

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

ITA Nos.142 to 145/Bang/2019
Assessment Year : 2009-10 to 2012-13

M/s. Moody’s Analytics Knowledge Services (India) Private Limited, [Formerly known as Amba Research (India) Private Limited], G 02-Prestige Loka 7/1 Brunton Road, Bengaluru – 560 001. PAN : AAECA 9391 H	Vs.	Income Tax Officer (TDS),, Circle – 2(1) Erstwhile ITO Ward 16(1).

Assessee by	:	Shri Chavali Narayan, CA
Revenue by	:	Shri K. R. Narayana,JCIT-DR(ITAT)(Bengaluru)

Date of hearing	:	20.11.2019
Date of Pronouncement	:	13.12.2019

ORDER

Per N. V. Vasudevan, Vice President:

These are appeals by the Assessee against a common order dated 28.09.2019 by CIT(A)-13, Bengaluru, relating to AYs 2009-10 to 2012-13.

2. The common issue that needs to be decided in these appeals is as to whether the Revenue authorities were justified in levying interest under section 201(1A) of the Income Tax Act, 1961 (‘the Act’) for delaying in remitting tax deducted at source to the credit of the Central Government.

The admitted factual position is that the assessee deducted tax at source and deposited the same to the credit of the Government of India. It is not disputed that the tax deducted for a month were remitted on the 7th day of the next month which is the prescribed due date for remittance of tax deducted at source. The assessee remitted tax in the Online Tax Accounting System (OLTAS). In the OLTAS, the date of remittance was shown as 8th / 9th of the succeeding month. It is also not disputed that the payment was made online by the assessee and the date of payment as per challan used by the assessee for making payment of TDS and the date as per the bank statement and the date as per the TRACES were 7th of the succeeding month. Since the date of remittance as per the OLTAS was after 7th of the next month, the AO charged interest under section 201(1)(1A) of the Act.

3. The assessee has filed a Paper Book in which he has given the dates of deposits of TDS as per the bank statement as well as as per the OLTAS and the same are contained in page Nos. 5 to 8 of the Paper Book. He has also filed copies of the challan evidencing payment of taxes as well as the bank statement and TDS TRACES and all these documents show that the payment was made by the assessee on 7th of the succeeding month.

4. The AO as well as the CIT(A) were of the view that it is only the payment as shown in the OLTAS that will be considered and therefore the assessee was liable to pay interest under section 201(1)(1A) of the Act. In coming to the aforesaid conclusion, the Revenue authorities have made a reference to the Receipts and Payments Rules governing government receipts. These Rules which have been extensively referred

to in the orders of the Revenue authorities are in relation to payments that are made by cheques and the issue was whether the date of deposit of the cheque or the date of realisation of the cheque should be regarded as the date of payment. In the case of the assessee, however the payments have not been made by cheques but online and the credit is instant.

5. We have heard the rival submissions. The learned DR relied on the order of the CIT(A). The learned counsel for the Assessee drew our attention to Circular No.261 dated 08.08.21979 wherein it has been directed that even in the case of cheques, the date of payment is regarded as the date on which the cheque is handed over to the government bankers if the cheque is ultimately honoured. Our attention was also drawn to the decision of the ITAT Bench in the case of P L Haulwel Trailers Ltd., Vs. DCIT [2006] 100 ITD 485 (Chennai) wherein the identical issue in the context of the Treasury Rules referred to by the Revenue authorities was considered by the ITAT Chennai Bench in the context of levy of interest under section 234C of the Act.

6. We have given a very careful consideration to the rival submissions. We find that the issue raised in this appeal is no longer res integra and has been settled by the decision of the ITAT Chennai Bench in the case of P L Haulwel Trailers Ltd. (supra). The facts of the case before the ITAT Chennai Bench in the case of P L Haulwel Trailers Ltd. (supra) were that the assessee paid advance tax by depositing the cheques in the authorized bank within due date. However, cheques were realized after due date. The Assessing Officer, by taking the actual date of realization of those cheques as date of payment, levied interest under section 234C upon the assessee. On appeal, the

Commissioner (Appeals), relying upon the Central Government Account (Receipts and Payments) Rules, 1983, confirmed the impugned order. On second appeal the Tribunal held that Parliament, in order to define law relating to promissory note, bill of exchange and cheques, enacted the Negotiable Instruments Act, 1881. Sections 10 and 82 of the said Act clearly say that once the cheque is encashed in the ordinary course, it will discharge the drawer from payment. The Supreme Court, in the case of K. Saraswathy v. P.S.S. Somasundaram Chettiar [1989] 4 SCC 527 while considering the provisions of sections 10 and 82 of the Negotiable Instruments Act, 1881, held that the payment by cheque should be taken to be due payment if the cheque is subsequently encashed in the ordinary course. Therefore, the Parliament, in its wisdom, enacted the Negotiable Instruments Act to regulate and manage the transactions through cheques. Further, section 138 of the said Act was amended by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 by inserting Chapter XVII comprising of sections 138 to 142 with effect from 1-4-1989. This Chapter was introduced in the Negotiable Instruments Act, 1881 with a view to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of the funds in the account or for the reason that it exceeds the arrangement made by the drawer with adequate safeguards to prevent harassment of honest drawers. Therefore, the intention of the Legislature is to encourage the citizens to settle their liabilities through cheque or draft. The Parliament, in order to facilitate the usage of cheque and bank draft in the normal transaction, also introduced similar provisions in the Income-tax Act. Furthermore,

the CBDT, the highest administrative body of the direct taxes, issued circular in circular No. 261 dated 8-8-1979 clarifying that the date of payment would relate back to the date of presentation of the cheque if the cheque is honored on presentation. Admittedly, that circular of the CBDT was not withdrawn even after the Central Government Account (Receipts and Payments) Rules, 1983 was framed. In other words, even today, the circular issued by the CBDT in circular No. 261 dated 8-8-1979 holds the field. Income-tax Act is a special enactment by Parliament for the purpose of assessment, levy of tax and collection of tax. Therefore, the collection of income-tax shall be regulated by the provisions of the Act. The circular issued by the CBDT, in exercise of their statutory power under section 119, would be binding on the income-tax authorities in preference to any other executive instruction issued by any other authorities. Therefore, it is very clear that even the Government has taken a decision with respect to the payment of the Government dues by cheque. The circular of Directorate of Service Tax clearly expresses the intention of the Government in treating the payments made by the individual assesseees by cheque or bank draft. Central Government Account (Receipts and Payments) Rules, 1983 was framed by the executive authorities in exercise of their power under article 283(1) of the Constitution of India. Rule 20(1) of said Rules says that when the payment was made by cheque or draft, the payment shall be deemed to have been made on the date on which it was cleared and entered in the receipt scroll. Whereas under the Negotiable Instruments Act, 1881, as interpreted by the Supreme Court in the case of K. Saraswathy (supra), it is obvious that the date of payment relates back to the date of presentation of the cheque

provided the cheque was honoured on its presentation. Therefore, there is an apparent conflict between the law enacted by the Parliament, namely, the Negotiable Instruments Act, 1881 on one hand and the Rule framed by executive authorities in exercise of their power under article 283(1) of the Constitution of India, on the other hand. Whenever there is a conflict between the rules framed by the executive authorities and the law enacted by the Parliament, it is obvious that the law enacted by the Parliament will prevail over the rules framed by the executive authorities. Therefore, the provisions of the Negotiable Instruments Act, 1881 as interpreted by the Apex Court in the case of K. Saraswathy (supra) would prevail over the Central Government Account (Receipts and Payments) Rules, 1983. The Tribunal finally concluded that when the cheques were presented and deposited before the authorized banker within the due date for payment of advance tax and when the cheques are encashed and the amounts were realised subsequently the date of payment should be taken as date of presentation of the cheques and the Assessing Officer was directed to take the date of presentation of the cheques before the authorized banker for payment of advance tax as date of payment.

7. The aforesaid decision will apply with much greater force in the present case as the payment in the present case is online and the credit to the Government's account is instant. The Central Government Account (Receipts and Payments) Rules, 1983 do not apply to payments online but are applicable to payments made by cheques and the date of payment when payments are made by Cheques. Even in such cases, the rule is that if the cheques are ultimately honored the date of handing over the

cheque to the Government should be regarded as the date of payment. Therefore the aforesaid decision of ITAT Chennai Bench in the case of P L Haulwel Trailers Ltd. (supra) supports the plea of the assessee that the levy of interest under section 201(1A) of the Act to the facts and circumstances of the present case cannot be justified. We, therefore, direct that the order under section 201(1A) of the Act be cancelled. The appeals of the assessee are accordingly allowed.

8. In the result, appeals by the assessee are allowed.

Order pronounced in the open court on this 13th day of December, 2019.

Sd/-
(A.K.GARODIA)
Accountant Member

Sd/-
(N. V. VASUDEVAN)
Vice President

Bangalore.

Dated 13th December, 2019.

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.