IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH 'B' CHENNAI

Before Shri Abraham P. George, Accountant Member and
Shri George Mathan, Judicial Member

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I.T.A. Nos. 520 to 525/Mds/2010
Assessment Years : 2000-01 to 2005-06

Dr. V. Jayakumar # 4, Vaidyanatha Iyer Street, Shenoy Nagar, Madurai-625 002.	v.	The Assistant Commissioner of Income-tax, Circle-I, Madurai.

(PAN: ACPPJ8538H)

A N D

I.T.A. Nos. 526 to 529/Mds/2010
Assessment years : 2000-01, 2001-02, 2004-05 & 2005-06

Smt. Kalyani Jayakumar, # 4, Vaidyanatha Iyer Street, Shenoy Nagar, Madurai-625 002.	v.	The Assistant Commissioner of Income-tax, Circle-I, Madurai.

(PAN : AAIPJ5617J)

(Appellants) (Respondent)

Appellants by	:	Shri Philip George
Respondent by	:	Shri P.B. Sekaran

O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER : These are appeals filed by the assessees against the orders of the learned CIT(Appeals)-I, Madurai in appeal Nos. 0200 to 0205/08-09 and 0196 to 0199 dated 22-02-2010 for the assessment years 2000-01 to 2005-06 and 2000-01, 2001-02, 2004-05 and 2005-06 respectively. As the issues in these appeals are identical, the same are being disposed of by this common order.

2. Shri Philip George, Advocate represented on behalf of the assessees and Shri P.B. Sekaran, CIT-DR represented on behalf of the Revenue.

3. The facts relating to these appeals are that the assessee, Dr. V. Jayakumar is a practioner in Neurology at Madurai and Smt. Kalyani Jayakumar is the owner of M/s. J.K. Institute of Neurology. She is the wife of Dr. V. Jayakumar. A search and seizure operation was conducted on the business as well residential premises of the assessees on 21-8-2005. Consequently, notices under section 153A were issued on the assessees on 4-9-2006 and served on 5-9-2006. In response to the notices issued under section 153A, the returns were filed by both the assessees on 31-10-2006. Here we may mention that the notice u/s. 153A in the case of Smt. Kalyani Jayakumar was issued only on 30-11-2007 even though the return was filed on 31-10-2006. the assessment came to be completed u/s. 143(3) read with section 153A of the Income Tax Act, 1961 on 28-12-2007 accepting the returns filed. In the assessments no interest under sections 234A, 234B and 234C of the Act was charged. Subsequently notices u/s 154 dated 05-01-2009 on the assessees wherein it was proposed to levy interest under sections 234A, 234B and 234C of the Act for the relevant assessment years on the ground that it was a mistake apparent from the record. The

assessees had replied to the show cause notices vide letter dated 12-01-2009 wherein they had challenged the levy on the ground that it was a debatable issue. The Assessing Officer overruled the objections of the assessees and proceeded to levy the interest under sections 234A, 234B and 234C of the Act. On first appeal, the learned CIT(A) confirmed the levy of interest. The assessees had also challenged the quantification of the interest before the learned CIT(A) and the same was also dismissed. Aggrieved, the assessees have filed these appeals before the Tribunal.

4. At the time of hearing it was submitted by the learned authorised representative of the assessees that the Assessing Officer in the course of assessment proceedings had specifically recorded in his order that no additional tax was payable. It was the submission that the Assessing Officer was clear in his view that no interest u/s. 234A. 234B and 234C was leviable when the original assessment order u/s. 143(3) read with section 153A was passed. It was the submission that the subsequent action of another Officer taking a different view clearly showed a divergence of opinion which showed that the issue was debatable and consequently the provisions of section 154 could not be invoked. The learned authorised representative drew our attention to the provisions of section 154 of the Act to say that what was expected u/s 154 was a mistake apparent from the record. It was the submission that section 154 did

not specify as to what constituted a mistake. As the issue was debatable, the provisions of section 154 could not be invoked.

5. In regard to the quantum of interest it was submitted by the learned authorised representative that as per the provisions of section 234A and 234B the interest was liable to be computed from the expiry of the time limit provided in the notice u/s. 153A in view of the provisions of section 234A(3) and 234B(3) of the Act. It was the submission that the Assessing Officer had levied the interest from the date of the original return u/s. 139(1) which was not permissible. It was the further submission that while computing the interest the Assessing Officer did not give credit for the tax adjusted on 13.2.2007. It was the submission that in the assessment order also in the calculation of the interest under section 234A, 234B and 234C the Assessing Officer has given the credit of the tax paid after the computation of the interest whereas the taxes paid should have been given credit before the computation and it is only on the balance of the tax due that the interest was chargeable. It was the submission that it has been repeatedly held that interest is only compensatory and therefore the credit of the taxes paid should first be given.

6. In reply, the learned DR submitted that the fact that there has been non-application of the specific provisions of sections 234A, 234B and 234C showed that there was a mistake apparent from the record. It was the submission that the non-application of specific provision of the Act was a mistake apparent from

the record which was rectifiable by invoking the provisions of section 154. In regard to the quantum of interest, the learned DR submitted that the Assessing Officer had rightly quantified the interest and the learned CIT(A) had rightly confirmed the same. He vehemently supported the orders of the Assessing Officer and the learned CIT(A).

7. We have considered the rival submissions. We will first adjudicate on the quantum of interest. For better appreciation of the quantum issue, it would be worthwhile to extract the relevant provisions. Section 234A(3) reads as follows:

> "234A(3). Where the return of income for any assessment year, required by a notice under section 148 or section 153A issued after the determination of income under sub-section (1) of section 143 or after the completion of an assessment under sub-section (3) of section 143 or section 144 or section 147, is furnished after the expiry of the time allowed under such notice, or is not furnished, the assessee shall be liable to pay simple interest at the rate of one percent for every month or part of a month comprised in the period commencing on the day immediately following the expiry of the time allowed as aforesaid, and,--
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> (a) where the return is furnished after the expiry of the time aforesaid, ending on the date of furnishing the return; or
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> (b) where no return has been furnished, ending on the date of completion of the reassessment or recomputation under section 147 or reassessment under section 153A,

> on the amount by which the tax on the total income determined on the basis of such reassessment or recomputation exceeds the tax on the total income determined under sub-section (1) of section 143 or on the basis of the earlier assessment aforesaid."

Section 234B (3) reads as follows:

> "234B(3). Where, as a result of an order of reassessment or recomputation under section 147 or section 153A, the amount on which interest was payable under sub-section (1) is increased, the assessee shall be liable to pay simple interest at the rate of one percent for every month or part of a month comprised in the period commencing on the day following the date of determination of total income under sub-section (1) of section 143 and where a regular assessment is made as is referred to in sub-section (1) following the date of such regular assessment and ending on the date of the reassessment or recomputation under section 147 or section 153A, on the amount by which the tax on the total income determined on the basis of the reassessment or recomputation exceeds the tax on the total income determined under sub-section (1) of section 143 or on the basis of the regular assessment aforesaid."

8. A perusal of the provisions of section 153A(1)(a) of the Act clearly shows that the Assessing Officer is to issue notice on the searched person requiring him to furnish within such period as may be specified in the notice the return of income in respect of each assessment year falling within six assessment years

………. and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139. Thus from the above it is clear that a return filed in response to a notice u/s 153A is to be treated as a return filed u/s 139(1). Thus by the act of the provisions of section 153A where a notice has been issued on the assessee the due date of filing the return as provided in section 139(1) gets shifted to the date prescribed in the notice u/s. 153A. This is because of the words "apply accordingly as if such return were a return required to be furnished under section 139". A perusal of the return filed by the assessee shows that in the returns the assessee has paid taxes while filing the return itself. It has also been mentioned by the learned authorised representative that cash which was found in the course of search and which was seized was also immediately prayed for by the assessee to be adjusted against the tax liability in the statement recorded itself during the course of search. Thus it becomes clear that the assessee has paid the taxed much before the filing of the returns. A perusal of the provisions of section 234A(3), as extracted above, clearly shows that the said sub-section takes into consideration the return of income for any assessment year required by a notice under section 153A and as prescribed that the assessee is liable to pay simple interest at the prescribed rate for every month or part of the month comprised in the period commencing on the day immediately following the expiry of the time allowed in the said notice.

9. A perusal of the provisions of section 234B(43), as extracted above, clearly shows that the interest u/s 234B is leviable in relation to an assessment u/s. 153A on the amount which is increased in the final assessment when compared to the original assessment or the determination u/s. 143(1). Now a question comes up as to which is the 143(1) or the original assessment which is being talked about here. Here we may refer back to the second proviso to section 153A which specifically says that any assessment or reassessment, if any, relating to any assessment year falling within the period of six years referred to in section 153A(1) pending on the date of the initiation of the search shall abate. In such a situation obviously once a notice u/s. 153A is issued all past assessments and reassessments pending as on the date of the initiation of the search would no more survive. Further, in view of the provisions of section 153A(1)(a) as a return filed in response to the noti8ce u/s 153A is to be treated as a return under section 139, the section 143(1) referred to in section 234B(3) would have to be considered as the intimation in relation to such return which has been filed in response to a notice u/s 153A. This view also finds support because the intimation has to be issued within 12 months from the date of filing the return and as per the second proviso to section 153A, the assessment and reassessment proceedings which are pending at the time of initiation of the search have abated and as per the provisions of section 153A the return filed in response to such notices becomes by act of the provisions itself a return u/s.

139(1) which effaces the original return. In the present case it is noticed that the returned income has also been accepted. A perusal of the provisions of section 143(1) shows that the word used is "shall" i.e. "where a return has been made under section 139…….such return shall be processed in the following manner". Further the Explanation (b) of the second proviso to section 143(1) categorically explains that the acknowledgement of the return shall be deemed to be the intimation in a case where no sum is payable by or refundable to the assessee under clause (c), and where no adjustment has been made under clause (a). Thus the intimation of the return filed in response to the notice uu/s. 153A automatically by act of the provisions of the Explanation to section 143(1) becomes the intimation under section 143(1). Thus the interest under section 234B would be leviable only on the tax on the total income determined in the order passed u/s. 153A which exceeds the tax on the total income determined under sub-section (1) of section 143 in response to the notice under section 153A.

10. In regard to the levy of interest under section 234C, there is no provision similar to section 234A(3) or section 234B(3) in the said section. The learned authorised representative has also not raised any serious submissions in regard to the levy of interest under section 234C of the Act in regard to the calculation of the same.

11. In the circumstances, the computation of the interest under section 234A is to be done for every month or part of the month comprised in the period commencing on the day immediately following the expiry of the time allowed in the notice under section 153A. The interest under section 234B is to be computed on the amount by which the tax on the total income determined on the basis of the assessment under section 153A exceeds the tax on the total income determined under sub-section (1) of section 143 on the return filed in response to the notice issued under section 153A. In the circumstances, with these directions the issue of computation of interest under sections 234A and 234B is restored to the file of the Assessing Officer for re-adjudication and the order of the learned CIT(A) and the Assessing Officer on this issue stands set aside.

12. Coming to the issue of debatable nature of the levy of interest u/s. 234A, 234B and 234C, admittedly, the levy of interest is compensatory in nature. The method of computation of the interest is specifically provided in the sections 234A(3) and 234B(3) in the case of assessments under section 153A and section 234C. Non-application of a particular provision of the Act which is undisputedly is a mistake apparent from the record. The non-application of a specific provision being mistake apparent from record, we are of the view that the finding of the learned CIT(A) in holding that the Assessing Officer was right in invoking the provisions of section 154 is on a right footing and does not call for

any interference. Further there can be no two views in regard to the levy of interest under sections 234A, 234B and 234C, especially when the provisions of the said section themselves specifically provide for the levy. In the circumstances we are of the view that the Assessing Officer was right in invoking the provisions of section 154 for rectifying the mistake of the non-levy of interest under sections 234A, 234B and 234C of the Act in the original assessment.

13. In the result, the appeals of the assessees are partly allowed.

14. The order was pronounced in the court on 04/02/2011.

Sd/-	Sd/-
(Abraham P. George)	(George Mathan)
Accountant Member	**Judicial Member**

Chennai,
Dated the 04th February, 2011.

H.

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