

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE-PRESIDENT  
AND  
SHRI SAKTIJIT DEY, VICE-PRESIDENT**

ITA No.1667/Del/2020  
Assessment Year: 2017-18

M/s. Sony India Pvt. Ltd., A-18, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi	<b>Vs.</b>	DCIT, CPC, Bangalore
<b>PAN :AABCS1571Q</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Gaurav Singhal, Sh. Dev Dutt & Sh. Ashwini Singh, ARs
Department by	Ms. Anupama Singla & Sh. Sanjay Kumar, Sr. DRs

Date of hearing	06.10.2023
Date of pronouncement	04.01.2024

**ORDER**

**PER SAKTIJIT DEY, VICE-PRESIDENT**

Captioned appeal of the assessee arises out of order dated 11.08.2020 of learned Commissioner of Income-tax (Appeals)-8, New Delhi, pertaining to assessment year 2017-18.

2. The assessee has raised multiple grounds, however, the core issue arising for consideration is relating to chargeability of

interest under section 220(2) of the Income-tax Act, 1961 (in short 'the Act').

3. Briefly the facts relating to the issue in dispute are, the assessee is a resident corporate entity. As per the case set up by the department, for the assessment year under dispute, the assessee filed its return of income on 30.11.2017, declaring income of Rs.176,52,75,160/-. Return of income was processed under section 143(1) of Act accepting the returned income and determining refund due of Rs.7,59,49,760/-. However, out of the said refund due, an amount of Rs.1,83,69,090/- was adjusted, which comprised of an amount of Rs.91,84,590/- being outstanding Fringe Benefit Tax (FBT) demand under section 115WE of the Act for the assessment year 2009-10 created on 04.01.2011 and interest under section 220(2) thereon amounting to Rs.91,84,500/- i.e. up to the date of processing of the return on 26.05.2019. Aggrieved with the adjustment of refund in the intimation issued under section 143(1) of the Act, the assessee preferred an appeal before learned first appellate authority. Assessee's case before learned first appellate authority was, it had deposited FBT for assessment year 2009-10 amounting to

Rs.73,45,724/- and income tax of Rs.7,36,54,276/- at the time of filing of return of income for the said assessment year. However, the Revenue adjusted the entire sum against the income tax liability resulting in FBT demand of Rs.91,84,590/, including interest component of Rs.18,38,871/-. It was the further case of the assessee that no intimation or notice of demand was served on the assessee qua the FBT liability. It was submitted, *suo motu*, the assessee deposited FBT demand of Rs.91,84,590/- on 16<sup>th</sup> October, 2018. Despite that, FBT demand of Rs.91,84,590/- was again recovered from the refund due for the assessment year 2017-18 along with the interest amounting to Rs.91,84,500/- levied under section 220(2) of the Act. Thus, the assessee submitted that since no demand notice concerning the interest component of FBT demand was served on the assessee, the liability does not ensue.

4. After considering the submissions of the assessee in the context of facts and materials on record, learned Commissioner (Appeals) having found that the assessee had *suo motu* deposited FBT demand of Rs.91,84,500/- on 16<sup>th</sup> October, 2018, directed the Assessing Officer to give credit of such payment and set off

with the demand dated 04.01.2011. He further directed that since the assessee has deposited FBT demand on 16<sup>th</sup> October, 2018, the excess demand of the very same amount recovered from the assessee should be refunded.

5. Insofar as the interest component under section 220(2) is concerned, learned Commissioner (Appeals) observed that such interest shall be chargeable till the date of payment of demand. As regards assessee's contention that no interest is payable in terms of section 115WJ of the Act, learned Commissioner (Appeals) held that since the issue in dispute arises out of an order passed on 04.01.2011 for assessment year 2009-10, it cannot be the subject matter of the appeal for assessment year 2017-18. Accordingly, he disposed of the appeal.

6. Before us, learned counsel appearing for the assessee submitted that as per proviso to section 115WE of the Act, no intimation can be issued after expiry of one year from the end of financial year in which the return is made. He submitted, since, the intimation under section 115WE(1)(d) of the Act was sent after expiry of one year, it is barred by limitation.

7. Without prejudice, he submitted, the intimation under section 115WE(1) of the Act was never communicated to the assessee along with the demand notice. He submitted, merely because the demand was appearing in the portal of the Income Tax Department and the assessee was aware of such demand, cannot substitute valid service of the intimation and demand notice, as per the statutory requirement.

8. Drawing our attention to section 282 of the Act read with Rule 127, he submitted, uploading status of demand is not a valid mode of service of demand notice as it can be done only in the context of e-proceedings, as per the notification dated 3<sup>rd</sup> April, 2017. In this context, he drew our attention to a decision of the Hon'ble Delhi High Court in case of Court On Its Own Motion Vs. CIT [2013] 31 taxmann.com 31 (Delhi). Proceeding further, he submitted, interest under section 115WJ(3) is compensatory and not penal in nature, as it is levied to compensate for the loss of revenue due to non-payment of tax by the due date. Therefore, where the tax has been duly deposited by due date, there is no requirement to levy such interest. In support of such contention, he relied upon the following decisions:

1. *CIT Vs. Pranoy Roy [2009] 179 Taxman 53 (SC)*
2. *CIT Vs. Jindal Exports Ltd. [2009] 179 Taxman 391 (Delhi)*

9. Strongly relying upon the observations of learned first appellate authority, learned Departmental Representative submitted, the assessee was very much aware of the FBT demand including the interest component, which was uploaded in the Income Tax Department portal. He submitted, the assessee had access to the Income Tax Department portal and was aware of the demand created against him. Thus, he submitted, there is no substance in the claim of the assessee that he had not received any intimation regarding the demand.

10. We have considered rival submissions in the light of decisions relied upon and perused the materials on record. Pertinently, the dispute in the present appeal is confined to an amount of Rs.91,84,500/-, being interest levied under section 220(2) of the Act for alleged non-payment of FBT demand, including interest pertaining to assessment year 2009-10. From the facts on record, it is observed that in respect of its tax liability for assessment year 2009-10, both income tax and FBT, the assessee, along with the return of income filed for assessment

year 2009-10, had paid both income tax and FBT through challan. It is observed, in a single challan dated 13<sup>th</sup> June, 2008 bearing no. 1073, the assessee had paid income tax of Rs.7,36,54,276 and FBT of Rs.73,45,724/-, both aggregating to Rs.8,10,00,000/-. These payments made through a composite challan were separately indicated in the return of income filed for assessment year 2009-10. However, while processing the return of income, the entire amount of Rs.8,10,00,000/- was adjusted against the income tax liability, thereby, creating liability of FBT demand of Rs.73,45,724/- along with interest charged of Rs.18,38,871/- under section 115WJ of the Act. This liability was alleged to have been created on 04.01.2011. However, as asserted by the assessee, the intimation of FBT liability as well as the demand notice was never served on the assessee.

11. It is observed, though, the aforesaid facts were brought to the notice of learned first appellate authority, however, neither he has disputed assessee's claim of payment of FBT amounting to Rs.73,45,724/- through a composite challan, nor he has given any conclusive finding regarding assessee's claim that the intimation regarding FBT liability and demand notice was never

served on the assessee. Only observation of learned first appellate authority is to the effect that since the assessee had paid the FBT liability through challan dated 16<sup>th</sup> October, 2018, it was aware of the demand. Thus, it is clearly borne out from record that the assessee, indeed, has discharged its FBT liability for assessment year 2009-10 in June, 2008 itself. It is only the department which has appropriated the FBT liability towards income tax. Therefore, the assessee cannot be faulted with non-payment of FBT liability.

12. That being the factual position emerging on record, in our view, there cannot be levy of interest under section 220(2) of the Act for alleged non-payment of FBT liability. Furthermore, the record reveals that once the assessee came to know the fact that the demand relating to FBT liability was appearing in the portal of the Income Tax Department, it had opened a communication channel with the Assessing Officer continuously seeking information regarding service of intimation and demand notice creating such liability. However, the requests of the assessee failed to evoke any response from the Assessing Officer. These are admitted facts on record on record as learned first appellate authority has not disputed assessee's claim. The reason for

negating assessee's claim is, the assessee was aware of the tax liability uploaded by Revenue on e-filing portal. In our view, mere reflection of demand on e-filing portal does not absolve Revenue from properly serving the intimation and demand notice qua the FBT liability pertaining to assessment year 2009-10. Pertinently, in course of hearing of the present appeal, a report of the Assessing Officer was called for with regard to assessee's claim of non-service of intimation and demand notice pertaining to FBT liability. However, the Revenue has failed to furnish any material before us, which can establish that the intimation and demand notice concerning FBT demand was ever served on the assessee. Though, it may be a fact that the assessee might have discharged the FBT liability appearing on the portal of the Income Tax Department in the year 2018, but that act of the assessee, by itself, cannot fasten interest liability under section 220(2) of the Act upon the assessee.

13. Thus, considering the totality of facts and circumstances of the case and keeping in view the ratio laid down in the decisions cited before us, we hold that the assessee cannot be called upon to pay interest charged under section 220(2) of the Act amounting

to Rs.91,84,500/-. Accordingly, we direct the Assessing Officer to delete the demand and refund the amount adjusted against the refund due for the impugned assessment year.

14. In the result, appeal is allowed.

***Order pronounced in the open court on 4<sup>th</sup> January, 2024***

***Sd/-***  
**(G.S. PANNU)**  
**VICE-PRESIDENT**

***Sd/-***  
**(SAKTIJIT DEY)**  
**VICE-PRESIDENT**

Dated: 4<sup>th</sup> January, 2024.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi