आयकर अपीलीय अधिकरण, "डी" खंडपीठ मुंबई

INCOME TAX APPELLATE TRIBUNAL,MUMBAI - 'D' BENCH.

सर्वश्री आय.पी. बंसल, न्यायिक सदस्य एवं राजेन्द्र,लेखा सदस्य

Before S/Sh. I.P. Bansal,Judicial Member & Rajendra,Accountant Member

आयकर अपील सं/.ITA No.8121/Mum/2011 ,निर्धारण वर्ष/Assessment Year-2008-09

Rajshri Production Pvt. Ltd. Bhavan, 1st Floor, 422, Veer Savarkar Road, Prabhadevi, Mumbai-400025	Vs	Addl. CIT 11(1) Aayakar Bhavan, M.K.Road, Mumbai.
PAN:AAACR4139G		

(अपीलार्थी/ Appellant) (प्रत्यर्थी /Respondent)

निर्धारिती ओर से/ Assessee by : **Shri M.C.Maniwadekar**

राजस्व की ओर से/**Revenue by** : **Shri Sanjeev Jain**

सुनवाई की तारीख/ Date of Hearing : 22-10-2013

घोषणा की तारीख / **Date of Pronouncement** : 13-11-2013

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश
Order u/s.254(1)of the Income-tax Act,1961(Act)

PER RAJENDRA, AM

Following Grounds of appeal have been filed by the assessee against the order dated 03-10-2011 of the CIT(A)-3,Mumbai:

> *On the facts and circumstances of the case and in law the Learned C.I.T (Appeals) -3 erred in passing the order under section 154 of the Income Tax Act 1961 dated 03.10.2011 and thereby holding that the Assessee is liable to pay advance tax and failure of the same would attract interest U/s 234 B and 234 C. He failed to appreciate that these sections refer to section 210 which requires payment of advance tax as calculated u/s.209 and thus it is this advance tax which must not fall short by more than 10% of the assessed tax.*
> *2.The Learned C.I.T (Appeals)-3 ought to have upheld his decision taken in the main order dated 30/06/2011 that the Assessee was not liable to pay any advance tax as the taxes paid by way of TDS were more than 90% of the Assessed tax and hence there was no interest chargeable u/s.234 B and 234 C.*
> *3.The Assessees crave leave to alter, add or amend the aforesaid Ground of Appeal as and when necessary"*

Brief history:

In this case appellate order was passed on 23-6-2011,wherein it was held that the assessee had deducted TDS and MAT credit which was more than 90% of assessed tax,that there was no shortfall of advance tax,that interest u/s. 234B & 234C was not chargeable.AO vide his letter dated 24-8-11 stated that as per the record,filed by the assessee,there was shortfall of advance tax of Rs.15,59,761/- as against the assessed tax,that the assessee had not paid any advance tax and tax payable was more than Rs. 10,000/-,that provisions of section 208 were attracted,that interest u/s.234B & 234C was payable by the assessee.

2.In view of application made by the AO,under section 154 of the Act,First Appellate Authority (FAA) issued a notice of hearing to the assessee for rectifying mistake apparent from the record. After considering the submission of the assessee, FAA,held that there was shortfall of Rs. 15,59,761/- between the tax payable(Rs.1,93,50,326)and the advance tax paid(Rs.1,77,90,665), that as per provisions of section 208 r.w.s.211 if the advance tax payable was more than Rs.10, 000/-then the assessee was liable to pay advance tax and failure of the same would attract interest u/s.234B and 234C,that in view of provisions of the Act mistake apparent from record in the appellate order dated 23-6-2011 had to be rectified.Accordingly,he directed the AO to recalculate interest chargeable u/s.234B & 234C,after verification of the payment of taxes,TDS and MAT credit,in accordance with the law.

3.Before us,Authorised Representative(AR)of the assessee submitted that tax had been paid by way of TDS,that there was no default on part of the assessee,that interest u/s.234B and 234C was not leviable.Departmental Representative(DR)submitted that there was shortfall of Rs.15.59 lacs between the tax payable and the tax paid,that tax payable was more than 10,000/-,that assessee had to pay advance tax,that it did not pay advance tax as envisaged by the provisions of the Act, that FAA had rightly directed the AO to recalculate interest chargeable u/s.234 B and 234 C of the Act.

4.We have heard the rival submissions and perused the material before us.Before proceeding further,we would like to mention the history of provisions of section 234 and general principles governing the said section.Collection of tax,being an act of the State for providing protection, security and other amenities to the society,cannot be termed a penalty or a punishment.The purpose and object of the Act is to realise taxes.One of the reasonable mode of collection is to collect taxes in instalments.If assessees fail to adhere to schedule of payment,provisions have to be made to compensate the exchequer.Payment of interest or imposition of penalty can be considered justified modes of compensation. Section 28 of the 1868 Act dealt with the failure of payment of second installment of tax and resultant fine by magistrates.Section 18A of the Indian income tax Act, 1922 and sections 139(8),215,217 of the Act can be termed as predecessor to the existing provisions of section 234.

4.1. Sections 234A-234C of the Act were inserted by the Direct Tax Laws(Amendment)Act, 1987,with effect from 01.04.1989.A plain reading of the Statement of Objects and Reasons of the Bill shows that one of the objects behind the Bill was to remove the uncertainty in the matter of assessment by cutting down areas of subjective decisions of taxing authorities with a view to ensure uniform treatment to persons similarly placed and to reduce litigation, because it was felt that the existing provisions gave unlimited discretionary powers to the assessing officers to levy different penalties and interest for similar faults.With effect from April 1,1989,the requirement to pay interest on self-assessment u/s.140A was made mandatory.The requirement to pay interest with relation to the return u/s.142 of the Act was introduced by the Finance(No.2) Act,1991,with effect from 27.09.1991.Here we would like to mention that though,old provisions providing for payment of interest and penalty have been replaced by the provisions of sections 234A,234B and 234C,but the new system does not get its colour from the old.They have to be interpreted in the light of the language employed therein and the purpose they purport to achieve.

4.2. Section 234B provides for payment of interest by an assessee,who even though liable to pay advance tax u/s.208 of the Act,either fails to pay such tax or the advance tax paid by him u/s.210 of the Act is less than 90% of the assessed tax.The rate of interest prescribed is 24% per annum simple on the amount and for the period set out in the provision.Section 234C provides for payment of interest at the rate of 18% per annum simple in case an assessee liable to pay advance tax u/s.208 of the Act,either fails to pay such tax or pays the same so as to be less than 30 % by the 15th September or 60 % by the 15th December of the tax due on the returned income.The amount and the period for which such interest is made payable by this provision has also been set out in the section itself.

ii). There is an inherent indication in the statutory scheme that any payment made beyond the financial year has to be considered for calculating the exact tax liability,but such payment has to be accompanied by the interest.In other words failure on the part of the assessee to abide by the provisions of the Act has been made a basis for forcing him to compensate Sovereign by paying interest in terms of section 234B/234C of the Act.The amount on which interest is levied is an amount which can legitimately be said to be public revenue though payable by the assessee, but not paid by him, despite his knowledge of the position of law.Levy of interest on such amount which is utilised by the assessee for his own purposes has been directed to be compensated by means of directing him to pay the interest at the rates specified under the sections.Considering the above Courts have held that interest levied u/s. 234 of the Act is compensatory nature.The period for which this additional liability is imposed is an important feature which very clearly shows the true legislative intent behind the levy.

iii). Provisions of the said sections are meant to deter the assessees from repeatedly committing default,but it does not mean that the provisions are penal in character for the simple reason that because in actual application of these provisions there may be situations where assessees may render themselves liable to pay interest under each one of these provisions simultaneously for the same period.Secondly,in a given situation the provisions may,on account of their simultaneous application to an assessee,raise the liability to pay interest for the overlapping period to a rate higher than 2% per month.Besides,by prescribing calculation of interest on monthly basis,the provision also cannot be said to have lost its compensatory character.This is true even in regard to Sec.234C where the interest payable is not for the period for which the amount of tax is actually withheld but for a period of three months.In short,provisions dealing with payment of interest u/s.234B as well as u/s. 234C of the Act create circumstances for compelling the assessees to discharge their statutory obligation,therefore,same cannot be termed penal.

iv). The dates for paying the advance tax are specifically notified by the Act itself,which is spread over various months and liability to pay advance tax arises when the total income of the assessee exceeds an amount which is chargeable to tax provided the tax so payable exceeds stipulated sum.The liability to pay advance tax cannot be denied merely on the ground that the assessee could not visualise that income and,thus could not make an estimate on the basis of which advan -ce tax could be paid.If,despite full knowledge of the date and time when the tax is to be paid,an assessee commits a default,he makes himself liable to pay interest.It is not his failure to make the payment only for a day or two but his continuous conduct, spread over months which reflects his intention to avoid the tax or create circumstances to avoid the same.

v). From the harmonious reading of the entire provisions of section 234B of the Act,it is clear that if no advance tax is paid or what is paid is less than 90 % of the assessed tax,the assessee is liable to pay interest on the difference in the tax.For the purpose of levying tax,it is computed from the first day of April next following till the date of determination of tax u/s.143(1)/(3)of the Act.

vi). Levy of interest under sections 234B/234C has no co-relation, whatsoever, with the provision regarding payment of interest by the Department on refunds due to the assessees.

vii). Where there is non-payment or short payment due to the computation of income u/s.115J of the Act, interest can be levied under sections 234B and 234C. That apart, section 115J is no more available for the assessee for delaying the payment of advance tax in view of the insertion of sections 115JA and 115JB.

viii). Though,section 234B pertains to liability to pay interest for default in payment of advance tax, however, in the provision interest is payable on the amount which is the difference between the amount of tax payable on the total income as determined u/s.143(1) of the Act or on regular assessment as reduced by the tax paid by way of advance tax;tax collected or deducted at source; relief allowed under sections 90 and 90A of the Act in respect of tax paid outside India or allowed u/s.91 and also any tax credit allowed u/s.115JAA of the Act.

ix). Sections 234A, 234B and 234C do not envisage the grant of any hearing or the grant of any relief to the assessees concerned in so far as the levy of interest is concerned.The levy of interest is automatic the moment it is proved that the assessee has committed a default within the comprehension of any one of the provisions in question.That being so, it cannot be accepted that the authorities must grant a hearing and exercise the power to grant relief.

x). Courts are of the view that there is no breach of any principle of natural justice in charging interest under both the sections,inasmuch as the assessees have an opportunity,given by the statute,to apply for reduction or even waiver of the amount of interest by showing proper cause.

xi). No notice required to be given to assessee before levy of interests under either of the sub-sections,because the liability to pay interest is automatic and arises by operation of law,as stated earlier.

xii). Interest under sections 234A and 234B of the Act is leviable on the tax on the total income as declared in the return and not on the income as assessed and determined by the AO.

xiii). If there is no determination of tax under sub-section (1) of section 143 or regular assessment and the assessment is made for the first time u/s.147 of the Act,such assessment is also treated as a regular assessment and interest is payable from the first day of April next following till the date of assessment order.But if proceedings u/s. 147 of the Act is initiated in a case where there is determination of tax under sections 143(1)/(3)then the order passed u/s.147 is treated as an order of reassessment or re-computation.In the case of order of reassessment or re-computation, the interest is leviable not from the first day of April next following but from the date of determination of tax u/s.143(1) or 143(3).

xiv). There is no significance about the number of reassessments carried out u/s.147 for the purpose of levy of interest u/s.234B.Interest payable under this provision is for the increase in short-fall of advance tax with reference to the original assessment and it is levied for the period commencing from the date of completion of original assessment till date of completion of revised assessment u/s.147.When the section contemplates levy of interest in stages,interest u/s. 234B could be levied in all the reassessments completed u/s.u/s. 147 of the Act.Therefore, interest could be levied u/s. 234B(3) in the second revision of assessment u/s.147,even if in the first reassessment proceeding completed under the very same provision, interest under 234B(3) was not levied.

xv). In search and seizure cases,where an assessee makes a request to adjust advance tax payable out of cash seized,prior to due date for payment of instalment of advance tax,he is entitled to adjustment of seized cash against the payable advance tax and no interest can be charged u/s. 234B of the Act.

xvi). Once the issue of levy of interest u/s.234 B has been considered by the FAA and the Tribunal same issue cannot be agitated before the CIT under section 264 of the Act.

xvii). Interest under sections 234B of the Act is leviable on the tax on the total income as declared in the return and not on the income as assessed and determined by the assessing authority.

xviii). When AO does not dispute the fact that the amount received by the assessee,a non-resident,is subjected to 100 % tax deduction at source and that there is no liability on the assessee to pay advance tax,the question of levy of interest under section 234B of the Act alleging short payment cannot arise.

xix). Interest under section 234B can be levied in the cases where loss is shown and accepted in original return,but reassessment proceedings result in positive income.In such cases it is not material that AO had not levied any interest while passing original order.

5.After considering the facts of the case and above referred principles,we are of the opinion that the assessee had the liability to pay advance-tax as provided in sections 207 and 208 within the time prescribed u/s.211 of the Act,that the liability to pay such tax existed on the last date for payment of advance tax as provided under the Act or at least on the last date of the financial year preceding the assessment year in question.It is not the case that such liability arose subsequently, when the last date for payment of advance tax or even the last date of the financial year preced - ing the assessment year was over and the assessee had no liability to pay advance tax.In these circumstances it has to held that assessee was liable to pay advance tax for the year under consideration. We further find that it had failed to pay advance tax on stipulated dates. Therefore,the order passed by the FAA u/s. 154 of the Act;to recalculate the interest u/s.234B and 234C of the Act,after giving credit to the taxes paid by the assessee;does not suffer from any legal infirmity.Confirming his order,we decided the effective ground against the assessee.

As a result,appeal filed by the assessee stands dismissed.

परिणामस्वरूप निर्धारिती द्वारा दाखिल अपील नामंजूर की जाती है.

Order pronounced in the open court on 13th November,2013.
आदेश की घोषणा खुले न्यायालय में **नवंबर** 13, 2013 को की गई.

Sd/-	**Sd/-**
(आय.पी. बंसल, / I.P.Bansal)	**(राजेन्द्र/Rajendra)**
न्यायिक सदस्य /Judicial Member	**लेखा सदस्य /Accountant Member**

मुंबई/Mumbai,दिनांक/Date: 13.11.2013
SK

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. Assessee /अपीलार्थी **2.** Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त,**4.**The concerned CIT /संबद्ध आयकर आयुक्त

5. DR “D” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि.डी खंडपीठ,आ.अ.न्याया.मुंबई

6. Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई **/ITAT, Mumbai**