

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad**
(Through Video Conferencing)
Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri A. Mohan Alankamony, Accountant Member

ITA No.1854/Hyd/2019		
Assessment Year: 2018-19		
Sri Bharath Bhushan Agarwal, Hyderabad PAN: (Appellant)	Vs.	Dy.CIT Circle 14(1) Hyderabad (Respondent)
Assessee by:	Sri M.V. Anil Kumar	
Revenue by:	Sri Rohit Mujumdar,DR	
Date of hearing:	22/04/2021	
Date of pronouncement:	09/06/2021	

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2018-19 against the order of the CIT (A)-6, Hyderabad, dated 22.10.2019.

2. Brief facts of the case are that the assessee individual filed his return of income for the A.Y 2018-19 on 30.11.2018 declaring gross total income of Rs.5,07,03,257/- . The return of income was processed by CPC Bangalore u/s 143(1) of the Act and while computing the tax payable on the assessed income, the interest u/s 234A of the Act for a period of 3 months was levied i.e. at Rs.4,33,764/- as against Rs.89,176/- computed by the assessee in his return of income.

3. Aggrieved, by the intimation, the assessee filed an application u/s 154 of the Act. However, the same was rejected. Aggrieved, the assessee filed an appeal before the CIT (A) stating that the assessee was a working partner in two partnership firms whose accounts were subjected to tax audit. He submitted that by mistake, inadvertently, the assessee had chosen ITR Form-II instead of ITR-III. He submitted that for the relevant A.Y, the due date for filing of the return for the individual was 31.08.2008 and for the firms, the due date was 30.09.2018. It was submitted that the assessee having earned income from partnership firms whose accounts were audited, the assessee should have filed ITR-III on or before 30.09.2018 whereas the assessee has filed the returns on 31.11.2018. He submitted that the CBDT had extended the time for filing of the return of income for the relevant A.Y, but for the purposes of interest u/s 234A, it was clarified that interest was applicable from the original due date for filing of return. Therefore, it was prayed that the interest u/s 234A should be levied only for two months as against three months levied by the Assessing Officer. The CIT (A) granted relief to the assessee. However, the assessee had also raised an objection that since the assessee has paid self-assessment tax before the due date of filing of the return of income, no interest u/s 234A should be charged. This contention of the assessee was not accepted by the CIT (A). Therefore, the assessee is in second appeal before the Tribunal by raising the following grounds of appeal:

“1. The CIT (A) erred in law and facts of the case in confirming the levy of interest u/s 234A ignoring the fact that entire tax was paid before the due date of filing of the return.

2. The CIT (A) having relied on CBDT Circular ought to have relied on the decision of the Hon'ble Supreme Court decision in the case of VIT vs. Pranoy Roy 309 ITR 231 (SC) and deleted the interest u/s 234A.

3. Your appellant submits that the entire tax due for the A.Y 2018-19 as per return of income was paid before the due date of filing of the return and there was no tax payable on the date of filing of the return, interest u/s 234A is not payable, the interest may be deleted.

4. For these grounds and such grounds as may be urged at the time of hearing, your appellant prays that the additions may be deleted".

3.1 The learned Counsel for the assessee submitted that similar issue had come up before the Hon'ble Supreme Court in the case of CIT vs. Pranoy Roy reported in (2009) (179 Taxman 53 S.C) and the Hon'ble Supreme Court has held that where the tax due had already been paid on the due date of filing of the return of income and which was not less than the tax payable on the returned income which was accepted, question of levy of interest u/s 234A does not arise. He also drew our attention to the CBDT Circular No.2 of 2015 dated 10.02.2015 wherein after considering the Hon'ble Supreme Court's decision in the case of CIT vs. Pranoy Roy (Supra), the Board has directed that no interest u/s 234A of the Act is chargeable on the amount of self-assessment tax paid by the assessee before the due date of filing of the return of income. Therefore, he submitted that the circular is applicable to the assessee's case and the interest u/s 234A charged by the Assessing Officer is to be deleted.

4. The learned DR, on the other hand, supported the orders of the authorities below.

5. Having regard to the rival contentions and the material on record, we find that the returned income of the assessee was accepted by the Assessing Officer and because there was a delay in filing of the return of income, the CPC has charged interest u/s 234A of the Act for a period of 3 months by

treating the return as the return filed by an individual instead of a return filed by a firm. The CIT (A) has accepted the assessee's contention that the interest is chargeable for two months only.

6. However, as regard the quantum of interest is concerned, we find that the tax on both the self-assessment and also the assessed income is the same and the assessee had paid Rs.1.00 crore on 29.9.2018 i.e. before the due date of filing the return of income, while the balance of Rs.45,52,980/- was paid on 28.11.2018. Therefore, the decision of the Hon'ble Supreme Court in the case of CIT vs. Pranoy Roy (Supra) is clearly applicable to the case before us. For the sake of clarity and ready reference, the relevant paragraphs of the order of the Hon'ble Supreme Court are reproduced hereunder:

2. The respondent-assessee earned substantial capital gains for the asst. yr. 1995-96 for which IT return was due to be filed on 31st Oct., 1995. The return was filed on 29th Sept., 1996, i.e., after a delay of about 11 months. However, taxes due were paid on 25th Sept., 1995, i.e., before the due date of filing of the return. Though the returned income was accepted on 29th Jan., 1998, yet interest was charged under the provisions of s. 234A of the IT Act, 1961 (for short 'the Act') on the ground that tax paid on 25th Sept., 1995 could not be reduced from the tax due on assessment.

3. Being aggrieved, the assessee filed revision petition under s. 264 of the Act on 9th Nov., 1998 before the Administrative CIT requesting to delete interest charged under s. 234A of the Act. The Administrative CIT, vide order dt. 9th March, 1999, upheld the action of the assessing authority and dismissed the revision petition.

4. The assessee, being further aggrieved, filed writ petition in the High Court of Delhi which has been disposed of by the impugned order. The High Court, while accepting the writ petition and setting aside the interest charged under s. 234A of the Act, has come to the conclusion that interest is not a penalty and that the interest is levied by way of compensation to compensate the Revenue in order to avoid it from being deprived of the payment of tax on the due date. The High Court also held that interest would be payable in a case, where tax has not been deposited prior to the due date of filing of the IT return.

5. The Revenue has challenged the aforesaid decision by filing Special Leave Petition before this Court wherein leave was granted on 20th Jan. 2003.

6. Having heard counsel on both sides, we entirely agree with the finding recorded by the High Court as also the interpretation of s. 234A of the Act as it stood at the relevant time. Since the tax due had already been paid which

was not less than the tax payable on the returned income which was accepted, the question of levy of interest does not arise. Thus, we find no merit in this appeal and the same is dismissed".

7. The CBDT Circular No.2 of 2015 is also reproduced hereunder:

*"F. No. 385/03 /2015-IT(B)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(CBDT)*

*North Block, New Delhi
10th February, 2015*

Subject: Chargeability of Interest under Section 234A of the Income-tax Act, 1961 on self-assessment tax paid before the due date of filing of return of income- regarding

Interest under Section 234A of the Income-tax Act, 1961(hereinafter the Act) is charged in case of default in furnishing return of income by an assessee. The interest is charged at the specified rate on the amount of tax payable on the total income, as reduced by the amount of advance tax, TDS/TCS, any relief of tax allowed under section 90 and section 90A, any deduction allowed under section 91 and any tax credit allowed in accordance with the provisions of section 115JAA and section 115JD of the Act. Since self assessment tax is not mentioned as a component of tax to be reduced from the amount on which interest under section 234A of the Act is chargeable, interest is being charged on the amount of self-assessment tax paid by the assessee even before the due date of filing of return.

2. It has been held by the Hon'ble Supreme Court in the case of CIT vs Prannoy Roy, 309 ITR 231 (2009) 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. Accordingly, the present practice of charging interest under section 234A of the Act on self-assessment tax paid before the due date of filing return was reviewed by CBDT.

*3. The Board has decided that no interest under section 234A of the Act is chargeable on the amount of self-assessment tax paid by the assessee **before the due date of filing of return**.*

4. This Circular may be brought to the notice of all officers for compliance.

5. Hindi version shall follow.

Sd/-

*(Sandeep Singh)
Under Secretary to Government of India"*

8. Respectfully following the decision of the Hon'ble Supreme Court on similar set of facts, we direct the Assessing Officer to recompute interest u/s 234A of the Act only for two months and that too on the sum of Rs.45,52,980/- which was not paid before the due date of filing the return of income. Assessee's appeal is accordingly allowed.

9. In the result, assessee's appeal is partly allowed.
Order pronounced in the Open Court on 9th June, 2021.

Sd/-	Sd/-
(A. MOHAN ALANKAMONY) ACCOUNTANT MEMBER	(P. MADHAVI DEVI) JUDICIAL MEMBER

Hyderabad, dated 9th June, 2021.

Vinodan/sps

Copy to:

S.No	Addresses
1	Sri Bharath Bhushan Agarwal, Hyderabad
2	Dy.CIT, Circle 14(1) Hyderabad
3	CIT (A)-6, Hyderabad
4	Pr. CIT -6, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order