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

BEFORE SHRI JASON P. BOAZ ACCOUNTANT MEMBER
AND SHRI RAMLAL NEGI, JUDICIAL MEMBER

ITA No. 5087/MUM/2015
(Assessment Year : 2011-12)

Sun Tan Trading Company Limited,
Mumbai, C/o. Giiners & Pressers Ltd.,
Oriental House, 5th Floor,
7, Tata Road, Churchgate,
Mumbai 400 020
PAN:AACCS 2091L ... Appellant
Vs.
The Dy. Commissioner of Income Tax 1(3),
Aaykar Bhavan, MK Road,
Mumbai 400 020 .... Respondent

Appellant by : S/Shri J.D.Mistry/Madhur Agarwal/ Ketan Ved
Respondent by : Shri Manjunatha Swamy

Date of hearing : 06/01/2016
Date of pronouncement : 29/02/2016

ORDER

PER JASON P. BOAZ, A.M:

This appeal by the assessee is directed against the order of the CIT(Appeals)-3, Mumbai dated 30/09/2015 for assessment year 2011-12.

2. The facts of the case, briefly, are as under:-

2.1 The assessee company, engaged in the business of trading in Foreign Made Foreign Liquors, pigments and paintings (Art work) filed

its return of income for assessment year 2011-12 on 30/09/2011. The return was processed under section 143(1) of the Income Tax Act, 1961 (in short 'the Act') and the case was subsequently taken up for scrutiny. In the course of assessment proceeding, the Assessing Officer ('AO') noticed that assessee had received Rs.62.50 crores from "Diageo Brands " B.V Netherlands which was disclosed by the assessee as "reimbursement received" with a Note 12 (II)(F) to Schedule-17 of financial statements.. The Assessing Officer observed that the assessee had entered into a Distribution Agreement on 30/07/2001 for import of alcoholic beverages from Diageo B.V. Netherlands, in accordance with which the assessee continued to import beverages till the period relevant to assessment year 2010-11. In Nov.2009, the Directorate of Revenue Intelligence ('DRI') investigated the imports made by the assessee, in respect of the import value declared before the Customs Department, for the period November,2004 to November, 2009. The assessee and Diageo B.V., Netherlands entered into an Indemnity Agreement dated 7/4/2010, whereby the assessee was to receive reimbursement of amounts paid / to be paid to the Customs Dept. The assessee was required to deposit Rs.62,50,00,000/- as advance towards liability likely to arise under the Customs Act, 1961. As per the DRI's show cause notice dated 30/03/2011, the additional customs duty liability was worked out at Rs.58,04,28,000/-.

2.2 The assessee preferred an application in this regard before the Customs & Central Excise Settlement Commission and vide their order dated 9/2/2012 the following demands/ liabilities were drawn up against the assessee:-

(i) Addl. Customs duty	-	Rs. 58,04,28,400/-
(ii) Interest	-	Rs. 16,18,89,193/-
(iii) Fine for redemption of seized goods	-	Rs. 1,20,00,000/-
(iv) Penalty		Rs. 25,00,000/-
Total	-	Rs.75,68,17,593/-

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The aforesaid amount was paid on 14/03/2012 which falls in the subsequent year, pertaining to assessment year 2012-2013.

2.4 By virtue of the Indemnity Agreement, in the year under consideration the assessee had received from Diageo Holdings B.V., Netherlands an amount of Rs.62,50,00,000/- as reimbursement of deposit made to the Customs Dept. In the course of assessment proceedings the Assessing Officer issued a show cause notice to the assessee, as to why this amount of Rs.62,50,00,000/- received from Diageo Holdings B.V, Netherlands should not be brought to tax in the assessee's hands in this year. The assessee submitted that the customs duty liability got crystallized only in the period relevant to assessment year 2012-13 pursuant to the order of the Customs & Central Excise Settlement Commission order dated 9/2/2012 and for which it made the payment on 14/03/2012. The same being offered for tax in assessment year 2012-13, it cannot be taxed again in assessment year 2011-12. The Assessing Officer after considering the assessee's explanation was of the view and held that this amount of Rs.62.50 crores was exigible to tax in the assessee's hands for the reasons that, the liability to Customs Dept. is of the importer and not Diageo Holdings B.V, Netherlands and that it is a trading receipt. The assessment was

finally concluded under section 143(3) of the Act vide order dated 28/03/2014, wherein the assessee's income was determined at Rs.61,79,86,690/- in view of the following additional disallowances:-

(i) Payment received from Diageo Holdings B.V, Netherlands - Rs.62,50,00,000/-

(ii) Disallowance under section14A - Rs. 1,69,786/-

2.5 Aggrieved by the order of assessment for assessment year 2011-12 dated 28/03/2014, the assessee preferred an appeal before the CIT(Appeals) -3, Mumbai. The CIT(Appeals) dismissed the assessee's appeal vide order dated 30/09/2015

3.1 Aggrieved by the order of the CIT(Appeals) -3, Mumbai dated 30/09/2015 for assessment year 2011-12, the assessee has preferred this appeal rasing the following grounds:-

1. " *The learned CIT (A) erred in assessing the total income of the appellant at Rs.61,79,86,690/- instead of loss of Rs. 71,83,096/- claimed in the return of income.*
2. *The learned CIT (A) erred in holding that the Indemnity proceeds amounting to Rs. 62,50,00,000/- received towards Custom Duty (disclosed as 'loans and advances') is a taxable receipt for the AY 2011-12 instead of AY 2012-13.*
3. *The learned CIT(A) erred in not appreciating the fact that the appellant has already offered the indemnity proceeds to tax in the assessment year 2012-13, as the liability crystallized only in that year.*
4. *Without prejudice to Ground 2 and 3 above, the learned CIT(A) erred in not allowing the deduction of custom duty paid of Rs. 62,50,00,000/- in accordance with the provisions of section 43D of the Act.*
5. *The learned CIT(A) erred in confirming the levy of interest under section 234B and 234D of the Act amounting to Rs. 7,24,22,568/- and Rs. 5,93,106/- respectively".*

3.2.1 Vide letter dated 27/11/2015, the assessee has preferred to raise the following additional grounds of appeal:-

1.0 ***Re.: Taxability of the amount of Rs. 62.50 crores received from Diageo Holdings Netherlands BV pursuant to the Indemnity Agreement:***

1.1 The Assessing Officer has erred in holding that the amount received by the Appellant from Diageo Holdings Netherlands BV pursuant to the Indemnity Agreement dated 07 April 2010 is taxable without appreciating that it is capital receipt which is not chargeable to tax.

1.2 The Appellant submits that considering the facts and circumstances of its case the amount received by it in terms of the aforesaid Indemnity Agreement is a capital receipt and not taxable as its income.

1.3 The appellant submits that the Assessing Officer be directed to recomputed its total income for the year without considering the amount received in terms of te aforesaid Indemnity Agreement.

2 Re.: General:

2.1 *The Appellant craved leave to add, alter , amend, substitute and/or modify in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal*.

3.2.2 Before us, the Ld. Senior Counsel for the assessee submitted that the additional grounds (supra) be admitted for consideration since it raises a purely legal issue and would not require the examination of any new fact other than those already on the record. We have heard the rival contentions of both sides in the matter and carefully considered the issue before us. On an appreciation of the same, we are of the considered opinion that the issue raised in the additional grounds (supra) is purely a legal issue which would not require examination of any new facts, other than the material on record and, therefore, in the interest of equity and justice admit the same for consideration.

4. **Grounds Nos.: 1 to 3:**

4.1 In these grounds, the assessee assails the orders of the authorities below in holding that the indemnity proceeds amounting to Rs.62,50,00,000/- received from Diageo Holdings B.V, Netherlands

towards Customs Duty, which was disclosed as 'loans and advances' in the assessee's books, is a receipt exigible to tax in assessment year 2011-12 instead of assessment year 2012-13,where it was offered for taxation when the liability had crystallized and was accepted as such by the Department.

4.2.1 At the outset, the Ld. Sr. Counsel took us through the facts of the case, on the issue before us. It is submitted that the assessee company, engaged in the business of import and trading of alcoholic beverages till November, 2009, had entered into a Distribution Agreement dated 30/07/2001 with M/s. Diageo Brands B.V for distribution of imported alcoholic beverages in India. In November,2009, the DRI initiated investigations for re-determination of the assessable value of goods imported by the assessee in the period November, 2004 to November, 2009, since it was of the view that the reported assessable value of the imported goods did not reflect the correct import cost as the same were being undervalued. The DRI went about the re-determination of the assessable value declared by the assessee vis-à-vis the import prices of alcoholic beverages of the Diageo Group imported by duty free shops at duty free areas of the international airports.

In the course of DRI's investigations, the assessee deposited the following amounts with the Customs Department:-

Date	Amount(Rs.)
18/11/2009	7,50,00,000
23/11/2009	25,00,00,000
09/12/2009	25,00,00,000
18/02/2010	2,50,00,000
12/05/2010	2,50,00,000

Total	62,50,00,000

4.2.2. It was submitted by the Ld. Sr. Counsel that the assessee entered into an Indemnity Agreement dated 7/4/2010 (placed at page 39 to 51 of the Paper Book) with Diageo Holdings B.V,Netherlands, as per which it received the reimbursement amount of Rs.62,50,00,000/- it had deposited with the Customs Dept. as an advance in the year under consideration. As per clause -2 of the Indemnity agreement, Diageo Holdings Netherlands B.V was to indemnify the assessee of the 'relevant tax' that arose as a consequence of the re-determination of the assessable value. This agreement at clause 10 also provided for the return to Diageo Holdings Netherlands, B.V from the assessee of any amount received back from the authorities concerned.

4.2.3 The Ld. Sr. Counsel submitted that the DRI issued a show cause notice dated 30/03/2011 to the assessee alleging undervaluation of the imported goods and worked out the customs duty liability in this regard at Rs.58,04,28,400/-. According to the Ld. Sr. Counsel, the amount paid to the Customs Authority amounting to Rs.62,50,00,000/- was shown as " Advance payment of taxes" in Note -9'Loan and Advances' to the Balance Sheet as on 31/03/2011 (placed at page 79 of Paper Book). It is submitted that since this receipt was only an advance received and the additional duty paid was only an advance payment towards probable future tax, no effect was given to these items in the return of income filed for the year under consideration i.e. for assessment year 2011-12.

4.2.4 The Ld. Sr. Counsel further submitted that in view of commercial expediency and since it has not been engaged in the import of alcohol

beverages from November, 2009, the assessee decided not to agitate the matter further and approached the 'Customs & Central Excise Settlement Commission' in respect of the aforesaid show cause notice issued to it. As on the date of application before Settlement Commission there was no liability on the assessee to pay the customs duty. The Additional Bench of the Customs & Central Excise Settlement Commission, Mumbai considered the assessee's application and passed its final settlement order dated 9/2/2012 (placed at page 4 to 33 of the Paper Book). In this order, the settlement commission settled the additional customs duty liability payable at Rs.58,04,28,400/- as quantified in the show cause notice dated 30/3/2011 issued to the assessee; interest payable was determined at Rs.16,18,89,193/-. The order further imposed a fine of Rs.80,00,000/- and Rs.40,00,000/- for redemption of the seized goods at Nheva Shava and Delhi regions respectively and imposed a penalty of Rs.20,00,000/- on the assessee.

4.2.5 The Ld. Sr. Counsel submitted that in pursuance of the order of the Settlement Commission dated 9/2/2012, the custom duty liability of Rs.58,04,28,400/- was adjusted against the aforesaid deposit of Rs.62,50,00,000/- and the balance amount of Rs.4,45,71,600/- was adjusted against the interest liability. On 14/03/2012, the assessee made all the required payments of balance of interest liability, redemption fines and penalty, and accordingly the matter was settled. It was further submitted by the Ld. Sr. Counsel that the balance amounts, over and above the advance of Rs.62,50,00,000/-, were received during the financial year 2011-12 relevant to the subsequent assessment year 2012-13. It was contended that since the matter was

settled by the order of the Settlement Commission dated 9/02/2012,when the matter attained finality/liability had crystallized, the total amount of reimbursement received both in assessment year 's 2011-12 and 2012-13 was offered to tax in assessment year 2012-13 and has been accepted as such and taxed by the Assessing Officer as the assessee's income for the said year in the order of assessment passed under section 143(3) of the Act dated 23/3/2015 (Assessment order for assessment year 2012-13, placed at pages 56 to 64 of Paper Book).

4.2.6 The Ld. Sr. Counsel submitted that for the year under consideration, i.e. assessment year 2011-12, the Assessing Officer held that the amount of Rs.62,50,00,000/- received by the assessee by virtue of the Indemnity Agreement dated 7/4/2010 is exigible to the tax. It is contended that this order of assessment is a non-speaking order; which does not give any cogent reason for holding this amount to be a trading receipt and taxing this amount in this year and without establishing any linkage of any factual event of the case that proved that the said customs liability had crystallized in this year 2011-012. The Ld. Sr.Counsel further contended that on appeal the CIT(Appeals) in a non-speaking order confirmed the addition of Rs.62,50,00,000/- without assigning any proper reasons for his action. It was also contended by the Ld. Sr.Counsel that the CIT(Appeals) by wrongly relying on the provisions of section 43B of the Act even rejected the assessee's alternate claim that, if the reimbursement of Rs.62,50,00,000/- was to be held as exigible to tax during the period relevant to assessment year 2011-12, then a corresponding deduction should be allowed for the corresponding payment towards customs duty liability.

4.2.7 The Ld. Sr. Counsel contends that there can be no doubt that the amount of Rs.62,50,00,000/- is a pure reimbursement of expense paid by the assessee as customs duty liability and that this amount accrues to the assessee only in the year in which the liability to pay the additional customs duty has crystallized. It is submitted that since the facts on record establish that the order of the Settlement Commission was passed on 09/02/2012, it is undisputedly established that the assessee's liability to pay the customs duty crystallized only during the financial year 2011-12, relevant to the assessment year 2012-13, the assessee following accrual system of accounting. Consequently, the reimbursement of the customs duty liability which was received under the Indemnity Agreement can also crystallize only in the said assessment year 2012-13 and not earlier in assessment year 2011-12 as erroneously held by the authorities below. In support of this proposition reliance was placed on the decision of the Hon'ble Apex Court in the case of Taparia Tools Ltd. (2015), 372 ITR 605(SC).

4.2.8 The Ld. Sr. Counsel also drew the attention of the Bench to clauses of the 'Indemnity Agreement' dated 7/4/2010 (placed at page 39 to 51 of Paper Book) would bring out the fact that the amount of Rs.62,50,00,000/- received by the assessee thereunder in the year under consideration is purely an advance in respect of likely additional customs duty payable by the assessee pursuant to the DRI investigations in its case, which liability had not yet crystallized. It was also pointed out that clauses 3 to 10 also clearly demonstrates the fact that the receipt of Rs.62,50,00,000/- during the year is only an advance against likely customs duty and that any excess or shortfall would have

to be refunded or received from/to the indemnifier after completion of the proceedings of the Settlement Commission. The Ld. Sr.Counsel submitted that accordingly the aforesaid amount has been reflected in the assessee's books of account as Advance in Note-15 of the Final Accounts for the year ended 31/03/2011 relevant to assessment year 2011-12, from where it is clearly evident that the customs duty of Rs.62,50,00,000/- paid in advance as on 31/3/2011 was reflected as 'Customs Duty Advance Payment' under the head 'Short Term Loans & Advances' (reference to page 79 of Paper Book- Balance Sheet of year ended 31/03/2012 which also reports the relevant figures for assessment year 2011-12 also).

4.2.8 The Ld. Sr.Counsel contends that the said amount of Rs.62,50,00,000/- is an amount received in advance to defray a possible liability and, therefore, it cannot be treated as "income" until the corresponding liability has crystallized. In the case on hand the customs duty liability crystallized pursuant to the order of the Customs & Central Excise Settlement Commission dated 9/2/2012, which is in the subsequent period relevant to assessment year 2012-13 and, therefore, the amount of Rs.62,50,00,000/- can be taxed only in that year and not in the year under consideration i.e. assessment year 2011-12 as has been erroneously made out by the authorities below. In support of this proposition, Ld. Sr.Counsel placed reliance on the decision of the Hon'ble Delhi High Court in the case of Dalmia Cement(Bharat) Ltd. (2013) 357 ITR 459(Delhi), in which it is contended is an identical case of possible levy of 'Sales Tax liability', it was held that when the assessee collected refundable security deposit towards

possibly levy of Sales Tax on packing charges, on the understanding that it would be remitted to the Government if the pending issue of levy of the tax upheld by the Apex Court, the same could not be held to be trading receipt.

4.2.9 The Ld. Sr.Counsel submitted that without prejudice to the aforesaid arguments put forth, the whole amount of Rs.62,50,00,000/- alongwith the additional amount of reimbursement received was offered to tax in the immediately subsequent year, assessment year 2012-13 and the said amount has been accepted as declared and brought to tax by the Assessing Officer / Department in the order of assessment for assessment year 2012-13 passed under section143(3) of the Act vide order dated 23/03/2015.(Assessment order placed at pages 59 to 64 of the Paper Book). It is contended that in these circumstances, the action of the Assessing Officer in again taxing the same amount in the year under consideration i.e. assessment year 2011-12 would amount to double taxation of the same amount which is not permissible in law. In support of this proposition reliance was placed on the decision of the Hon'ble Apex Court in the case of Laxmipat Singhania (1969) 72 ITR 291, wherein it has been held that it is a fundamental rule of the laws of taxation that income cannot be taxed twice, unless otherwise expressly provided in the statute.

4.3.1 Per contra, the Ld. Departmental Representative strongly supported and relied the orders of the authorities below in bringing the amount of Rs.62,50,00,000/- to tax in assessment year 2011-12. It was also contended that even though the assessee had suo-moto declared the impugned amount of Rs.62,50,00,000/-, alongwith other amounts

reimbursed, in the return of income for assessment year 2012-13, which was admittedly accepted by the Department, the same amount has rightly been brought to tax in the year under consideration.

4.4.1 We have heard the rival contentions and perused and carefully considered the material on record, including the judicial pronouncements cited. The facts of the matter on this issue as emanate from the record are that the company was , inter-alia, engaged in the business of import and trading in alcoholic beverages till November, 2009, pursuant to a distribution agreement dated 30/7/201 it had with Diageo Brands B.V.,Netherlands. In the course of assessment proceedings, the Assessing Officer noticed that the assessee had received an amount of Rs.62.50 crores from Diageo Brands B.V, Netherlands , which was disclosed by the assessee as 'reimbursement received' with a Note 12(II)(F) to Schedule 17 to financial statements. In this regard, the Assessing Officer observed that in November, 2009 the DRI had initiated investigations in respect of undervaluation of the assessee's imports before the Customs Dept. for the period November 2004 to November,2009. Pursuant to this, the assessee entered into an Indemnity Agreement dated 7/4/2010 with Diageo Brands BV Netherlands, whereby the assessee was to receive reimbursement of amounts paid/to be paid to the Customs Department and received the said amount of Rs.62.50 cores as an advance towards liability likely to arise under the Customs Act. This amount was shown as 'Advance payment of taxes' in Note-9, 'Loans and Advances' to the Balance Sheet as on 31/03/2011. The DRI's show cause notice dated 30/3/2011 indicated that the additional customs duty liability on

account of under valuation of imports by the assessee would be Rs.58,04,28,000/-. The assessee then approached the Customs & Central Excise Settlement Commission, which by order dated 09/02/2012 worked out the assessee's liability at Rs.75,68,17,593/- which was inclusive of additional customs duty, interest, fine for redemption of seized goods and penalty payment of which were made on 14/3/2012. In this factual matrix, the assessee offered for tax the entire reimbursement received, inclusive of the amount of Rs.62.50 crores, in the period relevant to assessment year 2012-13 on the grounds that the additional customs liability led crystallized in this period; which was accepted as such by the Department in asst proceedings for Assessment year 2011-12. The authorities below were however of the view that the amount of Rs.62.50 crores having been received by the assessee in the period relevant to assessment year 2011-12 was exigible to tax for that year and not for assessment year 2012-13 ad declared by the assessee.

4.4.2 The question for adjudication before us in the grounds at Sl.No.1 to 3(supra) is whether this amount of Rs.62.50 crorres, received by the assessee as reimbursement and shown as 'Advance payment of taxes'as per Note-9 'Loans and Advances' to the Balance Sheet as on 31/3/2011 for assessment year 2011-12, was to be taxed in the same assessment year as held by Revenue or was exigible to tax in assessment year 2012-13, pursuant to the crystallization of this liability consequent to the order of the Customs & Central Excise Settlement Commission dated 9/2/2012 and its final settlement thereof on 14/03/2012.

4.4.3 From the facts on record, as brought out above, we find that the said amount of Rs.62.50 crores received by the assessee from Diageo Brands B.V. Netherlands pursuant to the 'Indemnity Agreement' dated 7/4/2010 is only a reimbursement of expenses paid by the assessee on account of probable future customs duty liability that may arise to the assessee on account of DRI investigation and was , therefore, correctly shown as 'customs duty & advance payment of taxes' in Note 15 to the Balance Sheet as on 31/3/2011 under 'Short Terms Loans and advances'. In our view, this amount of Rs.62.50 crores would accrue to the assessee and be exigile to tax in the assessee's hands only in the year in which the liability to pay the additional customs duty crystallized. The facts on record establish that the said liability, inter-alia, of additional customs duty of Rs.62.50 crores crystallized, not in Asst.year 2011-12 as held by the authorities below but only during the subsequent financial year relevant to assessment year 2012-13 when the assessee's liability to pay the additional customs duty arose, pursuant to the order of the Settlement Commission dated 9/2/2012 which was discharged by the assessee on 14/3/2012. The position that the payment of Rs.62.50 crores received by the assessee is purely an advance in respect of likely additional customs duty payable, which had not yet crystallized, is brought out in clause – 3 and 10 of the Indemnity Agreement dated 07/04/2010 specifying that any excess received by the assessee in this regard would have to be refunded to Diageo Brands B.V. Netherlands after finalization of the proceedings of the Customs & Central Excise Settlement Commission. In this factual matrix, we are of the considered opinion that since the additional customs duty liability crystallized pursuant to the order of the Customs & Central Excise

Settlement Commission order dated 09/02/2012, which is in the subsequent period relevant to assessment year 2012-13, it is exigible to tax only in that year and not in the period under consideration i.e. assessment year 2011-12. This amount of Rs.62.50 crores, therefore, could not be held to be a trading receipt exigible to tax in the year under consideration as held by the authorities below. In coming to this finding, we also draw support from the decision of the Hon'ble Delhi High Court in the case of Dalmia Cement (Bharat) Ltd. (357 ITR 459), where the factual matrix is similar. In this cited case on the issue of a possible levy of 'Sales Tax Liability', it was held that where the assessee has collected refundable security deposit towards possible levy of Sales Tax, on the understanding that it would be remitted to the government if the pending issue of levy of tax was upheld by the Hon'ble Apex Court, the same could not be held to be a trading receipt.

4.4.4 From the facts on record we also find that the Ld. Departmental Representative for the Revenue has not disputed or controverted the fact that admittedly the assessee has offered this amount of Rs.62.50 crores, alongwith additional amounts of reimbursements received for payment of liabilities on account of interest, fine and penalty to tax in the immediately following financial year ending 31/3/2012 relevant to the assessment year 2012-13 and the same has been accepted by the Department in the order of assessment for assessment year 2012-13 passed under section. 143(3) of the Act vide order dated 23/3/2015. Having brought to tax the aforesaid amount of Rs.62.50 crores, as declared by the assessee, in the assessment for assessment year 2012-13, we are of the view that it is not open to Revenue to tax the same

amount once again in the assessment year 2011-12. In coming to this finding, we place reliance on the decision of the Hon'ble Apex Court in the case of Laxmipat Singhania (79 ITR 291) wherein the Hon'ble Court has held that the fundamental rule of taxation is that, unless expressly provided the same income cannot be taxed twice.

4.4.5 Taking into consideration the factual and legal matrix of the case, as discussed above from paras 4.1 to 4.4.4 (supra), we are of the considered opinion that the said amount of Rs.62.50 crores is exigible to tax, as declared by the assessee, only in the financial year relevant to assessment year 2012-13 and not in the period relevant to assessment year 2011-12 as held by the authorities below. We, therefore, reverse the impugned order of the CIT(Appeals) and allow the assessee's appeal in terms of the grounds raised at Sl.Nos. 1 to 3.

5. In ground No.5, the assessee denies itself liable to be charged interest under section. 234B and 234D of the Act. The charging of interest is consequential and mandatory and the Assessing Officer has no discretion in the matter. This proposition has been upheld by the Hon'ble Apex Court in the case of Anjum M.H. Ghaswala (252 ITR 1) (SC) and we , therefore, uphold the action of the Assessing Officer in charging the said interest. The Assessing Officer is however, directed to re-compute the interest chargeable under section. 234B and 234D of the Act while giving effect to this order.

6. In view of our decision allowing the assessee's appeal in terms of the grounds raised at Sl.Nos. 1 to 3(supra) we do not deem it necessary to adjudicate the alternate ground raised at Sl.No.4 and additional grounds raised at Sl.Nos. 1.0 (1.1 to 1.3).

7. In the result, the assessee's appeal for assessment year 2011-12 is allowed as indicated above.

Order pronounced in the open court on 29/02/2016

Sd/-	Sd/-
(RAM LAL NEGI)	(JASON P. BOAZ)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dated 29/02/2016

Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai