) tax deducted or collected at source, in accordance with the provisions of Chapter XVII, on any income which is subject to such deduction or collection and which is taken into account in computing such total income;
- (ii) any relief of tax or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India;
- (iii) any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section; and
- (iv) any tax credit claimed to be set off in accordance with the provisions of section 115JAA or section 115JD.

(2) After a regular assessment under section 115WE or section 115WF or section 143 or section 144 or an assessment under section 153A or section 158BC has been made, any amount paid under sub-section (1) shall be deemed to have been paid towards such regular assessment or assessment, as the case may be.

(3) If any assessee fails to pay the whole or any part of such tax, *interest or fee* in accordance with the provisions of sub-section (1), he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax, *interest or fee*] remaining unpaid, and all the provisions of this Act shall apply accordingly."

14. On perusal of the above provisions of Section 140A of the Act we find that as per Section 140A(1) of the Act an assessee is required to pay

tax along with interest before the filing the return of income. Explanation to Section 140A(1) of the Act contains the rule of appropriation which comes into application in case the amount paid by an assessee falls short of aggregate tax and interest (payable as per the returned income). According to the aforesaid Explanation, the amount paid is first to be appropriated towards interest and then towards regular tax. As a result, the aforesaid shortfall in payment made by an assessee on account of application of the aforesaid rule of appropriation of payments would constitute a shortfall in payment of regular tax which can be subjected to compensatory interest.

15. For the purpose of Section 140A(1) of the Act, the interest under Section 234B of the Act is to be computed as per the provisions contained in Section 140A(1B) of the Act which was inserted by way of Finance Act, 2001 (w.e.f 01/04/1989). Section 140A(1B) of the Act prescribes the method of computing interest under Section 234B of the Act payable at the time of filing return of income and provides that for the purpose of Section 140A(1) of the Act, interest payable under section 234B shall be computed on an amount equal to the 'assessed tax' or on the amount by which the advance tax paid falls short of the 'assessed tax'. It would be pertinent to note that the term 'assessed tax' has been defined in Explanation to Section 140A(1B) of the Act to mean tax on total income as declared in the return of income as reduced by the tax deducted at source, any tax relief allowed under Section 90/90A of the Act etc. Thus, the basis of computation of 'assessed tax' or shortfall in the 'assessed tax', as the case may be, under Section 140A(1) read with Section 140A(1B) of the Act is tax on total income as declared in the return of income. At the time of filing return of income and payment of self assessment tax, an assessee could not be expected to anticipate the amount of assessed tax on determination of income under Section 143(1)/(3) of the Act, and therefore, for the purpose of payment of self-

assessment tax (including interest under Section 234B of the Act) under Section 140A(1) of the Act, the returned income has been taken as basis. At the time of filing return of income the payments made by an assessee are appropriated between interest paid under Section 234B of the Act and towards regular tax as per Explanation to Section 140A(1) of the Act. The appropriation so made remains constant as it does not vary depending upon the income assessed. Thus, amount of interest under Section 234B paid under Section 140A of the Act gets determined at the time of filing return of income. In our view, Section 234B(2)(i) of the Act provides for adjustment/reduction of the aforesaid amount. As noted hereinabove, the computation of interest under Section 234B of the Act is based upon assessed income (and not tax on returned income). Section 234B(2)(i) of the Act provides for adjustment of the amount of interest computed and payable under Section 234B(1) of the Act [*computed on the basis of the assessed income*] by the amount of interest computed on the basis of returned income and paid under Section 140A of the Act before filing return of income. Thus, we accept the contention of the Appellant that the rule of appropriation contained in Explanation to Section 140A(1) of the Act would be attracted only at the time of payment of self assessment tax at the time of filing return of income. While giving effect to the provisions contained in Section 234B(2)(i) of the Act the aforesaid amount shall be reduced from the interest computed under Section 234B(1) of the Act. Our view also draws support from the provisions contained in Section 140A(2) of the Act which, inter alia, provides that after regular assessment under Section 143 of the Act amount paid under Section 140A(1) of the Act as self assessment tax is deemed to have been paid towards such regular assessment. That being the case, the question of changing the appropriation of amount paid at the time self assessment under Section 140A of the Act between interest and tax on determination of income under Section

143(1)/(3) of the Act does not arise. The Assessing Officer cannot change the amount of interest paid under Section 234B of the Act at the time of filing return of income under Section 140A of the Act on determination of income under Section 143(1)/(3) of the Act.

16. We note that identical view has been taken by the Mumbai Bench of the Tribunal in the case of M/s. Great Easter Shipping Co. Ltd. Vs. DCIT,CC-47 in ITA No.2282/M.2005 passed on 09/04/2008 the relevant extract of which reads as under

"5. *With reference to the working of interest, the CIT(A) has analysed the provision of section 140A(1B) and 234B(2) and came to a finding which is as under:*

*4. I have considered the submissions of the Authorized Representative carefully. I find merit in the contentions of the Authorized Representative. The appellant paid total self assessment tax of Rs.2,22,38,841/- including interest u/s 234B and 234C. The self assessment tax paid by the appellant was a sum of Rs. 1,84,88,928/-, The Assessing Officer did not appreciate the amendments inserted by the Finance Act 2001 w.e.f. 1.4.1989 in Sec. 140A. Section 140A(1B) stipulates that interest payable u/s 234B shall be computed on an amount equal to the assessed tax on the amount by which advance tax paid falls short of the assessed tax. The "assessed tax" is defined in explanation to sec. 140A(1B) of the I.T. Act. According to this definition "assessed tax" means the tax on the total income as declared in the return as reduced by the amount of Tax Deducted or collected at source. This definition of the "assessed tax" is for the purpose of computation of interest u/s 234B at the time of filing of the return. The finance Act, 2001 clarified that for the purpose of computation of interest u/s. 234B, the returned income becomes the basis. Explanation-1 to Section 234B(1) has been inserted by the Finance Act, 2001 w.e.f. 1.4.89 which defines the "assessed tax" on completion of the regular assessment. According to this definition, the assessed tax means the tax on the total income determined u/s 143(3) reduced Tax or collected at source. Further, sub Sec.2 of Sec. 234B has stipulated the procedure for calculation of 234B interest, where tax is paid by way of self assessment tax or otherwise before completion of*

the regular assessment. To the facts of present case, the provisions of Section 234B(2) are applicable. In accordance with the provision of Section 234B(2), interest has to be calculated from 1st day of April next following each Financial year till the date in which self assessment tax paid. The interest so calculated requires to be reduced by the interest paid by the assessee u/s. 140A towards interest u/s. 234B. Thereafter, interest shall be calculated on the amount by which tax so paid (SA) together with advance tax paid falls short of the assessed tax. The appellant calculated the interest in accordance with the provisions of sec. 234B(2) of the IT. Act. The Self Assessment tax cannot be changed from time to time by the A.O. The appellant paid the interest and self assessment tax while filing the return of income and no tax or interest was due on the returned income. The calculation of interest u/s 234B made by the assessee is in accordance with the provisions of the Act."

6. *Nothing has been brought on record by the DR how this order of the CIT(A) is not correct. The CIT(A) has correctly analyzed the provisions and examined the working given by the assessee and the Assessing Officer and given the directions. We do not find any reason to interfere with the orders of the CIT(A).*
7. *In the result, appeal dismissed."*

17. Similarly, in the case of Patson Transformers Ltd. Vs. Deputy Commissioner of Income Tax, Special Range – VII [2006] 6 SOT 673 (AHD), Co-ordinate Bench of the Tribunal had, while examining identical issue in similar facts and circumstances, held as under:

"14. In the light of above discussion, we are of the considered view that adjustment towards interest payable under section 234B is to be considered only at the time of filing return of income i.e., when payment of self-assessment under section 140A is required to be made. Before that interest under section 234B is independently required to be calculated only in accordance with the provisions provided in section 234B(i). If at the time of filing return it is found short payment after adjustment of interest out of tax paid under section 140A, further interest is required to calculate in accordance with section 234B(2)(ii), on balance amount which is assessed tax minus advance tax and ad hoc payment.

15. Thus, we find that approach of revenue for calculation of

*interest under Section 234B is not correct, therefore, the orders of lower authorities are set-aside and the claim of the assessee is allowed. The Assessing Officer is directed to calculate interest under section 234B as per above discussion*

*17. In the result, appeals are allowed". (Emphasis Supplied)*

13. In view of the above, we accept the computation of income under Section 234B of the Act made by the Appellant and delete the levy of interest of INR.1,65,348/- under Section 234B of the Act. Thus Ground No.2 raised by the Appellant is allowed while Ground No.1 is dismissed as being general in nature.

14. In result, the appeal preferred by the Assessee is allowed.

Order pronounced on 21.11.2024.

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

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 21.11.2024  
Milan, LDC

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai