

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
MS. MADHUMITA ROY, JUDICIAL MEMBER**

आयकरअपीलसं./ITA No. 181/Rjt/2022
निर्धारणवर्ष/Asstt. Year :2011-12

Dhirendra Narbheram Sheth Office No. 302, Kamdhenu Commercial Complex, Raghuvie Para Street No. 7, Opp. Bank of Maharashtra, Dhebar Road Oneway, Rajkot PAN: AFJPS3831D	Vs.	ITO Ward-2(3)(5), Rajkot
(Applicant)		(Respondent)

Assessee by :	Shri Fenil Mehta, A.R.
Revenue by :	Shri B. D. Gupta, Sr. DR

सुनवाईकीतारीख/**Date of Hearing** : **04/01/2023**
घोषणाकीतारीख/**Date of Pronouncement** : **03/02/2023**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (in short "NFAC"), Delhi on 11.12.2021 arising in the matter of assessment order passed under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2011-12.

2. The Assessee has raised following grounds of appeals:

"1. That the learned CIT(Appeals) has grievously erred in law and on facts in upholding the action of the learned A.O. in charging the interest u/s 234A and 234B beyond the date on which self-assessment tax including interest u/s 234A, 234B and 234C up to that date is already paid.

2. That the learned CIT(Appeals) has grievously erred in law and on facts in not appreciating the contention of the appellant that interest u/s. 234A and 234B are

compensatory in nature and not penal in nature and they are levied to compensate revenue in order to avoid it from being deprived of payment of tax.

3. *That the appellant craves leave to add, amend, alter, vary and / or withdraw any or all the above grounds of Appeal."*

3. At the outset, it was brought to our notice by the learned counsel for the assessee that there was delay in filing the appeal for 105 days on account of Covid-19, therefore the same should be condoned. The learned DR on the contrary did not raise any objection on the condonation of the delay. Accordingly, we condone the same in pursuance to the judgment of Hon'ble Supreme Court in the case of **Cognizance for Extension of Limitation, In re reported in 125 taxmann.com 151** and proceed to adjudicate the issue on merit.

4. The only issue raised by the assessee is that the learned CIT-A erred in confirming the order of the AO by levying the interest under section 234A and 234B of the Act up to the date of the assessment order.

5. In the present case, the assessee is an individual and derives income under the head salary and interest income. The assessee did not file his return of income for the AY 2011-12 under section 139 of the Act. The assessee has filed the return of income as on 13/04/2018 in response to the notice issued under section 148 of the Act declaring an income of Rs. 6,20,156/- only which was accepted by the AO in the assessment framed under section 147 of the Act. Besides, the AO has levied interest under section 234A, 234B and 234C of the Act till the date of completion of assessment i.e. 29/11/2018.

6. The assessee against the levy of interest under section 234A and 234B of the Act, among other grievances, has moved an application dated 2 January 2019 under section 154 of the Act to rectify the same. As per the assessee, he has paid the self-assessment tax along with interest dated 19 March 2015 amounting to ₹ 71,070.00 and therefore there should not have been charged any interest under section 234A and 234B of the Act.

7. However, the AO disagreed with the contention of the assessee by observing as under:

"iv. The assessee has made payment of Rs. 71,070/- on 19/03/2015. As per the Explanation appended below section 140A of the Act, the self assessment tax paid is required to be first adjusted towards the interest payable by him and the balance shall be adjusted towards the tax payable. Accordingly the interest payable u/s. 234B of the Act is worked out giving credit to tax paid of Rs. 71,070/- after adjustment of interest payable by him u/s. 234A and 234C of the Act. Thus, the interest payable u/s. 234B is charged at Rs. 19,220/-, rectifying the mistake u/s. 154 of the Act."

8. Assessee preferred an appeal before the Ld. CIT(A). The assessee claimed that he has already paid self-assessment tax with interest under section 234A and 234B of the Act on 19/03/2015. So no interest should be charged under the aforementioned sections for the period attributable after the payment of self-assessment tax dated 19 March 2015.

9. It was submitted by the assessee that the interest under the provisions of Sec 234A, 234B and 234C are compensatory in nature. The Government should not incur loss of revenue on account of late payment of taxes. As the assessee has already paid the taxes to the Government, there is no loss of revenue after 19th March 2015.

10. However, the Ld. CIT(A) has disregarded the contentions of the assessee by treating the provision of section 234A, 234B and 234C as mandatory and penal in nature. The Ld. CIT(A) observed as under:

"6.2 The computation of the interest u/s 234A/234B is driven by the Act. Interest u/s 234A is charged from the original due date of filing the return to the date of actual filing of the return. Similarly, interest u/s 234B is charged from start of the AY to the date of determination of income u/s 143(1) or regular assessment including u/s 147. Section 234B(2) mandates that credit for self-assessment tax paid before the completion of assessment would be allowed. Explanation to Section 140A mandate that self-assessment tax is first to be adjusted against interest and then against the tax."

6.3 Since the levy of interest under section 234A and 234B of the Act is mandatory in nature being fastened by the statute automatically, in my considered opinion, the AO has no authority to restrict/curtail the same. Thus, the A.O. has correctly charged the interest as per the stated provisions of the Act, and the request of the appellant for curtailing the interest u/s 234A/234B upto the date of payment of self-assessment tax, being beyond the scope of section 154, has not been allowed by the AO. These grounds of the appellant therefore do not succeed."

11. Aggrieved assessee is in appeal before us.

12. The learned AR before us filed a paper book running from pages 1 to 46 and case law compilation running from pages 1 to 46 and contended that the interest charged under section 234A and 23B is compensatory in nature. Once, the assessee has paid the taxes including the interest under section 234A and 234B up to the date of self-assessment tax on the income declared in the income tax return which has been accepted by the revenue, there cannot be any element of interest to be charged beyond the date of tax paid by the assessee as self-assessment tax i.e. 19 March 2015. The learned AR in support of his contention has relied on various case laws which are available on record.

13. On the other hand, the learned DR vehemently supported the order of the authorities below.

14. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the assessee has not filed his return of income in response to the notice issued under section 148 of the Act. Likewise, the assessee has also paid the self-assessment tax along with interest under section 234A and 234B of the Act after the due date of filing the return of income specified under section 139 of the Act but before filing the return of income under section 148 of the Act.

15. The Revenue has charged the interest under section 234A and 234B up-to the date of passing the order under section 147 of the Act dated 29/11/2018 whereas as per the assessee interest shall be chargeable up-to the payment of self-assessment tax paid 19-3-2015.

16. As per the facts discussed above the issue before us is to decide whether the interest under the provisions of section 234A and 234B are compensatory or penal in nature. The scheme and the purpose of Income Tax Act is to realize direct taxes. It is not correct to refer to the levy of such interest as a penalty.

Having regard to the reason for the levy and the circumstances in which it is imposed, it is clear that interest is levied by way of compensation and not by way of penalty. It is, therefore, fairly manifest that the amount on which the interest is levied, is the amount, which can legitimately be said to be public revenue though payable by the assessee, but not paid by him. The income-tax Act makes a clear distinction between the levy of a penalty and other levies under that statute.

17. When the amount of tax has been paid by the assessee with interest up-to the date of payment, there is no point to charge the interest till the date of filing of return of income as the revenue is not incurring any loss on account of non-filing of ITR. The issue, however, is no longer res-integra. The Hon'ble Supreme Court and Various Hon'ble High Court thorough judgements have well settled that when the statute says interest, which would be compensatory in nature, would be levied upon happening of a particular event or action.

18. It has been held by the Hon'ble Supreme Court in the case of *CIT v. Prannoy Roy* 309ITR231/[\[2009\] 179 Taxman 53 \(SC\)](#) that the interest under section 234A of the Act on default in furnishing return of income shall be payable only on the amount of tax that has not been deposited before the due date of filing of the income-tax return for the relevant assessment year. The impugned provisions are only compensatory in nature and no part thereof is penal in character. The Hon'ble Delhi High Court in the case of *Commissioner of Income-tax-II v. Anand Prakash* reported in 316 ITR 141 has held as under:

"11. We have examined the decisions cited by the counsel on both sides and after considering the submissions made by them, we agree with the learned counsel for the revenue that the levy under section 234B of the said Act is compensatory in nature and is not in the nature of penalty. We may also note the decision of the Bombay High Court in the case of CIT v. Kotak Mahendra Finance Ltd. [\[2004\] 265 ITR 119](#), wherein the Bombay High Court observed that it was well-settled that interest under section 234B was compensatory in character and that it was not penal in nature. Another decision which would be relevant is of a Division Bench of this Court in the case of Dr. Prannoy Roy v. CIT [\[2002\] 254 ITR 755](#). In that case, the provisions of section 234A were in issue. The question before the court was whether interest could be charged under section 234A when, though the return had not been filed in time, the tax had been paid. The argument raised on behalf of the revenue that such payment of tax did not strictly comply with the meaning of advance tax and would therefore, have to be

disregarded for the purposes of charging interest under section 234A, was rejected. The Court also held that interest under section 234A was compensatory in nature and unless any loss was caused to the revenue, the same could not be charged from the assessee."

19. In view of the above and after considering the facts in entirety, we are of the opinion that the interest under section 234A and 234B of the Act can be levied in the given facts and circumstances up-to the date of self-assessment tax paid by the assessee along with the interest and not to the period beyond that date. Hence, we set aside the order of the learned CIT-A with the direction to the AO to delete the interest charged by him. Thus, the ground of appeal of the assessee is allowed.

20. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Court on 03/02/2023 at Ahmedabad.

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

Ahmedabad; Dated
Tanmay, Sr. PS

(True Copy)

03/02/2023

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**