

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.7499/Mum/2018
(Assessment Year: 2005-06)**

DCIT(LTU-2) 29 th Floor, Center-1 World Trade Center Cuffe Parade Mumbai-400 005	Vs.	Reliance Industries Ltd. 3 rd Floor, Maker Chambers IV, Nariman Point Mumbai-400 021
		PAN/GIR No.AAACR5055K
(Appellant)	..	Respondent)

Revenue by	Shri Abhijit Patankar,DR
Assessee by	Shri Nimesh Vora, AR
Date of Hearing	21/01/2020
Date of Pronouncement	05/02/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the revenue is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)–1, Mumbai, dated 12/09/2018 and it pertains to Assessment Year 2005-06.

2. The revenue has raised the following grounds of appeal:

1. *"Whether, on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was right in directing the Assessing Officer to not to levy interest u/s 234B of the Act, on the addition made in Book Profit under MAT with respect to deduction on export profit u/s 80HHC(3), ignoring the amendment made by the Finance Act 2011 to section 115JB with retrospective effect from 01.04.2005"*

3. The brief facts of the case are that the assessee is a public limited company engaged in the business of oil exploration, manufacturing of petrochemicals, polyester, fiber intermediates, textiles, generation and distribution of power and operation of jetties, and related infrastructure and investments. The assessee company has filed its return of income for AY 2005-06 on 28/10/2005, declaring total income at Rs. 1323,20,78,513/- under the normal provisions of the I.T.Act, 1961 and Rs. 5751,71,93,729/- u/s 115JB of the I.T.Act, 1961. The assessee has claimed deductions towards eligible profit u/s 80HHC of the I.T.Act, 1961. The Ld. AO had disallowed deductions claimed u/s 80HHC in view of sun-set clause u/s 80HHC(1B) of the I.T.Act, 1961. There was no retrospective amendment in section 115JB, either at the time of passing the order by the Ld. AO or CIT(A) with reference to deletion of clause (iv) to clause (vi) in Explanation (1) to section 115JB of the Act. The amendment in section 115JB was made by the Finance Act, 2011 with retrospective effect from 01/04/2005 by deleting sub clause (iv), (v) and (vi) of Explanation (1) to section 115JB of the Act. The assessee challenged the additions made towards disallowances of deductions claimed u/s 80HHC before the Tribunal. The Tribunal vide its order, dated 30/09/2013 decided the issue against the assessee for AY 2005-06 by stating that in view of the amendment made in section 115JB by the Finance Act,2011 with retrospective effect from 01/04/2005 by omitting clause (iv) to (vi) of Explanation to section 115JB, the provisions of section 115JB have been brought at par with the provisions of section 80HHC(1B) of the Act. Hence, the disallowances of deductions with respect to profit eligible for deductions u/s 80HHC of the Act, made by the Ld. AO for the purpose of computing book profit u/s 115JB of the Act, was

confirmed by the ITAT. The Ld. AO, while giving effect to order of the ITAT has levied interest u/s 234B of the I.T.Act, 1961, on book profit computed u/s 115JB of the I.T.Act, 1961, for shortfall in payment of advance tax vis-à-vis, the tax assessed for the year.

4. Aggrieved by the order of Ld. AO, the assessee had filed an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed elaborate written submissions on the issue, which has been reproduced at para 4.1 on pages 4 to 9 of Ld.CIT(A) order. The sum and substance of arguments of the assessee before the Ld.CIT(A) are that interest u/s 234B of the Act, cannot be charged as a consequence for an addition made to the book profit u/s 115JB of the I.T.Act, 1961, in view of retrospective amendment by the Finance Act, 2011 with retrospective effect from 01/04/2005. The Ld.CIT(A) after considering relevant submissions of the assessee and also, by following certain judicial precedents, including the decision of ITAT, in assessee's own case for the very same AY 2005-06 in ITA No. 5247/Mum/2014, vide order dated 03/06/2016 held that interest u/s 234B ought not to have been charged by the Ld. AO in a situation, where such liability is increased on account of the retrospective amendment in the law, after the end of the relevant assessment year, since, the assessee could not have envisaged, the additions on account of retrospective amendment and paid advance tax thereon and hence, deleted additions made by the Ld. AO towards computation of interest u/s 234B of the I.T.Act, 1961. Aggrieved by the Ld.CIT(A) order, the revenue is in appeal before us.

5. The Ld. DR submitted that the Ld.CIT(A) was erred in deleting the additions made by the Ld. AO towards interest u/s 234B of the

Act, on the additions made in book profit under MAT provisions with respect to deductions on export profit u/s 80HHC(1B), ignoring the amendment made by the Finance Act, 2011 to section 115JB with retrospective effect from 01/04/2005.

6. The Ld. AR, on the other hand, strongly supporting order of the Ld.CIT(A) submitted that this issue is squarely covered in favour of the assessee by the decision of ITAT, Mumbai in assessee own case for very same AY 2005-06, vide order dated 03/06/2016, where it was categorically held that 234B interest shall not be levied on the addition made on account of retrospective amendment to the Act. He, further submitted that this issue is also covered by the decision of Hon'ble Bombay High Court, in the case of CIT vs JSW Energy Limited (2015) 379 ITR 36, where it was held that where, the assessee computed book profit, as per prevailing law, no interest u/s 234B could be levied, consequent to inclusion of various items, while computing books profit, as per Explanation to section 115JB, which has been brought on statute by the Finance Act, 2008 with retrospective effect from 01/04/2001.

7. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The issue involved in the present appeal, i.e, whether interest u/s 234B of the Act, could be levied for shortfall in payment of advance tax or not, when such shortfall in payment of taxes was on account of additions made to total income, consequent to retrospective amendment made to the Act, is no longer a *res-integra*. The co-ordinate bench of ITAT, in assessee own case for AY 2005-06 in ITA No. 5247/Mum/2014, vide order dated 03/06/2016 had

considered an identical issue, in light of additions made by the Ld. AO towards levy of interest u/s 234B of the Act, on the additions made towards book profit computed u/s 115JB of the I.T.Act, 1961, on the basis of retrospective amendment to the Act, and held that the assessee should not be fastened with interest liability on additions made on the basis of subsequent amendment, since, the assessee could not have foreseen the liability, at the time of estimating his income for the purpose of payment of advance tax. We further noted that the Hon'ble Bombay High court, in the case of CIT vs JSW Energy Limited (supra) had considered an identical issue, in light of additions made to book profit computed u/s 115JB, on the basis of retrospective amendment brought in by Finance Act, 2008 with effect from 01/04/2001 and held that where, assessee computed book profit as per prevailing law, no interest u/s 234B could be levied, consequent to inclusion of various items, while computing book profit, as per Explanation to section 115JB, which has been brought on statute by Finance Act, 2008 with retrospective effect from 01/04/2001. We further noted that the Hon'ble Bombay High court, in the case of CIT vs KPMG in ITA No. 690/2017, dated 24/09/2009, has observed that a party cannot be called upon to perform an impossible Act, i.e to comply with the provision, which was not in force at the relevant time. The sum and substance of the ratios laid down by the Hon'ble High court of Bombay is that liability arising on account of retrospective amendment could not be fastened on the assessee, where the assessee could not have foreseen the liability, at the time of estimating his income for the purpose of payment of advance tax. In this case, additions was made to book profits computed u/s 115JB, towards deduction claimed on eligible profit u/s 80HHC of the Act, on the basis of

retrospective amendment to Section 115JB of the Act, by omitting clause (iv) to (vii) to explanation 1 by the Finance Act, 2011 with effect from 01/04/2005. Further, at the time of payment of advance tax, said provisions were very much was on statute, and assessee was entitled to deduct amount claimed as deduction u/s 80HHC from book profit u/s 115JB of the Act. Therefore, the assessee has taken the advantage of provisions as was there in statute at the time of payment of advance tax and hence, the assessee cannot be expected to pay advance tax on the part of disputed amount. Therefore, we are of the considered view that no interest can be levied u/s 234B of the Act, for shortfall in payment of advance tax on the basis of retrospective amendment to law. The Ld.CIT(A), after considering relevant submissions of the assessee and also, by following the order of the ITAT in assessee own case for very same AY 2005-06 has rightly deleted additions made by the Ld. AO towards levy of interest u/s 234B of the I.T.Act, 1961. Hence, we are inclined to uphold the order of the Ld.CIT(A) and dismiss, appeal filed by the revenue.

8. In the result, appeal filed by the revenue is dismissed..

Order pronounced in the open court on this 05 /02/2020

SD/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

SD/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 05/01/2020
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai

		Date	Initial	
WHETHER DICTATION PAD ENCLOSED WITH THE FILE : Yes/No (as the order has been typed with the help of manuscript)				
1.	Draft dictated on	28/01/2020		Sr.PS
2.	Draft placed before author			Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS
6.	Date of pronouncement			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the Head Clerk			
9.	Date of dispatch of Order			