

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

**BEFORE SHRI G. D. AGRAWAL, PRESIDENT  
AND  
SH. LALIET KUMAR, JUDICIAL MEMBER**

**ITA No. 6673/DEL/2016 ( A.Y 2008-09)**

DCIT (International Taxation) Dehradun  <b>(APPELLANT)</b>	Vs	Express Drilling System LLC Ltd. c/o. M/s. Nangia & Co. 3 <sup>rd</sup> Floor, NCR Plaza, New Cantt, Road Dehradun AABCE6891R <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Surnder Pal, CIT DR</b>
<b>Respondent by</b>	<b>Sh. Amit Arora &amp; Vishal Misra, CA</b>

<b>Date of Hearing</b>	<b>14.08.2018</b>
<b>Date of Pronouncement</b>	<b>14 .08.2018</b>

**ORDER**

**PER LALIET KUMAR, JM**

The present appeal is filed by the Revenue against the order dated 31/10/2016 passed by CIT(A)-2, Noida for Assessment Year 2008-09 on the following grounds:-

*“(i) Whether on the facts and in the circumstances of the case, the CIT (A) has erred in holding that the assessee is not liable to pay interest u/s 234B of the Act by ignoring the fact that the assessee cannot escape the liability to pay interest u/s 234B of the I.T. Act where the income is claimed to be taxable at a lower rate but is eventually held to be chargeable to tax at a higher rate in assessment proceedings.*

(ii) . Whether on the facts and in the circumstances of the case and in law, the CIT (A) has erred in directing the Assessing Officer not to levy interest u/s 234B of the Income Tax Act, 1961 when the decision of the Hon'ble Delhi High Court in GE Packaged Power Inc has not attained finality as the review application of the Revenue is pending in the Hon'ble Supreme Court.

(iii) The appellant prays for leave to add, amend, modify or alter any grounds of appeal at the time or before the hearing of the appeal.

2. At the outset, the Ld. AR submitted that the case of the Revenue is covered in favour of the assessee by the decision of the Co-ordinate Bench in the matter of the assessee for the Assessment Year 2010-11 & 2011-12, in ITA No. 1534/Del/2016 wherein identical issue was adjudicated by the Bench after relying upon the decision of the Hon'ble Jurisdiction High Court in the matter of *CIT vs. Oil Limited (ITA No. 56 of 2007)* and also in the matter of GE Packaged Power Inct. (ITA No. 353/Del/2014).

3. The Ld. DR on behalf of the Revenue, has not dispute this fact.

4. We have careful considered the rival contentions of parties and perused the material available on record. The Co-Ordinate Bench in para 6 held as under:-

*"6. We have heard Ld. A.R. of the assessee and perused the relevant records, especially the impugned order. We find that the position of law as it stands till the year 2011-12 as interpreted by various Courts support the*

*contention of the Assessee that interest on advance tax was not payable. Apart from the judgment of Jurisdictional High Court in the case of [CIT vs. Oil Limited \(ITA No. 56 of 2007\)](#), the decision of Hon'ble Delhi High Court in the case of [GE Packaged Power Inc. \(ITA No. 353/2014\)](#) and connected matters - [TS-27-HC-2015 \(DEL\)](#) also is in favour of the assessee in which it has been held that the primary liability of deducting tax (for the period concerned, since the law has undergone a change after the [Finance Act, 2012](#)) was that of the payer. The payer would be an assessee in default, on failure to discharge the obligation to deduct tax, under [section 201](#) of the Act and no interest was leviable on the assesses under [section 234B](#) of the Act. Therefore, in our considered view, the Ld. CIT(A) has rightly allowed this issue in favour of the assessee by respectfully following the above precedent, which does not need any interference on our part, hence, we uphold the well reasoned order passed by the Ld. CIT(A) on the issue in dispute and accordingly reject the grounds raised by the Revenue. 6.1 Following the consistent view as taken in assessment year 2010-11, as aforesaid, the similar ground raised in assessment year 2011-12 is also decided in favour of the assessee and against the revenue.”*

5. Respectfully following the decision of the Co-Ordinate Bench in the case assessee we here by dismiss the appeal filed by the Revenue, as no distinguishable fact brought to any notice by the parties.

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 14/8/2018

**Order pronounced in the Open Court on 14th August, 2018.**

Sd/-

Sd/-

**(G. D. AGRAWAL)  
PRESIDENT**

**(LALIET KUAMR)  
JUDICIAL MEMBER**

Dated: 14/08/2018  
*R. Naheed \**

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	14.08.2018
Date on which the typed draft is placed before the dictating Member	14.08.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	14.08.2018
Date on which the final order is uploaded on the website of ITAT	14.08.2018
Date on which the file goes to the Bench Clerk	14.08.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	