

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री रमित कोचर, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA Nos.3456 to 3462/Chny/2018

निर्धारण वर्ष /Assessment Years: 2009-10 to 2015-16

Shri J. Sunder,
New No.21, Old No.7,
Thirunavukarasu Street,
Perambur, Chennai-600 011.

v. The Asst. Commissioner of
Income Tax,
Central Circle-3(2),
No. 46, Mahatma Gandhi
Road, Nungambakkam
Chennai-600034

[PAN: CTYPS 3358 G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr. G.Baskar, Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mr. J.Pavithran Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 19.12.2019

घोषणा की तारीख /Date of Pronouncement

: 23.12.2019

आदेश / O R D E R

PER RAMIT KOCHAR, ACCOUNTANT MEMBER:

These seven appeals filed by assessee are directed against common appellate Order dated 25.09.2018 passed by learned Commissioner of Income Tax (Appeals)-19, Chennai (hereinafter called "the CIT(A)"), in ITA Nos.174 to 180/CIT(A)-19/2016-17 for assessment years (ays) 2009-10 to 2015-16 respectively, the appellate proceedings before learned CIT(A) had arisen from separate assessment order(s) all dated 22.12.2016 passed by learned Assessing Officer (hereinafter called "the AO") u/s.143(3) read with Section 153A of the Income-tax Act, 1961

(hereinafter called "the Act") for ay: 2009-10 to 2014-15 and u/s 143(3) read with Section 153B(1)(b) of the 1961 Act for ay: 2015-16. Since common issues are involved, all these appeals were heard together and are adjudicated vide this common order passed by tribunal. First we shall take up appeal of the assessee for ay: 2009-10 and since common issues are involved wherein facts are similar, our decision for ay: 2009-10 shall apply mutatis mutandis to the appeals filed by assessee for ay: 2010-11 to 2015-16.

2. The grounds of appeal raised by assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Chennai (hereinafter called "the Tribunal") for ay: 2009-10 read as under:-

"1. The order of the CIT(A) is erroneous and opposed to law and facts to the extent it confirms the order of assessment.

2.1 The CIT(A) erred in confirming the addition of the rent of Rs.79.100/- unexplained income from house property.

2.2 The CIT(A) failed to consider the submissions made before him in the proper perspective.

3.1 The CIT(A) erred in confirming the levy of interest u/s.234A in so far as the Appellant has duly furnished the returns of income on time.

3.2 The CIT(A) equally went wrong in not confirming the levy of interest u/s.234B of the Income-tax Act since the Appellant could not have anticipated the additions.

4. Any other grounds that may be taken up at the time of hearing."

3 These seven appeals are filed late by 23 days, the assessee has filed petition for condonation of delay supported by an affidavit and prayers are made to condone delay in filing these appeals late by 23 days beyond the time stipulated u/s 253(5) of the 1961 Act . The assessee has shown his

illness for not filing the appeal in time before the Tribunal. The Ld.DR did not object to condone the delay in filing the appeals late by 23 days, After hearing both the parties and perusing the material on record, we condone delay of 23 days in filing of this appeal late by assessee beyond time stipulated for filing appeal with tribunal u/s 253(5) of the 1961 Act , in the interest of substantial justice. Whence technicalities are pitted against substantial justice, the Courts will lean towards substantial justice unless malafide is writ large on the part of litigant. Based on material on record , we do not find any malafide on the part of the assessee in filing this appeal late by 23 days beyond time stipulated u/s 253(5) of the 1961 Act and thus, keeping in view interest of substantial justice, we condone this delay of 23 days and admit appeal filed by assessee .

4. Briefly stated facts of the case are that assessee derives income from business of money lending, supply of labour, house property and other sources. The assessee was searched by Revenue u/s.132 of the Income Tax Act, 1961 on 28.01.2015 at the residence of the assessee at No.21/7, Thirunavukarasu Street, Perambur, Chennai-600 011. The AO issued notice dated 29.12.2015 u/s.153A of the 1961 Act to the assessee which was duly served on the assessee on 01.01.2016. The assessee filed return of income u/s.153A of the Act on 15.04.2016. It is an admitted position now that the return of income u/s.153A of the Act pursuant to search u/s.132 was filed beyond the time stipulated in the notice issued by the AO. Even for AY 2015-16, the return of income was filed belatedly

pursuant to notice issued u/s 153A of the 1961 Act, while no return of income was earlier filed by assessee for ay: 2015-16 u/s.139(1) of the Act. Thus, it is an admitted position that return of income(s) were filed beyond the time stipulated in the notice issued by the AO u/s.153A of the Act .

5. Ground No.1 raised by assessee is general in nature. We have observed that no arguments were advanced by Ld.Counsel for the assessee in support of Ground No.1 and this ground of appeal is general in nature and in our considered view, does not require separate adjudication and is hereby dismissed. We order accordingly.

6. The Ld.Counsel for the assessee submitted before the Bench that assessee does not wish to press Ground Nos.2.1 & 2.2 and the same can be dismissed as not been pressed. The learned counsel for the assessee has made endorsement in the appeal memo as to the not pressing of the ground number 2.1 and 2.2 .The Ld.DR did not object to the dismissal of Ground Nos.2.1 & 2.2 as not been pressed. After hearing both the sides, we dismiss Ground Nos.2.1 & 2.2. We order accordingly.

7. So far as Ground Nos.3.1 & 3.2 are concerned, the Ld.Counsel for the assessee submitted that there is some computational errors in the interest computed by AO u/s.234A & 234B of the Act, which needs to be rectified. However, no details of the grievance as to computational error in computing interest by the AO are filed before us to support the contention. The Ld.DR submitted that as the assessee has filed return of income beyond the time stipulated by the AO for filing of return of income

u/s.153A of the Act, the AO has rightly computed interest as provided u/s 234A of the 1961 Act. The notice was issued by AO u/s.153A of the Act on 29.12.2015 which was duly served on assessee on 01.01.2016 asking assessee to file return of income u/s.153A of the Act within 30 days but the assessee has filed return of income on 15.04.2016 which is beyond the time prescribed in the notice issued by the AO u/s.153A of the Act and hence the learned DR claimed that the AO has rightly levied interest u/s.234A . It was also submitted by learned DR that there was detection income pursuant to search and the assessee filed return of income pursuant to search wherein these income detected during search were declared and thereafter further the AO has made an additions to the income of the assessee while framing assessment u/s 153A read with Section 143(3) of the 1961 Act. It was submitted that these income's although detected in search conducted u/s 132 on 28.01.2015 but these income relates to previous year relevant to ay: 2009-10 and hence interest u/s 234B was rightly levied.

7.2 In our considered view , provisions of Sec. 234A & 234B are consequential in nature and mandatory. Reference is drawn to decision of Hon'ble Supreme Court in the case of CIT v. Anjum M.H.Ghaswala reported in [2001] 119 Taxman 352 (SC) . The assessee has admittedly filed its return of income beyond time stipulated in notice issued u/s 153A. In the return of income filed by assessee in pursuant to notice issued u/s 153A , the assessee has declared income which was detected during search operations . The AO has further enhanced the income while

framing assessment u/s 153A read with Section 143(3) of the 1961 Act. Reference is also drawn to decision of Hon'ble Madras High Court in the case of A. Kuberan v. CCIT, Chennai reported in [2018] 89 taxmann.com 179 (Madras) , wherein Hon'ble Madras High Court has held that where assessee has made disclosure only after detecting to search there is no voluntary disclosure and hence assessee could not claim benefit of waiver of interest u/s.234A , 234B and 234C by invoking Circular No.400/29/2002-IT(B) dated 26.06.2006. We have observed that admittedly assessee has filed return of income beyond the time stipulated in the notice dated 29.12.2015 issued by AO u/s.153A of the Act asking assessee to file return of income u/s.153A of the Act within 30 days. The assessee filed return of income on 15.04.2016. The levy of interest u/s.234A & 234B is mandatory and is consequential in nature. We have also observed that the assessee has made disclosure in the return of income filed u/s.153A of the Act which were not disclosed in the original return of income filed u/s.139(1) of the Act and also there has been further additions made by AO while framing assessment u/s.153A r.w.s. 143(3) of the Act. These incomes belong to previous year relevant to impugned ay: 2009-10 which are now disclosed by assessee in return of income filed with revenue pursuant to search and further additions are also made by AO while framing assessment u/s 153A r.w.s. 143(3) of the 1961 Act. We hold levy of interest u/s 234A, 234B and 234C is mandatory and consequential in nature. The AO is directed to look into the grievance of the assessee as to error in computation of interest u/s 234A and 234B

and pass orders in accordance with law. The assessee is directed to appear before the AO and present its claim of error in the computation of intere. Consequently, we allow for statistical purposes Ground Nos.3.1 & 3.2 raised by assessee in its appeal filed with tribunal for limited verification by the AO as to computation aspect raised by assessee.

8. Ground No.4 is again general in nature, and in our considered view, does not require aseperate adjudication.

9. In the result, the appeal filed by the assessee in ITA No.3456/Chny/2018 for ay: 2009-10 stands partly allowed for statistical purposes Our decision in ITA no. 3456/Chny/2018 for ay: 2009-10 shall apply mutatis mutandis to ITA Nos.3457 to 3462/Chny/2018 for ay: 2010-11 to 2015-16. All the appeals stand partly allowed for statistical purposes as indicated above. We order accordingly.

Order pronounced on the 23rd day of December, 2019 in Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(रमित कोचर)

(RAMIT KOCHAR)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 23rd December, 2019.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

4. आयकर आयुक्त/CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF