

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.1498/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2012-13)

DCIT (International Taxation)-3(3)(1), Mumbai	बनाम/ Vs.	M/s. Quintiles Transnational Corp. C/o. Deloitte Haskins & Sells, Chartered Accountants, Tower 3, 27 th - 32 nd Floor India Bulls Finance Centre Elphinstone Mill Compound Mumbai-400013.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACQ2015N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Ram Tiwari (Sr. AR)	
Assessee by:	Shri K.K. Ved	

सुनवाई की तारीख / Date of Hearing: 25.05.2018

घोषणा की तारीख /Date of Pronouncement: 06.07.2018

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 14.12.2015 passed by the Dispute Resolution Panel -2, Mumbai [hereinafter referred to as the “DRP”] relevant to the A.Y.2012-13.

2. The revenue has raised the following grounds: -

“Whether on the facts and in circumstances of the case and in law, the Ld. DRP was justified in holding that the assessee Company is not liable to interest u/s 234B of the Act, despite decision of

Hon'ble Delhi High Court in the case of Alkatel Lucent USA Inc. Vs. DCIT

2. The appellant prays that the order of the Ld. DRP on the above ground be set aside and that of the AO be restored.”

3. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. Under this issue the revenue has challenged the order of the DRP in which it is specifically held that the assessee company is not liable to pay the interest u/s 234B of the Act. Before going further, we deemed it necessary to advert the finding of the DRP on record: -

“6.3 The Ground of Objection No. 3 relates to levy of interest u/s 234B amounting to Rs.10,57,589/- and u/s 234C of R.3,064/- in the draft assessment order. In the case of Director of Income-Tax (International Taxation) Vs. NGC Network Asia LLC (2009) 222 CTR 0086: (2009) 18 DTR 0203: (2009) 313 ITR 0187, the Hon'ble Bombay High Court has held that when a duty is cast on the payer to deduct tax at source, on failure of the payer to do so, no interest can be imposed on the payee assessee under s. 234B. Following the judgment of Hon'ble Bombay High Court, the AO is directed not to charge interest u/s 234B & u/s 234C of the I.T. Act 1961. Accordingly, this ground of objection of the assessee company is accepted and the AO is directed to modify the draft order, accordingly.”

4. On appraisal of the above said finding, we noticed that the DRP has decided the issue on the basis of the decision of Bombay High Court in the case of **DIT (International Taxation) Vs. NGC Network Asia LLC (2009) 222 CTR 0086**. At the time of argument, the Ld. Representative of the assessee has also placed reliance upon the order passed by the Hon'ble ITAT in his own case for the A.Y.2012-13 in ITA. No. 1497/M/2016 dated 27.11.2017. The relevant finding is hereby reproduced as under.: -

“2. We have heard the rival submissions and carefully considered the same along with the orders of the authorities below. The only issue involved in this appeal relates to levy of interest u/s. 234B of the Act. After hearing both the parties, we noted that this issue is no more res integra in view of the decision of the jurisdictional High Court in the case of Director of Income-tax (International Taxation) vs. NGC Network Asia LLC 313 ITR 187 (Bom), in which the High Court has clearly held that when a duty was cast on the payer to deduct the tax at source, on failure of the payer to do so, no interest could be imposed on the assessee u/s. 234B. It is not denied that payer in the impugned case was under an obligation to deduct the tax at source but he has not deducted the tax at source on the income on which assessment has been made in the hands of the assessee. The Assessing Officer levied interest u/s. 234B as the advance tax paid by the assessee including the TDS was less than the amount the assessee was under an obligation to pay. The fact remains that there was failure on the part of the assessee to pay advance tax only in respect of the income which is subject to deduction of tax at source. Thus, interest was levied on the assessee to the failure of the payer to deduct tax at source.”

5. Since the issue has duly been covered by the Bombay High Court in the case of **DIT (International Taxation) Vs. NGC Network Asia LLC (2009) 222 CTR 0086** in which it is specifically held that the assessee was not under obligation to deduct the tax because it was the initially duty of payer, therefore, in the said circumstances, it is quite clear that the DRP has decided the matter of controversy judiciously and correctly which is liable to be interfere with at this appellate stage.

6. In the result, the appeal filed by the **revenue is hereby ordered to be dismissed.**

Order pronounced in the open court on 06.07.2018.

Sd/-
(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 06.07.2018

vijay

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**