IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A" : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA.No.895/PUN./2022
Assessment Year 2011-2012

Shri Nakul Machindra Mhaske, Shantikunj Bungalow, Alandi Road, Kalas, Pune – 411 015. PAN BLMPM1496E	vs.	The Income Tax Officer, Ward – 7 (3), Income Tax Office, Pune. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Nikhil S. Pathak
For Revenue :	Shri Ramnath P Murkunde

Date of Hearing :	13.03.2023
Date of Pronouncement :	24.03.2023

ORDER

PER SATBEER SINGH GODARA, J.M.

This assessee's appeal for assessment year 2011-12, arises against the National Faceless Appeal Centre [in short "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2022-23/1045229278(1), dated 06.09.2022, involving proceedings u/s. 154 of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. Delay of 37 days in filing of the instant appeal is condoned as per the assessee's duly sworn in affidavit attributing reasons thereof to communication gap(s) at various

levels. Hon'ble apex court's landmark decision Collector, Land Acquisition vs., MST Katiji [1987] 167 ITR 471 (SC) has settled the law long back that all such technical aspects must make way for the cause of substantial justice. The Revenue has also not been able to rebut the assessee's foregoing averments. The impugned delay of 37 days in filing of the instant appeal stands condoned therefore.

3. The assessee has raised the following substantive grounds in his instant appeal :

> *"The following grounds are taken without prejudice to each other –*
>
> *On facts and in law,*
>
> *1) The appellant requests for condonation of delay in filing this appeal.*
>
> *1A) The appellant did not receive the order of CIT(A) on the registered e-mail as per Form No. 35 and therefore, he was unaware of the order of the CIT(A) till his C.A. checked the status from the IT Portal which was only a few days back and hence, the delay in filing the appeal which may kindly be condoned.*
>
> *2) The learned CIT(A) erred in confirming the enhancement of interest u/s 234A by a sum of*

Rs.30,77,569/- made by the A.O. in the order u/s. 154.

3) The learned CIT(A) failed to appreciate that –

a. As the order of asst, u/s 147 itself was null and void, the order u/s 154 rectifying the mistake in that asst, order is bad in law.

b. The issue involved of enhancing the interest u/s 234A did not constitute mistake apparent from record and therefore, the order u/s 154 was bad in law and needs to be cancelled.

4) The learned CIT(A) further failed to appreciate that –

a. The original return filed without payment of tax could not be treated as a defective return and accordingly, the asst, had become time barred and such time barred asst. could not be reopened u/s.147.

b. Interest u/s 234A was not correctly levied in the order u/s 154.

c. Without prejudice, the interest u/s 234A could be levied only up to the date of filing the original return i.e. 08.02.2013 and not till 19.11.2018 i.e. the date of filing the return in response to notice u/s. 148.

5) The appellant requests for cancellation of the order u/s 154 passed by the A.O. as the rectification order of an invalid reasst. is bad in law, the issue involved did not constitute mistake apparent from record and also because the enhancement of interest u/s 234A was not warranted.

6) The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal."

4. We take note of the basic relevant facts regarding the assessee's sole substantive grievance raised in the instant appeal that both the learned lower authorities have erred in law and on facts in raising sec.234A interest demand of Rs.30,77,569/- in issue in sec.154 rectification proceedings.

5. There is hardly any dispute between the parties that the assessment year before us is assessment year 2011-12. And that the "due date" for filing return therein was 01.08.2011. The assessee had e-filed his original return on 08.02.2013 stating taxable capital gains income of Rs.1,86,04,026/- without paying any self-assessment tax thereupon. The Assessing Officer thereafter formed his reasons to believe of the assessee's above stated capital gains of Rs.1,86,04,030/- (supra) had escaped assessment. He thus issued sec.148 notice dated 27.03.2018. The assessee filed his

second return dated 16.10.2018 in response thereto stating the very income of Rs.1,86,04,026/-. He did not pay any self-assessment tax qua the instant latter return as well. The Assessing Officer then framed his sec.143(3) r.w.s. 147 assessment on 19.11.2018 accepting the returned income. There is further no issue between the parties that the said re-assessment attained finality for want of any challenge made before the higher forums.

6. Now comes the issue of sec.154 rectification for the purpose of levying sec.234A interest which gets attracted on account of an assessee's default in furnishing return of income. The Assessing Officer passed his sec.154 rectification order in issue dated 18.06.2021 making it clear that once the "due date" of filing of return in assessment year 2011-12 before us was 01.08.2011. And that the assessee's former return dated 08.02.2013 was a defective; null and void u/s.139(9) of the Act which attracts sec.234A interest from 08.02.2013 to 19.11.2018; coming to Rs.30,77,569/- in question. It is in this manner that the Assessing Officer has rectified his above re-assessment for the purpose of levying sec.234A interest.

6.1. The "NFAC" has affirmed the Assessing Officer's action to this effect as follows :

3. The appellant has raised the following grounds of appeal:

The Learned A.O. has erred by levying interest from due date of filing return to date of filing return under section 148.

The erstwhile Assessing Officer had already levied interest under section 234A(3) which is acceptable to me and paid by me.

I reserve my rights to add, modify, alter or delete any or all grounds.

It is prayed that proper assessment be made.

4. Notices u/s 250 of the IT Act was issued to the assessee on 11.07.2022, 24.08.2022 respectively requesting for online submission, if any by 18.07.2022 and 29.08.2022.

6. I have considered the grounds of appeal, statement of facts and the rectification order of the jurisdictional officer.

The appellant in its grounds has stated that the Assessing Officer while assessing the total income u/s.143(3)r.w.s147 at Rs.1,86,04,030/- on 18.06.2021 had calculated the 234A at Rs.2,27,970/- for 87 months which had been accepted and duly paid by him. Subsequently, the Assessing Officer rectified the interest 234A u/s.154 and raised the interest by 30,77,569/- aggrieved by this the assessee filed the appeal.

However, to understand the calculation of interest u/s.234A the relevant portion of the I T, Act is reproduced below:

Interest for defaults in furnishing return of income.

234A. (1) Where the return of income for any assessment year under sub-section (1) or sub-section (4) 14[or sub-section (8A)] of section 139, or in response to a notice under sub-section (1) of section 142, is furnished after the due date, or is not furnished, 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 commencing on the date immediately following the due date, and,—

(a) where the return is furnished after the due date, ending on the date of furnishing of the return; or

(b) where no return has been furnished, ending on the date of completion of the assessment under section 144, on the amount of the tax on the total income as determined under sub-section (1) of section 143, and ***where a regular assessment is made, on the amount of the tax on the total income determined under regular assessment, as reduced by the amount of,—***

(i) advance tax, if any, paid;

(ii) any tax deducted or collected at source;

(iia) any relief of tax allowed under section 89;

(iii) any relief of tax allowed under section 90 on account of tax paid in a country outside India;

(iv) any relief of tax allowed under section 90A on account of tax paid in a specified territory outside India referred to in that section;

(v) any deduction, from the Indian income-tax payable, allowed under section 91, on account of tax paid in a country outside India; and

(vi) any tax credit allowed to be set off in accordance with the provisions of section 115JAA or section 115JD.

Explanation 1.—In this section, "due date" means the date specified in sub-section (1) of section 139 as applicable in the case of the assessee.

15[Explanation 2.—In this sub-section,—

(i) "tax on total income as determined under sub-section (1) of section 143" shall not include the additional income-tax, if any, payable under section 140B or section 143; and

(ii) tax on the total income determined under regular assessment shall not include the additional income-tax payable under section 140B.]

As seen from the above the Section 234A of the Income Tax Act clearly states that if the return is furnished after the due date, or is not furnished, 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 commencing on the date immediately following the due date

And clause (b) states that where a regular assessment is made, on the amount of the tax on the total income determined under regular assessment should be reduced by taxes already paid.

However, as the appellant has not paid any taxes before the completion of assessment hence, the Assessing Officer has correctly calculated the interest from due date to filing of the return on the assessed income as per the IT, Act. In view of this I do not find any infirmity in the decision taken by the Assessing Officer.

In the result, the appeal is dismissed.

7. Mr. Pathak vehemently argued during the course of hearing that both the lower authorities have erred in law and on facts in initiating sec.154 rectification proceedings on such a debatable issue of validity of the assessee's former return dated 08.02.2013 which is not sustainable in law as per T.S. Balram, ITO vs. Volkart Bros. [1971] 82 ITR 50 (SC). The assessee's former return dated 08.02.2013 was very much a valid one u/s.139(9A) read with Explanation(c)(i) thereto as per this tribunal's coordinate bench's order in Meters and Instruments Pvt. Ltd., vs. Inspecting Assistant Commissioner

[1991] 39 ITD 269 (Del.) and, therefore, both the lower authorities have wrongly held the same as a defective and invalid return. Learned counsel lastly posed challenge to validity of sec.148 proceedings itself that in case the assessee's former return is held to be a valid one which declared taxable income from capital gains of Rs.1,86,04,026/-, there would not be any occasion for the Assessing Officer to record his reasons of the same having escaped assessment.

8. Mr. Jasnani on the other hand vehemently supported both the learned lower authorities action levying sec.234A interest in sec.154 rectification in light of CIT vs. Pranoy Roy & Anr. [2009] 309 ITR 231 (SC); CIT vs. Kotak Mahindra Finance Limited [2004] 265 ITR 119 (Bom.) and this tribunal's recent adjudication in Dhirendra Narbheram Sheth vs. ITO, Ward-2(3)(5), Rajkot [2023] 147 taxmann.com 150 (Rajkot). His case before us is that the assessee all along has not submitted even a single valid return and, therefore, sec.234A interest has been rightly charged by way of sec.154 rectification mechanism.

9. We have given our thoughtful consideration to the foregoing rival stands. We find no merit in Revenue's arguments. We make it clear that the assessee had filed her former return u/s. 139 (4) of the Act without payment of self-

assessment tax qua the admitted income of Rs.1,86,04,026/-. The Revenue could hardly dispute that sec.139(9) of the Act is a specific provision wherein an Assessing Officer could held a return as a defective one after following the due procedure as per Explanation (c) (i) thereto which treats a return filed by an assessee to be defective only if there is self-assessment tax claimed to have been paid and not otherwise. It is in this factual backdrop that the tribunal's learned coordinate bench in Meters and Instruments Pvt. Ltd., (supra) has carved out a clear-cut distinction between cases where an assessee claims payment of tax and otherwise as follows :

> *"7. The argument of the Ld. Counsel for the assessee in this regard is very simple. According to him, return of income has to be accompanied by certain documents as detailed in section 139(9) of the Act. Inviting our attention to Explanation to section 139(9), it was submitted that the return has also to be accompanied by proof of advance tax and self-assessment tax. Elaborating the submission, the Ld. Counsel argued that if the assessee filed a return of income without attaching the proof of advance tax or self-assessment tax then the return would be a defective one and if the assessee could not remove the defect within 15 days from the date of receipt*

of intimation from the Assessing Officer then such a return shall be treated as an invalid return. The Ld. Counsel for the assessee pointed out that because of financial stringency the assessee could not make the payment of advance tax before the expiry of the relevant financial year. It was further submitted that the same tight financial position continued even when the return had to be filed and that the assessee's bank account was attached and the payments were recovered by the department by and by. Reliance was also placed on the Tribunal's decision in the case of Hazarimal Lalooram (supra) in which it was held that where the books of account were not audited and the assessee could not attach copies of the audited balance sheet and Profit and Loss A/c with the return, it could be said that he was prevented by sufficient cause for late submission of return.

8. We have given a very careful consideration to the arguments of the Ld. Counsel for the assessee, but do not find any force in the same. As rightly pointed out by the Ld. D.R., clause (c) of Explanation to section 139(9) uses the expression "tax, if any" claimed to have been at source or in advance or on self-assessment. In other words, if the assessee claims to have paid any tax either at source or by way of advance tax or on self-assessment,

but does not attach proof of having made such payments then the return could legitimately be treated as invalid, if the assessee did not remove the defect within 15 days of the receipt of the intimation from the Assessing Officer. The bare reading of the Explanation to section 139(9) leaves us in no doubt that what is expected of the assessee is to attach challans of payments which are claimed to have been made by the assessee and not in respect of payments which should have been made were not made by the assessee. If the assessee had not made any payments which he should have made and has not attached a challan in respect thereof, the return filed by him would not be a defective one. If the interpretation of the assessee were to be accepted that a return could not be filed without payment of advance tax. self-assessment tax etc., then the provisions of section 140A(3), re-enacted w.e.f., 1-4-1976, would be rendered meaningless. A provision of law has to be interpreted in such a way that its purpose is effectuated and not nullified or negated. We are of the considered opinion that even if the assessee had financial stringency and could not pay advance tax or self-assessment tax in time, nothing prevented it from filing the return of income on time. On a query from the Bench, the Ld. Counsel for the assessee submitted that in this case,

the books of account had already been audited and audited balance sheet and Profit & Loss A/c were available. In that view of the matter, the ratio of the Tribunal's decision in the case of Hazarimal Lalooram (supra) is not applicable in the instant case. We, therefore, reject the arguments of the Ld. Counsel for the assessee that it was prevented by sufficient cause for not filing the return in time."

9.1. We further observe that there is yet another provision in the Act i.e., sec.140A providing for consequences of non-payment of self-assessment tax as well as penalty u/s.221. And that such a default also results in non-admission of an assessee's appeal u/s.249(4) of the Act before the CIT(A) concerned. The purpose of quoting all these statutory provisions which apply in the corresponding specified facts and circumstances. Sec.139(9) read with [Explanation hereinabove] is also a self-contained code for the purpose of declaring a return as a defective and invalid one. Mr. Jasnani could hardly dispute that no such action had never been taken against the assessee. He took us to the Assessing Officer's re-assessment discussion at page-1 dated 30.11.2018 and that the latter had indeed issued notice for payment of self-assessment tax. We find no merit in the

instant arguments since the same was nowhere an intimation u/s.139(9) of the Act. That being the case, we are of the opinion that the assessee's above former return dated 08.02.2013 could not have been treated as a defective one so as to trigger applicability of sec.234A interest herein levied in sec.154 rectification proceedings in issue. Both the learned lower authorities action to this effect stands reversed therefore. The assessee's arguments stands accepted in very terms. Ordered accordingly.

10. This assessee's appeal is allowed in above terms.

Order pronounced in the open Court on 24.03.2023.

Sd/-	Sd/-
[DR. DIPAK P. RIPOTE]	[SATBEER SINGH GODARA]
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Pune, Dated 24th March, 2023
VBP/-
Copy to

1.	The appellant
2.	The respondent
3.	The NFAC, Delhi
4.	The CCIT, Pune
5.	D.R. ITAT, Pune "A" Bench, Pune
6.	Guard File.

//By Order//

Assistant Registrar, ITAT, Pune Benches,
Pune.