

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 379 of 2015 (O&M)

Date of Decision: 11.12.2015

Principal Commissioner of Income Tax, Faridabad

....Appellant.

Versus

Smt. Sushila Rani

...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. Delay of 12 days in refiling the appeal is condoned.
2. 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. 3230/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 ₹ 9,71,54,990/- including long term capital gain of ₹ 9,69,29,440/- with agricultural income of ₹ 62,460/- under Section 139(1) of the Act. 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 ₹ 4,12,275/- was raised due to short levy of interest under Sections 234A and 234B of the Act. Feeling aggrieved against the charging of interest under Sections 234A, 234B and 234C of the Act, 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 ₹ 2,17,219/- charged under Section 234A of the Act and ₹ 2,17,319/- under Section 234C of the Act and restricted the interest 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. We have heard learned counsel for the revenue.

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. The matter is no longer *res integra*. This Court in **ITA No. 253 of 2015 [Principal Commissioner of Income Tax, Faridabad v. Shri Krishan Gopal (HUF)]** decided on 15.9.2015 adjudicated both the issues, as noticed above, against the revenue holding that an appeal could be filed against the levy of interest under Sections 234A, 234B and 234C of the Act before the CIT(A) as an appeal was maintainable. Further, under similar circumstances, it was recorded that 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. The appeal of the revenue was dismissed.

8. In view of the above, the present appeal is also dismissed.

(AJAY KUMAR MITTAL)
JUDGE

December 11, 2015
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(RAMENDRA JAIN)
JUDGE