

आयकर अपीलीय अधिकरण, "पटना" न्यायपीठ पटना
IN THE INCOME TAX APPELLATE TRIBUNAL
"PATNA" BENCH, PATNA

(Heard from Kolkata Benches through web-based video conferencing platform)

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
SHRI MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 247/Pat/2019
Assessment Year: 2005-05

Alkem Laboratories Limited Exhibition Road Patna - 800001 [PAN: AABCA9521E]	Vs	Assistant Commissioner of Income Tax, Circle-1, Patna
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri A.K. Rastogi, Sr. Advocate and Shri Rakesh Kumar, Advocate	
Revenue by :	Shri Saumyajit Das Gupta, Sr. D/R	

सुनवाई की तारीख/Date of Hearing : 30/08/2022
घोषणा की तारीख /Date of Pronouncement: 12/12/2022

आदेश/ORDER

PER MANISH BORAD, ACCOUNTANT MEMBER:

The present appeal is directed at the instance of the assessee against the order of the Learned Commissioner of Income Tax (Appeals) - Patna, (hereinafter the "ld. CIT(A)") dt. 16/09/2019, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2004-05.

2. The assessee has raised the following grounds of appeal:-

"1. For that the Ld. CIT(A) has erred in holding that the interest paid on security of Rs.27.73 lakhs has no direct nexus with the interest received by the appellant.

2. For that the Ld. CIT(A) has failed to appreciate that as per Explanation (baa) of Section 80HHC(4C), the net interest is to be reduced while working out deduction u/s 80HHC and hence netting off of interest is prescribed by the provisions of the Act as well as the judgment of Apex Court in the case of Vikas Kalra Vs CIT reported in 345 ITR 557.

3. For that the Ld. CIT(A) has erred in affirming charging of interest u/s 234B till March, 2007 whereas the regular assessment w/s 143(3) was completed on 29.12.2006 and hence the cut-off date of charging of interest would be December, 2006 and not March, 2007.

4. For that the Ld. CIT(A) has erred in relying on provisions of section 234B(3) for affirming the order of A.O. by ignoring the mandate of law contained in section 234B(3) which specifically requires charging of interest on re-assessment u/s 147 and re-computation u/s 153A.

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5. For that the condition stipulated for charging of interest u/s 234B(3) is not available in the present case and the case of the appellant is squarely covered by sub-section 4 of section 234 which permits increase or reduction in interest charged w/s 234B(1) pursuant to orders of appellate authorities u/s 250 or section 254.

6. For that the Ld. CIT(A) has erred in confirming the charging of interest u/s 234B amounting to Rs.19,12,454/- charged in order u/s 143(3)/251/254/263/254 dated 23.12.2010 as against Rs.12,92,191/- charged vide order u/s 143(3)/254/263 dated 21.12.2009 despite the fact that variation of total income in between the two orders is only Rs.45,393/-.

7. For that charging of interest at Rs.19,12,454/- as against Rs.12,92,191/- is wrong, illegal and unjustified on the facts of the appellant's case.

8. For that the order is bad in facts and law of the case and is fit to be modified.

9. For that other grounds, if any, shall urged at the time of hearing of appeal."

3. The first issue raised through Ground Nos. 1 & 2 relates to deduction u/s 80HHC of the Act. The assessee is a limited company engaged in manufacturing and selling of pharmaceutical products. It claimed deduction u/s 80HHC of the Act. The ld. Assessing Officer while computing the deduction in compliance to the direction of the Tribunal, vide order dt. 26/02/2010 computed the deduction wherein net interest income was also to be considered. During the year, the assessee earned interest of Rs.16.47 Crores and paid interest of Rs.2.48 Crores. Interest paid included the interest paid on security deposits at Rs.27.73 Lakhs. The ld. Assessing Officer observed that the said interest paid on security deposit which is connected with business but its direct nexus with interest bearing assets was not proved. Therefore, the interest paid on security deposit was not allowed for netting purpose. The assessee failed to get any relief before the ld. CIT(A).

4. Aggrieved the assessee is in appeal before this Tribunal.

5. Before us, the ld. Counsel for the assessee submitted that the assessee deserves to succeed in view of the ratio laid down by the Hon'ble Supreme Court in the case of *Vikas Kalra vs. CIT (2012) 345 ITR 0557* as well as in the case of *ACG Associated Capsules Pvt. Ltd. v. CIT, 343 ITR 89 (SC)*.

6. Per contra the Id. D/R vehemently argued supporting the finding of the lower authorities.

7. We have heard rival contentions and perused the record placed before us.

8. Through Ground No. 1 & 2, the assessee has challenged the finding of the Id. CIT(A) holding that there is no direct nexus between the interest paid on security deposit and interest bearing assets and the Id. CIT(A) has also erred in not considering deduction of 90% of interest while working out deduction u/s 80HHC. We find that now it is a settled proposition as held by Hon'ble Apex Court (*supra*) that 90% of net interest [interest paid (minus) interest received] has to be reduced for the purpose of calculation of deduction u/s 80HHC of the Act. The Id. CIT(A) failed to take note of these judgments and emphasised more on the issue of nexus which no longer survives after the verdict of the Hon'ble Apex Court. We, therefore, respectfully following the judgment of the Hon'ble Apex Court, find merit in this contention of the Id. Counsel for the assessee and direct the Id. Assessing Officer to reduce 90% of the net interest received from the net profit for the purpose of calculating deduction u/s 80HHC of the Act. In the result, Ground Nos. 1 & 2 of the assessee are allowed.

9. Now we take up Ground Nos. 3 to 7 which relates to the correctness of interest charged u/s 234B of the Act. The Id. Counsel for the assessee has contended that the regular assessment u/s 143(3) of the Act was completed on 29/12/2006 and, therefore, the cut-off date for charging the interest would be December, 2006, whereas the Id. CIT(A) has confirmed the action of the Assessing Officer charging the interest up to March, 2007. It is also submitted that, the Id. CIT(A) relied on the provisions of Section 234B(3) of the Act, which are not applicable in the present case and provisions of Section 234B(4) of the Act should have been applied.

9.1. Another issued relating to charging of interest u/s 234B(3) of the Act has been raised in Ground Nos. 6 & 7 wherein it is stated that as per the order u/s 143(3)/254/263, dated 21/12/2019, interest u/s 234B was charged at Rs.12,92,191/- and thereafter in the order u/s 143(3)/251/254/263/254, dt. 23/12/2010, interest u/s 234B of the Act has been charges at Rs.19,12,454/- and such charging of interest is not correct in view of the fact that, variation of total income in between two orders is only Rs.45,393/-.

10. Per Contra the Id. D/R supported the order of both the lower authorities.

11. We have heard the rival contentions and perused the material available on record.

12. The first issue for our consideration raised in Ground No. 3, 4 & 5 is that whether the interest is chargeable u/s 234B(3) or 234B(4) of the Act. For better understanding, we will go through the relevant sections:-

"[(3) Where, as a result of an order of reassessment or recomputation under [section 147](#) or [section 153A](#), the amount on which interest was payable in respect of shortfall in payment of advance tax for any financial year under sub-section (1) is increased, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April next following such financial year and ending on the date of the reassessment or recomputation under [section 147](#) or [section 153A](#), on the amount by which the tax on the total income determined on the basis of the reassessment or recomputation exceeds the tax on the total income determined under sub--section (1) of [section 143](#) or on the basis of the regular assessment as referred to in sub--section (1), as the case may be.]

*(4) Where, as a result of an order under [section 154](#) or [section 155](#) or [section 250](#) or [section 254](#) or [section 260](#) or [section 262](#) or [section 263](#) or [section 264](#)⁷⁵[***], the amount on which interest was payable⁷⁶ under sub-section (1) or sub-section (3) has been increased or reduced, as the case may be, the inter-est shall be increased or reduced accordingly, and –*

- (i) in a case where the interest is increased, the Assess-ing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable and such notice of demand shall be deemed to be a notice under [section 156](#) and the provisions of this Act shall apply accordingly;*
- (ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded."*

13. From perusal of the above sections and going through the findings of the Id. CIT(A), we find that the Id. CIT(A) has referred to Section 234B(3) of

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the Act, which relates to the order of re-assessment or re-computation u/s 147 or Section 153A of the Act. However, in the instant case, the order of the ld. Assessing Officer is not framed u/s 147 or 153A of the Act. On the other hand, Section 234B(4) of the Act refers to the order u/s 154/155/250/254/260/262/263/264 of the Act and in the case of the assessee, the assessment order has been framed u/s 143(3)/251/254/263/254 of the Act. So, *prima facie* there remains no dispute to the fact that that in the case of the assessee interest should have been charged as per the provisions of Section 234B(4) of the Act i.e., up to December, 2006. We, therefore, fail to find any merit in the findings of the ld. CIT(A) and the same is reversed and Ground Nos. 3, 4 & 5, raised by the assessee are allowed.

14. Ground Nos. 6 & 7 of the instant appeal challenges the calculation of interest u/s 234B of the Act and the contention made by the ld. Counsel for the assessee has substantial merit because in the assessment order framed on 21/12/2009, interest u/s 234B of the Act has been charged at Rs.12,92,191/- where as in the order dt. 23/12/2010, interest of Rs.19,12,454/- has been charged. So far as the difference in the total income assessed is concerned, there is only an increase of Rs.45,393/-, in the order dt. 23/12/2010 as against the order dt. 21/12/2009. There is apparently a calculation error/mistake which needs necessary rectification. Therefore, we restore the issues raised in Ground Nos. 6 & 7 to the ld. Assessing Officer for necessary verification. Thus, both these grounds are allowed for statistical purposes.

15. In the result, appeal of the assessee is treated as partly allowed for statistical purposes.

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16. Apart from the above, it is observed that as per Rule 34 of Income Tax Appellate Tribunal Rules, an order is required to be pronounced preferably within ninety days from the date of hearing. We are conscious of the fact, but it is pertinent to observe that after the hearing, one of us (i.e., Vice-President) remained on tour to Mumbai, Hyderabad & Tirupati (Camp) Benches, thereafter on medical leave. Therefore, he was out of Kolkata for more than one month. Due to this reason, the order could not be pronounced within 90 days and it is pronounced roughly in 114 days.

Order pronounced in the Court on 12th December, 2022 at Kolkata.

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 12/12/2022
Sd/-

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पटना / DR, ITAT, Patna,
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Patna