

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

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No.1709/DEL/2016
Assessment Year: 2009-10**

**DCIT(Intl. Taxation),
Circle 3(1)(1), New Delhi.**

vs

**Qualcomm Incorporated
C/o SRBC & Associates LLP,
18, iLabs Centre, Oval office,
Madhapur, Hitech City,
Hyderabad.
PAN: AAACQ1484H**

(Appellant)

(Respondent)

**Assessee by: Shri Vipin Upadhyay, Advocate
Ms Gayatri Devi, Advocate
Department by: Shri G.K. Dhall, CIT-DR**

**Date of Hearing: 28.8.2019
Date of Pronouncement: 13.9.2019**

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 27.1.2016 of the learned Commissioner of Income-tax (Appeals)-43, New Delhi {for short "Learned CIT(A)"}, passed in Appeal No.458/14-15, revenue preferred this appeal.

2. Briefly stated facts are that the assessee is a foreign company engaged inter alia in the business of design, development and marketing of digital

wireless telecommunication products and services based on Code Division Multiple Access (“CDMA”) and other emerging wireless technologies. For the assessment year 2009-10 they have filed their return of income on 8/9/2010 declaring nil income and pursuant to the report of the Learned Transfer Pricing Officer (TPO), learned Assessing Officer assessing the total tax liability of the assessee at Rs.5,31,67,094/-, by order dated 30/08/2012 passed under section 143(3) read with section 144C (13) of the Income Tax Act, 1961 (for short “the Act”).

3. Subsequently, by order dated 11/02/2014 passed under section 154 of the Act, learned Assessing Officer charged interest under section 234B of the Act. Aggrieved by the said charging of interest in section 234B of the Act, assessee preferred appeal. Ld. CIT(A) by order dated 27/01/2016, while following the directions of the Ld. Dispute Resolution Panel (DRP) given on 20/10/2015 for the Assessment Year 2012-13 which in turn were based on the decision of the Hon’ble jurisdictional High Court in the case of GE Packaged Power Inc 2015-TII-02-HC-DEL-INTL, allowed the appeal.

4. Revenue is, therefore, aggrieved by the impugned order and preferred this appeal. Ld. DR submitted that the Ld. CIT(A) had erred in directing the Assessing Officer not to levy interest under section 234B of the Act when the decision of the Hon’ble Delhi High Court in GE Packaged Power (supra) had not attained the finality as in the review application filed by the Department, the Hon’ble Apex Court had recalled the earlier order of dismissing the SLP against the decision of the Hon’ble High Court.

5. Per contra, it is the submission on behalf of the assessee that the Ld. CIT(A) did not commit any error by following the directions of the Ld. DRP for the Assessment Year 2012-13 and the rule of consistency demands that a

similar view has to be taken in the case of the same assessee when the facts and circumstances remain the same.

6. We have gone through the record in the light of the submissions made on either side. There is no denial of the submission made on behalf of the assessee that the Revenue, when appealed to the Hon'ble High Court against the order of the Tribunal for AY 2000-01 to AY 2004-05 had not disputed or filed any appeal against the deletion of interest under section 234B of the Act by the Tribunal. It is also not in dispute that for the AY 2012-13, by order dated 20/10/2015, Ld. DRP directed the learned Assessing Officer to delete the interest levied under section 234B of the Act, which the Ld. CIT(A) followed while passing the impugned order.

7. It is not the case of the Revenue that there is any change in the facts and circumstances involved in the case of the assessee from the earlier years, in respect of which the Revenue had accepted the order of the Tribunal in respect of levy of interest under section 234B of the Act. When the facts and circumstances of the case are similar, we find it difficult to take a different view for this assessment year from the one taken in assessee's own case for earlier years. Though the principle of res judicata is not applicable to the tax matters, since each year is a separate year, the rule of consistency as laid down by the Hon'ble Apex Court in the case of Radha Soami Satsang Vs. CIT, 193 ITR 321 (SC) has to be followed. It is not the case of the Revenue that the decision of the Hon'ble jurisdictional High Court in the case of GE Packaged Power Inc (supra) is not a binding precedent insofar as the authorities in the territorial jurisdiction of the Hon'ble Delhi High Court are concerned. With this view of the matter we hold that the Ld. CIT(A) did not commit any error while directing the deletion of the levy of interest in section u/s 234B of the Act. Grounds of appeal of Revenue being devoid of merits are dismissed.

8. In the result, appeal of the Revenue is dismissed.

Order Pronounced in the open court on 13th September, 2019.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

sd/-

**(K.NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 13th September, 2019
VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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