

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH: CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य एवं  
श्री एस जयरामन, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND  
SHRI S.JAYARAMAN, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA Nos.752/Chny/2014, 608/Chny/2015,  
742/Chny/2016 & 2691/Chny/2016**

निर्धारण वर्ष /Assessment Years: 2010-11, 2011-12, 2012-13 & 2013-14

**M/s.Verizon Communications Vs. The Deputy Commissioner of**  
**Singapore Pvt Ltd.,** Income Tax,  
C/o.Ernst and Young,Tidel Park, International Taxation-1,  
6<sup>th</sup> & 7<sup>th</sup> Floor-A Block, Chennai 600 034.  
(Module 601, 701,702)  
No.4,Rajiv Gandhi Salai,Taramani,  
Chennai 600 113.

**[PAN: AADCM 6355 L]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

:

Mr.R. Venkatesan, FCA

प्रत्यर्थी की ओर से /Respondent by

:

Mr.M. Srinivasa Rao, C.I.T, D.R

सुनवाई की तारीख/Date of Hearing

:

12.12.2019

घोषणा की तारीख /Date of Pronouncement

:

12.12.2019

आदेश / O R D E R

**PER S.JAYARAMAN, ACCOUNTANT MEMBER:**

All these above four appeals of the assessee are reopened for limited purposes to adjudicate upon non-disposal of specific grounds in the first round of litigation in the Tribunal as mentioned in the order of

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Tribunal in Miscellaneous Petition filed by the assessee in M.P. Nos.250,251,252 & 253/Chny/2017 vide order dated 18.01.2018.

2. The assessee has raised the following issues for our consideration:

(i) Ground No.8 & 10 for the assessment years 2010-11 & 2013-14 in respect of denial of credit for TDS,

(ii) Ground No.8 for assessment year 2012-13 in respect of incorrect levy of surcharge and education cess on the rates under the Tax Treaty,

(iii) Ground No.9 for assessment year 2010-11, ground No.8 for assessment year 2011-12, and Ground No.9 for assessment year 2012-13, in respect of levy of interest u/s.234B of the Act,

(iv) Ground No.11 for assessment year 2013-14 in respect of incorrect levy of education cess.

2.1 Since the above mentioned grounds pertaining to the relevant assessment years were not disposed of inadvertently by this Tribunal in the respective appeals vide the orders dated 31.01.2017 read with M.P vide orders dated 18.01.2018, they are disposed of on merits as under.

3. The Id.A.R submitted that in the assessee's case, the tax was deductible at source u/s.195 of the Act on all the payments made to the assessee from the Indian customers, the assessee, being a foreign

company, it was not liable to pay any advance tax u/s.208 of the Act and consequently, it cannot be subjected to interest u/s.234B of the Act. In this regard, the assessee relied on the Hon'ble jurisdictional High court's decision in the case of CIT Vs. Madras Fertilizers Ltd., reported in [1984] 149 ITR 703(Mad). Considering such plea and other declared decisions, this Tribunal in the assessee's own case in ITA Nos.1311/Chny/2006,164/chny/2007,1507/Chny/2010 & 1722/Chny/2011 for assessment years 2002-03,2003-04, 2007-08 & 2008-09 dated 30.11.2016 held that the assessee was not liable for interest u/s.234B of the Act. Therefore, Id.A.R pleaded that Ground No.9 for assessment year 2010-11, Ground No.8 for assessment year 2011-12, and Ground No.9 for assessment year 2012-13 be allowed.

4. We have heard both the parties and gone through the relevant portion of orders of the Tribunal. Paras 5 & 6 of which are extracted as under:-

*"5. We find that similar view was also taken by Mumbai Bench of this Tribunal in the case of De Beers UK Ltd (supra) at para 7 of its order.*

*'The ground No.6 is against charging of interest u/s.234B. We find that this ground is covered by the judgment of the Hon'ble Jurisdictional High Court in the case of DIT (International Taxation) vs. NGC Network Asia LLC (2009) 313 JTR 187 (Bom) holding that interest u/s.2348 cannot be charged where tax is deductible at source in relation to royalty and FTS. The Tribunal in assessee's own case for the immediately preceding year has directed the Assessing Officer to compute interest u/s.234B, if*

*any, after reducing the amount of tax deductible at source in relation to royalty and FTS from the advance tax payable. Respectfully following the precedent, we hold accordingly.'*

*6. Thus, we are of the opinion that assessee was not liable for interest u/s.234B of the Act. However, in respect of interest u/s.234A & 234D of the Act, Id. Counsel for the assessee fairly admitted that these were statutory levies for default in furnishing return of income and on excess refund granted to the assessee. Accordingly, we are of the opinion that levy of interest u/s.234A and 234D were justified u/s.234B of the Act is cancelled."*

Therefore, we find merit in the submissions of the Id. Counsel for the assessee and hence, the corresponding grounds of assessee on this issue are allowed.

5. The Id.A.R submitted that the assessee claimed credit for TDS of Rs.154,835,440/- in the return of income for assessment year 2010-11. However, in the assessment order, the Id. Assessing Officer has given credit for Rs.78,50,714/- only. For the assessment year 2013-14, while making the assessment order, the AO considered the receipts from Indian customers as per Form-26AS at Rs.7,61,79,974/- as income chargeable to tax in India, however, the corresponding TDS appearing in Form-26AS was Rs.88,48,665/-. While completing the assessment, the AO has given credit for Rs.83,11,513/- only, though the Hon'ble DRP vide its direction dated 10.06.2016 had directed the AO to give the credit for tax deducted

at source in accordance with the Rules, the additional TDS credit of Rs.537,152/-, as appearing in Form 26AS has not been granted to the assessee. Therefore, Id.A.R submitted that suitable directions be issued to the AO to give the due credit to the assessee for the respective assessment years.

6. We have heard the rival submissions and perused the material on record. We find merit in the submissions made by the Id.A.R. Therefore, the Assessing Officer is directed to verify the assessee's claim in the respective years and grant due TDS credits in accordance with the provisions of the Rules.

7. With regard to the levy of surcharge and education cess for assessment year 2012-13 and education cess for assessment year 2013-14, the Id.A.R submitted that while making the assessments for the assessment years 2012-13 & 2013-14, the AO levied surcharge and cess on the taxes. As per Section 90 of the Act, in a case where the Indian Government has entered into a tax treaty with another country, the provisions of the tax treaty would apply to the extent they are more beneficial to the assessee. Therefore, Id.A.R submitted that while applying the Tax Treaty rate, no surcharge or education cess can be levied.

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8. We have heard the rival submissions and perused the material on record. In the light of the analogy applied for the provisions of the section 234B of the Act vide the decision cited supra, we find merit in the submissions of the Id.A.R and therefore, the levy made towards Surcharge and Cess, and Educational Cess for the assessment years 2012-13 & 2013-14, respectively, are directed to be deleted.

9. In the result, the assessee's appeal for the assessment years 2010-11 & 2013-14 are partly allowed, and the assessee's appeal for the assessment years 2011-12 & 2012-13 are allowed.

Order pronounced in the open court after conclusion of hearing on 12<sup>th</sup> December, 2019 in Chennai.

**Sd/-**  
**(जॉर्ज माथन)**

**(GEORGE MATHAN)**

न्यायिक सदस्य/JUDICIAL MEMBER

**Sd/-**

**(एस जयरामन)**

**(S. JAYARAMAN)**

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 12<sup>th</sup> December, 2019.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF