

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND SHRI KULDIP SINGH, JUDICIAL MEMBER**

ITA No. 6533/Del/2013

AY: 1998-99

ACIT, Circle 5(1)
New Delhi

vs. MMTC Ltd.
Core 1, Scope Complex
7, Institutional Area
Lodhi Road
New Delhi 110 003

PAN: AAACM 1433 E

(Appellant)

(Respondent)

Appellant by : Sh.Rishpal Bedi, Sr.D.R.

Respondent by : Sh.Rohit Jain, Adv. &
Ms. Deepa Shree Rao, C.A.

ORDER

PER J.SUDHAKAR REDDY, A.M.

This is an appeal filed by the Revenue directed against the order of the Ld.Commissioner of Income Tax (Appeals)-VII, New Delhi dt. 10.9.2013 pertaining to the Assessment Year (A.Y.) 1998-99 on the following grounds.

"1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred by directing the AO to restrict the levy of interest u/s 220(2) on Rs.4,18,908/- from 1.4.2001 to 12.10.2003 i.e. amounting to Rs.1,62,327/-?"

- 1.1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred by restricting the amount of interest u/s 220(2) from Rs.29,59,061/- to Rs.1,62,327/- in spite of admission of the assessee in the form 35 that the interest u/s 220(2) is chargeable for Rs.20,95,730/- on tax and interest for an amount of Rs.54,08,335/- for 31 months @ 38.75%?*
- 2. That the order of the Ld.CIT(A) is erroneous and is not tenable on facts and in law.*
- 3. That the grounds of appeal are without prejudice to each other.*

4. *That the appellant craves leave to add, alter, amend or forgo any grounds of the appeal raised above at the time of the hearing.”*

2. We have heard Shri Rohit Jain, the Ld.Counsel for the assessee and Shri Rishpal Bedi, Ld.Sr.D.R. on behalf of the Revenue. On a careful consideration of the facts and circumstances of the case, perusal of material on record, orders of lower authorities, case laws cited, we hold as follows.

3. We find that the Ld.CIT(A)-VIII, New Delhi vide order dt. 22.7.2004 in appeal no.43/0304 at the very same A.Y. 1998-99 had at para 3 held as follows.

‘3. *Ground no.6 is with regard to charging of interest u/s 220(2) amounting to Rs.1,71,29,012/-. It was mentioned that since no demand was pending on the date of passing of order u/s 143(3) and the demand was created only after passing the order u/s 154, AO was not justified in charging interest u/s 220(2). On perusal of the income tax computation form annexed with the order u/s 154/143(3), which is the subject matter of appeal it is noticed that interest u/s 220(2) has been charged from April, 2001 to Sep.2003 and the total interest charged is Rs.1,71,29,012/-. It is further noticed that the credit of tax benefit of Rs.3,34,18,811/- was given by the AO vide his order u/s 143(3) dt. 23.2.2001. Withdrawal of this tax credit in the order u/s 154/143(3) dt. 30.9.2003 has resulted in the charging of interest u/s 220(2). However, the tax payable as per the order u/s 143(3) dt. 23.2.2001 was only Rs.4,18,908/- which the assessee was supposed to pay. S.220(2) reads as under.*

“If the amount specified in any notice of demand u/s 156 is not paid within the period limited under sub section (1), the assessee shall be liable to pay simple interest at (one and one fourth)% 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.”

3.1. This order of the Ld.CIT(A) has not been challenged before the Tribunal and hence attained finality. The same issue is sought to be challenged by the Revenue before us in an appeal filed against an order passed by the Ld.CIT(A)-VIII, New Delhi dt. 10.9.2013, wherein he partly allowed the appeal of the assessee against an order, passed u/s 154 r.w.s. 143 of the Act on 28.10.2012. When the order of the Ld.CIT(A)-VIII, New Delhi dt. 22.7.2004 attained finality, it is not open for the Revenue to challenge the findings in consequential orders. Hence we uphold the order of the First Appellate Authority and dismiss the appeal of the Revenue.

4. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the Open Court on 07th December, 2015.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 07th December, 2015

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar