



ITA-173-2013 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

-:-

ITA-173-2013 (O&M)

Reserved on :- 16.01.2025

Date of Pronouncement: 11.02.2025

M.C.Anand

....Appellant

VERSUS

Commissioner of Income Tax, Jalandhar (Punjab)

....Respondent

**CORAM : HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Divya Suri, Advocate, with
Mr. Yogesh Kumar Mittal, Advocate,
for the appellant.

Mr. Ranvijay Singh, Senior Standing counsel
for the respondent.

-:-

SUDEEPTI SHARMA, J.

1. The present appeal is preferred under Section 260-A of the Income Tax Act, 1961 (for short, 'the Act') for the assessment year 1982-1983 against order of Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, in ITA No. 01/Asr/2011, dated 10.10.2012.

2. The present appeal was admitted for determination of the following substantial questions of law:-

i) Whether on the facts and in the circumstances of the case, the Tribunal order is sustainable on the true & correct interpretation of the Provisions of Section 154, 220(2) in setting aside the proceedings, read with the CBDT Circular No.334 of 1982 hence outside the scope of 'mistake apparent from the record'?



ii) Whether on the facts and in the circumstances of the case, the Tribunal's Order is sustainable for levying interest [u/s 220(2)] from the date of original assessment order, while 'charge' commences from date of fresh demand notice?

iii) Whether on the facts and in the circumstances of the case the 'chargeability of interest' u/s 220(2) 'during proceedings' is to be from the date of fresh demand notice after the reframed assessment in the same 'cause of action'?

3. The brief facts of the case are that the assessment for the year 1982-1983 was originally framed under Section 143 (3) of the Act on 28.03.1985 at income of Rs.5,34,380/- and a demand of Rs.4,44,325/- was created, which was set aside and restored back to the file of A.O with the direction to frame fresh assessment. Again the assessment was framed on 23.03.1988, which was again set aside on 19.10.1989 and restored back to the file of A.O with the direction to frame fresh assessment. For the third time the assessment was framed on 31.03.1995, which was also set aside on 18.11.1996 and restored back to the file of A.O with the direction to frame fresh assessment. Again the assessment was framed on 30.12.1998, which was again set aside and restored back to the file of A.O with the direction to frame fresh assessment. Finally, the assessment in the present case was framed under Section 143(3) of the Act on 26.03.2002 at the same income of Rs.5,34,380/-, which was originally assessed on 28.03.1985.

4. Originally the demand was created on 28.03.1985 and notice for recovering the demand was issued on 23.03.1988. The demand was, therefore, held to be due to be paid on, as before 28.04.1988. The A.O accordingly computed



the interest under Section 220(2) for the period 01.05.1988 to 31.10.1996 at Rs.6,37,225/- in respect of the unpaid demand. The A.O also noted several payments made by the appellant against the tax demand and the period of delay for the payment made and computed further interest under Section 220(2) of Act of Rs.1,56,629/- for the period from 01.11.1996 till 22.03.2000. The total interest under Section 220(2) of the Act, till 22.03.2000 was thus computed at Rs.7,93,855/-, therefore, the A.O issued notice under Section 154 of the Act to the appellant proposing to charge interest under Section 220(2) of the Act.

5. The appellant objected to the proposed charging of interest on the ground that certain interest under Section 220(2) of the Act had already been charged by the Department vide order dated 22.07.2000 amounting to Rs.1,20,859/- and that the TRO had also charged interest under Section 220(2) of Rs.1,18,736/- vide letter dated 15.09.2000.

6. The further ground for objection by the appellant was that the interest under Section 220(2) of the Act had already been charged and the same could not be rectified again by extending the period for which interest was to be paid and the interest could not be charged from 01.05.1988 since such interest was payable only when the demand remained outstanding and payable by the appellant and further since amount specified in the notice of demand was already paid, the liability to pay the interest under Section 220(2) of the Act could not arise. The appellant further stated in his reply to notice under Section 154 of the Act that when the assessment order was set aside, the demand was no longer due and the final order and demand notice was issued on 30.12.1998 and at the best the interest under Section 220(2) could be charged from 30.12.1998 but not from 01.05.1988.



Therefore, he objected to the rectification of order under Section 154 of the Act. The A.O was not convinced by the reply filed by the appellant and held that the AO's order was set aside in the first appeal, but restored finally, therefore, interest under Section 220(2) of the Act would run from the due date of original demand. The A.O, therefore, held that the total interest chargeable under Section 220(2) was Rs.7,93,855/- and after reducing the interest of Rs.2,39,595/- already charged by the ITO and TRO, raised balance demand of Rs.5,54,260/- vide its order dated 16.07.2004.

7. Aggrieved by the order dated 16.07.2004, the appellant filed appeal before the Commissioner of Income Tax (Appeals), Jalandhar [for short, CIT(A)], who vide order dated 25.10.2010 allowed the appeal filed by the appellant. Both the appellant as well as the respondent were aggrieved by the order dated 25.10.2010 of CIT(A), Jalandhar, therefore, both filed appeals before the Income Tax (Appeals) Tribunal, Chandigarh Bench, Chandigarh and the learned Tribunal allowed the appeal filed by the Revenue but dismissed the appeal filed by the appellant vide its order dated 10.10.2012. Hence the present appeal challenging the order dated 10.10.2012.

8. Learned counsel for the appellant contends that the interest under Section 220(2) cannot be charged when the original assessment was set aside.

9. *Per contra*, learned counsel for the Revenue contends that the interest under Section 220(2) of the Act has been rightly charged vide order dated 16.07.2004.

10. We have heard learned counsel for the parties and perused the whole record of this case.



11. It would be appropriate to reproduce here relevant provisions of Income Tax Act, 1961 :-

12. **Section 154 Rectification of mistake:-**

(1) With a view to rectifying any mistake apparent from the record an income-tax authority referred to in section 116 may,—

(a) amend any order passed by it under the provisions of this Act;

(b) amend any intimation or deemed intimation under sub-section (1) of section 143;

(c) amend any intimation under sub-section (1) of section 200A;

(d) amend any intimation under sub-section (1) of section 206CB.

(1A) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.

(2) Subject to the other provisions of this section, the authority concerned—

(a) may make an amendment under sub-section (1) of its own motion, and



(b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee or by the deductor, or by the collector, and where the authority concerned is the Joint Commissioner (Appeals) or the Commissioner (Appeals), by the Assessing Officer also.

[* * * *]*

(3) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee or the deductor or the collector, shall not be made under this section unless the authority concerned has given notice to the assessee or the deductor or the collector of its intention so to do and has allowed the assessee or the deductor or the collector a reasonable opportunity of being heard.

(4) Where an amendment is made under this section, an order shall be passed in writing by the income-tax authority concerned.

(5) Where any such amendment has the effect of reducing the assessment or otherwise reducing the liability of the assessee or the deductor or the collector, the Assessing Officer shall make any refund which may be due to such assessee or the deductor or the collector.

(6) Where any such amendment has the effect of enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee or the deductor or the collector, the Assessing Officer shall serve on the assessee or the deductor or the collector, as the case may be, a notice of demand in



the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 156 and the provisions of this Act shall apply accordingly.

(7) Save as otherwise provided in section 155 or sub-section (4) of section 186 no amendment under this section shall be made after the expiry of four years from the end of the financial year in which the order sought to be amended was passed.

(8) Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made by the assessee or by the deductor or by the collector on or after the 1st day of June, 2001 to an income-tax authority referred to in sub-section (1), the authority shall pass an order, within a period of six months from the end of the month in which the application is received by it,—

(a) making the amendment; or

(b) refusing to allow the claim.

13. A perusal of **Section 154** of the Act referred to above shows that the Income Tax Officers can rectify any mistake apparent from the record and if there is an enhancement i.e. liability of the assessee is increased, a show cause notice is required to be issued to the assessee. In the present case proper opportunity of being heard was granted to the appellant after issuing a show cause notice and before passing the order dated 16.07.2004 under Section 154 of the Act.

14. **Section 156. Notice of demand.**—

(1) When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the



Assessing Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable:

Provided that where any sum is determined to be payable by the assessee or the deductor or the collector under sub-section (1) of section 143 or sub-section (1) of section 200A or sub-section (1) of section 206CB, the intimation under those sub-sections shall be deemed to be a notice of demand for the purposes of this section.

(2) Where the income of the assessee of any assessment year, beginning on or after the 1st day of April, 2021, includes income of the nature specified in clause (vi) of sub-Section of Section 17 and such specified security or sweat equity shares referred to in the said clause are allotted or transferred directly or indirectly by the current employer, being an eligible start-up referred to in Section 80-IAC, the tax or interest on such income included in the notice of demand referred to in sub-section (1) shall be payable by the assessee within fourteen days:-

- (i) after the expiry of forty-eight months from the end of the relevant assessment year; or*
- (ii) from the date of the sale of such specified security or sweat equity share by the assessee; or*
- (iii) from the date of assessee ceasing to be the employee of the employer who allotted or transferred him such specified security or whichever is the earliest.*



15. A perusal of above referred to **Section 156** of the Act shows that when any tax/interest/penalty/fine or any other sum is payable in consequence of any order passed under the Income Tax Act, 1961 the Assessing Officer shall serve upon the assessee a notice of demand. Therefore, it is mandatory to issue notice of demand as per Section 156 of the Income Tax Act, 1961 and the same was issued in the present case.

16. **Section 220**

When tax payable and when assessee deemed in default.—

(1) Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under section 156 shall be paid within thirty days of the service of the notice at the place and to the person mentioned in the notice :

Provided that, where the Assessing Officer has any reason to believe that it will be detrimental to revenue if the full period of thirty days aforesaid is allowed, he may, with the previous approval of the Joint Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of thirty days aforesaid, as may be specified by him in the notice of demand.

(1A) Where any notice of demand has been served upon an assessee and any appeal or other proceeding, as the case may be, is filed or initiated in respect of the amount specified in the said notice of demand, then, such demand shall be deemed to be valid till the disposal of the appeal by the last appellate authority or disposal of



the proceedings, as the case may be, and any such notice of demand shall have the effect as specified in section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 (11 of 1964).

(2) If the amount specified in any notice of demand under section 156 is not paid within the period limited under sub-section (1), the assessee shall be liable to pay simple interest at one per cent for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-section (1) and ending with the day on which the amount is paid.

***Provided that,** where as a result of an order under section 154, or section 155, or section 250, or section 254, or section 260, or section 262, or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under this section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded:*

***Provided further that** where as a result of an order under sections specified in the first proviso, the amount on which interest was payable under this section had been reduced and subsequently as a result of an order under said sections or section 263, the amount on which interest was payable under this section is increased, the assessee shall be liable to pay interest under sub-section (2) from the day immediately following the end of the period mentioned in the first*



notice of demand, referred to in sub-section (1) and ending with the day on which the amount is paid:

***Provided also** that in respect of any period commencing on or before the 31st day of March, 1989 and ending after that date, such interest shall, in respect of so much of such period as falls after that date, be calculated at the rate of one and one-half per cent for every month or part of a month.*

17. A perusal of **Section 220** of the Act referred to above reads as to when the tax is payable and when the assessee is deemed in default. Section 220(2) specifically states about the obligation to pay interest on the delayed payment of the amount specified in any notice of demand under Section 156 of the Act. Undisputedly, in the present case there is delay in payment of tax.

18. Circular No.334, dated 03.04.1982 issued by the CBDT explains the issue of levy of interest under Section 220(2) when the original assessment is set aside. The same is reproduced as under:-

“Subject:- Levy of interest under Section 220(2) when the original assessment is set aside-Instructions regarding.

Doubts have been raised as to the quantum of interest chargeable under Section 220(2) of the Income-tax Act, when the original assessment order passed by the Income-tax Officer is:-

- (i) Cancelled by him under Section 146 of the Income-tax Act;*
- (ii) Set aside/cancelled by an appellate/revisional authority and such appellate/revisional order has become final; or*



(iii) *Set aside by one appellate authority but, on further appeal, the order setting aside the assessment is varied by the second appellate authority and the demand gets finally determined.*

2. *These issues were comprehensively examined in consultation with the Ministry of Law and the Board has been advised.*

(i) *Where an assessment order is cancelled under Section 146 or cancelled / set aside by an appellate / revisional authority and the cancellation / setting aside becomes final (i.e. it is not varied as a result of further appeals / revisions), no interest under Section 220(2) can be charged pursuant to the original demand notice. The necessary corollary of this position will be that even when the assessment is reframed, interest can be charged only after the expiry of 35 days from the date of service of demand notice pursuant to such fresh assessment order.*

(ii) *Where the assessment made originally by the Income-tax Officer is either varied or even set aside by one appellate authority but, on further appeal, the original order of the Income-tax Officer is restored either in part or wholly, the interest payable under Section 220(2) will be computed with reference to the due date reckoned from the original demand notice and with reference to the tax finally determined. The fact that during an intervening period, there was no tax payable by the assessee under any operative order would make no difference to this position.*



3. *The foregoing legal position will apply mutatis mutandis to the proceedings under other direct taxes also.”*

19. A perusal of the above circular shows that where the assessment order made originally by the Income-tax Officer is set aside by the Appellate Authority and the original order of Income-tax Officer is restored, on further appeal either in part or wholly, interest payable under Section 220(2) of the Act will be computed with reference to the due date reckoned from the original demand notice and with reference to the tax finally determined. Further the fact that during the intervening period there was no tax payable by the assessee under any operative order, would make no difference to this position.

In the present case, the assessment order was challenged and in appeal it was set aside and restored back to the file of A.O with a direction to frame fresh assessment which was repeated four times and finally the assessment was framed under Section 143(3) of the Act on 26.03.2002 at the same income of Rs.5,34,380/-, which was originally assessed on 28.03.1985. Meaning thereby the original assessment order dated 28.03.1985 sustains. The demand was originally created on 28.03.1985 and notice for recovering the demand was issued on 23.03.1988. Therefore, as per the CBDT circular referred to above the interest payable under Section 220(2) of the Act will be computed with reference to the due date reckoned from the original demand notice.

20. A perusal of the record shows that original demand was created under Section 143(3) of the Act on 28.03.1985 and notice for recovering the demand was issued on 23.03.1988. Thereafter, the assessment orders were challenged and set aside and restored back to the A.O and fresh assessment orders were passed and



again set aside and finally the assesment order under Section 143(3) was passed on 26.03.2002 at the sum of Rs.5,34,380/- i.e. which was originally assessed on 28.03.1985.

21. Undisputedly, the orders creating the demand were never satisfied till 22.03.2000 and fourth time the assessment order had been passed under Section 143(3) of the Act on 26.03.2002 at the same income of Rs.5,34,380/-, which was taken in the first assessment order dated 28.03.1985 under Section 143(3) of the Act. The demand was originally created on 28.03.1985 and notice for recovering of demand was issued on 23.03.1988. Therefore, the demand was due to be paid on or before 28.04.1988, which in fact was not paid. Undisputedly, the first payment was made by the assessee on 26.11.1996 and A.O has rightly computed the interest under Section 220(2) for the period from 01.05.1988 to 31.10.1996 at Rs.6,37,226/- in respect of the unpaid demand.

22. A perusal of the order dated 16.07.2004 passed by the A.O under Section 154 of the Act shows that he has categorically mentioned several payments made by the assessee against the tax demand and the period of delay in payments made as well as interest in the form of date wise chart and has computed interest under Section 220(2) at Rs.1,56,629/- for a period from 26.11.1996 till 22.03.2000 when the assessee paid the final demand of Rs.27,111/- along with interest of Rs.339/-, which is a matter of record as per order of A.O dated 16.07.2004 under Section 154 of Act. Therefore, the order under Section 154 of the Act is correct in the eyes of law since interest under Section 220(2) of the Act is liable to be paid on the amount which is specified in the notice of demand under Section 156 of the Act, which was not paid by the appellant within a period prescribed under Section



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220(1) of the Act. Therefore, we do not find any infirmity in the order dated 10.10.2012 passed by the learned Income Tax Appellate Tribunal. The same is affirmed.

23. In view of the above discussion, we answer the above referred to substantial questions against the appellant and in favour of the Revenue Authority.

24. The present appeal is dismissed.

25. Pending applications, if any, also stand disposed of.

(ARUN PALLI)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

February 11, 2025
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Whether speaking/non-speaking : Speaking
Whether reportable : Yes