

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**BEFORE SH. R.K. PAND, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.106/Del/2016
Assessment Year: 2008-09

Dy. Commissioner of Income Tax (International Taxation), Circle, Gurgaon	Vs	M/s. MOL Corporation C/o Mr. Ashwin Ravinderanath (Partner) SRBC & Associates LLP Golf View Corporate Tower, Sector-42, Sector Road, Gurgaon . 112202 (PAN : AAFCM9676A)
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. G. K.Dhall, CIT DR
Respondent by	Sh. Nageshwar Rao, Advocate

Date of hearing:	03/10/2018
Date of Pronouncement:	26/11/2018

ORDER

PER R.K. PANDA, AM:

This appeal filed by the revenue is directed against the order dated 19.10.2015 passed by the CIT (A)-43, New Delhi relating to A. Y. 2008-09.

2. Facts of the case, in brief, are that the assessee MOL Corporation ('MOLC' in short) is a company incorporated in the United States of America, having its registered, office at 2215-B Renaissance Drive, Las

Vegas NV 89119, USA. Microsoft Corporation, USA ("MS-Corp") is the ultimate parent entity of MOLC. MOLC is a tax resident of USA and therefore, it is entitled to claim the applicability of beneficial provisions of the Double Taxation Avoidance Agreement entered into between India and US ("India-US tax treaty") vis-a-vis the provisions of the Income-tax Act, 1961 ("the Act"). MS Corp, has granted exclusive rights to MOLC for manufacturing and distribution of Microsoft Retail Software Products. MOLC has granted non-exclusive rights to Microsoft Operations Pte Ltd {MO¹} (a tax resident of Singapore) for manufacturing and distribution of MS Retail Software Products. MO has in turn sold those MS Retail Software Products to Microsoft Regional Sales Corporation (MRSC) for distribution. MRSC has sold the MS Retail Software Products to Indian distributors outside India.

3. The assessee filed its return of income on 29th May, 2009 declaring NIL total income, as the amount received by MOLC was not taxable in India. Subsequently, a notice u/s 148 was issued by the Assessing Officer on 25th November, 2010. The assessee filed detailed objections on the non-maintainability of the notice under law and technical submission on the merits of the case with AO on 21st January 2011 and 12th December 2011 respectively. The AO however rejected the objections of the assessee and completed the assessment u/s 144C (13) of the Act read with section 147 and 143(3) of the Act, vide order dated 30 October, 2012. In the said assessment order, the AO assessed the total income of the assessee at INR 18,49,67,42,612/- as against 'NIL' income returned by the assessee which resulted into a demand amounting to INR 3,02,79,68,508/- [including interest of INR 1,07,44,40,438/- under section 234B of the Act] on the assessee. The same income has been taxed in the hands of MRSC on protective basis.

4. Subsequently, the AO issued, a notice u/s 154/155 dated 6th February, 2014 proposing to rectify the assessment order dated 30 October 2012 on account of non-levy of interest u/s 234A of the Act. The assessee, in response to the same, filed a detailed submission dated 28th February 2014 on the non-levy/applicability of interest u/s 234A. However, the AO rejected the same and passed an order u/s 154 dated 26 March 2014 which was served upon the assessee on 6th May 2014.

5. Aggrieved by the order passed by the AO, the assessee preferred appeal before the CIT (A).

6. Based on the arguments advanced by the assessee, the Ld. CIT(A) held that TDS credit claimed by the assessee in return of income for A. Y. 2008-09 should have been granted to the assessee. He accordingly directed the Assessing Officer to re-compute the interest u/s 234A, if any, after transferring the TDS credit to the assessee, which was claimed by MRSC in its return of income for A. Y. 2008-09.

7. Aggrieved with such order of the CIT(A), the revenue is in appeal before the Tribunal by raising following grounds of appeal :-

1. *“On the facts and circumstances of the case Ld. CIT(A)-43, New Delhi has erred in deleting the interest amounting to Rs. 3,67,46,965/- u/s 234 A of the IT Act 1961 levied on the taxpayer on assessed income of Rs.18,49,67,42,612/-.*
2. *On the facts and circumstances of the case Ld. CIT(A)-43, New Delhi has erred in directing the Assessing Officer to grant the benefit of the TDS deducted in the case of M/s. MRSC in its return of income for A. Y 2008-09 to the assessee against the provisions of section 199 of the I. T. Act, 1961.*
3. *The appellant craves to add, amend modify or after any grounds of appeal at the time or before the hearing the appeal.”*

8. We have considered the rival arguments made by both the sides. It was agreed by both the sides that the matter needs to be set aside to the file

of the Assessing Officer with a direction to decide the issue afresh in the light of decision of Hon'ble Supreme Court in the case of ITO Vs. Bachu Lal Kapoor Kewal Ram reported in 60 ITR 74. The Ld. Counsel for the assessee stated that specific time limit should be prescribed to the Assessing Officer for deciding the issue. Considering the totality of the facts of the case and in the interest of justice we deem it proper to restore the issue to the file of the Assessing Officer with a direction to adjudicate the issue regarding granting of TDS benefit deducted in the case of M/s. MSRC in its return of income in A. Y. 2008-09 to the assessee and to re-compute the interest u/s 234 A & 234 B of the IT Act. The Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee within a period of 3 months from the date of receiving of this order by him. We hold and direct accordingly. The grounds raised by the revenue are accordingly allowed for statistical purpose.

9. In the result, the appeal filed by the revenue is allowed for statistical purpose.

Order pronounced in the open court on 26.12.2018.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

NEHA

Date:- 26.12.2018

Copy forwarded to:

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

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
 ITAT NEW DELHI

Date of dictation	20.11.2018
Date on which the typed draft is placed before the dictating 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	
Date on which the final order is uploaded on the website of ITAT	26.12.2018
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	