

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
BANGALORE BENCH 'B'**

**BEFORE SMT. P MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.244/Bang/2014  
(Asst. Year – 1992-93)

Tam Tam Pedda Guruva Reddy,  
No.1427, 18<sup>th</sup> Main, 2<sup>nd</sup> Phase  
2<sup>nd</sup> Cross, J.P Nagar,  
Bangalore-560 078.

. Appellant

Vs.

The Asst. Commissioner of Income-tax,  
Circle-4(1),  
Bangalore.

. Respondent

Appellant by : Shri R.B Krishna, Advocate

Respondent by : Shri P.K Srihari, Addl. CIT

Date of Hearing : 28-7-2015

Date of Pronouncement : 23-9-2015

**ORDER**

**PER JASON P BOAZ, ACCOUNTANT MEMBER :**

This appeal by the Revenue is directed against the order dated of the Commissioner of Income-tax(A) – II, Bangalore dated 26/11/2013 for the asst. year 1992-93.

2. The facts of the case, briefly, are as under:

2.1 The Hon'ble High Court of Karnataka passed an order in ITA No.36 of 1999 dated 8/9/2006 in the assessee's case whereby the total income came to be reduced to Rs.9,39,406/- from the originally assessed income of Rs.30,95,390/-. The Assessing Officer passed an order giving effect (hereafter referred to as 'OGE) to the Hon'ble High Court order whereby the refundable amount was determined at Rs.48,08,868/- which included an amount of Rs.26,58,286/- towards interest payable u/s 244A of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). The OGE did not contain or mention the date of the order and the refund arising out of the undated order was paid to the assessee vide cheque dated 8/5/2007.

2.2 After a lapse of considerable time, it was found that the refund has been granted to the assessee in excess, due to wrong computation of interest u/s 244A of the Act. The Assessing Officer, therefore sought to rectify the OGE by invoking the provisions of sec. 154 of the Act. After putting the assessee on notice, the Assessing Officer passed an order u/s 154 of the Act dated 31/3/2011 ( (sic.31/3/2012) determining the amount of refund to the assessee at Rs.36,21,199/-;

which included an amount of Rs.15,72,339/- towards interest u/s 244A of the Act, as against Rs.26,58,286/- granted earlier. In this order, the Assessing Officer charged interest of Rs.3,09,495/- u/s 234D of the Act. Though no details of this charge of interest is mentioned in the order u/s 154, from the computation of interest it is seen that interest u/s 234D of the Act has been charged for 57 months, i.e the period between the OGE and its rectification on 31/3/2012. Therefore, the levy of interest u/s 234D of the Act is on the excess refund given due to wrong computation of interest u/s 244A of the Act. This order u/s 154 of the Act was dated 31/3/2011. Subsequently, the Assessing Officer passed a corrigendum, correcting the date thereof to 31/3/2012.

2.3 Aggrieved by the order u/s 154 of the Act dated 31/3/2012 for Asst. Year 1992-93, the assessee preferred an appeal to the CIT(A)-II, Bangalore. After hearing the assessee and obtaining a remand report from the Assessing Officer, the learned CIT(A) upheld the decision of the Assessing Officer and dismissed the assessee's appeal vide the impugned order dated 26/11/2013.

3.1 Aggrieved by the order of the CIT(A)-II, Bangalore dated 26/11/2013 for asst. year 1992-93 the assessee preferred this appeal raising the following grounds:

*“1) The order u/s 154 of the Income-tax Act, 1961 passed by the Assessing Officer is time barred and hence to be set aside.*

*2) If it were to be held that the order u/s 154 of the Income-tax Act, 1961 passed by the Assessing Officer is not time barred then, interest u/s 234D charged by the AO on recovery of excess interest granted earlier u/s 244A is illegal and hence to be withdrawn.*

*3) The appeal may be allowed for the above ground(s) and any other grounds(s) which the appellant may be permitted to adduce at the time of hearing.”*

3.2 In the proceedings before us, the learned AR for the assessee reiterated the submissions made before the learned CIT(A). In short, the assessee contends that the undated OGE of the Assessing Officer was actually passed on 31/3/2007 and, therefore, the rectification order u/s 154 of the Act passed on 31/3/2012 is beyond the statutory limit specified in the Act and is, therefore, barred by limitation and is liable to be set aside.

3.3 Per contra, the learned DR for Revenue supported the view of the learned CIT(A) that the undated order was passed on 8/5/2007. The learned DR submitted the report of the Assessing Officer which contained copy of the order sheet noting of 4<sup>th</sup> Apr, 2007 and copy of the assessee's letter dated 25/4/2007 to support Revenue's contention that the undated order was passed in the Fin. Year 2007-08 and, therefore, there was time till 31/3/2012 to pass any rectification to the OGE.

3.4.1 We have heard the rival contentions and perused and carefully considered the material on record, including the judicial pronouncements cited and relied upon. The issues for consideration before us is two- fold:

(i) Whether the order u/s 154 of the Act dated 31/3/2012 is barred by limitation and, therefore, needs to be set aside.

(ii) Even if the said order u/s 154 of the Act was passed within time specified, whether the interest charged u/s 234D of the Act in the said order is wrong and requires to be cancelled.

3.4.2 In the second issue (ii) above, which we shall examine first, the contention of the assessee is that the interest charged u/s 234D of the

Act is wrong and requires to be withdrawn. It may be mentioned here that the objection of the assessee is not in respect of withdrawal of the excess interest charged u/s 244A of the Act, but is only on the charging of interest u/s 234D on the same. The learned CIT(A) has dismissed the contention of the assessee observing that-

- (i) The section only mentions the interest to be charged on the excess refund granted earlier.
- (ii) Since the assessee enjoyed excess refund to which he was not entitled, the charged interest u/s 234D of the Act is charged on such refund upto the period which he enjoyed the excess refund.
- (iii) The interest charged u/s 234D of the Act is compensatory in nature as the assessee has enjoyed excess refund (including interest) wrongly granted to him. There is no question of compound interest chargeable or charged by the Assessing Officer u/s 234D of the Act. A plain and careful reading of sec. 234D will throw light on the correct legal position.

3.4.3 At this stage, it would be relevant to have a plain reading of the provision of sec. 234D of the Act, which is as under:-

**‘Interest on excess refund**

*(1) Subject to the other provisions of this Act, where any refund is granted to the assessee under sub-section (1) of section 143, and –*

*(a) no refund is due on regular assessment; or*

*(b) the amount refunded under sub-section (1) of sec. 143 exceeds the amount refundable on regular assessment, the assessee shall be liable to pay simple interest at the rate of [one half] percent on the whole or the excess amount so refunded, for every month or part of a month comprised in the period from the date of grant of refund to the date of such regular assessment.*

*(2) Where, as a result of an order u/s 154 or section 155 or section 250 or sec. 254 or sec. 260 or sec. 262 or sec. 263 or sec. 264 or an order of the Settlement Commission under sub-section (4) of sec. 245D, the amount of refund granted under sub-section (1) of section 143 is held to be chargeable, if any, under sub-section (1) shall be reduced accordingly.*

*Explanation – 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.]*

From the provisions of section 234D of the Act, the two attendant conditions stipulated for charging of interest are-

(a) Any refund granted to the assessee u/s 143(1) of the Act,

AND

(b)- No refund is due on regular assessment OR –

- The amount of refund u/s 143(1) of the Act exceeds the amount refundable on regular assessment

3.4.4 Therefore, the first condition for charging of interest u/s 234D of the Act is that there should have been refund granted to the assessee u/s 143(1) of the Act. This principle has been upheld by the Hon'ble High Court of Bombay in the case of DIT(Int. Taxation) Vs. Vs. Delta Activities Inc., (2012) 21 Taxman.com 511 (Bom), relied upon by the assessee, wherein the Hon'ble High Court has held that sec. 234D of the Act is attracted only when the refund granted to the assessee u/s 143(1) of the Act become refundable.

3.4.5 'Regular assessment' has been defined u/s 2(40) of the Act to mean assessment made u/s 143(3) or 144 of the Act. Therefore, the definition of 'regular assessment' does not include 'order giving effect to appellate order'. This principle has been upheld by the ITAT, Delhi Bench, in the case of ACIT Vs. Oracle India Pvt. Ltd., in ITA Nos.4639 & 4640/Del/2007 dated 31/3/2008 wherein it was held that the charge of interest u/s 234D of the Act by the Assessing Officer for the first time in an order passed u/s 254/250 of the Act while giving effect to the orders of the appellate authorities was not in accordance with law.

3.4.6 In the case on hand, there was a mistake in computation of the refund to be granted to the assessee pursuant to the order of the Hon'ble High Court. The mistake was due to computation of interest u/s 244A of the Act payable to the assessee. This mistake in computing the interest u/s 244A of the Act has been rectified by passing the order u/s 154 of the Act on 31/3/2012, and with which the assessee has no quarrel. It is not the case of Revenue that the refund has arisen due to order u/s 143(1) of the Act. Therefore, the first necessary condition for charging of interest u/s 234D of the Act is not satisfied.

3.4.7 Further, the refund has arisen due to an order giving effect to an appellate order, which was subsequently rectified u/s 154 of the Act, wherein the interest u/s 234D of the Act was charged. In these circumstances, the second condition that refund granted earlier becomes refundable to Revenue on regular assessment is also not satisfied.

3.4.8 In view of the factual matrix of the case on hand, as discussed above, we are of the considered opinion that both the conditions for charging of interest u/s 234D of the Act are not satisfied. Consequently ground No.2 raised by the assessee is allowed.

4. As regards the contention raised by the assessee in ground No.1 that the order u/s 154 of the Act was barred by limitation, the documents brought on record by the learned DR seem to clearly indicate that the order giving effect to the Hon'ble High Courts order (Supra) was passed in the period relevant to Fin. Year 2007-08 and, therefore, the Assessing Officer had time till 31/3/2012 to pass the rectification order. Since the substantive issue regarding the charging of interest u/s 234D of the Act has been decided in favour of the assessee and the assessee has no grievance with respect to the re-

computing of interest u/s 244A of the Act as per the order u/s 154 of the Act dated 31/3/2012, this issue is academic in nature. We are of the view that, in these circumstances, it is not necessary to make any surmises. On the actual dated on which the undated order giving effect has been passed, except to observe that the documents brought on record by the learned DR clearly establish that the OGE was passed in the Fin. Year 2007-08 and, therefore, the Assessing Officer had time till 31/3/2012 to pass any rectification order.

5. Ground No.3 is general in nature and, therefore, no adjudication being called for thereon, this ground is dismissed as infructuous.

16. In the result, the assessee's appeal for the assessment year 1992-93 is partly allowed as indicated above.

Order pronounced in the open court on **23<sup>rd</sup> Sept, 2015.**

**Sd/-**  
**(P MADHAVI DEVI)**  
**JUDICIAL MEMBER**

Vms.

Bangalore

Dated : 23/9/2015

**Sd/-**  
**(JASON P BOAZ)**  
**ACCOUNTANT MEMBER**

Copy to :

1. The Assessee
2. The Revenue
3. The CIT concerned.
4. The CIT(A) concerned.
5. DR
6. GF

By order

Asst. Registrar, ITAT, Bangalore.