

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.403/Mum/2022
(Assessment Year :2018-19)**

M/s. Taurus Family Trust 8 th Floor, Grand Palladium Kalina Santacruz (E) Mumbai – 400 098	Vs.	Asst. Director of Income Tax, CPC, Bangalore
PAN/GIR No.AAATT4813C		
(Appellant)	..	(Respondent)

Assessee by	Shri Hiten Jain
Revenue by	Shri Pitta Samuel
Date of Hearing	07/07/2022
Date of Pronouncement	12/07/2022

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.403/Mum/2022 for A.Y.2018-19 arises out of the order by the Id. Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC) in appeal No. NFAC/2017-18/10016738 dated 27/12/2021 (Id. CIT(A) in short) against the order of assessment passed u/s.154 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 01/06/2020 by the Id. Asst. Director of Income Tax, CPC (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the interest u/s.234C of the Act could be charged on the dividend income earned by the assessee for all the four quarters when actually the said dividend has been received by the assessee only in third and fourth quarters of the financial year.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is a private discretionary trust and had filed its return of income for the A.Y.2018-19 on 14/07/2018 admitting the total income of Rs. 63,02,52,700/-. Out of this amount, dividend income taxable u/s.115BBDA of the Act amounts to Rs.62,99,76,250/-. This return of income was duly processed by the CPC Bangalore u/s.143(1) of the Act on 01/07/2019 wherein interest u/s.234C of the Act was charged at Rs.21,05,041/-. In the said intimation, the CPC Bangalore had considered the dividend income like any other income which is required to be apportioned for the full year for the purpose of levy of interest u/s.234C of the Act in case of default of payment of advance tax. The assessee pleaded that the dividend income from M/s. Marico Ltd., was earned by the assessee only on 29/11/2017 and 09/03/2018 falling in third and fourth quarters of the financial year respectively and hence, the advance tax on the said dividend income would become payable by the assessee only in third and fourth quarter which has been duly complied with by the assessee. Hence, there cannot be any levy of interest u/s.234C of the Act in respect of first two quarters of the financial year by apportioning this dividend income for the whole year. Accordingly, the assessee preferred a rectification application before CPC, Bangalore against the said intimation on 26/05/2020 on the e-filing portal requesting for cancellation of interest u/s.234C of the Act. Subsequently, the rectification order u/s.154 of the Act was passed on 01/06/2020 by CPC

Bangalore rejecting the rectification petition of the assessee. Thereafter grievance was also filed by the assessee on the e-nivaran tab on the e-filing portal on 03/06/2020 providing the aforesaid details, which proved in vain as the assessee got the reply that there was no discrepancy from the end of the CPC. Not satisfied with the above grievance resolution, the assessee lodged grievance on the Centralized Public Grievance Redress and Monitoring System (CPGRAMS) on 16/06/2020 in response to which the rectification rights were transferred to the Id. AO i.e. ITO-23(3)(4). Subsequently, the assessee filed a rectification application vide letter dated 13/07/2020 requesting the Id. AO to pass an order u/s.154 of the Act after recalculating the interest u/s.234C of the Act. In response to the same, the Id. AO vide letter dated 21/07/2020 intimated that the issue had already been dealt by CPC vide order u/s.154 of the Act dated 01/06/2020 and also in the grievance resolution filed on 03/06/2020.

4. Aggrieved by this, the assessee preferred appeal before the National Faceless Appeal Centre (NFAC). The NFAC in para 5.5 of its order applied the provisions of Section 234C of the Act as amended by the Finance Bill 2021 and held that the said amendment is prospective in nature and could be applied only from A.Y.2021-22 onwards. The NFAC also observed that even though the dividend was declared in the last two quarters of the financial year, by virtue of the deeming fiction u/s.8 of the Act and in the absence of any exception for dividend income provided u/s.234C of the Act, interest u/s.234C of the Act would become chargeable in respect of tax payable u/s.115BBDA of the Act for dividend. With these observations, the appeal of the assessee was dismissed by NFAC. Aggrieved the assessee is in appeal before us.

5. At the outset, we find that the Id. CIT(A) had applied the provisions of Section 234C as amended by the Finance Bill 2021 which reads as under:-

“234C(1).....
 (a).....
 (i).....
 (ii).....
 (b)

[Provided that nothing contained in this sub-section shall apply to any shortfall in the payment of the tax due on the returned income where such shortfall is on account of under-estimate or failure to estimate

*(a) the amount of capital gains; or
 (b) income of the nature referred to in sub-clause (ix) of clause (24) of section 2; [or]
 (c) income under the head "Profits and gains of business or profession in cases where the income accrues or arises under the said head for the first time; or]]
 [(d) the amount of dividend income.]*

and the assessee has paid the whole of the amount of tax payable in respect of income referred to in clause (a) or clause (b) "for clause (c) for clause (d)] as the case may be, had such income been a part of the total income, as part of the [remaining instalments of advance tax which are due or where no such instalments are due], by the 31st day of March of the financial year”.]

6. We find that clause (d) of the aforesaid proviso as it stood during the year under consideration which was inserted by the Finance Act 2017 w.e.f. 01/04/2017 read as under:-

“(d) income of the nature referred to in Sub-Section (1) of Section 115BBDA”.

This was the proviso in clause (d) which was in the statute book during 01/04/2017 to 31/03/2021. Hence, for the year under consideration i.e. A.Y.2018-19, the old proviso as it stood during 2017-21 would apply. If the said provision is applied, the dividend income contemplated u/s.115BBDA of the Act falls under the Exception clause in Clause (d).

Admittedly in the instant case, the dividend from M/s. Marico Ltd., was received by the assessee only in third and fourth quarters of the financial year. Admittedly, the assessee had duly paid the advance tax on the said dividend income taxable u/s.115BBDA of the Act in the third and fourth quarters of the financial year. Hence, as per the old proviso to Section 234C (1) of the Act, there cannot be any levy of interest u/s.234C of the Act that could be fastened on the assessee for the first two quarters by apportioning dividend income for the whole year. Hence, we find lot of force in the arguments advanced by the Id. AR and accordingly, allow the grounds raised by the assessee.

4. In the result, appeal of the assessee is allowed.

Order pronounced on 12/07/2022 by way of proper mentioning in the notice board.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 12/07/2022

KARUNA, *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.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai