

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 253 of 2015 (O&M)

Date of Decision: 15.9.2015

Principal Commissioner of Income Tax, Faridabad

....Appellant.

Versus

Shri Krishan Gopal (HUF)

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.  
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. Tajender K. Joshi, Advocate for the appellant.

**AJAY KUMAR MITTAL, J.**

1. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 24.12.2014 (Annexure A-III) passed by the Income Tax Appellate Tribunal, Delhi Bench “G”, New Delhi (hereinafter referred to as “the Tribunal”) in ITA No. 3226/DEL/2010, for the assessment year 2007-08, claiming the following substantial questions of law:-

1. Whether on facts and in the circumstances, the Ld. ITAT was right in law in upholding the order of CIT(A) in deleting interest u/s 234A of the Income Tax Act and to restrict the levy of interest u/s 234B of the Income Tax Act charged

by the Assessing Officer even though in the charging of interest u/s 234A and 234B is mandatory in nature and is contrary to the decision of the Hon'ble Supreme Court in the case of CIT Vs. Anjum M.H. Ghaswala & others (2001) 252 ITR 1 (SC) wherein it is held that Sections 234A and 234B are independent provisions of the Income Tax Act and if conditions for attracting these provisions exist the Assessing Officer shall have to levy the same as held that the levy of interest u/s 234A and 234B is mandatory in nature?

2. Whether on facts and in the circumstances, the Ld. ITAT was right in law in upholding the order of CIT(A) who without prejudice to the above had no jurisdiction u/s 246 of the Income Tax Act, 1961 to entertain and decide an appeal against orders u/ss 234A, 234B and 234C; more so, when the returned income was accepted u/s 143(3) and there was no grievance against the order and the separate ITNS 150 was prepared to calculate tax and interest and signed by the Assessing Officer?
3. Whether on facts and in the circumstances, the Ld. ITAT was right in law in upholding the order of CIT(A) in passing a perverse order without mandate in the case where the assessee could

have filed a petition u/s 154 of the Income Tax Act to the Assessing Officer instead of filing an appeal before the CIT(A), which does not lie?

4. Whether on the facts and in circumstances of the case and in law, the ITAT was right in law in upholding the order of CIT(A) wherein, having no regards to the expressions used in Section 45 and Section 48 for computation of long term capital gain arising for accruing on transfer of capital, the CIT(A) held that it was a conditional sale with sales considerations not fully received in the F.Y. 2006-07 and, therefore, liability u/s 234A, u/s 234B and u/s 234C did not arise. The order of the CIT(A) and that of ITAT upholding the order of CIT(A) are perverse inasmuch as Sections 45 and 48 do not recognize conditional sale for computation of capital gains, rather, that capital gains have to be computed on considerations received or accruing?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee is an agriculturist and had filed the return of income on 10.10.2007 for the assessment year 2007-08 declaring a total income of ₹ 11,69,85,910/- including long term capital gain of ₹ 11,69,05,260/- under Section 139(1) of the Act in which the assessee had voluntarily paid interest to the tune of ₹ 5,24,261/-, ₹ 15,72,783/- and ₹ 2,62,130/- under Sections 234A,

234B and 234C of the Act respectively. The case of the assessee was selected for scrutiny and the Assessing Officer vide order dated 8.10.2009 (Annexure A-I) framed regular assessment under Section 143 (3) of the Act by accepting the returned income of the assessee. As a result thereof, ITNS 150 of the Act was prepared and a demand of ₹ 91,206/- was raised due to short levy of interest under Sections 234A and 234B of the Act. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity “the CIT (A)”]. The CIT(A) vide order dated 29.4.2010 (Annexure A-II) deleted the interest amounting to ₹ 5,24,261/- charged under Section 234A of the Act and ₹ 2,62,130/- under Section 234C of the Act and restricted the interest of ₹ 5,88,244/- charged under Section 234B of the Act. Being dissatisfied with the order, Annexure A-II, the revenue filed an appeal before the Tribunal who vide order dated 24.12.2014 (Annexure A-III) upheld the order of the CIT(A) and dismissed the appeal. This gave rise to the revenue to approach this Court by way of instant appeal.

4. Learned counsel for the revenue submitted that the first appeal under Section 246 of the Act was not maintainable against the chargeability of interest under Sections 234A, 234B and 234C of the Act particularly when the returned income was accepted under Section 143 (3) of the Act and there was no grievance against the order and the separate ITNS 150 was prepared to calculate tax and interest. It was further urged that the CIT(A) and the Tribunal were not justified in deleting the interest under Sections 234A and 234C of the Act and in restricting the interest charged under Section 234B of the Act.

5. After hearing learned counsel for the revenue, we do not find any merit in the appeal.

6. In this appeal, two issues arise for consideration of this Court, namely, (i) Whether the CIT(A) was well within his jurisdiction to entertain the first appeal under Section 246 of the Act against the chargeability of interest by the Assessing Officer under Sections 234A, 234B and 234C of the Act; and (ii) Whether the CIT(A) and the Tribunal were justified in deleting the interest under Sections 234A and 234C of the Act and in restricting the interest charged under Section 234B of the Act.

7. Adverting to issue No. (i), it may be noticed that the question regarding maintainability of appeal under Section 246 of the Act against order charging interest passed by the Assessing Officer under the Act was considered by the Apex Court in **Central Provinces Manganese Ore Co. Ltd. v. CIT (1986) 160 ITR 961**. It was observed that the levy of interest is the part of the process of assessment. Although Sections 143 and 144 of the Act do not specifically provide for the levy of interest but it is nevertheless a part of the process of assessing the tax liability of the assessee. The Supreme Court held that since levy of interest is a part of the process of assessment, it could be challenged in appeal provided the assessee disputes the chargeability of interest on the ground that he is not liable to the levy of interest at all. It was clarified that where the assessee claims waiver or reduction of the interest levied, that could not be agitated in appeal under Section 246 of the Act but more appropriately by resorting to revisional jurisdiction of the Commissioner. It was further observed that before the revisional jurisdiction of the Commissioner can be invoked for waiver or reduction, the assessee is required to demonstrate before the Assessing Officer that there is a case for waiving or reducing the levy of interest.

8. Applying the aforesaid authoritative principles of law enunciated by the Apex Court, the appeal filed by the assessee laying challenge to the very levy of interest under Sections 234A, 234B and 234C of the Act before the CIT(A) was clearly maintainable.

9. Similar contention raised by the revenue before the Tribunal against maintainability of appeal before the CIT(A), against levy of interest under Sections 234A, 234B and 234C of the Act, was repelled with the following observations:-

“12. We have occasion to go through the decision of Hon'ble Supreme Court in the case of Central Province Manganese Ore Co. Ltd. vs. CIT (1986) 160 ITR 961 (SC) on an identical issue. The issue raised before the Hon'ble Supreme Court was as to whether orders levying interest under sub-section (8) of section 139 and under sec. 215 are appealable under sec. 246 of the Act. Hon'ble Supreme Court after detailed discussion has been pleased to hold that the levy of interest is part of the process of assessment. Although Sections 143 and 144 do not specifically provide for the levy of interest and the levy is, in fact, attributable to sec. 139(8) or section 215, it is nevertheless a part of the process of assessing the tax liability of the assessee. It was held that, in as much as, the levy of interest is the part of the process of assessment, it is open to an assessee to dispute levy in appeal provided he limits himself to the ground that he is not liable to the levy at all. The fact of that

case before the Hon'ble Supreme Court is akin to the fact of the present case as in the present case as well the assessee in their first appeals had limited themselves to the grievance of non-leviable of interest under Sections 234A, 234B and 234C of the Act at all. The contention of the assessee was that the charging of interest under Sections 234A, 234B and 234C was not proper and justified in view of the facts and circumstances of the case as only 20% of the sales consideration was received prior to the end of the relevant financial year and balance 80% was received in the next financial year. Without prejudice to this ground, the assessee during the course of first appellate proceedings also raised an additional ground that the assessee company could be fastened with the levy of interest to the extent of 20% only, i.e. the amount received by the assessee in the relevant financial year. Obviously, it was an alternative ground. The main contention as discussed above of the assessee remained that it was not liable to the levy of interest under Sec. 234A, 234B and 234C of the Act. Thus, respectfully following the ratio laid down by the Hon'ble Supreme Court in the above cited case, we hold that the first appeal against the levy of the disputed interest under Sec.234A, 234B and 234C was very much maintainable under sec. 246 of the Act. Hon'ble Supreme Court has been also pleased

to observe that clause (c) of sec. 246 provides an appeal against an order where the assessee denies his liability to be assessed under the Act or against any assessment order under sub-section (3) of sections 143 or 144, where the assessee objects to the amount of income assessed or to the amount of tax determined or to the amount of loss computed or to the status under which he is assessed. Inasmuch as, the levy of interest is part of the process of assessment, it is open to an assessee to dispute the levy in appeal provided he limits himself to the ground that he is not liable to the levy of interest at all. The issue is thus decided in favour of the assessee. In result, ground No.2 involving the issue is rejected.”

10. Learned counsel for the revenue was unable to demonstrate that the approach of the Tribunal was erroneous or perverse in any manner. Issue No.(i) is, thus, decided against the revenue.

11. Regarding issue No. (ii), the Tribunal has noticed that as the assessee had paid due taxes within 4 days of the receipt of the cheque in the month of September, 2007 and filed the return voluntarily, thus, the CIT(A) had rightly held that interest under Section 234A of the Act be not charged for the reasons that the sale was conditional sales which was to be completed only after the realization of the last cheque and thus considerations were beyond the control of the assessee. Further, interest under Section 234B of the Act was also restricted by directing the Assessing Officer to charge it only on the amount of capital gain worked out after taking sales consideration at the amount received by

the assessee during the financial year 2006-07 and deducting proportionate indexed cost of acquisition and allowing exemption under Section 54EC of the Act for ₹ 50 lacs out of the capital gain so worked out. Still further, the liability to pay interest under Section 234C of the Act qua the capital gains was held to be unwarranted in view of the specific provisions of the Act and the CIT(A) was correct in deleting the interest levied under Section 234C of the Act. The Tribunal had recorded as under:-

“13. Here, in the present case, it is not the case that the learned CIT(Appeals) has allowed the appeal of the assessee on the basis that in absence of directions in the assessment order interest under Sec. 234A, 234B and 234C cannot be charged on the basis of ITNS 150 or demand notice. Thus, there is no need to consider the arguments advanced by the parties in this regard. The learned CIT(Appeals) instead has allowed the alternative ground raised before him by the assessee with the directions to the Assessing Officer to restrict the levy of interest under Section 234B of the Act on the amount of capital gain worked out after taking sales consideration at the amount received by the assessee during the financial year 2006-07, deducting proportionate indexed cost of acquisition and allowing exemption under Section 54EC of the Act for Rs.50 lacs out of the capital gains so worked out. Rest of the interest charged under Section 234B was directed to be deleted. As the

assessee had paid due taxes within 4 days of the receipt of the cheque in the month of September 2007 and filed the return voluntarily, the learned CIT (Appeals) was of the view that interest under Section 234A should not be charged for the reasons that the sales was conditional sales which was to be completed only after the realization of the last cheque and thus considerations were beyond the control of the assessee. He found that the liability to pay interest under Section 234C of the Act was not warranted in view of the specific provisions of the Act in respect of capital gains. He accordingly directed to delete the interest levied under Section 234C of the Act.”

12. In view of the aforesaid findings which are not shown to be erroneous or perverse in any manner, the Tribunal was right in upholding the order of the CIT(A). Accordingly, no substantial question of law arises in this appeal and the instant appeal is dismissed.

**(AJAY KUMAR MITTAL)**  
**JUDGE**

**September 15, 2015**  
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**(RAMENDRA JAIN)**  
**JUDGE**