आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
' C' BENCH : CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं
श्री धुव्वुरु आर.एल रेड्डी न्यायिक सदस्य के समक्ष

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND Shri Duvvuru RL Reddy, JUDICIAL MEMBER

आयकर अपील सं./**I.T.A.No.545/Mds./2016**
निर्धारण वर्ष /Assessment year : 2011-12

M/s.Nuts 'n' Spices, 75/34B,Mahatma Gandhi Road, Nungambakkam, Chennai 600 034. **[PAN** AAEFN 5355 M **]** **(अपीलार्थी/Appellant)**	**Vs.**	The Assistant Commissioner of Income Tax, Non Corporate Circle 16, Chennai-34. **(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by	**:**	Mr.M.Karunakaran,Advocate
प्रत्यर्थी की ओर से /Respondent by	**:**	Mr.A.V.Sreekanth,JCIT,D.R
सुनवाई की तारीख/Date of Hearing	**:**	10-05-2016
घोषणा की तारीख /Date of Pronouncement	**:**	20-05-2016

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

This appeal of the assessee is directed against the order of the Commissioner of Income-tax (Appeals)-4,Chennai dated 06.01.2016 pertaining to assessment year 2011-12.

2. The assessee has raised the following grounds.

1. *The learned Commissioner of Income-tax (Appeals) erred in confirming the order of the assessing officer with regard to the levy of interest under section 234B of the Act in the appellant's case for the assessment year 2011-12.*
2. *The lower authorities ought to have seen that the assessment made was under section 147 and therefore, the interest under section 234B has to be calculated as per the provisions of section 234B(3) and not as per the provisions of section 234B(1) of the Act.*
3. *The lower authorities have erred in holding that the assessment completed was the first assessment under section 147 and therefore it is a regular assessment and consequently the provisions of section 234B(1) would apply by completely ignoring the fact that there was an intimation under section 143(1) in the appellant's case determining the tax liability for the assessment year 2011-12.*
4. *The appellant submits that this was not a case of assessment made for the first time but it was a case of order of reassessment or re-computation under section 147 and therefore the interest has to be calculated from the date of determination of tax under section 143(1)(a) and to the date of re-assessment on the difference between the tax determined under section 143(1) and in the re-assessment as per the provisions of section 234B(3) of the Act and not from 1st April of the assessment year as held by the lower authorities.*
5. *The appellants rely on the decision of the Karnataka High Court in the case of Vijay Kumar Saboo (HUF) and another Vs. ACIT (340 ITR 382) and the order of the Income-tax Appellate Tribunal, Mumbai in the case of Sri Gopal Agarwal in ITA Nos. 7076 & 70771M12012 dated 3111212015.*
6. *The appellants therefore pray that the assessing officer may be directed to allow the application under section 154 by charging the interest as per the provisions of section 234B(3) instead of under section 234B(1) and render justice.*

3.1 The facts of the case are that the assessee filed its return of income on 06.08.2011 admitting total income of `1,92,09,210/- which was processed u/s.143(1) on 21.2.2012. Subsequently, a Survey u/s.133A of the Act was conducted in the premises on 30.10.2013 and the case was reopened u/s 147 of the Act. In response to the notice

u/s 148, the assessee filed the return of income on 06/01/2014 admitting a total income of `5,21,75,557/-. On 27/06/2014 the assessment was made for the first time and was completed u/s 143 (3) r.w.s. 147 which resulted in tax demand of `1,23,150/-. Against this assessment order, the assessee had filed an application before the AO on 10/7/2014, seeking rectification u/s 154 of the Act. In the application, the assessee stated that the interest u/s 234B is wrongly calculated as per the provisions of section 234B (1), whereas, it should have been calculated as per the provisions of section 234B (3). It was observed by the AO that the issues raised by the assessee do not constitute rectifiable mistake warranting rectification u/s 154 of the Act and hence, rejected the rectification application of the assessee.

