

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER

I.T.A. No. 2505/Mum/2024
Assessment Year: 2021-22

Standard Chartered Bank (Singapore) Limited Narendra Singhania & Company E 21, 1 st & 2 nd Floor, Hauz Khas New Delhi - 110016 [PAN: ABBCS3236R]	Vs	Dy. Commissioner of Income Tax, International Taxation, Circle - 4(2)(2), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Dhanesh Bafna, Ms. Chandni Shah & Shri Amol Mahajan, A/Rs
Revenue by :	Shri Anil Sant, Addl. CIT, D/R

सुनवाई की तारीख/**Date of Hearing** : 06/08/2024
घोषणा की तारीख/**Date of Pronouncement** : 14/08/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM :

This appeal by the assessee is preferred against the order of the ld. CIT(A)-58, Mumbai, dt. 26/03/2024, pertaining to AY 2021-22.

2. The solitary grievance of the assessee is that, the ld. CIT(A) erred in confirming the levy of interest u/s 234C of the Act amounting to Rs. 51,75,514/-.

3. Briefly stated the facts of the case are that, the assessee is a company incorporated in Singapore and is registered as a Category I Foreign Portfolio Investor (FPI) with the Securities and Exchange Board of India ('SEBI'). The assessee has made investments in debt securities and equity shares in India. The return for the year under consideration

was electronically filed on 15/03/2022 declaring total income of Rs.7,56,66,23,191/-. The return was processed and intimation dt. 22/06/2022 u/s 143(1) of the Act, was served with a demand of Rs.47,13,33,940/-. TDS credit was not granted and erroneous interest u/s 234B and 234C of the Act were levied which were subsequently rectified but the levy of interest u/s 234C of the Act at Rs.51,75,514/- stood. This levy of interest was challenged before the Id. CIT(A) but without any success.

4. Before us, the Id. Counsel for the assessee explained that the assessee has received interest on commercial papers and non-convertible debentures (NCDs) amounting to Rs.62,10,11,200/- & Rs.13,68,16,712/- respectively, which was subject to withholding tax/deduction of tax @20%. The Id. Counsel for the assessee further explained that the assessee has also received interest on government securities which was subject to TDS @5%. It is the say of the Id. Counsel that on some part of interest income received from commercial papers, non-convertible debentures and government securities, payers did not deduct tax at source, though the payers were liable to deduct tax at source as per Section 196D and 194LD of the Act. The Id. Counsel further stated that pursuant to failure of the payer to deduct tax at source, the assessee was required to discharge tax liability by way of advance tax at the time of receipt of such interest income from commercial papers, NCD and Government Securities within the stipulated advance tax due date as per the provisions of the Act and accordingly the assessee paid full tax on interest receipts as advance tax. Therefore, there is no reason for levy of interest u/s 234C of the Act for the default of the payers.

Strong reliance was placed on the decision of the Co-ordinate Bench in the case of *Goldman Sachs Investment (Mauritius) Ltd. v. Dy.CIT(2021) 187 ITD 184 (Mum.)(Trib.)* and Hon'ble Madras High Court in the case of *C.I.T. v. Madras Fertilizers Limited [149 ITR 703]*.

The Id. D/R strongly supported the findings of the AO/Id. CIT(A). It is the say of the Id. D/R that though the assessee has received interest throughout the year but it is not known that for which period the assessee has fully paid the advance tax.

5. We have given a thoughtful consideration to the orders of the authorities below and have perused the decisions relied upon by the Id. Counsel. It is an undisputed fact that on some part of the interest received by the assessee on commercial papers, NCDs and Government securities, payers have faulted in not deducting the tax at source. It is true that for the fault of the payer, the assessee cannot be held responsible. In our understanding of the law, for failure on part of the payer to deduct TDS u/s 196D and 194LD of the Act, the assessee cannot be penalized by levy of interest u/s 234C of the Act. He has diligently discharged its full tax liability by paying the entire advance tax on the interest income

6. Section 234C of the Act reads as under:-

“[Interest for deferment of advance tax.

