

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "I-2": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.:-6711/Del/2015  
Assessment Year: 2012-13

Viking Supply Ships Ltd., Co Pricewater house Coopers Pvt. Ltd., PWC House, Plot 18A, Guru Nanak Road, (Station Road) Bandra (West) Mumbai Pin 400050 PAN AAICS2595R	vs.	DCIT (International Taxation) Dehradun
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Ms. Shubhangi Arora, Adv.
Department by :	Shri Sanjay Kumar Yadav, Sr. DR
Date of Hearing	12/07/2018
Date of pronouncement	08/10/2018

**ORDER**

**PER AMIT SHUKLA, J.M.**

The aforesaid appeal filed by the assessee against final assessment order dated 23.10.2015, passed u/s 143(3)/144C(13) the assessee has mainly challenged the action of the AO in not following the direction of the DRP by bringing the interest amounting to Rs. 40,00,679/- u/s 244A to tax.

2. Brief facts are that assessee has received interest u/s 244A amounting to Rs. 40,00,679/- on income tax return determined as per intimation issued u/s 143(1) for the assessment year 2010-11. On this interest, TDS of Rs. 16,89,487/- was deducted by the AO. The assessee has offered the aforesaid interest u/s 244A in its return of income @15% which was as per Article 12 of the DTAA between India and UK dealing with the taxability of the interest income. Later on, AO has withdrawn the interest granted vide his assessment order passed u/s 143(3) read with section 144C (13) for assessment year 2010-11 vide order dated 20.11.2013.

3. DRP held that when the interest u/s 244A has been withdrawn by the AO, then such interest cannot be included in the determination of the total income by the AO for the year under consideration. It further held that assessee has already offered the aforesaid interest income to tax @ 15% in accordance with the Article 12 of the DTAA and, therefore, levying tax @ 42.04% is not correct. Ld. AO despite such a direction by the DRP has not given effect and again brought to tax the interest @ 40% after observing and holding as under :-

*“5.2 The assessee has offered interest income of Rs. 40,00,679/- on income tax refund to be chargeable to tax @ 15% thereof claiming to be covered by provisions of Article 12 of DTAA between India and UK. The contention of the assessee in this regard is not acceptable and interest income is to be brought to tax @ 40% as applicable to foreign companies. The assessee’s written submissions dated 11.12.2014, in this regard on this issue have been considered and is not found acceptable.*

*5.2.1 Income is earned, being in the nature of interest, generating from PE which is the case here. Assessee has carried out business in India for several years for which it has a PE in India, which it*

*itself claims and on account of which the assessee has earned income which has been subjected to tax and offered u/s 44BB of the Act by it. The excess income tax deducted/paid on account of such income, having been generated from this PE, has attracted interest u/s 244A of I.T. Act and therefore it partakes the character of interest on such income/business carried out in India on account of which income tax is determined payable as a statutory liability. Therefore, this interest income is on account of its PE in India through which business was carried out. This interest income u/s 244A is therefore to be treated as business income as defined in the Income Tax Act and also. in Article 7 of the DTAA dealing with "Business Profit". In fact perusal of Article 12 of the DTAA, claimed by the assessee, clearly shows that interest u/s 244A of I.T. Act is not covered by the said Article. In fact interest on income tax refund cannot be termed as "debt claims of every kind" as interest on income tax refund is not a debt on government or of the nature defined in the said Article. Thus contentions of AR of the assessee are out rightly rejected as stated above.*

*Interest income u/s 244A is therefore, brought to tax as business income chargeable to tax at the rate applicable to non-resident companies."*

4. After considering the submissions made by the parties and on perusal of the observation and the finding given in the impugned order, we find that AO has grossly erred in law in not complying with the directions of the DRP and has still proceeded to tax the interest u/s 244A @ 40%. Such an action of the AO by not following the direction of the DRP is against the provision of law as given in section 144C (10), wherein direction issued by the DRP is binding by the AO.

Accordingly, we set aside the entire finding of the AO and direct him to follow the direction of the DRP and give consequential relief to the assessee.

5. In the result appeal of the assessee is allowed.

Order pronounced in the Open Court on 8<sup>th</sup> October, 2018.

**sd/-**

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**sd/-**

**(AMIT SHUKLA)  
JUDICIAL MEMBER**

Dated: 08 /10/2018

***Veena***

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi