IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JANUARY, 2016

PRESENT

THE HON'BLE MR. JUSTICE N.K. PATIL

AND

THE HON'BLE MRS.JUSTICE S. SUJATHA

ITA No.272/2015

BETWEEN

Sri. Suresh Sharma
Aged 50 years
S/o. late D.P. Sharma
No.328, Sangeetha Bhavan,
Tippu Sultan Road,
Kalasipalyam,
Bangalore – 560 002

...Appellant

(By Sri. S. Parthasarathi &
Ms. Jinita Chatterjee, Advocates)

AND

The Asst. Commissioner
of Income-tax,
Circle 3[1], IV Floor,
Unity Building Annexe,
Mission Road
Bangalore – 560 027

...Respondent

(By Sri. K.V. Aravind, Advocate)

This Income-tax appeal is filed under Section 260-A of Income-tax Act, 1961, praying to allow the appeal and set aside the order dated 23.1.2015 of the Income Tax Appellate Tribunal bearing ITA No.297/Bang/2014 and etc.

This appeal having been heard and reserved for Judgment on 18th January 2016, coming on for pronouncement of Judgment this day, **S. Sujatha J.,** delivered the following:

JUDGMENT

This appeal is directed against the Judgment passed by the Income Tax Appellate Tribunal, Bangalore Bench 'A', Bangalore, bearing ITA No.297/Bang/2014 dated 23.1.2015 by the Assessee, under Section 260-A of the Income Tax Act, 1961, [hereinafter referred to as 'the Act', for short] raising the following substantial questions of law.

"[a] Whether the Tribunal was justified in upholding the levy of interest under Section 234A of the Act determined before taking notice of self assessment payment under Section 140A of the Act on the pretext that the entire tax in accordance with the declared income was not paid by way of self assessment tax before the due date of filing the return?

[b] Whether the Tribunal was justified in not appreciating that the ratio

down by the Hon'ble Apex Court in the case of CIT vs. Pranoy Roy [(2009) 309 ITR 231] cited before it while interpreting that the entire payment of tax was required to have been discharged before the due date of filing the return in order to justify the appropriation of tax before levy of interest under Section 234A of the Act?

[c] Whether the interpretation as made by the Tribunal was justified in light of the Supreme Court judgment which refers to the payment of tax till the due date of filing the return especially when interest levy under Section 234A of the Act was only compensatory and when the interpretation of the Appellant was also supported by the Board Circular No.2/2015 dated 10.02.2015?"

2. The facts in brief are:

That the appellant/assessee is an individual carrying on business of transport, travel and tourism as Proprietor under the name of Sharma Transports. It transpires that the appellant filed return of income for the assessment year 2009-2010 on 30.11.2009. The due date for filing the return for the relevant assessment year was 30.9.2009 and the appellant paid taxes in the following manner:

Tax deducted at source	21,05,330
Advance tax on 14.03.2009	25,00,000
Self Assessment Tax on	
29.07.2009 10,00,000	
29.08.2009 20,00,000	
29.09.2009 10,00,000	
03.11.2009 <u>10,00,000</u>	50,00,000
Tax on Regular Assessment	9,60,000

The said return of income filed by the assessee came to be processed under Section 143[1] of the Act on 7.3.2011 and the case was selected for scrutiny after service of notice under Section 143[2] of the Act. The assessment was concluded by making several additions and also levying interest of Rs.2,06,932/- under Section 234A of the Act, Rs.5,51,822/- under

Section 234B of the Act, Rs.2,52,541/- under Section 234C of the Act. On receipt of the assessment order, the appellant filed rectification application under Section 154 of the Act, contending that interest under Sections 234A and 234B of the Act have been wrongly worked out. The Assessing Officer rejected the said application and directed the appellant to pay balance outstanding demand. Aggrieved by the same, the appellant preferred an appeal before the Commissioner of Income Tax [Appeals]. The Appellate Commissioner confirmed the calculation of interest made by the Assessing Officer and dismissed the appeal. Aggrieved by the Order of the Appellate Commissioner, the appellant preferred an appeal before the Income Tax Appellate Tribunal, Bangalore. The Tribunal declined to accept the explanation made by the Assessee in computing interest under Section 234A of the Act and dismissed the appeal. Being aggrieved by the same, the appellant is before this court.

3. Heard Sri. S. Partharasarathi, learned Counsel appearing for the Assessee as well as Sri. K.V. Aravind, learned Counsel appearing for the Revenue.

4. Sri. S. Partharasarathi, learned Counsel appearing for the Assessee would contend that the return of income was filed by the Assessee for the relevant assessment year on 30.11.2009 though due date for filing the reurn of income was 30.09.2009. The Assessee has paid self assessment tax on 29.07.2009, 29.08.2009 and 29.09.2009 amounting to Rs.40,00,000/- prior to the due date of filing of the return for the relevant assessment year. The self assessment tax amounting to Rs.10 lakhs was paid on 3.11.2009 i.e., after due date for filing the return and the balance outstanding demand was Rs.9,60,000/-. According to the learned Counsel, interest has to be computed under Section 234A of the Act taking into consideration the self assessment tax paid prior to the due date of filing the return. If so, the liability to make payment of interest under

Section 234A of the Act would arise only on the total sum of Rs.10 lakhs paid on 3.11.2009 and the balance outstanding demand of Rs.9,60,000/- amounting to Rs.19,60,000/- and not to Rs.40 lakhs which has been paid prior to the due date for filing the return of income.

5. In support of his contentions, learned Counsel for the Assessee places reliance on the Judgment of the Apex Court in the case of ***'Commissioner of Income Tax and Another Vs. Pranoy Roy and Another'*** reported in ***[2009] 309 ITR 0231*** and also the Judgment of the Delhi High Court in the case of ***'Dr. Prannoy Roy & Another Vs. Commissioner of Income Tax and Another'*** reported in ***[2002] 254 ITR 0755***. He would also place reliance on the Circular Instructions issued by the Under Secretary to Government of India in Circular No.2/2015 dated 10.2.2015 whereby 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 the return of income.

6. On the other hand, Sri. K.V. Aravind, learned Counsel for the Revenue would strongly rely upon the provisions of Section 234A of the Act, to contend that no self assessment tax would be reduced by the amount of tax on the total income as determined under Section 143[1] of the Act and where a regular assessment is made on the amount of the tax, on the total income determined under regular assessment. Section 234A of the Act provides only six items to be reduced in which self assessment tax does not find a place. Strictly applying the provision as contemplated under Section 234A of the Act, the Tribunal and the Authorities have levied interest on the amount of self assessment tax though paid in part before the due date of filing of return of income.

7. Learned Counsel would also contend that in the Judgment of the Apex Court in the case of

Pranoy Roy [supra], the facts reveal that the tax due had already been paid which was not less than the tax payable on the returned income thus, the same was accepted. As such, the Apex Court has held that the question of levy of interest does not arise. Accordingly, he seeks to answer the questions in favour of the Revenue, confirming the Judgment passed by the Tribunal.

8. We have given careful consideration to the rival submissions made at the Bar and perused the material on record.

9. The undisputed facts are that the appellant filed his return of income for the assessment year 2009-2010 on 30.11.2009. The due date for filing the return for the relevant assessment year was 30.9.2009. The self assessment tax was paid on various dates amounting to Rs.40 lakhs prior to the date of filing of return of income and an amount of Rs.10 lakhs was paid on 3.11.2009 subsequent to the date of filing of the return and the

balance outstanding demand was Rs.9,60,000/-. The Assessing Officer has levied interest on the entire amount of tax under Section 234A of the Act as no discretionary power is vested with the Assessing Officer to waive off the interest on the self assessment tax paid prior to the filing of the return of income. This is confirmed by the Appellate Commissioner as well as by the Income Tax Appellate Tribunal.

10. Section 234A of the Act contemplates interest for defaults in furnishing return of income. A reading of this provision makes it clear that the return of income for any assessment year under sub-section [1] or sub-section [4] of Section 139 of the Act, or in response to a notice under sub-section [1] of Section 142, is furnished after the due date, 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 date immediately following the due date, and -

[a] where the return is furnished after the due date, ending on the date of furnishing of the return; or

[b] xxxx xxxx xxxx

on the amount of the tax on the total income as determined under sub-section [1] of Section 143, and where a regular assessment is made, on the amount of the tax on the total income determined under regular assessment, as reduced by the amount of, -

[i] advance tax, if any paid;

[ii] any tax deducted or collected at source;

[iii] any relief of tax allowed under Section 90 on account of tax paid in a country outside India;

[iv] any relief of tax allowed under Section 90A on account of tax paid in a specified territory outside India referred to in that section;

[v] any deduction, from the Indian income-tax payable, allowed under section 91, on account of tax paid in a country outside India; and

[vi] any tax credit allowed to be set off in accordance with the provisions of section 115JAA or Section 115JD.

11. This provision does not provide for reduction of the amount of self assessment tax paid by the Assessee before the due date of filing return of income. We have also noticed that payment of interest is to compensate losses to the Revenue. In the absence of any statutory provision made for reducing such amount paid towards self assessment tax, the Authorities proceeded to levy interest on the entire amount *de hors* the payment of Rs.40 lakhs made by the Assessee towards the self assessment tax before the due date of filing of return of income. A similar question was considered by the Apex Court in the case of ***Pranoy Roy*** [supra]. This Judgment of the Apex Court was considered by the Central Board of Direct Taxes in Circular No.2/2015 dated 10.2.2015 and 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 of income. This circular was not available at the time of the Tribunal deciding the matter. Accordingly, we are of the view that the Tribunal had no occasion to examine the case of the Assessee in the light of the Circular No.2/2015 dated 10.2.2015 and its applicability thereof to the present case. Hence, it would be appropriate for us to remand the matter to the Tribunal to examine the issue of payment of interest under Section 234A of the Act on the amount of self assessment tax paid by the Assessee before the due date of filing of return of income in the light of the Judgment of the Apex Court in the case of ***Pranoy Roy*** [supra], as well as the Circular No.2/2015 dated 10.2.2015.

Without answering the substantial questions raised in the appeal, the matter is remitted back to the Tribunal to address on these issues and to pass appropriate orders in accordance with law after providing an opportunity of hearing to both the parties leaving open all the contentions. Appellant and respondent are directed to appear before the Appellate Tribunal in person or through their counsel without any further notice on 08.02.2016 at 10.30 am.

Accordingly, this appeal stands disposed of.

Sd/-
JUDGE

Sd/-
JUDGE

AN/-