234C. (1) [Where in any financial year, –

[(a) an assessee, other than ⁶⁶[the assessee referred to in clause (b)], who is liable to pay advance tax under [section 208](#) has failed to pay such tax or –

(i) the advance tax paid by such assessee on its current income on or before the 15th day of June is less than fifteen per cent of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of September is less than forty-five per cent of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of December is less than seventy-five per cent of the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of one per cent per month for a period

of three months on the amount of the shortfall from fifteen per cent or forty-five per cent or seventy-five per cent, as the case may be, of the tax due on the returned income;

(ii) the advance tax paid by the assessee on the current income on or before the 15th day of March is less than the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of one per cent on the amount of the shortfall from the tax due on the returned income:

Provided that if the advance tax paid by the assessee on the current income, on or before the 15th day of June or the 15th day of September, is not less than twelve per cent or, as the case may be, thirty-six per cent of the tax due on the returned income, then, the assessee shall not be liable to pay any interest on the amount of the shortfall on those dates;]

(b) ⁶⁸[⁶⁹[an assessee who declares profits and gains in accordance with the provisions of sub-section (1) of [section 44AD](#) or sub-section (1) of [section 44ADA](#), as the case may be], who is liable to pay advance tax under [section 208](#) has failed to pay such tax or the advance tax paid by the assessee on its current income on or before the 15th day of March is less than the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of one per cent on the amount of the shortfall from the tax due on the returned income:]]

⁷⁰[**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 ⁷²[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) ⁷¹[or clause (c) ⁷⁴[or clause (d)]]], as the case may be, had such income been a part of the total income, as part of the ⁷⁵[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:]

[Provided further 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 increase in the rate of surcharge under [section 2](#) of the Finance Act, 2000 (10 of 2000), as amended by the Taxation Laws (Amendment) Act, 2000 (1 of 2001), and the assessee has paid the amount of shortfall, on or before the 15th day of March, 2001 in respect of the instalment of advance tax due on the 15th day of June, 2000, the 15th day of September, 2000 and the 15th day of December, 2000 :]

⁷⁷[**Provided also** 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 increase in the rate of surcharge under [section 2](#) of the Finance Act, 2000 (10 of 2000) as amended by the Taxation Laws (Amendment) Act, 2001 (4 of 2001) and the assessee has paid the amount of shortfall on or before the 15th day of

March, 2001 in respect of the instalment of advance tax due on the 15th day of June, 2000, the 15th day of September, 2000 and 15th day of December, 2000.]

[28](#)^[29][Explanation 1]. – In this section, "tax due on the returned income" means the tax chargeable on the total income declared in the return of income furnished by the assessee for the assessment year commencing on the 1st day of April immediately following the financial year in which the advance tax is paid or payable, as reduced by the amount of, –

(i) any tax deductible or collectible at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income;

⁸⁰[(ia) any relief of tax allowed under [section 89](#)];

(ii) any relief of tax allowed under [section 90](#) on account of tax paid in a country outside India;

(iii) any relief of tax allowed under [section 90A](#) on account of tax paid in a specified territory outside India referred to in that section;

(iv) any deduction, from the Indian income-tax payable, allowed under [section 91](#), on account of tax paid in a country outside India; and

(v) any tax credit allowed to be set off in accordance with the provisions of [section 115](#)^{JA}⁸¹[or [section 115](#)^D].]

⁸²[Explanation 2. – For the purposes of this sub-section, the term "dividend" shall have the meaning assigned to it in clause (22) of [section 2](#), but shall not include sub-clause (e) thereof.]

(2) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989 and subsequent assessment years.]]

7. As per Explanation 1, tax due on returned income means the tax chargeable on the total income declared in the return of income furnished by the assessee for the assessment immediately following the financial year in which the advance tax is paid or payable, as reduced by the amount of any tax deductible or collectible at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income.

8. It can be seen that the advance tax is reduced by any tax deductible or collectible which means that even the legislators have taken care of liability of the payer to deduct tax at source on payments and to that extent, assessee is not required to pay any advance tax.

9. In the case on hand, since the payers faulted in deducting tax at source, the assessee discharged its liability by paying the full tax. Therefore, in our considered opinion, the assessee cannot be levied with interest u/s 234C of the Act for the fault of the payers.

10. For this proposition, we draw support from the decision of the Hon'ble Jurisdictional High Court of Bombay in the case of *Director of Income-tax (International Taxation) v. Ngc Network Asia LLC* reported in [2009] 313 ITR 187 (Bombay), wherein the Hon'ble High Court held that when a duty is cast on the payer to deduct and pay the tax at source, on payer's failure to do so, no interest under section 234B can be imposed on the payee assessee. We are of the considered view that it is not case of deferment in payment of advance tax on income as envisaged in Section 234C of the Act. Since the assessee has discharged the tax liability, no interest is leviable u/s 234C of the Act. We accordingly, direct the AO to delete the impugned addition.

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

Order pronounced in the Court on 14th August, 2024 at Mumbai.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 14/08/2024

S.P.

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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, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai