

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

**ITA.NO.709/MUM/2017 (A.Y: 2012-13)**

M/s. Tenova SPA C/o Rejendra & Co. 1311, Dalamal Tower, 211 Nariman Point, Mumbai -400 021  <b>PAN NO: AADCT 1393 H</b>	v.	DCIT (IT)– 4(1)(2) Air India Building Nariman Point, Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

**Assessee by : Shri Apurva R. Shah**

**Revenue by : Shri M. Rajguru**

**Date of Hearing : 26.06.2018**

**Date of Pronouncement : 12.09.2018**

**ORDER**

**PER C.N. PRASAD (JM)**

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) – 58, Mumbai dated 14.10.2016 Assessment Year 2012-13.

2. The assessee raised the following grounds in its appeal: -

“1. In holding that the appellant was liable to pay advance tax and accordingly computing interest u/s 234B. This was notwithstanding that the appellant was a Non Resident and the payers of income were obliged to do TDS on the income so paid.

2. In not appreciating correctly that in cases where the appellant had a certificate u/s 197 for deduction of TDS at a lower rate, but the tax liability was

higher, the appellant had already computed interest u/s 234B. He erred in assuming that all the income earned was covered by the certificate issued under Section 197.”

3. The Assessing Officer while completing the assessment noticed that assessee is a tax resident of Italy, it has income from supervision services rendered for installation for furnaces for various company's in India and the assessee has offered the income from supervisory services, being attributable to deemed Permanent Establishment (PE) in India for taxation @40% of the Act. He also noticed that assessee earned exempt income from other sources not attributable to supervisory PE and offered tax @10% u/s. 115A of the Act. He computed the total income of the assessee accordingly. While computing the total income and tax liability the Assessing Officer charged interest u/s. 234B of the Act. The assessee before the Ld.CIT(A) contended that in respect of remittances where the TDS was done against the order u/s. 197 of the Act interest u/s. 234B was computed. However, in remaining cases assessee is not liable to charge interest u/s. 234B of the Act as the onus was on the deductors to deduct TDS u/s. 195 of the Act and hence the assessee could not be charged interest u/s. 234B of the Act on these amounts. The assessee also placed reliance on the decision of the Special Bench in the case of Motorola Inc. reported in 95 ITD 269 in support of its contention. However, the Ld.CIT(A) not appreciating the submissions of the assessee sustained the interest levied u/s. 234B of the Act.

4. Ld. Counsel for the assessee reiterated the submissions made before the lower authorities.

5. Ld. DR vehemently supported the orders of the authorities below.

6. We have heard the rival submissions, perused the orders of the authorities below. On hearing both the sides, we are of the considered view that this matter has to go back to the Assessing Officer for fresh adjudication in the light of the submissions of the assessee and the decision of the Special Bench in the case of Motorola Inc. (supra). Hence, we restore this matter to the file of the Assessing Officer for denovo adjudication, keeping in view the decision of the Special Bench. Needless to say that the Assessing Officer shall provide adequate opportunity of being heard to the assessee.

7. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on the 12<sup>th</sup> September, 2018.

Sd/-  
**(RAJESH KUMAR)**  
**ACCOUNTANT MEMBER**

Mumbai / Dated 12/09/2018  
Girdhar, Sr.PS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**