3.2 The assessee had filed the present appeal against this rectification order of the AO before the Ld.CIT(A). Before CIT(A), ld.A.R submitted that the assessment being a re-assessment u/s 148 of the Act, the interest should have been calculated as per the provisions of section 234B (3) and not u/s 234B (1) of the Act. The assessee submitted that as per the provisions of section 234B (3), even in a case where the intimation, under section 143 (1) is also issued, the provisions of section 234B (3) would apply. Therefore, it was contended that the

period should be reckoned for the purpose of levy of interest from the day following the day of determining of the total income u/s 143 (1) till the date of the reassessment u/s 147. The assessee has further pleaded that in the present case the date of intimation is admittedly on 21/2/2012 and the reassessment was made on 27/6/2014, hence, the period to be reckoned is from 22/2/2012 to 27/6/2014 and not from the date of 01/04/2011, as done by the assessing officer. Further, the interest has to be calculated on the amount by which the tax on the total income determined on the basis of the reassessment u/s 147 exceeds the tax on the total income determined under subsection (1) of section 143 of the Act. Hence, the interest has to be calculated on the tax difference between the income of `1,92,09,210/-and admitted in the return of income originally and not on the income finally determined under section 147 of the Act. The Ld.CIT(A) observed that it is ascertained from the facts of the case that the AO has rightly worked out the interest u/s 234B as per the provisions of subsection (1) of section 234B. The relevant section is reproduced as under:

> *"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 an assessee under the provisions of section 210 is less than 90% of the assessed tax, the assessee shall be liable to pay simple interest at the rate of 1% for every month or part of a month comprised in thé period from the first 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, the date of such regular assessment, on an*

amount equal to the assessed tax or, as the case may be, on the amount of which the advance tax paid as aforesaid falls short of the assessed tax."

It has been further clarified in Explanation-1 to the above sub-section that "assessed tax" means the tax on the total income determined under subsection (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 …." Further, as per Explanation 2 it is clarified that "where, in relation to an assessment year, an assessment is made for the first time u/s 147 or section 153A, the assessment so made shall be regarded as a regular assessment for the purposes of this section.

3.3 From the perusal of section 234B(1), it becomes evident that for the purposes of calculating interest u/s 234B, the re-assessment u/s 147 shall be treated as regular assessment if the assessment is made for the first time. In the present case, the reassessment is done for the first time. There was no scrutiny assessment u/s.143(3) prior to this re-assessment order. Therefore, Explanation 2 to section 234B (1) is applicable to the present case of the assessee. Secondly, the assessed tax in this case means the tax assessed by the AO in the re-assessment order which has been treated as regular assessment. Hence, in view of the above provisions of the Act, the AO has rightly

calculated the interest to be levied u/s 234B by invoking subsection (1) of section 234B. Therefore, the contention of the assessee that the interest should have been calculated under sub-section (3) of section 234B is rejected.

3.4 The CIT(A) further observed that the second issue raised by the assessee is that the interest u/s 234B has to be calculated on the amount by which the tax on the total income determined on the basis of the re-assessment u/s 147 exceeds the tax on the total income determined under subsection (1) of section 143. The CIT(A) observed that the explanation of the assessee is devoid of any merit. The period of interest in this case will be reckoned from the 1st day of April next following such financial year, and not from the date of determination of tax u/s 143(1), to the date of regular assessment u/s 147. Aggrieved by the order of the CIT(A), the assessee is in appeal before us.

4. We have heard both the parties and perused the material on record. In this case, the main pleas of the ld. AR is that the provisions of sub-section (3) of section 234B should be invoked as the assessment in this case was made only under section 147 and as such, the interest be charged from the date of Intimation under section

143(1)(a). It is true that sub-section (3) of section 234B provides for the charging of interest, as a result of reassessment under section 147, in a situation in which either the assessment was originally made under section 143(3) or there was determination of income under section 143(1). In both the situations, the interest under section 234B(3) is charged with the starting point as the date of determination of income or the date of regular assessment. If the contention of the ld. AR is accepted that in a case where there is an assessment under section 147, then invariably the interest should be charged under section 234B(3) from the date of determination of income under section 143(1) or the date of original regular assessment, then the provisions of Explanation 2 to sub-section (1) of section 234B shall become otiose. The view so canvassed on behalf of the assessee is not legally sustainable. The opening words of sub-section (3) of section 234B are: 'Where, as a result of an order of reassessment or re-computation under section 147...'. It does not encompass 'assessment' made under section 147. From the language of section 147, it can be easily viewed that it refers to both the 'assessment' as well as 'reassessment' within its fold, subject to the fulfilment of other conditions. This section provides that : 'If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions

of sections 148 to 153, ASSESS or REASSESS such income...' [Emphasis supplied]. From here it is palpable that section 147 refers to the making of assessment or reassessment when the income escapes assessment. Whereas 'assessment' in this section refers to the making of assessment for the first time, the 'reassessment' pre-supposes the existence of an earlier assessment. This position is further clarified by the Explanation 2 to section 147. Clause (a) of this Explanation deems income escaping assessment even when no return has been filed by the assessee. Clause (b) covers within its ambit the cases where a return of income has been filed but no assessment is made. Clause (c) extends to the cases where an assessment has been made but still income chargeable to tax has been under assessed or such income has been assessed at too low a rate, etc. Section 234B extends to both the cases under section 147, viz., where it is assessment (that is, assessment for the first time) and reassessment (that is, where it is not the first assessment). There is a clear cut line of demarcation. The cases of 'assessment' under section 147 are covered under sub-section (1) of section 234B, by way of Explanation 2, the cases of 'reassessment' under section 147 are covered under sub-section (3). The further submission made on behalf of the assessee that the Heading or Marginal note of section 143 is 'Assessment' and, hence, the processing of return under sub-section (1) of this section shall also

amount to assessment, is devoid of any merit. It is well-settled that the marginal note to a section, albeit plays an important role in the interpretation of a provision, but cannot control the clear language of a provision. The Hon'ble Supreme Court in Prakash Nath Khanna v. CIT [2004] 266 ITR 1has laid down that though the heading of section or marginal note may be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent, it cannot control the meaning of the body of the section if the language employed there is clear. Similar view has been taken by the Hon'ble jurisdictional High Court in Dharamvat Provisions Store v. CIT [1983] 139 ITR 700(Bom.). We, therefore, jettison this contention advanced on behalf of the assessee for the reason that the language of sub-section (1) of section 143 is clear and unambiguous as it refers to the processing of return and the resultant issuance of 'Intimation' to the assessee. In such a situation, there is no rationale to go by the heading of section 143 which refers to 'Assessment', also covering the regular assessment under sub-section (3).

5. Adverting the present case, it is observed that the determination of "total income" under sub-section (1) of section 143 was made on 21.02.2012. No regular assessment was made u/s.143(3) of the Act. Notice was issued u/s.148 of the Act on 02.01.2014 and assessment

was made u/s.143(3) of the Act read with section 148 on 27.06.2014 for the first time. This re-opened assessment was resulted in demand of ₹1,23,150/-. A demand notice u/s.156 was served on the assessee on 08.07.2014. The assessment made for the first time u/s.143(3) read with section 147 of the Act fits into Explanation-2 to section 234B(1) of the Act, which is to be regarded as "Regular Assessment" for the purpose of sec.234B of the Act. As intimation u/s.143(1) is obviously not an assessment and it is the case of "Assessment " for the first time in the hands of assessee u/s.147, the case will fall under sub-section(1) of section 234B. We Therefore,, hold that the AO is justified in coming to the conclusion that the starting point for charging interest u/s.234B have been as First April 2011 and end point of the same is 27.06.2014 and as such there is no error in the assessment order so as to rectify u/s.154 of the Act.

6. More so, the issue raised by the assessee herein cannot be considered u/s.154 of the Act as the issue in dispute is highly debatable. Under section 154 of the Act, only mistakes apparent on record could be rectified by the Authorities. The issue in dispute is not a mistake apparent from record. It is required long process of reasoning and points on which there may be conceivably two opinions possible. As such the issue in dispute cannot be considered u/s.154 of

the Act. No such judgements relied by the assessee's counsel including the judgement of Karnataka High Court in the case of Vijay Kumar Saboo Vs. ACIT (340 ITR 382) have no application.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 20th May, 2016, at Chennai.

Sd/-	Sd/-
(धुव्वुरु आर.एल रेड्डी)	**(चंद्र पूजारी)**
(**DUVVURU RL REDDY**))	**(CHANDRA POOJARI)**
न्यायिक सदस्य/JUDICIAL MEMBER	**लेखा सदस्य /ACCOUNTANT MEMBER**

चेन्नई/Chennai
दिनांक/Dated: 20th May, 2016
K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant	4. आयकर आयुक्त/CIT
2. प्रत्यर्थी/Respondent	5. विभागीय प्रतिनिधि/DR
3. आयकर आयुक्त (अपील)/CIT(A)	6. गार्ड फाईल/GF