

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 382/DEL/2015 (A.Y 1979-80)
ITA No. 383/DEL/2015 (A.Y 1980-81)
ITA No. 430/DEL/2015 (A.Y 1981-82)
ITA No. 431/DEL/2015 (A.Y 1982-83)
ITA No. 395/DEL/2015 (A.Y 1983-84)
ITA No. 396/DEL/2015 (A.Y 1984-85)
ITA No. 432/DEL/2015 (A.Y 1986-87)
ITA No. 433/DEL/2015 (A.Y 1987-88)**

Aparna Ashram C/o. Sh. K. S. Pathania, R/o. C- 3A/20A, Janakpuri New Delhi AAATA3999E (APPELLANT)	Vs	ADIT(E) Inv. Circle, Aayakar Bhawan, Room NO. 309, Laxmi Nagar, Distt Centre Delhi (RESPONDENT)
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Appellant by	Sh. Subhash Dutta, Sh. Manu K Giri, Adv. Sh. K. S. Pathania, Member Governing Councils
Respondent by	Sh. R. C. Dandey, Sr. DR

Date of Hearing	28.09.2017
Date of Pronouncement	29.09.2017

ORDER

PER BENCH

These appeals are filed by the assessee against the orders dated 27/10/2014 passed by CIT(A)-XI, New Delhi for various assessment years.

2. The grounds of appeal are as under:-

- 1) *That the order under appeal is against law and facts of the case.*
- 2) *That the Ld. CIT (A) has erred in law in holding that non issuance of u/s 154(3) is a “procedural lapse on the part of the A.O”. when in la service of the notice u/s 154(3) gives jurisdiction to the A.O. to pas: u/s 154 of the Income Tax Act as notice u/s 154(3) is a jurisdictional notice.*
- 3) *That the Ld. CIT (A) has also erred in law in not holding the order by the A.O. passed under section 154 is null and void as the order passed by the A.O. is nullity in law.*
- 4) *That in addition and rather in the alternative and without jurisdiction grounds No. 3 and 4 above, it is submitted:*
 - (a) *That the observations made by the Ld. CIT(A) in the impugned order regarding charging of interest under section 139(8),2 234A, 234B in any case are not correct in law and liable to be aside;*
 - (b) *That the Ld. A.O. has erred in law in increasing /charging interest **u/s** 139(8)217, 234A&234B.*
 - (c) *That the appellant craves the indulgence of the Hon’ble Tribunal : allow the appellant to take up such other /amended / alternate c additional ground of appeal at the time of hearing for which the permission may be sought at the time of hearing.*

The grounds of appeal in all the Assessment Years are common therefore, we are taking up the facts of the lead case for Assessment Year 1979-80 (ITA No. 382/2015) .

3. The order u/s 254/143(3) of the Income Tax Act, 1961 was passed on 30/12/2010 and addition of Rs.16,02,84,689/- was made. The Assessing Officer observed that the calculation of interest charged u/s 220(2) of the Act was wrongly made and some

error occurred in charging of interest u/s 217 & Section 139 (8) of the Act at the time of re-assessment proceedings which was apparent from record. Hence, the Assessing Officer rectified the same u/s 154 of the Act. The Assessing Officer passed following rectification order:-

“ ORDER U/S 154/254 OF THE INCOME TAX ACT

The order u/s 254/143(3) was passed on 30/12/2010 and a demand of Rs.16,02,84,689/- was created.

On going through the records, it is found that the calculation of interest charged u/s 220(2) was wrongly made and some error occurred in charging of interest u/s 217 and 139(8) at the time of re-assessment which is apparent from the record. Hence, the same is rectified u/s 154 Issue Demand Notice & Challan.”

4. Aggrieved by the same, the assessee filed appeal before the CIT(A). The CIT(A) observed that the perusal of the rectification order passed by the Assessing Officer shows that the Assessing Officer reduced the tax liability of interest u/s 220(2) of the Act which was wrongly charged by him at the time of passing of re-assessment order. The Assessing Officer was competent to make amendment/rectification in the re-assessment order as per Section 154(2) of the Act on his own motion as a mistake apparent from record was noticed by him. The CIT (A) further observed that the Assessing Officer rightly rectified the computation of interest u/s 139(8) and u/s 270 of the Act which resulted in enhancement of the

interest charged under these Sections, though the overall demand against the assessee got reduced because of wrong charging of interest u/s 220 (2) of the Act. The CIT(A) also observed that the Assessing Officer's order is silent about any opportunity of being heard given to the assessee in respect of enhancement in the interest amounts u/s 139 (8) and Section 217 of the Act. The CIT(A) vide letter dated 14/10/2014 admitted that the Assessing Officer has not given any opportunity to the assessee and therefore, without prejudice to the same, the CIT(A) gave specific opportunity to submit assessee's objection in respect of Assessing Officer's computation of interest u/s 139(8) & Section 217 of the Act.

6. The Ld. AR submitted that the CIT(A) himself admitted that the Assessing Officer has not given opportunity to the assessee, while rectifying the original assessment order despite the fact that the tax liability increased upon the assessee. The Ld. AR relied upon the judgment of the Hon'ble Apex Court in case of M Chockalingam & M. Meyyappan Vs. CIT (1963) 48 ITR 34 wherein it is held that if opportunity is given to the assessee, the assessee may convince the authority that they had good grounds for not paying the advance tax because their cases were still in process of consideration and settlement. Since the assessee was not given an opportunity to bring the cases to the notice of the authorities which was denied to the assessee, therefore, there was a breach of principles of natural of justice. The Ld. AR further submits that as per Section 234A & Section 234B of the Act, the assessee is not liable to pay interest as there was no default in furnishing return of income or default in

payment of advance tax. Therefore, Ld. AR submitted that the Assessing Officer as well as the CIT (A) has erroneously passed the orders against the assessee. The same needs to be set aside.

7. The Ld. DR submitted that the Assessing Officer as well as the CIT(A) rightly passed the orders. The Assessing Officer has rectified the order as there was error in the Original Assessment Order about calculation and charging of interest which is allowed under the relevant provisions of the Act. The Ld. DR relied upon the order of Apex Court in case of M/s Deepak Agro Food Vs. State of Rajasthan and Ors. (Civil Appeal Nos. 4327-28/2008 order dated 11th July 2008) wherein it is held that the irregularities committed by the Assessing Officer, during the course of assessment proceedings will not make assessment orders null and void.

8. We have heard both the parties and perused the material available on record. The principle of natural justice was not followed by the Assessing Officer while rectifying the original assessment order and the said fact was admitted by the CIT(A). It is not proper to improve the Assessing Officer's defect by the CIT(A) which is not permissible under the Income-Tax statute wherein the notice has to be given to the assessee when there is an increase in tax liability on the assessee. The reliance upon the Apex Court judgment in case of Chockalingam & Meyyappan Vs. CIT (1963) 48 ITR 34 by the Ld. AR is precisely holding that principle of natural justice has to be followed by the authorities. In case of M/s. Deepak Agro Food (Supra), the Hon'ble Apex Court dealt with Sec.

29(8)(b) of the Act which is not having similar wordings like that of Sec. 154 (3) of the Act under which it is mandatory to issue notice. As per Section 154(3) of the Act amendment/rectification which has effect of enhancement of an assessment or reducing a refund or otherwise increasing the liability of the assessee shall not be made unless the authority concerned gives notice to the assessee of its intention to do so. Therefore, it is obligatory under the statute to issue notice by the Assessing Officer to give a reasonable opportunity of being heard to the Assessee. This is clearly set out u/s 154 of the Income Tax Act and it has to be followed by the tax authorities at the initial stages. If this procedure is not followed of issuing the notice and giving reasonable opportunity of being heard, further exercise will be non est. Therefore, the assessment order itself becomes void ab initio. The order u/s 154/254 of the Act is set aside. In all the Assessment Years the issue is identical; hence all the appeals of the assessee are allowed.

9. In result, all the appeals of the assessee are allowed.

Order pronounced in the Open Court on 29th September, 2017.

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 29/09/2017
*R. Naheed **

Copy forwarded to:

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	28/09/2017	PS
2.	Draft placed before author	28/09/2017	PS
3.	Draft proposed & placed before the second member	.2017	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	29.09.2017	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	29.09.2017	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		