IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

BEFORE SHRI. NARENDRA KUMAR BILLAIYA, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No. 972/Mum/2025
(Assessment Year: 2020-21)

Ajay Jaisinghani 1301/B, Beau Mode, Appasaheb Marathe Marg, Prabhadevi, Mumbai – 400025.	Vs.	**Deputy Commissioner of Income Tax (Central Circle) – 5(2)** Room No. 427, Kautilya Bhavan, Bandra Kurla Complex, Mumbai – 400051.
PAN/GIR No. AACPJ2099J		
(Appellant)	:	**(Respondent)**

Assessee by	:	Shri Rajan Vora, Shri Pranay Gandhi & Shri Lekh Mehta
Respondent by	:	DR. K. R. Subhash (CIT-DR)

Date of Hearing	:	24.03.2025
Date of Pronouncement	:	19.06.2025

O R D E R

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) 53, Mumbai ('ld. CIT(A)' for short), passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2020-21.

2. The assessee has raised the following grounds of appeal:

1. *the learned CIT(A) has erred in dismissing the Appellant's appeal against order u/s 143(1) of the Act, as not maintainable, as returned income is accepted in the order under section 143(1) of the Act*

2. *the learned CIT(A) ought to have considered that additional claim made before the assessing officer post passing of the intimation order under section 143(1) of the*

Act and since the CIT(A)'s jurisdiction is co-terminus with that of the assessing officer, ought to have adjudicated upon the additional claim,

3. *the learned CIT(A), failed to consider the fact that the ground of appeal on erroneous levy of interest under section 234A of the Act had been validly raised and therefore, the appeal ought to have been considered as maintainable:*

Capital gains not chargeable to tax of Rs. 73,41,56,972:

Not admitting the Appellant's additional claim;

4. *the learned CIT(A) erred in not admitting the Appellant's additional claim in respect of non-chargeability of his capital gains income amounting to Rs. 73,41,56,972 filed by way of a 'ground of appeal;*

5. *the learned CIT(A) failed to appreciate the fact that additional claim made by the Appellant being a legal claim, the Appellate authority ought to have admitted the same and adjudicated judiciously and on merits in the course of the Appellate Proceedings:*

Provisions of Explanation to section 55(2)(ac) of the Act as applicable at the time when the impugned OFS transactions was entered into should be applied:

6. *the learned CIT(A) failed to appreciate the fact that since, the additional claim made by the AO in respect of non-chargeability of capital gains arising on shares offered under Offer for Sale ('OFS') ought to have been allowed, as the computation mechanism in relation to determination of cost as per section 55(2)(ac) of the Act fails, by virtue of which the capital gains cannot be computed and hence there can be no levy of capital gains tax;*

Without prejudice, cost of acquisition of the shares may be computed using the fair market value as on 31 January 2018:

7. *without prejudice to the above, the learned CIT(A) ought to have considered alternate legal claim of the Appellant that the cost of shares of Polycab India Ltd offered by assessee under the OFS should be considered to be Fair Market Value ('FMV') of shares as on 31 January 2018 for the purpose of computation of capital gains:*

Without prejudice, provisions of section 55(2)(aa)(ia) of the Act cannot be imported into the provisions of section 55(2)(ac) of the Act.

8. *without prejudice to the above, failed to appreciate that the provisions of section 55(2)(aa)(ia) of the Act providing for cost of acquisition of bonus shares to be Nil cannot be imported into the provisions of section 55(2)(ac) of the Act and it has to be considered as per grand-fathering provisions le fair market value as on 31 January 2018 should be adopted*

Without prejudice, adjudication on the additional claim by the ITAT.

9. the Hon'ble Tribunal ought to admit the Appellant's additional claim and adjudicate upon the following issues in relation OFS transaction:

- *Provisions of Explanation to section 55(2)(ac) of the Act as applicable at the time when the impugned OFS transactions was entered into should be applied,*
- *Amended provisions of Explanation to section 55(2)(ac) of the Act cannot be applied retrospectively:*
- *Without prejudice, cost of acquisition of the shares may be computed using the fair market value as on 31 January 2018,*
- *Cost of acquisition of bonus shares cannot be considered as Nil;*

Levy of interest under section 234A of the Act-Rs. 1,06,335:

10. the learned CIT(A) erred in disposing the Appellant's grounds of appeal holding the same to be consequential in nature, without appreciating the correct computation submitted by the Appellant in rectification application filed before AO has not being considered:

Each of the above ground is independent and without prejudice to one another."

3. Brief facts of the case are that the assessee is an individual and had filed his return of income dated 23.12.2020, declaring total income at Rs. 100,59,09,135/- and the same was processed u/s. 143(1) of the Act, where the ld. AO/CPC vide an intimation dated 23.03.2021 accepted the returned income filed by the assessee but had levied interest u/s. 234A of the Act.

4. The assessee was in appeal before the first appellate authority, challenging the intimation passed by the ld. AO/CPC and also on the ground that the ld. AO has not considered the additional legal claim filed by the assessee dated 17.07.2021 post the intimation order u/s. 143(1) of the Act and had further failed to adjudicate the same on the merits.

5. The ld. CIT(A) vide order dated 06.12.2024, dismissed the appeal filed by the assessee on the ground that the ld. AO/CPC has accepted the returned income filed by the assessee, thereby making no adjustments and the subsequent legal claim filed by the assessee, modifying/revising the claim made in the return of income was filed subsequent to the passing of the intimation order u/s. 143(1) of the Act. That being so, the ld. CIT(A) held that the assessee can file the appeal before the first appellate authority u/s. 246A of the Act, only when he is aggrieved by the order passed by the ld. AO, in which case, the assessee has failed to substantiate the fact that he was aggrieved by the order by way of any documentary evidences. The ld. CIT(A) relied on the order of the coordinate bench in the case of ***Huber Group India Pvt. Ltd. (formerly known as Micro Inks Pvt. Ltd.) vs. ACIT, Vapi, ITA No. 234/AHD/2016, dated 15.06.2022***, in which case, the appeal of the assessee was dismissed as there were no subject matter which was appealable neither from the draft assessment order nor was a subject matter of objections before the Hon'ble DRP. The ld. CIT(A) also dismissed the grounds challenging the levy of interest u/s. 234A of the Act, by holding that the same is mandatory and is a consequence of the income assessed.

6. The assessee is in appeal before us, challenging the impugned order of the ld. CIT(A).

7. We have heard the rival submissions and perused the materials available on record. The learned Authorised Representative ('ld. AR' for short) for the assessee contended that the ld. CIT(A)’s power is co-terminus with that of the ld. AO and that the ld. CIT(A) has erred in not adjudicating the additional claim made by the assessee which was rejected by the ld. AO for the reason that the same was claimed after the passing of the

intimation order u/s. 143(1) of the Act. The ld. AR relied on the following decisions, wherein it was held that the additional claim of the assessee should have been adjudicated by the ld. CIT(A).

a. *Jute Corpn. Of India Ltd. [(1991) 187 ITR 688 (SC)]*
b. *Ahmedabad Electricity Co. Ltd. [(1993) 199 ITR 351 (Bombay HC Full Bench)]*
c. *Nirmala L. Mehta [(2004) 269 ITR 1 (Bombay HC)]*
d. *Smt. Archana R. Dhanwatey [(1982) 136 ITR 355 (Bombay HC)].*

8. The ld. DR on the other hand controverted the said fact and stated that when the assessee is not aggrieved by the 143(1) intimation, there remains no subject matter/dispute for further adjudication before the ld. CIT(A). The ld. DR further stated that the assessee can raise the additional claim only by way of revised returns and not by a regular appeal as laid down by the Hon'ble Apex Court in the case of ***Goetze (India) Ltd. vs CIT (2006) 284 ITR 323 (SC), dated 24.03.2006***. The ld. DR relied on the order of the ld. CIT(A).

9. Upon perusal of the facts, it is observed that the assessee being one of the promoters of Polycab India Limited were its shares are listed in the National Stock Exchange (NSE) and Bombay Stock Exchange (BSE) in which the offer was for fresh issuance of share and Offer for Sale (OFS) by existing shareholders/promoters. The Polycab India Limited decided to list its shares in NSE and BSE. Further, it is observed that the promoters of Polycab India Limited who held shares of the company offered a part of their stake in the company in the OFS during the process of Initial Public Offer (IPO) were the assessee was holding 2,33,42,506 shares as on 01.04.2019, which comprised of both bonus and non-bonus shares. The assessee is also said to have participated in the OFS and sold 20,71,965 shares for a total consideration of Rs. 111,39,48,988/-, and

the capital gain was computed at Rs. 73,84,86,410/-. The assessee computed cost of acquisition as under:

> *"Shares acquired (by way of bonus or otherwise) before 1 April 2001 (either by himself or the previous owner) - fair market value as on 1 April 2001 (i.e. Rs. 126.40 per shares) in terms of section 55(2)(b)(i) of the Act*
>
> *Bonus shares received after 1 April 2001 – Nil"*

10. The sequence of events for the said transaction is tabulated hereinunder:

22nd March, 2019 and 25th March, 2019	*The shares were transferred from the selling shareholders/promoters account to the Escrow Account.*
5th April, 2019 to 9th April, 20219	*IPO was open for investors*
15th April, 2019	*Date of Allotment of shares and the shares are transferred from the Escrow Account to the purchasers account.*
15th April, 2019	*The final listing and trading approval was issued by the NSE and the BSE.*
16th April, 2019	*The shares of Polycab India Limited were listed on the NSE and the BSE.*

11. The details of shares offered by the assessee in OFS are as under:

Sr. No.	*Particulars*	*No. of Shares*	*Date of Acquisition*	*Date of Acquisition of Previous Owner*
1.	*Shares received as bonus by Mr. Ramesh Jaisinghani & transferred to the Appellant.*	*2,85,586*	*15 April 2011*	*24 December 2011*
2.		*11,21,000*	*15 April 2011*	*9 March 2006*
3.	*Shares subscribed by Mrs. Reina Jaisinghani for cash & transferred to the Appellant.*	*1,000*	*15 April 2011*	*20 December 1997*
4.	*Shares acquired by Mrs. Reina Jaisinghani in further issue by cash & transferred to the Appellant.*	*1,00,000*	*15 April 2011*	*5 March 1998*
5.		*4,95,000*	*15 April 2011*	*24 March 1999*
6.	*Shares received as bonus by Mrs. Reina Jaisinghani & transferred to the Appellant.*	*69,379*	*15 April 2011*	*24 December 1999*

12. Subsequent to the intimation u/s. 143(1) of the Act, the assessee filed an additional legal claim before the ld. AO dated 30.07.2021, by relying on the decision of the Hon'ble Apex Court in the case of ***B. C. Srinivasa Shetty [(1981) 128 ITR 294]*** which held that capital gains are not liable to tax in case of OFS for the following reasons:

    - *"As per Explanation to section 55(2)(ac) of the Act, to compute the FMV, the shares should be listed on a recognized stock exchange on the date of transfer. However, in case of OFS, the shares have been transferred to an escrow account well before the listing date and it is one day prior to the listing date that the shares are transferred to the account of the purchaser. The shares are listed onto the stock exchanges after the date of transfer.*

    - *Cost for the purpose of capital gains in the present case is the FMV which cannot be computed.*

    - *The current transaction specifically falls under section 55(2)(ac) of the Act and hence, recourse of any other provision of section 55 of the Act for determination of cost of acquisition cannot be sought as section 55(2)(ac) of the Act is more specific to the facts of the case and since no other provision can be applied and no computation mechanism is available, the cost of the shares cannot be computed and the computation mechanism fails."*

13. The assessee also filed an alternate additional claim before the ld. AO stating that the cost of acquisition of shares was to be considered to be the FMV of the shares as on 31.01.2018 as per grand fathering provision. Since the ld. AO did not act upon the claim of the assessee, the assessee was in appeal before the first appellate authority, where the assessee has challenged the additional legal claim raised before the ld. AO as being non adjudicated.

14. It is observed that the assessee has filed the additional legal claim before the ld. Jurisdictional AO vide letter dated 17.07.2021 which was sent by email on 19.07.2021 and again physically on 13.07.2021 and 28.03.2022, were the assessee contended that the same should be admitted as per the proposition laid down by the Hon'ble Apex

Court in the case of ***Jute Corporation of India Ltd. (187 ITR 688) (SC)***, and the Hon'ble Bombay High Court in the case of ***Pruthvi Brokers and Shareholders Pvt. Ltd. (349 ITR 336) (Bom.)***. The assessee had simultaneously filed an appeal before the ld. CIT(A) who had dismissed the grounds of appeal filed by the assessee, for the reason that there was no subject matter of appeal as per the order of CPC/AO in the intimation passed u/s. 143(1) of the Act and the assessee ought to have filed appeal u/s. 246A of the Act but since there was no grievance against the order u/s. 143(1) of the Act, the same was dismissed by the first appellate authority by relying on the decision of the coordinate bench in the case of ***Huber Group India Pvt. Ltd. (supra),*** when the appeal of the assessee was dismissed on the ground that there was no subject matter emanating from the orders of the lower authorities directly or indirectly, thereby rejecting the additional ground raised by the assessee.

15. The assessee is in appeal before us, challenging the order of ld. CIT(A) in not admitting the additional claim pertaining to the non-taxability of capital gain along with other grounds on the merits of the issue.

16. The ld. AR had relied on a catena of decisions of the Hon'ble Supreme Court as well as Hon'ble Bombay High Court and further contended that the ld. CIT(A) ought to have decided the additional legal claim raised by the assessee as having co-terminus powers as that of the ld. AO. Upon perusal of the decision relied upon by the ld. AR, it is observed that all the decisions are on the fact that there was either an assessment proceeding or an appellate proceeding pending adjudication and only in such case an additional claim depending upon the facts of the case could be admitted, but in the

present case in hand, the revenue contends that there is no subject matter of appeal neither before the ld. CIT(A) nor before us as the assessee's returned income has been accepted by the CPC/AO in the 143(1) proceeding and pertinently, the assessee's case was also not picked up for scrutiny assessment u/s. 143(3) of the Act. On perusal of section 246A of the Act, which enumerates a list of orders which are appealable before the Commissioner (Appeals), it has categorically stated that any assessee who is aggrieved by any of the following orders, may appeal to the Commissioner (Appeals) against the specified orders which are mentioned from clauses (a) to (r) which also includes the intimation under sub section (1) of Section 143 of the Act. Further, in order to make an additional claim the recourse to the assessee is to file a revised return u/s. 139(5) of the Act within the specified time or to raise a claim before the ld. CIT(A) in an appeal against a valid grievance challenging an addition or disallowance or error in the original order or by way of rectification application u/s 154 of the Act, if applicable, or a revision u/s. 264 of the Act before the Commissioner.

17. In a celebrated case law of the Hon'ble Supreme Court in the case of ***Commissioner of Income-Tax, Calcutta vs Rai Bahadur Hardutroy Motilal Chamaria, [1967] 66 ITR 443 SC,*** though the issue was with regard to the power of enhancement of the appellate authority the proposition that was laid down was that the Commissioner (Appeals) cannot go beyond what was there in the return of income or the assessment order of ld. AO and is restricted to find out new sources of income which has not being the subject matter of the

consideration by the ld. AO. Further, it was held that there cannot be any 'incidental' or 'collateral' examination of any matter which is not in the assessment order or in the return of income and that the Commissioner (Appeals) has no jurisdiction to consider any issue which was not part of the assessment proceedings.

18. In the present case in hand, it is observed that the assessee has raised the ground challenging the interest levied u/s. 234A of the Act in the intimation passed u/s. 143(1) of the Act, for which the assessee is said to have filed a rectification application on 30.09.2021 for re-computing the interest calculated as per intimation issued u/s. 143(1) of the Act. The assessee aggrieved by the fact that the rectification application was not given effect filed an appeal before the ld. CIT(A) challenging the quantum of interest levied by the CPC. Now, the moot question here is whether the interest levied u/s. 234A of the Act is an appealable order u/s. 246A of the Act before the Commissioner (Appeals). For this, we would like to place our reliance on the decision of the Punjab and Haryana High Court in the case of ***PCIT, Faridabad vs. Shri Krishan Gopal (HUF), in ITA No. 253 of 2015, Order dated 15.09.2015***, where one of the issue was whether the Commissioner (Appeals) has jurisdiction u/s. 246 to entertain and decide an appeal against the order u/s. 234A, 234B and 234C of the Act. The Hon'ble High Court by relying on the decision of the Hon'ble Apex Court in the case of ***Central Provinces Manganese Ore Co. Ltd. v. CIT (1986) 160 ITR 961,*** held that the levy of interest is part of the process of assessment and could be challenged in an appeal, provided the assessee disputes the chargeability of interest on the ground that he was

not liable to the levy of interest at all and further, it held that where the assessee claims waiver or reduction of interest levied then the same could not be challenged in appeal u/s. 246 of the Act except by way of invoking revisional jurisdiction of the Commissioner. It was reiterated that the levy of interest becomes part of the process of assessment which is appealable only when the assessee limits to the ground that it was not liable for levy of interest at all. The relevant extract of the said order of the Hon'ble High Court is cited herein under for ease of reference:

6. In this appeal, two issues arise for consideration of this Court, namely, (i) Whether the CIT(A) was well within his jurisdiction to entertain the first appeal under Section 246 of the Act against the chargeability of interest by the Assessing Officer under Sections 234A, 234B and 234C of the Act; and (ii) Whether the CIT(A) and the Tribunal were justified in deleting the interest under Sections 234A and 234C of the Act and in restricting the interest charged under Section 234B of the Act.

7. Adverting to issue No. (i), it may be noticed that the question regarding maintainability of appeal under Section 246 of the Act against order charging interest passed by the Assessing Officer under the Act was considered by the Apex Court in Central Provinces Manganese Ore Co. Ltd. v. CIT (1986) 160 ITR 961. It was observed that the levy of interest is the part of the process of assessment. Although Sections 143 and 144 of the Act do not specifically provide for the levy of interest but it is nevertheless a part of the process of assessing the tax liability of the assessee. The Supreme Court held that since levy of interest is a part of the process of assessment, it could be challenged in appeal provided the assessee disputes the chargeability of interest on the ground that he is not liable to the levy of interest at all. It was clarified that where the assessee claims waiver or reduction of the interest levied, that could not be agitated in appeal under Section 246 of the Act but more appropriately by resorting to revisional jurisdiction of the Commissioner. It was further observed that before the revisional jurisdiction of the Commissioner can be invoked for waiver or reduction, the assessee is required to demonstrate before the Assessing Officer that there is a case for waiving or reducing the levy of interest.

8. Applying the aforesaid authoritative principles of law enunciated by the Apex Court, the appeal filed by the assessee laying challenge to the very levy of interest under Sections 234A, 234B and 234C of the Act before the CIT(A) was clearly maintainable.
9. Similar contention raised by the revenue before the Tribunal against maintainability of appeal before the CIT(A), against levy of interest under Sections 234A, 234B and 234C of the Act, was repelled with the following observations: -

> *"12. We have occasion to go through the decision of Hon'ble Supreme Court in the case of Central Province Manganese Ore Co. Ltd. vs. CIT (1986) 160 ITR 961 (SC) on an identical issue. The issue raised before the Hon'ble Supreme Court was as to whether orders levying interest under sub-section (8) of section 139 and under sec. 215 are appealable under sec. 246 of the Act. Hon'ble Supreme Court after detailed discussion has been pleased to hold that the levy of interest is part of the process of assessment. Although Sections 143 and 144 do not specifically provide for the levy of interest and the levy is, in fact, attributable to sec. 139(8) or section 215, it is nevertheless a part of the process of assessing the tax liability of the assessee. It was held that, in as much as, the levy of*

interest is the part of the process of assessment, it is open to an assessee to dispute levy in appeal provided he limits himself to the ground that he is not liable to the levy at all. The fact of that case before the Hon'ble Supreme Court is akin to the fact of the present case as in the present case as well the assessee in their first appeals had limited themselves to the grievance of non-leviable of interest under Sections 234A, 234B and 234C of the Act at all. The contention of the assessee was that the charging of interest under Sections 234A, 234B and 234C was not proper and justified in view of the facts and circumstances of the case as only 20% of the sales consideration was received prior to the end of the relevant financial year and balance 80% was received in the next financial year. Without prejudice to this ground, the assessee during the course of first appellate proceedings also raised an additional ground that the assessee company could be fastened with the levy of interest to the extent of 20% only, i.e. the amount received by the assessee in the relevant financial year. Obviously, it was an alternative ground. The main contention as discussed above of the assessee remained that it was not liable to the levy of interest under Sec. 234A, 234B and 234C of the Act. Thus, respectfully following the ratio laid down by the Hon'ble Supreme Court in the above cited case, we hold that the first appeal against the levy of the disputed interest under Sec.234A, 234B and 234C was very much maintainable under sec. 246 of the Act. Hon'ble Supreme Court has been also pleased to observe that clause (c) of sec. 246 provides an appeal against an order where the assessee denies his liability to be assessed under the Act or against any assessment order under sub-section (3) of sections 143 or 144, where the assessee objects to the amount of income assessed or to the amount of tax determined or to the amount of loss computed or to the status under which he is assessed. Inasmuch as, the levy of interest is part of the process of assessment, it is open to an assessee to dispute the levy in appeal provided he limits himself to the ground that he is not liable to the levy of interest at all. The issue is thus decided in favour of the assessee. In result, ground No.2 involving the issue is rejected."

19. In the present case in hand, the ld. CIT(A) has not discussed any of these issues and has merely held that the levy of interest is mandatory and consequential. There has been no discussion about the admissibility of the ground challenging the levy of interest before the first appellate authority and only when the issue of admissibility of the levy of interest as an appealable ground has been discussed, then the other grounds of appeal raised by the assessee by way of additional claim can be admitted and adjudicated. We find no discussion in the ld. CIT(A)'s order on this issue which has larger impact on the admissibility of the additional claim raised by the assessee.

20. On this observation, we find that the action of the ld. CIT(A) in not passing a speaking order on this issue is not justifiable. We therefore are of the considered opinion that all these issues are to be remanded back to the file of the ld. CIT(A) with the direction to decide the admissibility of the ground challenging the levy of interest u/s. 234A of the Act and if the same is admissible in accordance with law then whether the assessee's

additional claim raised before the ld. AO could be adjudicated which the assessee could possibly not raise before the ld. AO as per the Hon'ble Supreme Court decision in the case of ***Goetze (India) Ltd. (supra).*** We direct the ld. CIT(A) to re-examine this issue in the light of the relevant case laws and to pass a speaking order after giving sufficient opportunity of hearing to the assessee and decide the issue on the merits and in accordance with law. We have not given our thoughtful consideration on any of the issues on merits. Therefore, the grounds of appeal filed by the assessee is allowed for statistical purpose.

21. In the result, the appeal filed by the assessee is hereby allowed for statistical purpose.

Order pronounced in the open court on 19.06.2025

Sd/-	**Sd/-**
(NARENDRA KUMAR BILLAIYA)	**(KAVITHA RAJAGOPAL)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated: 19.06.2025
Karishma J. Pawar (Stenographer)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai