

*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "C" KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and  
**Shri S.S.Viswanethra Ravi, Judicial Member**

**ITA No.1169 & 1294/Kol/2013**  
Assessment Year:2007-08

Philips Electronics India Ltd., 7, Justice Chandra Madhab Road, Kolkata-700 020 [PAN No.AABCP 9487 A]	<u>बनाम</u> / V/s.	DCIT, Circle-11 Kolkata-700 069
DCIT, Circle-11 P-7, Chowringhee Square, Kolkata-700 069	<u>बनाम</u> / V/s.	M/s Philips Electronics India Ltd. 7, Justice Ch. Mahadeb Road, Kolkata-700 020
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

आवेदक की ओर से/By Assessee	Shri D.S. Damle, FCA
राजस्व की ओर से/By Respondent	Shri G. Mallikarjune, CIT-DR
सुनवाई की तारीख/Date of Hearing	03-06-2016
घोषणा की तारीख/Date of Pronouncement	20-07-2016

**आदेश /O R D E R**

**PER Waseem Ahmed, Accountant Member:-**

These are cross-appeal filed by the assessee and Revenue, which are directed against the common order of Commissioner of Income Tax (Appeals)-XII, Kolkata by even date i.e. 07.02.2013. Assessment was framed by DCIT, Circle-11, Kolkata u/s 154/144C(13)/143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his common order dated 25.05.2011 for assessment year 2007-08.

Shri D.S. Damle, L'd Authorized Representative appeared on behalf of assessee and Shri G. Mallikarjune, L'd Departmental Representative appeared on behalf of Revenue.

2. Both the appeals are heard together and are being disposed of by way of consolidated order for the sake of convenience.

**First we take up assessee's appeal in ITA No.1169/Kol/2013**

3. The grounds raised by the assessee per its appeal are as under:-

*"1) For that on the facts and in the circumstances of the case, the CIT (A) erred in law and on acts in partly confirming the levy of interest u/ s 234C of the Income Tax Act without taking into consideration the jurisdictional facts.*

*2) For that on the facts and in the circumstances of the case, the CIT (A) was unjustified in upholding the levy of interest u/ s 234C for the period after 29th September 2006 on the grounds & reasoning which were entirely different from the grounds & reasoning on which the AO had justified levy of interest and before partially upholding the levy of interest on the different grounds; the CIT (A) did not afford opportunity of rebutting his reason to the assessee.*

*3) For that on the facts and in the circumstances of the case, the CIT (A) failed to take into account the fact that the appellant had in fact made investment in REC Bonds amounting to Rs.50 Lacs which was the limit imposed u/s 54EC for the first time by the Govt. of India through its Notification dated 22.12.2006 even though no such ceiling was statutorily provided in Sec. 54EC of the Act.*

*4) For that on the facts and in the circumstances of the case, the authorities below be directed to delete the levy of interest u/s 234C in respect of appellant's income under the head 'long term capital gains' since the liability of the appellant to pay advance tax on long term capital gains became legally due only on 15th March 2007 when the last installment became due and the same was also fully paid by the appellant by that date.*

*5) For that the appellant craves leave to file additional grounds and/ or amend or alter the grounds already taken either before or at the time of hearing of the appeal."*

4. The common issue raised by the assessee in all the grounds of appeal is that Id. CIT(A) erred in partly confirming the order of the AO for levying interest under section 234C of the Act. Since the common issue is arising out of all the grounds of

appeal, therefore all of them are clubbed together for adjudication and for the sake of convenience.

5. Before carving the specific issue let us understand the brief facts of the case. The assessee in the present case is a limited company and incorporated under the Companies Act, 1956. During the year under consideration, assessee made a slump sale of its semi-conductor unit comprising of semiconductor division and PSS division on dated 28-09-2006 and earned the Long Term Capital Gains (LTCG for short) amounting to Rs. 128,20,86,643/-. The assessee sought to make the investment of the slump sale proceeds in the bonds specified under section 54EC to avail the exemption benefit. However, bonds specified under section 54EC were not available for subscription at the time of slump sale took place i.e. September 2006. As a result the assessee could not invest the sale proceeds immediately after the slump sale. The Central Government issued Notification No. 2146 (E) dated 22.12.2006 notifying the bonds issued by Rural Electrification Corporation Limited for the purpose of section 54EC of the Act with the ceiling of Rs. 50 lacs, meaning thereby that the investment under section 54EC is limited to extent of Rs. 50 lacs. Accordingly the assessee subscribed the bonds for a sum of Rs. 50 lacs only for claiming the exemption under section 54EC of the Act. As the bonds were notified on 22<sup>nd</sup> December 2006 after the due date of 3<sup>rd</sup> installment for making the advance tax payment i.e. 15<sup>th</sup> December 2006, the assessee paid the advance tax in its 4<sup>th</sup> installment of advance tax i.e. 15 March 2007.

5.1 Now coming to the specific issue, the AO observed that the assessee has not paid the advance tax as per the provision of Sec 211(1) (a) of the Act. As a result the AO has charged the interest under section 234C of the Act from the first quarter of advance tax payment of the Act on account of deferment of advance tax. The AO also observed that the long term capital gain was derived by the assessee in the 1<sup>st</sup> quarter of the financial year 2006-07 and therefore the liability for advance tax liability arose in the first quarter itself i.e. 15<sup>th</sup> June 2006.

6. Aggrieved, assessee preferred an appeal before Ld. CIT (A) where assessee submitted that the Central Government vide Notification No. 2146(E) dated 22.12.2006 notified bonds issued by Rural Electrification Corporation Ltd to be eligible security for the purpose of Sec. 54EC of the Income Tax Act. The said Notification however imposed a ceiling of Rs.50 Lacs per person per year. In terms of the said Notification; assessee whose LTCG exceeded Rs.50 Lacs were not permitted to invest entire capital gains so as to claim exemption u/s 54EC. The Notification issued by the Central Govt., thus artificially imposed a restriction or ceiling on the assessee's statutory right of claiming exemption u/s. 54EC in excess of Rs.50 Lacs even though the statutory provisions of sec. 54EC of the IT Act prevalent at the material time did not contain any such restriction or statutory ceiling.

The Notification issued by the Central Govt. imposing restriction on the assessee to subscribe towards notified Bonds up to Rs.50 Lacs, thus ran contrary to the provisions enacted by the Legislature. However, since the Notification issued by the Central Govt. permitted investment by an assessee only up to Rs.50 Lacs, the appellant ultimately could subscribe to REC bonds only up to Rs.50 Lacs, and claim exemption u/s. 54EC only for the said sum.

From the copy of the Central Govt. Notification it is be apparent that the Notification was published in the official Gazette only after 22.12.2006. This fact demonstrates that restriction on the appellant's right to claim exemption up to Rs.50 Lacs came into effect after 15.12.2006 i.e., when the 3<sup>rd</sup> installment of advance tax was due. Till the notification was not issued the appellant was sanguine of investing its entire capital gains in purchase of the notified bonds & for this purpose time available to the appellant was up to 28.03.2007. It was only upon publication of the Central Govt. Notification on 22.12.2006, the assessee became aware that the exemption us/s 54EC could be availed only for Rs.50 Lacs and on the remaining capital gains it had liability to pay tax u/s.112 of the Income Tax Act. However, such liability got crystallized only after the Notification No. 2146(E) dated 22.12.2006 was published by the Govt. of India in its official Gazette.

Considering the facts and circumstances and written submission filed by assessee, the Ld CIT(A) observed that the capital assets was transferred on 28-09-2006 and allowed the appeal of the assessee on this ground by observing as under :

*“I have considered the finding of the AO and the written submission filed by the AR I find that since the capital assets was transferred on 28.09.2006. Therefore, Assessing Officer's action of charging interest u/s. 234C for the entire year is not justified.”*

7. However the Id. CIT(A) rejected the plea of the assessee for making the payment of advance tax only in the month of March 2007 by observing that the assessee intended to invest in notified bond has no proof or basis. There is nothing on record to substantiate the claim. The relevant extract of the Id. CIT(A) order is extracted below:

*“On the other hand, the submissions filed by the AR pointing out that the assessee intended to invest in notified bond has no proof or basis. There is nothing on record to substantiate the claim of the assessee or to prove the intention of the assessee to invest in notified bond has no proof or basis. There is nothing on record to substantiate the claim of the assessee or to prove the intention of the assessee. Further, AR's submission that the assessee was prevented in making investment because of 50 lakhs ceiling imposed by the Central Govt. is also not acceptable because once the Central Govt. makes some rule it is on the basis of powers given to the Central Govt. by the statute passed by the Parliament. Therefore, it cannot be challenged until and unless it is so declared by the Supreme Court of India. Thus, it is clear that there assessee was duly bound to pay advance tax on LTCG on installments w.e.f. Sept. 2006 onwards. Accordingly, the AO is directed to calculate the amount of advance tax to be paid by the assessee after it received LTCG on 29.09.2006 and charged interest u/s. 234C of the IT Act, 1961.”*

The order of the Id. CIT(A) is partly favoring the assessee that the transfer of slump sale took place in on dated 28-09-2006, so liability to pay the advance tax arose on 15<sup>th</sup> December 2006. Therefore the AO order for charging the interest under section 234C from 1<sup>st</sup> quarter of 2006 was rejected. Against this order of Id. CIT(A), Revenue is in appeal before us.

At the same time the Id. CIT(A) rejected the plea of the assessee that the liability to pay the advance tax arose only in the month of March 2006 on the ground that the REC bonds were notified only after 15/12/2006 i.e. 22/12/2006. This decision of the

ld. CIT(A) is favoring to Revenue. Against this order of ld. CIT(A), assessee is in appeal before us.

Being aggrieved by this order of L'd CIT(A) assessee and Revenue both came in appeal before us.

**First we are taking assessee's appeal ITA no. 1169/Kol/2013**

8. Before us Ld. AR filed paper book which is running pages 1 to 12 and reiterated same submission which was made before the lower authorities. The ld. AR also drew our attention on page 9 of the PB where a letter was written to the CBDT seeking the clarification with regard to the issue of notified bonds under section 54 EC of the Act. It was requested that issue may be decided in favour of assessee.

On the other hand, Ld DR relied on the orders of Authorities Below and submitted a judgment of case law of Hon'ble Madras High Court in the case of *Areva T & D India Ltd. vs. ACIT* (2009) 177 taxmann 192 (Mad) and Finance Circular No. 142/09/2006-TPL dated 30.06.2006. The ld. DR also submitted that the definition of long term specified assets was substituted retrospectively by the Finance Act 2007, w.r.e.f. 1.4.2006.

9. We have heard the rival contention of both the parties and perused the materials available on records. From the aforesaid discussion, we find that the assessee has sold the semi-conductor unit under slump sale and earned LTCG. However, assessee was desirous to invest LTCG in notified bonds to avail the exemption of Income Tax. But at the time of sale of slump sale no notified bonds were available for subscription/ investment. However, the CBDT came with an amendment in the provision of Section 54EC of the Act and restricted the limit of investment to 50 lacs only with retrospective effect. As a result the assessee invested only to Rs. 50 lacs which resulted into shortfall of the advance tax payment. Accordingly the assessee made the payment of advance tax on 15-3-2007 but the Ld. CIT (A) held that the assessee was liable to pay advance tax installment effective from 3<sup>rd</sup> quarter i.e. 15-12-2006. Now the question before us is to determine whether Section 234C of the

Act is applicable to the assessee from 3<sup>rd</sup> quarter i.e. 15-12-2006 or 4<sup>th</sup> quarter 15-03-2007. We find that the assessee was having a fair intention to invest in the LTCG for the consideration received out of slump sale in bonds notified u/s 54EC. But no bonds were available in the market at that time. The assessee has substantiated its intention by submitting before us the copy of the letter it has written to the CBDT dated 12/12/2006 regarding the availability of notified bonds. Copy of letter is available on Page no 9 & 10 of the paper book. The facts of the case cited by the Id. DR are distinguishable from the facts of the case on hand. The relevant facts of the case are as under :

*“Both the petitioners decided to invest the capital gains in the bonds for the purpose of availing benefit of exemption under section 54EC of the Act. Section 54EC deals with capital gains not to be charged on investment in certain bonds. The benefit of tax exemption is only with respect of long-term capital gains invested in the bonds which are redeemable after three years and issued by the National Highways Authority of India or by the Rural Electrification Corporation Ltd., on or after 1-4-2006. There is no limitation for the investment. However, the Central Government later issued a **Notification No. 380/2006**, F. No. 142 of 2006-TPL, dated 22-12-2006 restricting the investment in bonds to a sum of Rs.50 lakhs per person. As per the above notification, a person, who is entitled to the benefit under section 54EC of the Act, the value is restricted to a sum of Rs. 50 lakhs. Aggrieved by the same, both the writ petitioners have filed the writ petitions seeking for issuance of writ of declaration, declaring that the conditions occurring in the Notification No. 380 of 2006, F. No. 142/09/2006-TPL, dated 22-12-2006 along with the words “subject to the following conditions, namely” issued by the second respondent herein are ultra vires of section 54EC of the Income-tax Act, 1961 and arbitrary and violative of articles 14 and 265 of the Constitution of India and consequently unenforceable.”*

So, it is clear that the assessee filed the writ challenging the notification issued by the CBDT on the ground of *ultra-vires* provisions with regards to articles 14 and 265 of the constitution of India. Therefore we find that the issue raised in the writ was not pertaining to the issue of charging of interest under section 234C of the Act. In this connection we find that the case of the assessee is squarely covered by the judgment of this Hon'ble Jurisdictional High Court of Calcutta in the case law *Emami Ltd. Vs. CIT 337 ITR 470* :

"A mere reading of relevant provisions leaves no doubt that the advance tax is an amount payable in advance during any financial year in accordance with the provisions of the Act in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year. Thus, in order to hold an assessee liable for payment of advance tax, the liability to pay such tax must exist on the last date of 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. If such liability arises subsequently when the last date of payment of advance tax or even the last date of the financial year preceding the assessment year is over, it is inappropriate to suggest that still the assessee had the liability to pay "advance tax" within the meaning of the Act. In the instant case, the last date of the relevant financial year was 31st March, 2001 and on that day, admittedly, the appellant had no liability to pay any amount of advance tax in accordance with the then law prevailing in the country. Consequently, the appellant paid no advance tax and submitted its regular return on 31st Oct., 2001 within the time fixed by law wherein it declared its total income and the book profit both as nil. However, consequent to the amendment of the provisions contained in s. 115JB by virtue of Finance Act, 2002 which was published in the Official Gazette on 11th May, 2002 giving retrospective effect to the amendment from 1st April, 2001, the appellant first voluntarily paid a sum of Rs. 1,55,62,511 on account of the tax payable on book profit as provided in amended provision of s. 115JB and then filed its revised return of 31st March, 2003 declaring its business income as nil but the book profit under s. 115JB as Rs. 20,63,65,711. The AO accepted such return of income but imposed interest under ss. 234B and 234C amounting to Rs. 44,00,937 and Rs. 11,78,960 respectively. The amended provision of s. 115JB having come into force w.e.f. 1st April, 2001, the appellant cannot be held defaulter of payment of advance tax. As pointed out earlier, on the last date of the financial year preceding the relevant assessment year, as the book profit of the appellant in accordance with the then provision of law was nil, one cannot conceive of any "advance tax" which in essence is payable within the last day of the financial year preceding the relevant assessment year as provided in ss. 207 and 208 or within the dates indicated in s. 211 which inevitably falls within the last date of financial year preceding the relevant assessment year. Consequently, the assessee cannot be branded as a defaulter in payment of advance tax. It appears that the Tribunal has not at all considered the aforesaid aspect as to the liability of the assessee to make payment of the advance tax on the last day of the financial year i.e. 31st March, 2001 when its book profit was nil according to the then law of the land. In a case like the present one where on the last date of the financial year preceding the relevant assessment year, the assessee had no liability to pay advance tax, he could not be asked to pay interest in terms of s. 234B and s. 234C for default in making payment of tax in advance which was physically impossible.—*Star India (P) Ltd. vs. CCE (2006) 201 CTR (SC) 63 : (2006) 280 ITR 321 (SC) applied; Jt. CIT vs. Rolta India Ltd. (2011) 237 CTR (SC) 329 : (2011) 49 DTR (SC) 346 : (2011) 330 ITR 470 (SC) distinguished.*

Provision of s. 115JB having been amended by the Finance Act, 2002, with retrospective effect from 1st April, 2001, the assessee cannot be held defaulter of payment of advance tax as no advance tax was payable on the last date as per law then prevailing, and therefore interest under ss. 234B and 234C could not be charged."

Respectfully following the above precedents and case law, we reverse the order of Ld. CIT(A) and this ground of assessee's appeal is allowed.

**Coming to Revenue's appeal in ITA No.1294/Kol/2013**

10. The facts and issue are same as assessee's appeal in **ITA No.1169/Kol/2013** except the issue of Revenue that the assessee was liable to pay advance tax from the first quarter of FY 2006-07 i.e. 15-06-2006.

11. At the outset it was observed that the Id. DR failed to bring anything contrary to the findings of the Id. CIT(A). On the contrary the Id. AR submitted the CA certificate and report under section 50B of the Act in form no. 3CEA. In view of above we find no reason to interfere in the order of Id. CIT(A). Hence this ground of Revenue's appeal is dismissed.

**10. In the result, the appeal filed by assessee is allowed and that of Revenue stands dismissed.**

Order pronounced in open court on 20/07/2016

Sd/-  
(S.S.Viswanethra Ravi)  
Judicial Member

Sd/-  
(Waseem Ahmed)  
Accountant Member

\*Dkp

दिनांक:- 20/07/2016 कोलकाता / Kolkata

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. आवेदक/Assessee-Philips Electronics India Ltd., 7, Justice Chandra Madhab Road  
Kolkata-20
2. राजस्व/Revenue-DCIT, Circle-11, P7, Chowringh Square, Kolkata69
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता