

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA 01/Mum/2024
(Assessment year: 2016-17)

Godrej Projects Development Ltd, (into which Godrej Buildcon Pvt Ltd. has been amalgamated) M/s Kalyaniwalla & Mistry LLP, Esplanade House, 2 nd Floor, 29, Hazarimal Somani Marg, Fort, Mumbai-400 001 PAN: AADCG9636J	vs	The Deputy Commissioner of Income Tax, Centralized Processing Centre, Bengaluru.
APPELLANT		RESPONDENT

Assessee by : Shri Jeet Kamdar
Respondent by : Shri Dinesh A Chourasia – Sr.AR

Date of hearing : 30/05/2024
Date of pronouncement : 11/ 06/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee is preferred against the order of the Ld.Commissioner of Income-tax (Appeal Addl / JCIT(A)-5, Chennai[for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2016-17, date of order 03.11.2023.The impugned order

was emanated from the order of the CPC, Bengaluru (in short, 'the A.O.')

passed under section 143(1) of the Act, date of order 20/12/2016.

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

“This Appeal is against the Order dated November 3, 2023, of the Commissioner of Income Tax (Appeals), Addl./JL. T (A) -5, Chennai, and relates to the Assessment Year 2016-17.

1. The learned Commissioner of Income-tax (Appeals) erred in directing the Assessing Officer to levy interest under Section 234B of the Act for the month of July 2016 i.e. for the month in which the Press Release was issued for deferment of applicability of Income Computation and Disclosure Standards (ICDS).

The Appellant craves leave to add to, alter or amend the above Grounds of Appeal as and when advised.”

3. Brief facts of the case are that the assessee has availed the Income Computation and Disclosure Standards (in short 'ICDS') during the impugned assessment year and calculated the tax accordingly. The assessee deposited the advance-tax as per section 208 & 210 of the Act considering the ICDS. After the end of previous year in the month of July 2016, the CBDT announced that the applicability of the ICDS was being deferred by one year and such standards were to be applicable from A.Y.2017-18. In this consequence, the assessee recomputed the total income and the tax amount is increased Rs.19,69,75,061/-. The excess amount of tax was immediately paid by the assessee. The return was processed under section 143(1) and the Ld.AO levied interest under section 234B and 234C amount to Rs.28,10,022/- and Rs.29,36,559/-, respectively which works out to total amount to Rs.57,46,581/-. The assessee only challenged the interest levied under section 234B & 234C of the Act before the Id. CIT(A) as the delay of

payment of advance-tax is not willful and not the assessee's prior intimation. So, the total interest demanded U/s 234B & 234C be deleted. Ld.CIT(A) accepted the computation and allowed the relief of payment of interest from April to June 2016 and also directed to pay the interest under section 234B from the month of July, 2016 till the date of payment of self assessment tax. Being aggrieved on the appeal order, the assessee filed an appeal before us.

4. The Ld.AR having only grievance with the interest under section 234B, should be removed for the month of July as because the circular was published on 06/07/2016. The assessee has no prior intimation or information related to withdrawal of ICDS. So, the interest on the extra tax due to the removal of ICDS should be after the month of July, 2016.

5. The Ld.DR vehemently argued and relied on the appeal order paragraphs 4.2 & 4.3 which are as under: -

“4.2 The ICDS was 'originally' proposed to be implemented w.e.f 03/11/2015 and consequent to the press release dated 06/07/2016, the implementation was deferred by an year to become applicable from AY 2017-18. Therefore, while estimating the advance tax liability for AY 2016-17, the law that was in force enforced the applicability of ICDS in computing the taxable income and the subsequent increase in taxable income due to non-implementation of ICDS is beyond the control of the Appellant. Therefore, while the Advance Tax liability was addressed clearly & completely, taking into consideration the income that is actually determinable for AY 2016-17, applying the principles of ICDS, the levy of interest u/s.234F on the differential sum of income is not leviable. In this regard, the contention of the Appellant is concurred with.

4.3 However, in respect of interest u/s.234B, the Appellant had the opportunity to pay the Self Assessment tax in the month of July 2016, the month when the press release of the Finance Ministry propagating the deferral was released. Hence the jurisdictional Assessment Officer is directed to calculate the interest u/s 234B from the month of July 2016 till the date of payment of self assessment tax and levy accordingly.”

6. We heard the rival submission and considered the documents available in the record. The assessee calculated the tax after publication of circular related to ICDS on dated 06/07/2016. The Ld.AR prayed for relief of interest only for the month of July as because the assessee has no prior intimation or information about the deferring of ICDS. The Ld. AR fully relied on the order of Hon’ble jurisdictional High Court in case of **Prime Securities Ltd vs ACIT 33 ITR 464 (Bom)**. We respectfully consider the order of jurisdictional High Court but which is factually distinguished. Considering the **section 234B Explanation 2** which is read as under: -

“Interest for Defaults in Payment of Advance Tax

234B. (1) *Subject to the other provisions of this section, where, in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of section 210 is less than ninety per cent of the assessed tax, the assessee shall be liable to pay simpler interest at the rate of (one) per cent for every month or part of a month comprised in the period from the 1st day of April next following such financial year [to the date of determination of total income under sub-section (1) of section 143 [and where a regular assessment is made, to the date of such regular assessment, on an amount]] equal to the assessed tax or,*

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2. प्रतिवादी/ The Respondent.
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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai