IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

ITA.No. 30 of 2013 ()
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ORDER DATED 24.08.2012 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN IN I.T.A. NO.904/COCH/2007 ASSESSMENT YEAR 2003-04.

APPELLANT:
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M/S.APPOLLO TYRES LTD,
6TH FLOOR, CHERUPUSHPAM BUILDINGS
KOCHI-31.(PAN: AAACA 69990Q).

BY ADVS.SRI.JOSEPH MARKOSE (SR.)
SRI.V.ABRAHAM MARKOS
SRI.MATHEWS K.UTHUPPACHAN
SRI.BINU MATHEW
SRI.TERRY V.JAMES
SRI.TOM THOMAS (KAKKUZHIYIL)

RESPONDENT:
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THE DEPUTY COMMISSIONER OF INCOME-TAX,
CIRCLE-1(1),
ERNAKULAM, PIN-682018.

BY ADV. SRI.P.K.R.MENON,SR.COUNSEL, GOI(TAXES)
BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 28-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ITA.No. 30 of 2013

APPENDIX

APPELLANT'S ANNEXURES:

A1 : TRUE COPY OF ASSESSMENT ORDER DATED 27.3.2006 OF THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 1(1), ERNAKULAM.

A2 : TRUE COPY OF ORDER DATED 4.7.2006 OF THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 1(1), ERNAKULAM.

A3 : TRUE COPY OF RECTIFICATION APPLICATION DATED 13.9.2006 FILED BY THE APPELLANT.

A4 : TRUE COPY OF ORDER DATED 16.2.2007 OF THE ASSESSING OFFICER.

A5 : TRUE COPY OF APPELLATE ORDER DATED 25.9.2007 OF THE COMMISSIONER OF INCOME TAX (APPELS) - II, KOCHI.

A6 : CERTIFIED COPY OF ORDER DATED 24.8.2012 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN IN I.T.A. NO.904/COCH/2007.

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY// P.A. TO JUDGE

smv

**ANTONY DOMINIC**
**&**
**SHAJI P. CHALY, JJ.**

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**I.T.A. No.30 of 2013**

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**Dated this the 28th of May, 2015**

## <u>JUDGMENT</u>

**<u>Antony Dominic,J.</u>**

This appeal is filed against the order passed by the Income Tax Appellate Tribunal, Cochin Bench in I.T.A. No.904/Coch/2007 pertaining to the assessment year 2003-2004. By the said order, the Tribunal has confirmed interest levied on the appellant under Section 234C and 234D of the Income Tax Act.

2. In so far as the interest levied under Section 234C is concerned, the case of the appellant is that following the notification dated 01.03.2003 issued by the Government of India, they got credit for additional excise duty of Rs.36.24 Crores and that the same should be treated as exempted from the levy of interest under Section 234C. This has been negatived by the authorities concurrently and the correctness of this finding is challenged before us.

3. Section 234C of the Income Tax Act provides for interest

for deferment of advance tax, in the manner as provided in the section. As per the proviso to this section, only the amount of capital gains and income of the nature referred to in Section 2 (24)(ix) of the Act, alone are exempted. It cannot be said that the credit of additional excise duty received by the appellant falls in either of the exempted categories in Section 234C. Therefore, the finding of the authorities on the above issue requires to be upheld and we do do.

4. Second question raised by the appellant is whether the Tribunal is correct in upholding the levy of interest under Section 234D up to the date of passing the consequential order following the appellate order treating the said order as an order of regular assessment as provided under this section.

5. A reading of the Annexure -A1, the revised assessment order issued consequent to the direction contained in the appellate order shows that interest under Section 234D has been charged on the appellant till the date of the revised order treating it as the regular assessment. According to the appellant, regular assessment for the purpose of levy of interest under Section 234D is the original order of assessment passed under Section 143(3) of the Act and not the revised assessment order and that therefore, the levy of interest confirmed by the

appellate authority and the Tribunal is incorrect.

6. Having heard the learned Senior Counsel for the appellant and also learned Senior Standing Counsel for the respondent, we are inclined to think that in view of the principles laid down by the Apex Court in **Modi Industries Ltd. & others v. Commissioner of Income Tax & another** [216 ITR 759], the term 'regular assessment' used in Section 234D, which is also defined in Section 2(40), is the original order of assessment and not the revised order passed in compliance with the appellate orders. Therefore, this question raised by the appellant has to be answered in their favour.

7. The appeal is, therefore, disposed of holding that the assessee is liable to pay interest under Section 234D is upto the date of first order of assessment. Annexure-A1 order of assessment will be modified in the light of the above.

Appeal is disposed of accordingly.

Sd/-
**ANTONY DOMINIC**
**JUDGE**

Sd/-
**SHAJI P. CHALY**
**JUDGE**

//true copy// P.A. to Judge

smv