

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
&  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**ITA No. 561/Del/2016  
(Assessment Year: 2012-13)**

DCIT (International Taxation) Circle 1(3)(1) New Delhi.	vs	GE Nuovo Pignone SPA 6 <sup>th</sup> Floor, Building 7A, Standard Chartered Building, DLF Cyber City, Gurgaon. <b>AABCG3212A</b>
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<b>Assessee by</b>	<b>Sh. Sachit Jolly, Adv.</b>
<b>Revenue by</b>	<b>Sh. G.K. Dhall, CIT DR</b>

<b>Date of Hearing</b>	<b>31.05.2018</b>
<b>Date of Pronouncement</b>	<b>01.06.2018</b>

**ORDER**

**PER SHRI BHAVNESH SAINI, J.M.**

This appeal by the Revenue has been directed against the order of DCIT, Circle 1(3)(1) (International Taxation), New Delhi dated 30.12.2015 for A.Y. 2012-13 passed u/s 144C(13)/143(3) of the Income Tax Act, 1961 (hereinafter for short called as the "Act") on the ground that the Department has filed review petition before the Hon'ble Supreme Court on the chargeability of interest u/s 234B of the Act in the same group of companies. The DRP in their

order dated 27.11.2015 noted that regarding interest u/s 234B of the Act, the assessee has argued that since all the payments made to non-resident assesseees are subject to withholding tax u/s 195 of the Act, hence, interest u/s 234B of the Act is not leviable. The proviso below section 209(1) was only inserted w.e.f. AY 2013-14 and is a prospective amendment. Reliance has been placed on the decision of Delhi High Court in the case of GE Capital. The DRP following the above decision on the issue directed the AO to delete interest u/s 234B of the Act. The AO in view of the directions of the DRP did not charge interest.

2. The Revenue only contended that review petition is pending in the Supreme Court on the chargeability of interest u/s 234B of the Act, on the other hand, Ld. Counsel for the assessee submitted that issue is covered in favour of the assessee by judgment of jurisdictional Delhi High Court in the case of Director of Income Tax (International Taxation) vs. GE Packaged Power Inc. reported in 373 ITR 65 (Delhi) in which group appeals have been decided including the assessee and in para 23 it was held as under:

*“For the above reasons, this court finds that no interest is leviable on the respondent-assesseees under section 234B even*

*though they filed returns declaring nil income at the stage of reassessment. The payers were obliged to determine whether the assesses were liable to tax under section 195(1), and to what extent, by taking recourse to the mechanism provided in section 195(2) of the Act. The failure of the payers to do so does not leave the Revenue without remedy; the payer may be regarded an assessee-in-default under section 201, and the consequences delineated in that provision will visit the payer. The appeal of the Revenue is accordingly dismissed without any order as to costs.”*

2.1 He has, therefore, submitted that issue is covered in favour of the assessee.

3. Considering the above, we are of the view that the issue is covered in favour of the assessee by judgment of Delhi High Court in the case of GE Packaged Power Inc. (supra). Merely because the review petition is pending before the Supreme Court is no ground to take a contrary decision.

4. In the result, the departmental appeal fails and is dismissed.

Order pronounced in the open court on 01.06.2018

Sd/-

**(L.P. SAHU)**

**ACCOUNTANT MEMBER**

Dated: 01.06.2018

\*Kavita Arora

Sd/-

**(BHAVNESH SAINI)**

**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

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