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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

T.C.A.NO.733 OF 2013

The Commissioner of Income tax,
Chennai.

...Appellant / Appellant

-VS-

M/s.United India Insurance Co. Ltd.,
No.24, Whites Road,
Chennai-600 014.

...Respondent / Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order dated 11.08.2011 made in I.T.A.No.914/Mds/2011 on the file of the Income Tax Appellate Tribunal 'C' Bench, Chennai for the assessment year 2001-02 against the order passed by the Commissioner of Income Tax, LTU (Appeals), Chennai made in ITA.No.3/10-11/LTU-(A) dated 21.02.2011 and against the order passed by the Additional Commissioner of Income Tax, LTU, Chennai made in G.I.No./PAN No.AAACU5552C, dated 26.12.2008.

For Appellant : Mr.T.Ravikumar,
Senior Standing Counsel

For Respondent : Mr.M.V.Swaroop
assisted by
Ms.Madhunika Varadarajan

JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal, by the Revenue, filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the order dated 11.08.2011, made in I.T.A.No.914/Mds/2011 passed by the Income Tax Appellate Tribunal 'C' Bench, Chennai (for brevity "the Tribunal") for the assessment year 2001-02.

2.The appellant-Revenue had raised the following three substantial questions of law for consideration:-

"1.Whether on the facts and in the



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circumstances of the case, the Income Tax Appellate Tribunal was right in deleting the interest levied under Section 234D of the Income Tax Act?

2. Whether on the facts and in the circumstances of the case, no interest can be charged even for the period subsequent to the introduction of Section 234D merely on the ground that said section was introduced by Finance Act, 2003 with effect from 01.06.2003? and

3. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that interest levied under Section 234D of the Income Tax Act cannot be charged for the assessment year 2001-02 especially when the assessment order was made after introduction of the said Section?"

3. When the matter came up for admission before the Division Bench, to which one of us (TSSJ) was a party, the substantial questions of law were re-framed by order dated 21.03.2014. For better appreciation, we quote the operative portion of the order hereunder:-

"2. It is seen from the narration of the facts that originally as per the proceedings under Section 143(1) of the Income Tax Act, 1961, the assessee was granted refund of a sum of Rs.27,53,15,828/-. However, there afterwards, the assessment was taken up for scrutiny and the same was completed under Section 143(3) of the Act resulting in additional income of Rs.38,61,15,000/-. In view of the demand thus made, interest under Section 234D was sought to be levied therein. As against this order, the assessee went on appeal. In the meantime, by order dated 26.12.2008 the assessment was re-opened and an order under Section 143(3) r/w 147 of the Income Tax Act, 1961 was made. As per the revised assessment order, the liability of the assessee was arrived at a sum of Rs.45,64,03,628/-. The Officer also levied interest under Section 234D at an amount of Rs.10,50,78,864/- as against the interest levied at Rs.2,71,08,878/-.

3. The assessee went on appeal before the Commissioner of Income Tax (Appeals) on various aspects of the assessment and it also questioned the levy of interest under Section 234D contending that the provisions under 234D was



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introduced into the Statute under the Finance Act, 2003, w.e.f. 01.06.2003 and hence, the same was not applicable to the assessee. Thus the demand was set aside by the Commissioner of Income Tax (Appeals).

4. Aggrieved by this, the Revenue went on appeal before the Income Tax Appellate Tribunal. The Tribunal dismissed the Revenue's appeal holding that there was no decision of the jurisdictional High Court on the issue and that the Delhi High Court in the case of Director of Income Tax vs. Jacobs Civil Incorporated [2011] 330 ITR 578 had already taken a decision that Section 234D was applicable only on and from assessment year 2004-05 onwards only. Thus the Revenue's appeal was dismissed. Hence, the present appeal.

5. Learned Standing Counsel appearing for the Revenue pointed out that this Court had already considered the issue in the decision reported in 340 ITR 580 [CIT vs. Infrastructure and Development Co. Ltd.] a decision rendered long after the Tribunal's decision dated 11.08.2011. He further pointed out that in view of Explanation (2) to Section 234D inserted under Finance Act of 2003 w.e.f. 1.6.2003, the assessment herein being with reference to 2001-02 will be covered by the said Explanation and hence the provision to Section 234D would apply.

6. Since the issue raised herein is a substantial one in the context of Explanation (2) to Section 234D of the Act, we ordered notice to the respondent/assessee. Accordingly the respondent/assessee is before us today.

7. Learned Counsel appearing for the assessee submitted that even though Explanation (2) inserted w.e.f. 1.6.2003, may apply to the assessment year 2001-02, yet, considering the facts prevailing herein Section 234D itself would not be of any assistance to the Revenue to levy interest. He submitted that the said Section would have relevance only to a case of regular assessment. The assessee's case herein relates to an assessment order under Section 143(3) r/w 147 of the Act. Hence, the said Section would not apply to the proceedings under Section 147 of the Act.

8. We find that the said issue was not raised or considered before the Tribunal. The assessee's appeal before the Tribunal was allowed going by the provisions of 234D as it then stood,



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where the order therein was made on 11.08.2011 and the Tribunal confirmed the order passed by the Commissioner of Income Tax (Appeals). Thus even though the insertion of Explanation (2) to Section 234D would be of relevance to the assessment herein as the Explanation itself was introduced w.e.f. 1.6.2003 under Finance Act, 2003, the question as to whether the provisions would be applicable to the proceeding under Section 147 of the Act was not raised or considered in the context of the facts as narrated above.

9. In the circumstances, satisfied of the question of law arising on the facts of the case, as to the applicability of the Explanation (2) to Section 234D to the proceedings under Section 147, we deem it fit to admit this Tax Case (Appeal) by reframing the questions of law as under:-

(i) Whether Section 234D of the Income Tax Act, in the context of the language used in the said provision is referable to re-assessment under Section 147 revising the original assessment order made under Section 143(3) of the Act?

(ii) Whether the assessment made under Section 143(3) r/w 147 as by way of re-opening would also be covered by Section 234D?"

4. From the above order, it is seen that the above substantial questions of law framed for consideration in this appeal, were not the grounds, which were canvassed before the Tribunal. Under normal circumstances, an appellant, who prefers an appeal under Section 260A of the Act, will be entitled for his appeal to be heard only on the questions so formulated and the respondent, shall at the hearing of the appeal, be allowed to argue that the case does not involve such question.

5. The proviso under sub-section (4) of Section 260A provides that nothing in sub-section (4) shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question. Precisely, the Division Bench while passing the order dated 21.03.2014, exercised its power under the proviso to sub-section (4) of Section 260A and re-framed the substantial questions of law, despite that such question was not an issue before the Tribunal. Therefore, we shall proceed to consider and decide the following substantial questions of law:-

(i) Whether Section 234D of the Income Tax Act, in the context of the language used in the



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said provision is referable to re-assessment under Section 147 revising the original assessment order made under Section 143(3) of the Act? and

(ii) Whether the assessment made under Section 143(3) r/w 147 as by way of re-opening would also be covered by Section 234D?"

6. We have elaborately heard Mr. T. Ravikumar, learned Senior Counsel appearing for the appellant-Revenue and Mr. M. V. Swaroop, learned counsel assisted by Ms. Madhunika Varadarajan, learned counsel counsel for the respondent-assessee.

7. The facts, which are necessary for deciding the above substantial questions of law are culled out as hereunder:-

7.1. The assessee, the United India Insurance Company Ltd., filed its return of income on 31.10.2001, declaring a total loss of Rs. 91,70,56,335/-. The assessment was completed under Section 143(3) on 31.03.2004. Subsequently, notice was issued under Section 148 of the Act on 28.03.2008, informing the assessee that the Revenue proposes to reopen the assessment and calling upon the assessee to file its return of income pursuant to the notice issued under Section 148 of the Act. The assessee by letter dated 27.04.2008, requested the original return filed on 31.10.2001 to be treated as a return in response to the notice under Section 148 of the Act. Subsequently, notice under Section 143(2) was issued and thereafter, the assessee sought for reasons for reopening and the reasons were furnished and there was change of jurisdiction and ultimately, the assessment was completed by order dated 26.12.2008, under Section 143(3) read with Section 147 of the Act. There was an order of rectification passed under Section 154 of the Act dated 24.03.2010 and the total income was arrived at Rs. 90,51,95,515/-.

7.2. The assessee preferred appeal against the said order of reassessment before the Commissioner of Income Tax (Appeals), Large Taxpayer Unit (LTU), Chennai (for brevity "the CIT(A)") challenging the levy of interest under Section 234D and on other issues as well. The appeal filed by the assessee was allowed holding that Section 234D will not be applicable for the assessment year 2001-02, as the said provision was introduced by Finance Act, 2003 with effect from 01.06.2003. Aggrieved by the same, the Revenue preferred appeal before the Tribunal, but the Tribunal dismissed the appeal by the impugned order, which is questioned before us in this tax case appeal.

8. As mentioned above, the questions to be decided were not an issue either before the CIT(A) or before the Tribunal. Thus, we are required to decide as to whether the assessment under Section 143(3) read with Section 147 of the Act dated



26.12.2008, would also be covered by Section 234D of the Act.

8.1. Section 234D deals with 'interest on excess refund'.

8.2. Sub-section (1) of Section 234 states that subject to the other provisions of the Act, where any refund is granted to the assessee under sub-section (1) of Section 143 and (a) no refund is due on regular assessment; or (b) the amount refunded under sub-section (1) of Section 143 exceeds the amount refundable on regular assessment, the assessee shall be liable to pay simple interest at the rate of one-half per cent on the whole or the excess amount so refunded, for every month or part of a month comprised in the period from the date of grant of refund to the date of such regular assessment.

8.3. Sub-section (2) of Section 234D deals with cases where an order is passed under Section 154 or Section 155 or Section 250 or Section 254 or Section 260 or Section 262 or Section 263 or Section 264 or an order of the Settlement Commission under sub-section (4) of Section 245D and in such case, the amount of refund granted under sub-section (1) of Section 143 is held to be correctly allowed, either in whole or in part, as the case may be, then the interest chargeable, if any, under sub-section (1) shall be reduced accordingly.

8.4. Explanation (1) in Section 234D states that where, in relation to an assessment year, an assessment is made for the first time under Section 147 or Section 153A, the assessment so made shall be regarded as a regular assessment for the purposes of Section 234D of the Act.

8.5. Explanation (2) has been inserted for the removal of doubts and it has been declared that the provisions of Section 234D shall also apply to an assessment year commencing before the 1st day of June, 2003 if the proceedings in respect of such assessment year is completed after the said date.

8.6. Explanations (1) and (2) were inserted by Finance Act, 2012 with retrospective effect from 01.06.2003. Thus, the issue, which was before the CIT(A) and the Tribunal, which was the basis for the assessee to succeed, does not any longer survive on account of the provisions being given retrospective effect and admittedly, the assessment having been passed after 01.06.2003, Section 234D would stand attracted. But the only important a shuttle distinction in the case on hand is that whether the assessment, which has been completed on 26.12.2008, is an assessment made for the first time under Section 147 of the Act and if it is so, can it be regarded as a 'regular assessment'.

8.7. 'Regular assessment' has been defined under Section 2(40) of the Act to mean the assessment made under sub-section (3) of Section 143 or Section 144.



9. The facts noted by us in the preceding paragraphs as well as the facts, which can be culled out from the assessment order dated 26.12.2008 are as follows:-

9.1. The assessee filed its return of income on 31.10.2001, the assessment under Section 143(3) was made on 31.03.2004. Subsequently, notice under Section 148 was issued on 28.03.2008. The assessee, by letter dated 27.04.2008, requested to treat the original return filed on 31.10.2001 as a return in response to the notice under Section 148 of the Act. The reasons for reopening were furnished and the assessee objected to the reopening and ultimately, the assessment stood completed under Section 143(3) read with Section 147 of the Act, by order dated 26.12.2008. Thus, the facts clearly show that there was an assessment, which was made under Section 143(3) on 31.03.2004. In such circumstances, can the assessment order dated 26.12.2008 passed under Section 143(3) read with Section 147 of the Act be regarded as the assessment made for the first time to be regarded as a regular assessment in terms of the definition contained in Section 2(40) of the Act.

10. The following decisions cited at the Bar would have facilitate us in answering the substantial questions of law, which have been framed for consideration:-

10.1. In *Darshan Lal Gulati vs. CIT* [(2008) 173 Taxman 268 (Punjab & Haryana)], the assessee filed its return of income for the assessment year 1988-89 on 31.08.1988. The Assessing Officer, however, issued notice under Section 148 and completed the reassessment and also charged interest under Section 217 of the Act. The order was upheld by the CIT(A) and confirmed by the Tribunal. On appeal to the High Court, it was held that in a case, an assessment has been framed in response to the return filed on 31.08.1988, then it was manifest that first or initial assessment made by the Assessing Officer would be treated as a regular assessment and in that situation, the assessment, in pursuance to reassessment proceedings, could not be termed as "first assessment" and it did not come within the meaning of 'regular assessment'. Accordingly, it was held that interest under Section 217 of the Act could not have been charged. The operative portion of the judgment reads as follows:-

"9. Sub-section (40) of section 2 defines "regular assessment". According to the aforesaid section, at the relevant time, any assessment made under section 143 or section 144 of the Act is regarded as regular assessment. However, section 215 of the Act with effect from 1-4-1985 by way of amendment by Taxation Laws (Amendment) Act, 1984 (for short the "Amendment Act") has brought about important changes in the scheme of interest by the assessee. After the aforesaid amendment, sub-section (6) of section 215 provides that where in



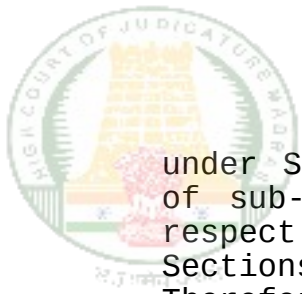
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respect to an assessment year, an assessment is made for the first time under section 147, the assessment so made would be regarded as a regular assessment for the purposes of this section and sections 216, 217 and 273.

10. Firstly, taking up the case that an assessment had been framed in response to the return filed on 31-8-1988, then it is manifest that first or initial assessment made by the Assessing Officer would be treated as regular assessment and in that situation assessment in pursuance to re-assessment proceedings cannot be termed as "first assessment" and does not come within the meaning of the expression 'regular assessment'. Accordingly, the interest under section 217 of the Act could not have been charged."

10.2. In *K. Govindan and Sons vs. CIT, Cochin* [(2001) 1 SCC 460 (SC)], the Hon'ble Supreme Court, after noting the provisions viz., Sections 139, 142, 143(3), 147 and 148, held that an initial assessment made by the Assessing Officer either on the assessee voluntarily furnishing a return of income or furnishing such a return on being served a notice under Section 148, is a 'regular assessment' under Section 2(40) of the Act, but an order passed by the Assessing officer making a reassessment or revised assessment in a case where an assessment had been made, does not come within the meaning of the said expression.

10.3. In *Modi Industries Ltd. vs. CIT* [(1995) 216 ITR 759 (SC)], after examining the scheme of the Act without taking into consideration the amendments made to Section 2(40) from time to time, the Hon'ble Supreme Court held that if regular assessment means the final assessment made after and pursuant to the appellate order under Section 250, then the sub-section becomes meaningless. It was further pointed out that the sub-section speaks of the amount on which interest is payable under sub-section (1) being increased or decreased as a result of the appellate order, which necessarily means that the order of regular assessment referred to in sub-section (1) is not the order of assessment made pursuant to the appellate order, but the original assessment order. Explanation (2) introduced by the Amendment Act states that where in relation to an assessment year, an assessment is made for the first time under Section 147, the assessment so made shall be regarded as a regular assessment for the purposes of the said section. The Hon'ble Supreme Court emphasised on the words "made for the first time under Section 147" of the Act. Further, it was pointed out that even against an assessment made under Section 147, there can be an appeal and revision just as against an assessment made under Sections 143/144. If the assessment made for the first time



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under Section 147 is to be regular assessment for the purposes of sub-section (1) of Section 214, it cannot be otherwise in respect of the assessment made in the ordinary course under Sections 143/144, spoken of in sub-section (1) of Section 214. Therefore, it was held that a 'regular assessment' would mean the 'first assessment'.

11. The learned counsel for the respondent-assessee placed reliance on a decision of the Vishakapattinam Bench of the Tribunal in Dredging Corporation of India Ltd. vs. Assistant Commissioner of Income-tax, Circle 3(1), Visakhapatnam [(2011) 13 taxmann.com 37 (Visakhapatnam)]. In the said case, the assessee was given a refund of Rs.11.02 Crores while processing the return under Section 143(1). In the assessment order passed under Section 143(3), the refund amount was determined of Rs.11.08 Crores. In the reassessment proceedings under Section 147, the refundable amount got reduced to Rs.8.75 Crores. The Assessing Officer levied interest on the sum of Rs.2.33 Crores which became collectable under Section 234D of the Act. The assessee challenged the said order before the Commissioner (Appeals), who held that interest was not chargeable in the hands of the assessee-company in re-assessment proceedings. The Revenue was on appeal before the Tribunal and the Tribunal held as follows:-

“5.3. The second issue in "Other grounds" raised by the revenue in assessment year 2006-07 relates to the chargeability of interest under section 234D of the Act. As stated earlier, the assessee was given a refund of Rs. 11.02 crores while processing the return under section 143(1) of the Act. In the assessment order passed under section 143(3) of the Act, the refund amount was determined at Rs. 11.08 crores to the assessee. However, in the reassessment proceedings carried under section 147 of the Act, the amount refundable to the assessee got reduced to Rs. 8.75 crores. Hence a sum of Rs. 2.33 crores became collectible from the assessee. The Assessing Officer levied interest of Rs. 29,14,110 under section 234D of the Act on the amount so became collectible. The assessee challenged the said interest charged under section 234D of the Act before Learned CIT(A), who held that the interest under section 234D is not chargeable in the hands of the company in reassessment proceeding. The revenue has challenged the said decision of Learned CIT(A) before us.

5.3.1. The learned Departmental Representative submitted that the interest under section 234D can be charged if the amount of refund already granted became collectible in a regular assessment. For the said purpose, the assessment made for the first time under section 147 of the Act is treated as "regular



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assessment". The impugned assessment is the assessment made for the first time under section 147 of the Act, i.e., there is no other section 147 assessment earlier. The only assessment order available is the assessment order made under section 143(3) of the Act. Accordingly, he submitted that the assessment made for the first time under section 147 of the Act is to be treated as "regular assessment" for the purpose of section 234D of the Act and hence interest is leviable in the hands of the assessee. On the contrary the learned Authorised Representative submitted that the impugned section is applicable only in cases where the refund granted under section 143(1) became collectable in a regular assessment. He submitted that, in the instant case, the impugned assessment is a reassessment made under section 147 of the Act, since the original assessment has already been completed under section 143(3) of the Act. Accordingly, he contended that the provisions of section 234D shall not apply in the facts and circumstances of the case.

5.3.2. We have heard the parties on this issue. For the sake of convenience, we extract below the sub-section (1) of section 234D:

"234D(1) Subject to the other provisions of this Act, where any refund is granted to the assessee under sub-section (1) of section 143 and -

(a) no refund is due on regular assessment; or

(b) the amount refunded under sub-section (1) of section 143 exceeds the amount refundable on regular assessment, the assessee shall be liable to pay simple interest at the rate of one - half per cent on the whole or the excess amount so refunded, for every month or part of a month comprised in the period from the date of grant of refund to the date of such regular assessment".

On a plain reading of the above said section, we notice that the interest under section 234D is leviable only if the refund granted to the assessee under section 143(1) of the Act become collectable in the order passed under "regular assessment". The term "regular assessment" has been defined under section 2(40) of the Act as under: "(40) "regular assessment" means the assessment made under sub-section (3) of section 143 or section 144;".



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Under the Explanation given under section 234D the meaning of "regular assessment" is extended further as under:

"Explanation—Where, in relation to an assessment year, an assessment is made for the first time under section 147 or section 153A, the assessment so made shall be regarded as a regular assessment for the purposes of this section".

Now the question that arises is whether the reassessment made in the instant case under section 147 of the Act can be termed as a "regular assessment" for the purpose of section 234D of the Act. According to the learned Departmental Representative the impugned assessment is the assessment made for the first time under section 147 of the Act and hence it can be called as regular assessment for the purpose of charging interest under section 234D, i.e., according to learned Departmental Representative the second and subsequent reassessments made under section 147 of the Act after the completion of first reassessment under section 147 of the Act are only excluded from the purview of section 234D of the Act. However, we are not able to agree with the said contentions of the learned CIT(DR). According to us the interpretation made by the learned CIT(A) appears to be acceptable. For the sake of convenience, we extract below the relevant observations of the learned CIT(A):

"9.1 After hearing the learned Authorised Representative and on a careful consideration of the facts relating to the issue, it may be stated that regular assessment has been defined to mean assessment order passed under section 143(3) or under section 144 or where the assessment has been made for the first time under section 147 or under section 153A. Thus, reassessment proceedings under section 147 after completion of the assessment under section 143(3) is excluded from the purview of "regular" assessment. Such exhaustive definition of "regular" assessment when considered in the light of the fact that in the appellant company's case the assessment under section 147 has been made not for the first time, but after the completion of an assessment under section 143(3), the same cannot be termed as "regular" assessment and, consequently, the provisions of sec.234D cannot apply in the appellant company's case, although as a



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logical corollary, the appellant company is liable to pay interest on the excess refund granted to it earlier in the manner where interest under section 144A is granted to the appellant company on the excess taxes paid by it. In this view of the matter, no interest under section 234D is chargeable in the appellant company's case".

Accordingly we uphold the order of the learned CIT(A) on this issue.

12.The Tribunal agreed with the views expressed by the CIT(A), who held that re-assessment proceedings under Section 147 after completion of the assessment under Section 143(3) is excluded from the purview of regular assessment and taking note of the definition of regular assessment, in the facts of the said case, the assessment under Section 147 having not been made for the first time, but after the completion of the assessment under Section 143(3), the same cannot be termed as "regular assessment" and consequently, the provisions of Section 234D cannot be applied to the assessee's case.

13.We are informed that the decision in Dredging Corporation of India Ltd. (supra) has attained finality, as the research done as to whether any appeal has been preferred does not indicate the appeal to the High Court.

14.With a view to assist the Court in arriving at a correct decision on the substantial questions of law framed, Mr.T.Ravikumar, learned Senior Standing Counsel also referred to certain decisions, though the ultimate conclusion on those decisions was against the Revenue.

15.In Sundaram Finance Ltd. vs. Deputy Commissioner of Income Tax [(2019) 417 ITR 0679 (Madras)], one of the substantial questions of law framed for consideration was whether interest under Section 234D can be charged for the first time in a revision passed under Section 143(3) read with Section 254 giving effect to the Tribunal's order.

16.The other question was whether the provisions of Section 234D introduced with effect from 01.06.2003 is applicable to the assessment years prior to the assessment year 2004-05. This decision has been referred to by us, since the Court in the said case noted the memorandum explaining the provisions in the Finance Bill, 2012 to get clarity on the issues when Explanation (2) was inserted by Finance Act, 2012 with retrospective effect from 01.06.2003. Taking note of the said memorandum, the Court proceeded to consider and it was held that no interest can be charged under Section 234D of the Act, as it is not a 'regular assessment'. The operative portion of



the judgment reads as follows:-

"17.To get clarity on the issue, when Explanation (2) was inserted by the Finance Act, 2012 with retrospective effect from 01.6.2003, we will have to look into the Memorandum Explaining the Provisions in the Finance Bill, 2012. The issue relating to charging of interest on recovery of refund granted earlier is dealt in Clause 85 of the Memorandum, which reads as follows :

"Charging of interest on recovery of refund granted earlier"

Under the existing provisions of Section 234D of the Income-tax Act (inserted with effect from 1.6.2003, vide Finance Act, 2003), where any refund has been granted to the assessee under Sub-Section (1) of Section 143 and subsequently on regular assessment, no refund or lesser amount of refund is found due to the assessee, then, the assessee shall be liable to pay simple interest at the rate of one-half per cent on the excess amount so refunded for the period starting from the date of refund to the date of such regular assessment.

In a recent decision of the Court, it has been held that the provisions of Section 234D inserted with effect from 1.6.2003 would be applicable from the assessment year 2004-05 only and accordingly no interest could be charged for earlier assessment years even though the regular assessments for such years were framed after 1st June, 2003 or refund was granted for those years after the said date.

This is not in conformity with the legislative intent of the provision.

It is, therefore, proposed to clarify that the provisions of Section 234D would be applicable to any proceeding which is completed on or after 1st June, 2003, irrespective of the assessment year to which it pertains.

This amendment will take effect retrospectively from the 1st day of June, 2003. [Clause 85]."

18. A reading of the above Memorandum shows that insertion of Explanation (2) was necessitated on account of a decision of the Court, which held that the provisions of Section 234D inserted with effect



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from 1.6.2003 would be applicable from the assessment year 2004-05 only and accordingly no interest could be charged for the earlier assessment years even though the regular assessments for such years were framed after 01.6.2003 or refund was granted for those years after the said date. The Memorandum would state that the said decision is not in conformity with the legislative intent of the said provision namely Section 234D of the Act and accordingly clarified that the provisions of Section 234D of the Act would be applicable to any proceeding, which is completed on or after 01.6.2003 irrespective of the assessment year to which it pertains.

19. Thus, what is important to note is that the provision namely Section 234D of the Act was made applicable to any proceedings, which have completed on or after 01.6.2003 irrespective of the assessment year, to which, it pertains. In our considered view, Explanation (2) cannot be read in isolation from Sub-Section (2) of Section 234D of the Act and the entire Section should be read as a whole. If we adopt such a procedure, the correct legal position emanates because the charging provision is Sub-Section (1) of Section 234D of the Act. In the said Sub-Section namely Sub-Section (1), in three places, the expression 'regular assessment' occurs namely in Section 234D(1)(a), Section 234D(1)(b) and the remaining portion of Section 234D of the Act.

20. The question would be as to whether the order passed by the Assessing Officer dated 20.6.2008 could be taken as a regular assessment.

21. In our considered view, the same cannot be done so because an order passed under Section 154 cannot be taken to be framing of a regular assessment for such a year. Further, in our opinion, the regular assessment in the assessee's case is the assessment order passed under Section 143(3) of the Act on 30.3.2001. Admittedly, in the said order dated 30.3.2001, there was no levy of interest on the assessee. Furthermore, it is clear that Sub-Section (2) of Section 234D of the Act would be attracted only if reduction occurs and it cannot be made applicable when there is an increase.

22. The Hon'ble Supreme Court, in the case of Reliance Energy Limited has clarified the legal position and has spelt out the legislative intent and as to how the provisions of Section 234D of the Act should be applied. In the said case, it was held that Explanation (2), which has been inserted by the Finance Act, 2012, in Section 234D of the Act, declared that the provisions of the said Section shall



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also apply to an assessment year commencing from 01.6.2003 if the proceedings in respect of such assessment year is completed after the said date. The High Court, in the said case, was dealing with an assessment of the year 1998-99. It was an admitted case that the assessment of that year was completed prior to 01.6.2003 taking note of the fact that the Supreme Court held that having regard to the legal position, which has been clarified by the Parliament, by insertion of Explanation (2) to Section 234D of the Act, in the said case, where the assessment was completed prior to 01.6.2003, it was held that retrospectivity of Section 234D of the Act does not arise. The above decision would be squarely applicable to the case of the assessee, as, admittedly, the regular assessment was completed under Section 143(3) of the Act much prior to 01.6.2003 i.e. On 30.3.2001. For the above reasons, we are of the view that no interest can be charged under Section 234D of the Act for the assessment year in question.

23. In the result, the appeal filed by the assessee is allowed, the order passed by the Tribunal is set aside and the substantial questions of law are answered in favour of the assessee. No costs."

17. In CIT vs. Bishal Enterprises [(2002) 125 Taxman 52 (Madras)], the substantial question of law, which fell for consideration, was whether interest under Section 139(8) and under Section 217 of the Act is leviable in the case of assessment years 1979-80 and 1980-81, since the assessments have been completed for the first time under Section 147 read with Section 143(3). The Hon'ble Division Bench answered the question against the assessee by following the decision in the case of CIT vs. S. Antony [(2000) 242 ITR 363 (Madras)] noting that on facts in the said case, the assessment under Section 147 read with Section 143(3) was the assessment done for the first time.

18. In CIT vs. K.P. Baburaj [(1998) 234 ITR 0718 (Kerala)], it was held that any assessment made for the first time by resort to Section 147 will also be a 'regular assessment' for the purpose of invoking Section 147 of the Act. Though the legal position which emerges from the above decision is that Explanation (1) would stand attracted, if an assessment is made for the first time under Section 147 or Section 153A and the assessment if it is done for the first time, it shall be regarded as a 'regular assessment' under Section 2(40) of the Act.

19. In the instant case, admittedly, the assessment order dated 26.12.2008 under Section 143(3) read with Section 147 was



not the first assessment, as the assessment was under Section 143(3) dated 31.03.2004, which fact is not disputed.

20.The decision in the case of CIT vs. Fertilizers & Chemicals Travancore Ltd. [(2019) 307 CTR 0349 (Ker.)] would also help us in answering the substantial questions of law, though it was a case arising under Section 234B(3) of the Act wherein, it was held that interest payable under sub-section (1) of Section 234B was levied in the regular assessment and on re-assessment, the liability for advance tax was also stood increased and in such circumstances, the differential tax of reassessment has to be levied interest at the rate provided under sub-section (3) of Section 234B of the Act.

21.To be noted, that there is no such provision in Section 234B of the Act and conspicuously, no provision in pari materia with Section 234B(3) is found in Section 234B of the Act.

22.Thus, in the light of the above discussion, we are of the clear view that the assessment framed under Section 143(3) read with Section 147 dated 26.12.2008, being not the assessment made for the first time, the same cannot be regarded as a 'regular assessment' for the purposes of Section 234D and therefore, no interest can be levied on the respondent-assessee.

23.For the above reasons, the appeal filed by the Revenue is dismissed and the substantial questions of law are answered against the Revenue. No costs.

Sd/-

Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

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To

- 1.The Income Tax Appellate Tribunal 'C' Bench,
Chennai.
- 2.The Commissioner of Income Tax,
Chennai.
- 3.The Commissioner of Income Tax, LTU, (Appeals)
Chennai.
- 4.The Additional Commissioner of Income Tax, LTU,
Chennai

T.C.A.No.733 of 2013

BS(CO)
RVM(06/10/2021)