

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

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3637/Del./2016
(ASSESSMENT YEAR : 2008-09)**

**ITA No.3638/Del./2016
(ASSESSMENT YEAR : 2015-16)**

Interocean Shipping (India) Pvt. Ltd., vs. DCIT, CPC-TDS,
75, Link Road, Lajpat Nagar – III, New Delhi.
New Delhi – 110 024.

(PAN : AAAPS1392K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sanjiv Rai Mehra, FCA
REVENUE BY : Ms. Ashima Neb, Senior DR

Date of Hearing : 17.12.2018

Date of Order : 21.12.2018

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common questions of facts and law have been raised in both the aforesaid appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. The appellant, Interocean Shipping (India) Pvt. Ltd. (hereinafter referred to as 'the assessee') by filing the present appeals, sought to set aside the impugned orders both dated

28.03.2016 passed by Ld. CIT (Appeals)-41, New Delhi qua the Assessment Years 2008-09 & 2015-16 on the grounds inter alia that :-

“ITA NO.3637/DEL/2016 (AY 2008-09)

1. The learned Commissioner of Income Tax (Appeals)-41, New Delhi erred in law and on facts in upholding levy of interest @ 1.50% per month for two months total amounting to RS.35,530/- for the tax duly deposited on due date i.e. 07.07.2007 and the same was cleared in normal banking channels on 10.07.2007.”

“ITA NO.3638/DEL/2016 (AY 2015-16)

1. The learned Commissioner of Income Tax (Appeals)-41, New Delhi erred in law and on facts in upholding levy of interest @ 1.50% per month for two months total amounting to Rs.10,65,320/- for the delay in payment of TDS of one day whereas as per the interpretation given by the Supreme Court in CIT vs. Elly Lilly & Co. 178 taxman 505, the penal interest has to be calculated from the date of tax deductibility of the actual date.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : In Assessment Year 2008-09, the assessee deducted due tax for the quarter ending 30.06.2007 and remitted the same through banking channel by depositing a cheque on 07.07.2007 which was cleared in the normal banking channel on 10.07.2007 as against the due date of tax as 07.07.2007.

Consequently, Assessing Officer raised a demand of interest for two months amounting to Rs.35,530/- by treating the payment date as 10.07.2007 instead of 07.07.2007.

3. Similarly, in AY 2015-16, AO after noticing that as against the due date of depositing of tax as 07.07.2014, the Department received the payment on 08.07.2014 and thereby charged the interest as per section 201(1A) of the Income-tax Act, 1961 (for short 'the Act') to the tune of Rs.10,65,320/-.

4. Assessee carried the matter by way of appeals before the Id. CIT (A) who has confirmed the orders passed by the AO by partly allowing the appeals. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeals.

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Undisputedly, in AY 2008-09, the assessee deposited the TDS on 07.07.2007 which was credited into the account of Revenue on 10.07.2007 as against due date of 07.07.2007. It is also not in dispute that AO by declining the contentions raised by the assessee that the date of deposit is to be taken as 07.07.2007,

raised a demand of two months amounting to Rs.35,532/- by treating the payment date as 10.07.2007 instead of 07.07.2007.

7. Ld. AR for the assessee by relying upon the decision rendered by the coordinate Bench of the Tribunal in *Sandip Bhagat vs. ACIT – (2017) 88 taxmann.com 356 (Delhi – Trib.)*

contended that the date of depositing the TDS with the state exchequer is to be taken as 07.07.2007, the date of depositing the cheque as the assessee was having sufficient funds in his account.

Coordinate Bench of the Tribunal by relying upon numerous decision rendered by the coordinate Bench of the Tribunal as well

as Hon'ble Supreme Court in case cited as *DIT (Exemption) vs. Raunaq Education Foundation (2013) 350 ITR 420* reached to

the conclusion that when the cheques issued have not been dishonoured the payment is to relate back to the date of receipt of

the cheque. Consequently, following the decision rendered by the coordinate Bench of the Tribunal in case cited as *Sandip Bhagat*

vs. ACIT (supra) which is based upon the decision rendered by Hon'ble Apex Court in *DIT (Exemption) vs. Raunaq Education*

Foundation (supra), we are of the considered view that when the assessee has deposited the cheque on account of TDS on

07.07.2007 and undisputedly, sufficient funds were there in its

account, the payment has to relate back to the date of presentation of the cheque and not to the date of its realization i.e. 10.07.2007.

8. So, the date of depositing the cheque dated 07.07.2007 is to be treated as date of tax payment for the purpose of depositing the TDS and no further interest has to be charged. So, the interest, if any, is to be charged from the date of presentation of the cheque qua tax payment. Consequently, ground no.1 of AY 2008-09 is determined in favour of the assessee.

9. Likewise, in appeal for AY 2015-16, the assessee deposited the TDS for the quarter ending 30.06.2014 on 07.07.2014 through online banking channel but was debited from the bank account of the assessee on 08.07.2014, AO as well as CIT (A) taken the view that when the amount was credited in the account of state exchequer on 08.07.2014, interest for the delay of 2 months as per section 201(1A) is to be charged and thereby raised the demand of Rs.10,65,320/-.

10. Again, the Id. AR for the assessee contended that when the payment of TDS was made on 07.07.2014 through banking channel on the basis of sufficient funds in its account, the same is to be treated as deposited on 07.07.2014 itself and relied upon the decision rendered by the coordinate Bench of the Tribunal in case

cited as *P.L. Haulwel Trailers Ltd. vs. DCIT – (2006) 100 ITD 0485*.

11. Coordinate Bench of the Tribunal, after discussing various decisions rendered by Hon'ble High Courts as well as Hon'ble Supreme Court, specifically relied upon the decision rendered by Hon'ble Apex Court in case cited as *K. Saraswathy vs. P.S.S. Somasundaram Chettiar – (1989) 4 SCC 587* wherein it is held that payment by cheque should be taken as due payment if the cheque is subsequently encashed in the ordinary course. In the instant case, undisputedly, the assessee has made online payment of TDS due for the quarter ending 30.06.2014 on 07.07.2014 which was treated having been paid on 08.07.2014, the date of debiting the said amount from the account of the assessee.

12. When the assessee has made payment of TDS on 07.07.2014 by way of online payment and the same was debited from his account on 07.07.2014, the same is to relate back with date of online payment i.e. 07.07.2014 and not 08.07.2014, as online payment is on better footing than payment made by cheque as has been discussed by Hon'ble Apex Court in *K. Saraswathy vs. P.S.S. Somasundaram Chettiar* (supra).

13. So, following the decision rendered by Hon'ble Apex Court in *K. Saraswathy vs. P.S.S. Somasundaram Chettiar* (supra) as

well as the decision rendered by the coordinate Bench of the Tribunal in *P.L. Haulwel Trailers Ltd. vs. DCIT* (supra), we are of the considered view that the assessee has made payment of TDS for the quarter ending on the due date and no interest is to be charged. Consequently, ground no.1 of AY 2015-16 is determined in favour of the assessee.

14. Resultantly, both the appeals filed by the assessee are allowed.

Order pronounced in open court on this 21st day of December, 2018.

**SD/-
(O.P. KANT)
ACCOUNTANT MEMBER**

**SD/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 21ST day of December, 2018
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-41, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**