

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'A-SMC' BENCH : Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
And
Shri S. Rifaur Rahman, Accountant Member**

**ITA Nos. 1279/Hyd./2018
Assessment Year: 1993-94
&
ITA Nos. 1280/Hyd./2018
Assessment Year: 1994-95**

Shri Bansilal Mohanlal Malani vs. ITO, Ward 10(1)
Represented by L/R Smt.Aruna Malani Hyderabad
1-11-219, Begumpet
Hyderabad 500 016

PAN: AFCPM7838P

(Appellant)

(Respondent)

For Assesse: Sh. G. Kalyan Das, A.R.

For Revenue: Sh. Chilaka Rajeswara Reddy, D.R.

Date of Hearing : 30/07/19

Date of Pronouncement : 23/10/19

ORDER

Per Smt. P. Madhavi Devi, J.M.

Both are assessee's appeals for A.Y. 1993-94 and 1994-95 respectively against individual orders of the Ld.CIT(A)-6, Hyderabad dated 4.5.2018 for both the A.Ys.

2. Brief facts of the case are that the assessee, an individual, carrying on money lending business and trading in shares and securities, during the F.Yrs relevant to A.Yrs 1990-91 to 1995-96. There was a search and seizure operation in his case on 4.9.1994 and a declaration was made u/s 132(4) of the Income Tax Act, 1961 (the Act) and the assessee opted to pay taxes out of the proceeds from the sale of seized shares and securities. Consequently, the assessee filed an application before the Settlement Commission which passed an order on 02.12.1999 determining the unaccounted income of the assessee at Rs.1,68,09,306/-. The A.O. gave effect to the order of the

Settlement Commission on 11.2.2000 determining the tax payable at Rs.1,67,77,651/-. The assessee paid the taxes amounting to Rs.1,60,66,947/- on 8.3.2002. By an order dated 8.3.2002 the ITO, Hyderabad levied interest u/s 220(2) of the Act amounting to Rs.31,41,106/- for the AYs 1990-91 to 1995-96 which was later rectified to Rs.24,36,352/-.

2.1. Aggrieved by levy of above interest, assessee filed an Application before the CIT(A)-V, Hyderabad on 3.4.2002 seeking waiver of the same. Initially the CIT(A) rejected assessee's application, against which assessee filed Writ Appeal before the Hon'ble High Court and the Writ Petition was also dismissed, and thereafter assessee filed Civil Appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court remanded the matter to the file of the CIT(A)-V, Hyderabad for fresh consideration. The CIT(A)-V, Hyderabad vide order dt. 26.6.2009 waived off the interest of Rs.24,36,352/- levied by the A.O. which was outstanding interest u/s 220(2) of the Act. Subsequently in the income tax appeal filed by assessee for A.Ys 1991-92, 192-93, 1993-94 and 1994-95 seeking adjustment of the taxes paid by the assessee against the outstanding demand for the A.Y. 1995-96, the Tribunal observed that the assessee has paid a sum of Rs.42 lakhs in 1995 and the AO gave credit of the same for A.Y. 1991-92 to 1994-95 and assessee objected to giving credit to AY 1991-92 to 1994-95. He observed that according to assessee Rs.42 lakhs paid was for AY 1995-96 and the assessee had filed appeal before the CIT(A) who after getting remand report from the AO dated 21.11.2002 found that on the date of payment of Rs.42 lakhs, there was no demand outstanding pertaining to any A.Y. and no amount was due as per return filed. In view of this categorical finding of CIT(A) that the amount of Rs.42 lakhs paid by assessee need to be given credit for AY 1995-96, the Tribunal held that this amount paid by assessee in advance, has to be treated as advance tax for A.Y. 1995-96. The Tribunal therefore confirmed the order of CIT(A) and directed the AO to give credit for the amount paid and also interest u/s 234A of the Act. The order of Tribunal dt. 27.4.2007 was confined to AY 1995-96 and there was no discussion or whisper in respect of other A.Ys. Pursuant thereto, the AO passed an order u/s 154 of the Act rectifying the orders for

AYs 1991-92 to 1994-95 against which the assessee preferred an appeal before the CIT(A) and thereafter before the Tribunal in ITA Nos. 1199, 1200 and 1202/2008. The Tribunal considered the issue and observed that the direction of the Tribunal in the appeal for AY 1995-96 was to give credit of Rs.42 lakhs for A.Y. 1995-96 and there was no other direction given by either the CIT(A) or the Tribunal and no such matter was adjudicated either by the CIT(A) or by the Tribunal, and, therefore, held that the AO cannot travel beyond the extent of giving credit of Rs.42 lakhs for the A.Y. 1995-96. The Tribunal held that the AO exceeded his jurisdiction by passing a consequential order for A.Y. 1991-92 to 1995-96 in the case of giving effect to the order of CIT(A) for the A.Y. 1995-96. The Tribunal also observed that credit should not be given twice for the amount paid by the assessee. The Tribunal further held that for the A.Y. 1991-92 to 1994-95 order was passed in the year 2002, and, therefore mistake has to be rectified within 4 years from the date of order, and since this has not been done in the impugned A.Y., the order is barred by limitation. The Tribunal accordingly set aside orders of the lower authorities. The AO passed consequential order dated 22.6.2010 by adjusting the sum of Rs.42 lakhs towards the outstanding demand for AY 1995-96 and recomputing interest u/s 220(2) of the Act.

2.2. Aggrieved by this consequential order, the assessee filed an appeal before the CIT(A) who directed the AO to follow the directions of Hon'ble ITAT by not giving double credit and by not waiving interest levied u/s 234A, B and C of the Act. Consequent to the order of CIT(A), the AO passed consequential order dt. 22.6.2010 against charging interest u/s 220(2) of the Act and against this order assessee filed an appeal before the CIT(A), who dismissed the same by holding that the order passed charging interest u/s 220(2) of the Act is not an appealable order u/s 234A of the Act. Against this order of CIT(A), the assessee is in appeal before us.

3. The Ld.Counsel for the assessee submitted that the assessee has paid little more than the entire tax demand in the year 2002 itself and the interest u/s 220(2) for the years before the Settlement Commission was waived off by the CIT(A) after directions of the Hon'ble Supreme Court remanding the

matter to the file of CIT(A). He submitted that the assessee is challenging the levy of interest u/s 220(2) of the Act itself, and not just the computation and, therefore, it is an appealable order u/s 246 of the Act. In support of his contention that it is an appealable order, he placed reliance on the decision of Jurisdictional High Court in the case of Bakelite Highlam Ltd. Vs. CIT reported in 171 ITR 344 (AP).

4. The Ld.DR, on the other hand, supported the orders of the CIT(A) and placed reliance upon the decision of Hon'ble High Court of Calcutta in the case of ANZ Grindlays Bank PLC vs. CIT reported on 241 ITR 269(2000) (Calcutta) wherein it has been held that the order charging interest u/s 220(2) of the Act is neither a part of assessment order, nor there is any appeal provided u/s 246 of the Act and, therefore, the order charging interest u/s 220(2) of the Act is not an appealable order.

5. Having regard to the rival contentions and material placed on record, we find that the interest u/s 220(2) which has been charged in the initial consequential order passed by the AO has been waived by the CIT(A)-V, Hyderabad. Subsequently, pursuant to directions of ITAT to treat the advance amount paid by assessee, as advance tax for the A.Y. 1995-96, the AO has passed the consequential order. We find that in the case of Bakelite Hylam Ltd. (supra), the Hon'ble Jurisdictional High Court was considering the case of an assessee wherein while giving effect to the order of the ACIT in the quantum appeal, the interest on refund was not allowed u/s 244 of the Act. The Hon'ble High Court held that the order passed by the ITO giving effect to the decision of appellate authority is as much an assessment order as the one passed by him by way of regular assessment u/s 143 of the Act. It was also held that in the absence of specific right of appeal conferred by S.246, no appeal lies to the appellate authority against refusal to grant interest, but where there is total denial of liability to pay interest, the order is liable to be challenged in an appeal although there can be no appeal if dispute is only regarding the quantum of interest payable. There is a distinction between the principle of law, i.e. where there is total denial of assessee's claim, it is open to him to show that the claim for interest was well

founded. For the sake of ready reference, the relevant paras are reproduced hereunder:

“An order of assessment is one in which there is computation of income or computation of tax or both. The computation of income and tax can be made by the Income-tax Officer not only in regular assessment made under [section 143](#) of the Act but also in orders passed from time to time giving effect to the decision of the appellate authorities. The order passed by the Income Tax Officer giving effect to the decision of the appellate authority is as much an assessment order as the one passed by him by way of regular assessment under [section 143](#) of the Act.

In the absence of a specific right of appeal conferred by section 246, no appeal lies to the appellate authority against refusal to grant interest. Where there is total denial of the liability to pay interest, the order is liable to be challenged in an appeal although there can be no appeal if the dispute is only regarding the quantum of interest payable. There is a distinction where, on principle of law, there is a total denial of the assessee's claim, it is open to him to show that the claim for interest is well founded. If however, on principle, there was no objection to the grant of interest but the dispute related only to the quantum, then the assessee has no right of appeal against the order on the ground that interest was inadequately granted.

The Tribunal granted certain reliefs to the assessee and in giving effect to the Tribunal's order, the Income tax Officer passed a modification order granting refund to the assessee. The assessee preferred an appeal to the Commissioner (Appeals) against the modification order and claimed that the Income tax Officer was in error in not granting interest on refund under section 244 of the Income Tax Act, 1961. The Commissioner (Appeals) held that no appeal lay against an order giving effect to the appellate order of the Tribunal and that, in any event, no right of appeal was provided against the Income tax Officer's omission to grant refund u/s 244. The Tribunal upheld the view taken by the Commissioner (Appeals). On a reference:

Held, (i) that the assessee had a right of appeal against the modification order as if it were an assessment order itself and the appellate authority was bound to entertain the appeal and decide it on merits.

(ii) That since there was total denial of liability on the part of the Revenue to pay interest on the refund, an appeal lay to the next appellate authority.”

5.1. The Ld.Counsel submitted that this very same logic is applicable to the interest charged u/s 220(2) of the Act as well, therefore, is an appealable order. We find that the decision of the Jurisdictional High Court is binding on the Subordinate Courts and Tribunals as against the decision of a different High Court. Therefore, respectfully following the decision of the Jurisdictional High Court in the case of Bakelite Hylam Ltd. (cited Supra) we set aside the issue to the file of CIT(A) with a direction to reconsider and adjudicate the issue on merits.

6. In the result, appeals of the assessee for both the AYs are treated as allowed for statistical purposes.

Order pronounced in Open Court on 23rd October, 2019.

Sd/-

Sd/-

(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

(P MADHAVI DEVI)
JUDICIAL MEMBER

Dated: 23rd October, 2019.

*GMV

Copy forwarded to:

1. Bansilal Mohanlal Malani Represented by L/R Smt.Aruna Malani, C/o M/s Kalyandas & Co. Cas, 15, Venkateswara Colony, Narayanguda, Hyderabad – 500 029, Telangana.
2. CIT(A)-6, Hyderabad.
3. Pr.CIT-6, Hyd.
4. ITO, Ward 10(1), Hyderabad.
5. D.R. ITAT Hyderabad
6. Guard File

// C o p y //

1.	Draft dictated on	10/10/19
2.	Draft placed before the author	10/10/19
3.	Draft placed before the second Member	
4.	Draft approved by second Member	
5.	Approved Draft comes to SrPS	
6.	Kept for Pronouncement	23/10/19
7.	File sent to Bench Clerk	