IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'B', KOLKATA
[Before Shri P.M. Jagtap, Vice President & Shri S.S. Godara, JM]

I.T.A. No. 622/Kol/2017
Assessment Year 2008-09

Haldia Petrochemicals Ltd.....Appellant
Bengal Eco Entelligent Park (Techna),
Tower – 1, Block – EM, Plot No. – 3,
Sector – V, Salt Lake City, 3rd Floor,
Kolkata – 700 091
[PAN: AAACH 7360 R]

D.C.I.T. CIR 11(1).....Respondent
P-7, Chowringhee Square,
Kolkata – 700 069

I.T.A. No. 609/Kol/2017
Assessment Year 2008-09

D.C.I.T. CIR 11(1).....Appellant
P-7, Chowringhee Square,
Kolkata – 700 069

Haldia Petrochemicals Ltd.....Respondent
Bengal Eco Entelligent Park (Techna),
Tower – 1, Block – EM, Plot No. – 3,
Sector – V, Salt Lake City, 3rd Floor,
Kolkata – 700 091
[PAN: AAACH 7360 R]

Appearances by:
Shri H Chakraborty, AR appearing on behalf of the Assessee.
Shri P.K. Srihari, CIT, DR appearing on behalf of the Revenue.

Date of concluding the hearing : November 01, 2018
Date of pronouncing the order : November 22, 2018

ORDER

SHRI P.M. JAGTAP, VICE PRESIDENT

These two appeals, one filed by the assessee being ITA No. 622/K/2017 and the other filed by the revenue being ITA No. 609/K/2017, are cross appeals which are directed against the order of Ld. CIT (A) – 10, Kolkata dated 30.01.2017.

2. The issue involved in Ground No. 1 of the assessee's appeal relates to the disallowance of Rs. 57,53,60,000/- made by the A.O. and

confirmed by the Ld. CIT(A) on account of unexplained excess consumption of raw material (Nahptha).

3. The assessee in the present case is a company which is engaged in the business of manufacturing of polymers & other petrochemical products. The return of income for the year under consideration was filed by it on 26.09.2008 declaring total income of Rs. NIL. During the course of assessment proceedings, the assessee company was required by the A.O. to furnish the details of consumption of raw materials vis-a-vis its end products. From the details so furnished, it was noticed by the A.O. that there was excess consumption of raw materials i.e. Naphtha to the extent of 18560 MT by the assessee during the year under consideration. As the assessee could not offer any explanation in respect of the said excess consumption in spite of sufficient opportunity afforded in this regard, the A.O. treated the excess consumption of Nahptha to the extent of 18560 MT as unexplained and added the value of the same amounting to Rs. 57,53,60,000/- calculated @ Rs. 31,000/- per MT to the total income of the assessee in the assessment completed u/s 143(3) vide an order dated 29.12.2010.

4. Against the order passed by the A.O. u/s 143(3), an appeal was preferred by the assessee before the Ld. CIT(A) challenging inter alia the addition of Rs. 57,53,60,000/- made on account of the alleged excess consumption of Nahptha. During the course of appellate proceedings before the Ld. CIT(A), the following submissions were made on behalf of the assessee company in support of its case on this issue:

"The appellant is in the petrochemical business and produce various polymers and chemicals of different types/grades in its plant at Haldia, West Bengal. The main input is Naphtha and sometimes certain hydrocarbons obtained from cracking of Naphtha like C5 recycle, PLG are used as inputs.

During the course of the assessment, the Ld. A.O. asked for standard yield (terming it as co-efficient of consumption). Accordingly the appellant submitted the standard input output statement for the relevant year i.e. 2007-08. A copy is enclosed in page 9. As per the statement, 3.32 MT of input feed is required to obtain 2.79 MT of standard output. Based on this relation, for actual output of 14,59,820/- MT the standard input feed would be (14,59,820x3.32/2.79) 17,37,133 MT. In the statement it is also stated the actual feed was 17,55,693 MT. Therefore there was difference of 18,560 MT between standard feed with actual feed. It was also mentioned the actual feed of 17,55,393 consisted of

'Naphtha	*17,09,889*
C5 Recycle	*32,848*
LPG	*12,955'*

Thereafter the Ld. A.O. issued a show cause notice (herein after referred to as SCN) to the appellant on 21.12.2010 a copy of which is enclosed in page 10. In the SCN the appellant was asked to show cause within 24.12.2010 as to why
'the excess consumption of 18560 MT of Naphtha @ Rs. 31,000/- per MT which comes to Rs. 57,53,60,000/- shall not be treated as not your consumption and why the said amount shall not be added back with your net profit'

The appellant has replied to the SCN on 24.12.2010. A copy of the reply duly acknowledged by the Ld. A.O.'s office is enclosed in pages 11 to 12. In the said reply the appellant explained the difference of 18560 MT as under:

i. Shutdown loss	*7300 MT*
ii. Shift of production towards fuel gas	*4300 MT*
iii. LPG usage as fuel in NCU	*2000 MT*
iv. Others	*4960 MT*

Apart from the above it was pointed out that the Ld. A.O. had presumed that the entire input was Nahptha only but actually it was mixture of Naphtha, C5 recycle and LPG with Naphtha being the dominant constituent.

However for reasons not known to the appellant the Ld. A.O. passed an assessment order on 29.12.2010 without considering or even referring to the explanation furnished by the appellant vide its aforesaid letter dated 24.12.2010. In fact the Ld. A.O. observed in para 3 of the order that no explanation or reply had been received to the SCN dated 21.12.2010 and A.R. could not explain anything in respect of excess consumption of raw materials. Accordingly, the entire 18,560 MT of input which Ld. A.O. presumed to be Naphtha only valued @ 31,000/- per MT amounting to Rs. 57,53,60,000/- is to be disallowed from the cost of consumption as it is excess consumption and the Ld. A.O. added the same to the total income of the appellant.

The appellant submits the aforesaid action of the Ld. A.O. is not tenable for the following reasons:

i. First of all the Ld. A.O. was utterly wrong in observing that the appellant failed to explain the reasons for difference of 18560 MT from the standard even when the explanation was furnished in writing, within the time specified in the SCN and acknowledged by his office itself.

ii. The explanation given in the letter dated 24.12.2010 is fully satisfactory and complete as may be seen from the copy enclosed in pages 11 to 12.

iii. Even assuming, without admitting in any manner whatsoever, that no explanations have been given, yet the difference of 18,560 MT as a percentage of standard consumption of 17,37,133 is approximately 1.07% which is well within normal variance limit. There can never be a situation where the actual consumption will be equal to the standard. Some degree of difference is always present and the difference of 1.07% in this case is absolutely reasonable.

Therefore the Ld. A.O.'s decision to disallow alleged excess Nahptha consumption is completely bad in law. Hence the disallowance made in the assessment order should be set aside."

5. The above submissions made by the assessee were forwarded by the Ld. CIT(A) to the A.O. seeking remand report. In the remand report submitted to the Ld. CIT(A), the Assessing Officer stated that the assessee could not furnish any documentary evidence to support

and substantiate its explanation in respect of excess consumption of Naphtha and in the absence of such supporting evidence, the claim of the assessee for excess consumption of Naphtha was not acceptable. When the remand report submitted by the A.O. was confronted by the Ld. CIT(A) to the assessee, it was submitted by the assessee that no sufficient opportunity was afforded by the A.O. to furnish the relevant supporting documents pertaining to the period of 10 years back. It was reiterated on behalf of the assessee before the Ld. CIT(A) that the explanation in respect of the alleged excess consumption Naphtha was duly offered during the course of assessment proceedings itself by a letter dated 21.12.2010 and the existence of the said letter was accepted by the A.O. It was also submitted that the excess consumption of Naphtha as alleged by the A.O. was only 1.07% of the total consumption and the same should be accepted as normal. The Ld. CIT(A) did not accept this stand of the assessee and proceeded to confirm the addition of Rs. 57,53,60,000/- made by the A.O. on account of excess consumption of Naphtha for the following reasons given in paragraph no. 11 and 12 of his impugned order:

> *"11. I have carefully considered the action of the Ld. A.O. and the reasoning offered during the assessment as well as the remand proceedings. I have also considered the submissions of the appellant both during the stage of assessment as well as the stage of appeal and remand. I have also perused the case law relied upon by the appellant. I find that the Ld. A.O. has gone by a scientific method of analysis in order to arrive that there was excessive consumption of raw materials no commensurate with the output. It is to be said that in the line of production the coefficient of consumption gives valuable insight into the production figures and the efficiency of production, and the A.O. has relied upon such figures as produced by the assessee during the assessment stage. It is to be observed that from the chart prepared and submitted by the assessee, the Ld. A.O. observed that during the year under consideration the assessee company consuming excess (materials) as shown to that extent which should have been actually utilized as per the coefficient of consumption*

given by the assessee which is to the tune of 18,560 MT of raw material i.e. Naphtha for the actual output production shown to have been manufactured. In the stage of remand the assessee has only repeated what was said during the assessment. It has been stated that the difference of the actual feed and the standard feed (relied upon by the A.O.) was mainly due to the following reasons:
a. Shutdown Loss: During NCU start up some faring of Naphtha / intermediate products is required till plant operation is stabilized. In the FY 2007-08, there are number of times NCU shutdowns took place for various reasons and in the process 73 00 tons feed were lost.

b. Shift of production towards Fuel Gas: Relative quantities of products and by products from NCU depends on Naphtha feed composition, which varies with sources of Naphtha, Fuel Gas generation increased in NCU from typical 15.6% to 15% by which increase of around 4300 MT of feed was lost in Fuel Gas during 2007-08.

c. LPG usage as fuel in NCU: LPG is used in NCU as supplemental feed with input/output given earlier only showed feed and products and not the quantity used for fuel purpose. In the year 2007-08, 2000 tons LPG has been used for fuel purpose.

d. Balance loss from Naphtha cracker unit: Balance loss is 5600 MT due to various other reasons.

12. However the same was unacceptable to the Ld. A.O. as the claims made for the impugned difference were not supported with any documentary evidence, such as the reason for shut down, documents relating to the shift of production towards another source of energy. Before the Ld. A.O. during remand the assessee had expressed its inability to furnish the same. The Ld. A.O. noted that only the submissions made earlier were reiterated and the assessee is silent about the raw material loss from Naphtha cracker unit of 5600 MT. After examining the matter, I am persuaded to agree with the Ld. A.O. and in my considered view it is quite inconceivable as to how the appellant does not have the necessary documents and calculation / production sheets to support its contention. It is to be said that the assessee-appellant M/s. Haldia Petrochemicals Ltd. (HPL) is a highly competitive modern Naphtha based petrochemical complex located 125 kms from Kolkata, at Haldia, West Bengal, India and is known to be a highly prestigious Joint Venture Project having the Government of West Bengal, The Chatterjee Group, the TATAS with the Indian Oil Corporation, as major stakeholders with an investment of Rs. 5864 crores. In my considered view of the matter, the same applies to the

matter regarding the claim of shift of production towards fuel gas. In this matter also, the appellant has only given certain figures which are not backed up with relevant record of production and quantitative details. It has to be said that any shift of input costs are highly valuable charge of technology and there would surely be a record in the matter. The appellant has been unable to provide any records and documents in the matter, and this in my considered view goes against the appellant. In the matter of LPG usage as fuel in the Naphta Cracker Unit also, the appellant has not been able to provide any back up documentation in the matter, even while making a claim that around 4,300 MT of feed was lost in Fuel Gas for the Financial Year 2007- 08. Even more intriguing is the claim of the appellant that the balance loss from the Naphta Cracker Unit was about 5600 MT due lo 'various other reasons'. These reasons have not been mentioned by the appellant, even less elaborated. In a situation such as this where there is a difference however small, the appellant is well expected to explain the difference with specific documents; instead only general and non-specific reasons have been mentioned and no documentation has been provided. The plea of the assessee that the Ld. AO did not allow much time in the remand proceedings is without merit, as it is to be said that the assessment was completed on29.12.2010 and the appeal was filed on 28.01.2011, and that the appellant ought to be fully prepared with basic documents to defend its case. I have also carefully perused the judgment relied upon by the appellant, namely the case of DCIT vs.

Sahara India Mass Communication (ITA No. 4751/Del/2011 & CO No. 406/Del/2011) the Hon'ble Tribunal has held that actual wastages cannot be compared with the fixed standard and disallowances for wastage cannot be made on the basis of standard when the reason for the excess wastage was explained by the Assessee. In my considered view of the matter, the Judgment has been rendered in a different set of facts and circumstances, and that the same is not applicable to the

case of the appellant-assessee. In that case there was a clear finding by the Higher Authority that the assessee had preserved quantitative records wherein the full details of raw material (newsprint) purchased and used were recorded. In the case of the assessee such details are conspicuous by their absence. In the case before the Hon'ble ITAT the reasons for wastage had been explained before the Ld AO and thus there was reason to deviate from the established "fixed standard". The same is not applicable in the case of the assessee, and the deviation from the standard has remained unexplained. In the circumstances I am persuaded to agree with the Ld. AO, and hold that the disallowance/addition of Rs. 57,53,60,000/- was warranted in the case of the appellant, and the said addition is accordingly confirmed.

In summary, the grounds 1 and 2 are adjudicated against the appellant and stand dismissed."

6. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the excess consumption of Naphtha as noticed from the relevant details filed by the assessee was disallowed by the A.O. on the ground that no explanation whatsoever was offered by the assessee in this regard. As pointed out on behalf of the assessee company before the Ld. CIT(A), such explanation however was offered in writing vide letter dated 21.12.2010 but the same was not considered by the A.O. When the matter was remanded by the Ld. CIT(A) to the A.O., the A.O. accepted the existence of such explanation offered by the assessee vide letter dated 21.12.20102 but did not accept the same in the absence of any supporting documentary evidence furnished by the assessee. As submitted on behalf of the assessee company before the Ld. CIT(A) as well as before us, sufficient opportunity was not afforded by the A.O. to the assessee during the course of remand proceedings to furnish the relevant supporting documentary evidence relating to the period 10 years back. It appears that the Ld. CIT(A) however overlooked this vital aspect specifically pointed out by the assessee and proceeded to confirm the addition made by the A.O. on account of alleged excess consumption of Naphtha without giving the assessee a proper and sufficient opportunity to support and substantiate its claim by producing the relevant documentary evidence. There is thus a clear violation of principles of natural justice on the part of the Ld. CIT(A). In reply to a query raised by the bench in this regard, the learned counsel for the assessee has submitted that

the relevant documentary evidence to support and substantiate its explanation in respect of the alleged excess consumption of Naphtha is duly maintained by the assessee company and the assessee company is in a position to produce the same for verification before the A.O. if proper and sufficient opportunity is given to the assessee. Keeping in view all the facts of the case, we consider it fair and proper and in the interest of justice to give one more opportunity to the assessee. Accordingly we restore this issue to the file of the A.O. for deciding the same afresh after giving a proper and sufficient opportunity to explain the alleged excess consumption of Naphtha by producing the relevant supporting documentary evidence. Ground No. 1 of the assesee's appeal is accordingly treated as allowed for statistical purpose.

7. The issue involved in Ground No. 2 of the assessee's appeal relates to the disallowance made by the A.O. u/s 14A while computing the total income of the assessee under the normal provisions of the Act which is sustained by the Ld. CIT(A) to the extent of 1% of dividend income.

8. During the year under consideration, the assessee company had earned dividend income of Rs. 27.33 crores which was claimed to be exempt from tax. No disallowance on account of expenses incurred in relation to the said exempt income however was offered by the assessee as required by section 14A of the Act. The A.O. therefore applied Rule 8D to workout such expenses at Rs. 30 lacs and made a disallowance to that extent u/s 14A. On appeal, the Ld. CIT(A) restricted the said disallowance to 1% of the dividend income earned

by following decision of the Tribunal in assessee's own case for A.Y. 2006-07 rendered vide its order dated 29.07.2016 passed in ITA No. 2114/K/2009.

9. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. It is observed that the disallowance made by the A.O. u/s 14A by applying Rule 8D has been restricted by the Ld. CIT(A) to the extent of 1% of the dividend income earned by the assessee by following the decision of this Tribunal in assesee's own case for A.Y. 2006-07 (supra). It is also observed that a similar view was taken by the Tribunal on identical issue even in A.Y. 2005-06. Since the material facts relating to this issue as involved in the year under consideration are similar to A.Y. 2005-06 and 2006-07, we respectfully follow the orders of the Tribunal for A.Y 2005-06 and 2006-07 and uphold the impugned order of the Ld. CIT(A) sustaining the disallowance to the extent of 1% of the exempt dividend income. Ground No. 2 of the assessee's appeal is accordingly dismissed.

10. As regards the remaining issue raised by the assessee in this appeal relating to the disallowance u/s 14A as made by the A.O. and sustained by the Ld. CIT(A) while computing the book profit of the assessee company u/s 115JB of the Act, we find that the same gets covered by any decision rendered on the issue involved in Ground No. 2 of the assessee's appeal. Consequently we uphold the impugned order of the Ld. CIT(A) sustaining the addition made by the A.O. on account of disallowance u/s 14A to the extent of 1% of the dividend

income for the purpose of computing book profit of the assessee company u/s 115JB of the Act and dismiss this ground.

11. During the course of appellate proceedings before the Tribunal, the assessee has made an application seeking admission of the following additional grounds:

> *"A. On assessment under the normal provisions of the Act*
> *1. Without prejudice to the grounds of appeal already submitted, the appellant submits that the incentives received by the appellant under the Incentive Scheme 1999 from the GOWB is a capital receipt and consequently not liable for Income-tax.*
>
> *B. On assessment under MAT*
> *2. Without prejudice to the grounds of appeal already submitted, the appellant submits that the incentives received by the appellant under the Incentive Scheme 1999 from the GOWB is a capital receipt and consequently not liable for Income-tax u/s 115JB of the Income-tax Act."*

12. In support of the application filed by the assessee for admission of the above additional grounds, the learned counsel for the assessee has relied on the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. vs CIT 229 ITR 383. He has contended that although the issue raised in the additional ground was not raised by the assessee either before the A.O. or before the Ld. CIT(A), the same involving a pure question of law can be raised by the assessee for the first time before the Tribunal as held by the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. (supra). The learned D/R, on the other hand, has raised a strong objection for the admission of additional ground raised by the assessee. He has contended that the issue being sought to be raised by the assessee in the additional ground is purely a question of fact and the same therefore cannot be allowed to be raised at this stage before

the Tribunal. He has also pointed out that the claim made by the assessee in the additional ground was not made even in the return of income filed by the assessee and therefore the relevant facts which are required to adjudicate the issue raised in additional ground are not available on record. The learned counsel for the assessee, in this regard, has invited out attention to page no 26 to 31 of the annual report of the assessee company for the year under consideration and submitted that the relevant facts of incentives received by the assessee under the scheme were placed on record by the assessee. A perusal of the said details furnished in the annual report shows that the LST remission income was included by the assessee in its other income and in the notes forming part of the accounts, it was indicated that the sales tax and VAT remission was taken into income on booking of sales. The relevant details in order to ascertain the nature of the amount in question as claimed now to be capital receipt by way of additional ground thus were not furnished by the assessee. Moreover there was no mention whatsoever even in the annual report indicating that the said amount was received by the assessee as incentive under the scheme of GOWB as now claimed in the additional ground. The fundamental material facts relating to the issue now being raised by way of additional ground thus were not placed on record by the assessee and in the absence of any claim made in the return of income, there was no occasion for the A.O. to consider or examine the same. We, therefore, find merit in the contention of the learned D/R that the examination of issue raised by the assessee in the additional grounds requires investigation of new facts which are not available on record and therefore the said issue cannot be allowed to be raised by way of additional ground for the

first time at this stage before the Tribunal as held by Supreme Court in the case of National Thermal Power Co. Ltd. (Supra). We accordingly reject the application of the assessee for admission of additional grounds.

13. As regards the Revenue's appeal being ITA No. 609/K/2017, it is observed that the solitary issue involved therein relating to the deletion by the Ld. CIT(A) of the interest charged by the A.O. u/s 234D of the Act is squarely covered by the decision of the Co-ordinate Bench of this Tribunal in assessee's own case for A.Y. 2006-07 rendered vide para no. 13 to 17 in its order dated 29.07.2016 in ITA No. 2114/K/2009:

> *"13. In support of the assessee's case on the issue raised in the addition ground challenging the levy of interest under section 234D, the Ld. Counsel for the assessee submitted that the assessee company had declared book profit of Rs. 285.01 crores under section115JB for A,Y. 2006-07 and the tax payable thereon at Rs. 23.98 crores. As the assessee-company had paid advance tax and TDS of Rs. 26.75 crores, refund of the excess tax along with interest aggregating to Rs. 3.07 crores was granted to the assessee as per intimation issued under section 143(1) on 31.01.2008. Subsequently, in the assessment completed under section 143(3) vide an order dated 30.12.2008, the*
> *Assessing Officer added back provision for deferred tax liability, provision for doubtful advance and provision for doubtful debts aggregating to Rs. 163.18 crores to the book profit as per the amendment made by the Finance Act, 2008 and 2009 under section 115JB with retrospective effect from 01.04.2001 and raised a demand for additional MAT of Rs. 13.73 crores. He also levied interest of Rs.20.25 lakhs under section 234D on the refund that had been granted to the assessee under section 143(1).*
>
> *14. The ld. counsel for the assessee submitted that the book profit of the assessee-company under section 115JB was worked out and accepted under section 143(1) as per the law prevalent at the relevant time as settled by the decision of the Hon'ble Calcutta High Court in the case of Balrampur Chini Mills [214 CTR 684(Cal.) and the Hon'ble Supreme Court in the case of HCL Conmet [305 ITR 409 (SC)]. He submitted that when the*

refund was granted to the assessee vide intimation issued under section 143(1) on 31.01.2008, retrospective amendments made by the Finance Act, 2008 & 2009 were not in the Statute and the said refund thus was granted in accordance with law as prevalent at the relevant time, He contended that the refund so granted, therefore, could not be treated as excess refund and interest under section 234D, which is payable on excess refund, could not be charged in assessee's case. In support of this contention, he relied on the decision of the Hon'ble Calcutta High Court in the case of Emami Limited -vs.- CIT reported in 337 ITR 470, wherein interest charged under sections 234B and 234C in the similar situation was cancelled.

15. On the other hand, the ld. D.R. did not raise any material contention and left the matter to be decided by the Tribunal in accordance with law.

16. We have considered the rival submissions and also perused the relevant material available on record. There is no dispute that the refund granted to the assessee as per the intimation issued under section 143(1) on 31.01.2008 was in accordance with law as prevalent at the relevant time. The additional tax liability, however, was raised against the assessee in the assessment completed by the Assessing Officer under section 143(3) as a result of amendment made in section 115J8 by the Finance Act, 2008 and 2009 with retrospective effect from 01.04.2001 and the refund granted by the assessee as per the intimation issued under section 143(1) became payable by the assessee. The refund granted to the assessee accordingly was treated by the Assessing Officer as excess refund and interest under section 234D was levied by him on such excess refund. In the case of Emami Limited -vs.- CIT (supra) cited by the ld. counsel for the assessee, a similar issue situation had arisen in the context of levy of interest under sections 234B and 234C and the interest charged by the Assessing Officer under sections 234B and 234C was cancelled by the Hon'ble Jurisdictional High Court for the following reasons given in paragraphs no. 9 to 11 of its order:-

> *"9. In the case before us, the last date of the relevant financial year was 31st March, 2001 and on that day, admittedly, the appellant had no liability to pay any amount of advance tax in accordance with the then law prevailing in the country. Consequently, the appellant paid no advance tax and submitted its regular return on 31st Oct., 2001 within the time fixed by law wherein it declared its total income and the book profit both as nil. However, consequent to the amendment of the provisions contained in s. 115J8 of the Act by virtue of Finance Act, 2002 which was published in the official*

gazette on 11th May, 2002 giving retrospective effect to the amendment from 1st April, 2001, the appellant first voluntarily paid a sum of Rs. 1,55,62,511 on account of the tax payable on book profit as provided in amended provision of s. 115JB and then filed its revised return of 3lst March, 2003 declaring its business income as nil but the book profit under s. 115JB as Rs. 20,63,65,771. The AO accepted such return of income but imposed interest under ss. 234B and 234C of the Act amounting to Rs. 44,00,937 and Rs. 11,78,960 respectively.

10. In our opinion, the amended provision of s. 115JB having come into force w.e.f. 1st April, 2001, the appellant cannot be held defaulter of payment of advance tax. As pointed out earlier, on the last date of the financial year preceding the relevant assessment year, as the book profit of the appellant in accordance with the then provision of law was nil, we cannot conceive of any "advance tax" which in essence is payable within the last day of the financial year preceding the relevant assessment year as provided in ss, 207 and 208 or within the dates indicated in s. 211 of the Act which inevitably falls within the last date of financial year preceding the relevant assessment year. Consequently, the assessee cannot be branded as a defaulter in payment of advance tax as mentioned above.

11. At this stage, we may profitably rely upon the observations of the Supreme Court in the case of Star India (P) Ltd. vs. CCE (2005) 201 CTR (SC) 63 : (2006) 280 ITR 321 (SC) strongly relied upon by Mr. Bajoria, where the apex Court in the context of imposition of service tax by the Finance Act, 2002 with retrospective effect held that the liability to pay interest would arise only on default and is really in the nature of quasi-punishment and thus, although the liability to pay tax arose due to retrospective effect of law, same should not entail the punishment of payment of interest.

17. Although the aforesaid decision in the case of Emami Limited was rendered by the Hon'ble Jurisdictional High Court in the context of levy of interest under sections 234B and 234C, we are of the view that the ratio and spirit of the said decision is equally applicable in the present case involving levy of interest under section 234D in the identical facts situation. We, therefore, apply the ratio of the said decision of the Hon'ble Jurisdictional High Court and direct the Assessing Officer to cancel the interest charged under section 234D."

14. As the issue involved in the year under consideration as well as all the material facts relevant thereto are similar to A.Y. 2006-07, we respectfully follow the order of the Tribunal for A.Y. 2006-07 and uphold the impugned order of the Ld. CIT(A) deleting the interest charged by the A.O. u/s 234D of the Act. The appeal of the Revenue is accordingly dismissed.

15. In the result, the appeal of the Assessee is treated as partly allowed while the appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on 22nd November, 2018.

Sd/-	Sd/-
(S.S. Godara)	(P.M. Jagtap)
(JUDICIAL MEMBER)	VICE - PRESIDENT

Dated: 22/11/2018
Biswajit, Sr. P.S.

Copy of order forwarded to:

1. Haldia Petrochemicals, Bengal Eco Intelligent Park (Techna), Tower -1, Block – EM, Plot No. – 3, Salt Lake City, Sector – V, 3rd Floor, Kolkata – 700 091
2. DCIT, CIR – 11(1), P-7, Chowringhee Square, Kolkata – 700 069.
3. The CIT(A)
4. The CIT
5. DR

True Copy, By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata