

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH MUMBAI

**BEFORE SHRI NARENDER KUMAR CHOUDHRY,
JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 4860/MUM/2024
Assessment Year: 2015-16**

New World Fund, Inc, 6455, Irvine Center Drive, Irvine, California, United States of America – 92618		Deputy Commissioner of Income-Tax (International Taxation) – 3(3)(1), Mumbai
C/o. Advocate Paras S. Savla, 504, Churchgate Chamber, Vitthalidas Thackersey Marg, New Marine Lines, Mumbai – 400020	Vs.	
(PAN : AABCN3163H)		
(Appellant)		(Respondent)

Present for:

Assessee : Shri Nitesh Joshi, Advocate
Revenue : Shri Preetamkumar Turerao, Sr. DR

Date of Hearing : 14.11.2024
Date of Pronouncement : 10.02.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A)-57, Mumbai, vide order no. ITBA/APL/S/250/2024-25/1066967235(1), dated 24.07.2024 passed against the assessment order by Deputy Commissioner of Income-Tax – 3(3)(1), Mumbai, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the “Act”), dated 07.12.2017 for Assessment Year 2015-16.

2. Grounds taken by the assessee are reproduced as under:

The Appellant objects to the order dated 24 July 2024 passed under section 250 of the Act by the learned Commissioner of Income Tax (Appeal)-57 ["CIT(A)"] for the AY 2015-16 on the following among other grounds:

1. Re.: Interest under section 234C is not applicable

1.1 The learned CIT(A) erred in not taking cognizance of the law that interest under section 234C of the Act was leviable only if there was a shortfall in payment of advance tax.

1.2 The learned CIT(A) erred in not taking cognizance of the law that Interest under section 234C of the Act is computed on the returned income.

1.3 The learned CIT(A) erred in not taking cognizance of the fact that there was no shortfall in payment of advance tax instalments computed on the basis of returned income.

1.4 The learned CIT(A) erred in not taking cognizance of the fact that the Appellant had deposited excess advance tax in each quarter.

2 Re.: Proviso to section 234C is applicable

Without prejudice to the above

2.1 The learned CIT(A) erred in denying the relief available under proviso to section 234C of the Act for computing advance tax instalments on capital gains.

2.2 The learned CIT(A) erred in holding that the Appellant has correctly estimated the quarter wise short-term capital gains and long-term capital gains, and thereby the proviso to section 234C of the Act is not applicable to the facts of the Appellant.

2.3 The learned CIT(A) erred in not taking cognizance of the fact that the Appellant cannot estimate the amount of capital gains that will accrue in the subsequent quarters.

2.4 The learned CIT(A) erred in not taking cognizance of the fact that accrual of capital gain in few transactions in first quarter does not result in first proviso to section 234C of the Act becoming non-applicable.

3 Re.: Set-off of brought forward short-term capital loss of INR 7.53.94.809 while computing advance tax instalment

Without prejudice to the above

3.1 The learned CIT(A) erred in holding that the advance tax liability was wrongly calculated by the appellant after adjusting brought forward short-

term capital loss of INR 7,53,94,809 in the first quarter and also adjusting the same against cumulative short term capital gain of next quarter.

3.2 The learned CIT(A) erred in directing the Assessing Officer to compute interest under section 234C of the Act after allowing set-off of brought forward short-term capital loss of INR 7,53,94,809/- in the period from 15.03.2014 to 31.03.2014 and determine the Interest under section 234C of the Act accordingly.

3.3 The learned CIT(A) erred In holding that the brought forward losses cannot be set-off while estimating the current Income i.e., while determining the instalment for payment of advance tax, instead it can be set-off only against the gain of the assessment year.

3.4 The learned CIT(A) erred in holding that section 209(1)(a) of the Act does not provide to set-off brought forward losses while estimating the current income.

3.5 The learned CIT(A) erred in not taking cognizance of the law that section 74 of the Act allows set-off of the brought forward capital losses against the current year's capital gain.

3.6 The learned CIT(A) erred in not conjunctively reading section 209 and section 74 of the Act.

4 Re.: Incorrect dismissal of the appeal

4.1 The learned CIT(A) erred in dismissing the appeal of the Appellant while directing the jurisdictional Assessing Officer to compute interest under section 234C of the Act as per the method prescribed in the order.

3. Brief facts of the case at that assessee is a Foreign Portfolio Investor (FPI) registered with Securities Exchange Board of India (SEBI). It is liable to tax under the provisions of section 115AD of the Act. Return of income was filed on 19.09.2015 reporting total income at Rs.192,16,85,280/-. Order u/s.143(3) was passed on 07.12.2017 accepting the returned income. In the computation of total income, forming part of the assessment order, ld. Assessing Officer computed tax liability with gross demand of Rs.25,29,33,224/- which includes interest u/s. 234C of Rs.61,53,242/-. After giving credit for advance tax of Rs.24,82,33,608/-, total tax and interest payable was determined at Rs. 46,99,616/-.

3.1. Statement of total income prepared by the assessee computing its total income at Rs.192,16,85,285/- for which the return was filed is extracted below. In this statement of total income, assessee claims a refund of Rs.14,53,627/- against total tax payable of Rs.24,67,79,981/-

<i>PREVIOUS YEAR ENDED</i> 31-Mar-15	NEW WORLD FUND, INC.		<i>ASSESSMENT YEAR</i> 2015-2016
STATEMENT OF TOTAL INCOME (Read with the notes hereunder)			
	AMOUNT		AMOUNT
	(Rupees)		(Rupees)
<i>INCOME FROM CAPITAL GAINS</i>			
Long term capital gain (Annexure 1)	15,17,90,85,766		
Long term capital loss (Annexure 1)	(1,24,25,26,897)		
Net Long Term Capital Gain/ Loss	<u>13,93,65,58,869</u>		
Less: Exempt under section 10(38) of the Act	<u>13,00,23,09,452</u>	93,42,49,417	
Short term capital gain (Annexure 1)	2,84,82,38,575		
Short term capital loss (Annexure 1)	(1,91,89,80,498)		
Net Short Term Capital Gain/ Loss	<u>92,92,58,077</u>		
Less: Brought Forward Short term capital term of earlier years set-off against current years income	<u>(7,53,94,809)</u>	85,38,63,268	
<i>INCOME FROM OTHER SOURCES</i>			
Dividend Income (Annexure 2)	1,28,75,13,141		
Less: Exempt under section 10(34) of the Act	<u>(1,28,75,13,141)</u>	-	
Other Income (Annexure 3)		13,35,72,600	
Total Income/(Loss)		<u><u>1,92,16,85,285</u></u>	
COMPUTATION OF TAX LIABILITY :			
Tax on Long term capital gain @ 10%		9,34,24,942	
Tax on Short term capital gain @ 15%		12,80,79,490	
Tax on Interest income @ 5%		66,78,630	
Total tax liability		<u>22,81,83,062</u>	
Add: Surcharge @ 5%		1,14,09,153	
Add: Education cess @ 3%		71,87,766	
Total tax payable		<u>24,67,79,981</u>	
Less: Advance tax paid (Annexure 4)		<u>24,82,33,608</u>	
Balance Payable / (Refund Due)		<u><u>(14,53,627)</u></u>	

3.2. Against this statement of total income by the assessee, ld. Assessing Officer computed the total income while completing the assessment to arrive at the assessed total income at the same figure which is also extracted below:

(Amount in Rs.)

I	Income from Capital Gain		
	Long Term Capital Gain	1517,90,85,766	
Less:	Long Term Capital Loss	<u>(124,25,26,897)</u>	
		1393,65,58,869	
Less:	Exempt u/s 10(38)	<u>1300,23,09,452</u>	93,42,49,417
	Short Term Capital Gain	284,82,38,575	
Less:	Short Term Capital Loss	<u>(191,89,80,498)</u>	
		92,92,58,077	
Less:	Set off of brought forward earlier losses of	<u>(7,53,94,808)</u>	85,38,63,258
II	Income from Other Sources		
	Dividend income	128,75,13,141	
Less:	Exempt u/s 10(34)	<u>(128,75,13,141)</u>	Nil
	Interest on Securities u/s 194LD		13,35,72,600
	TOTAL INCOME		192,16,85,285

3.3. From the perusal of both the computations of total income, i.e., by the assessee as well as by the Id. Assessing Officer, treatment given to various components of total income is identical, there being no variation. The difference is on account of final tax liability whereby assessee is claiming a refund contrary to which Id. Assessing Officer has raised a demand arising due to levy of interest u/s.234C amounting to Rs.61,53,242/-. Thus, the dispute in the present appeal are regarding chargeability of interest u/s. 234C in respect of capital gain accrued/earned by the assessee during each quarter of the year under consideration and set off of brought forward short term capital loss as

well as current year short term capital loss while computing advance tax installment for the year under consideration. Both the parties have made their representation along with filing their written submissions including rejoinder by the assessee, which are placed on record.

4. We have heard both the parties and perused the material on record. Contention of the assessee is that interest u/s. 234C is levied by the Id. Assessing Officer for which neither the basis of chargeability nor the working has been provided. By referring to provisions of section 234C, assessee submitted that interest under the said section would arise only when advance tax paid by the assessee on its returned income-

- i) on or before 15th June is less than 15% of tax due on the returned income; or
- ii) on or before 15th September is less than 45% of tax due on the returned income; or
- iii) on or before 15th December is less than 75% of tax due on the returned income; or
- iv) on or before 15th March is less than the tax due on returned income.

4.1. In the computation of assessed total income, set off of short term capital loss brought forward from the earlier years of Rs.7,53,94,808/- and short term capital loss of the current year of Rs.191,89,80,498/- has been accepted by the Id. Assessing Officer.

5. There is no identification of the short term capital loss to specific quarters during the year for computing the total income as well as arriving at demand raised by the Id. Assessing Officer. Assessee

identified the current year short term capital loss quarter wise which arose in quarter 2, 3 and 4. For the short term capital loss brought forward from earlier years, its set off was claimed from the very first quarter of the year since it was available with the assessee from the beginning of the year itself. According to the assessee, there was no taxable capital gain during the first quarter. Further, after adjustment of brought forward short term capital loss and the current years short term capital loss, assessee arrived at its taxable income and computed tax liability thereon. This tax liability was deposited by it by way of advance tax in the respective quarters. According to the assessee, it paid advance tax more than the tax liability due on it on the returned income and thus claimed a refund.

5.1. In the written submission filed before us, assessee furnished three exhibits with three different scenarios. Based on the above discussion, we refer to the working given in exhibit -2 whereby short term capital loss for the current year has been identified quarter wise and has been accordingly set off in the respective quarters. Furthermore, interest income earned by the assessee on investments made in the Government of India securities which is subjected to TDS u/s.194LD, the advance tax due thereon has been taken at Nil. Thus, interest u/s.234C for the first quarter was worked out to Rs.3,57,630/-. This working is extracted below for ready reference.

Computation of interest payable under section 234C of the Act

Particulars	Upto 15 June 2014 (15% of advance tax liability)	Upto 15 Sept 2014 (45% of advance tax liability)	Upto 15 Dec 2014 (75% of advance tax liability)	Upto 15 March 2015 (100% of advance tax liability)	Between 15 March 2015 and 31 March 2015 (100% of advance tax liability)	Total
LTCG (No STT paid)						
Long term capital gains	-	93,42,49,417	93,42,49,417	93,42,49,417	93,42,49,417	
Less: Set off of current year long term capital loss	-	-	-	-	0	
LTCG	-	93,42,49,417	93,42,49,417	93,42,49,417	93,42,49,417	
Tax liability	-	10,10,39,074	10,10,39,074	10,10,39,074	10,10,39,074	
Advance tax due (A)	-	4,54,67,584	7,57,79,306	10,10,39,074	10,10,39,074	
STCG (STT paid)						
Short term capital gains	57,82,92,817	90,01,55,376	90,79,09,434	2,79,62,77,921	2,84,82,38,576	
Less: Set off of brought forward short term capital loss	-7,53,94,809	-7,53,94,809	-7,53,94,809	-7,53,94,809	-7,53,94,809	
Less: Set off of current year short term capital loss		-1,39,48,426	-6,44,94,315	-1,91,89,80,497	-1,91,89,80,497	
STCG	50,28,98,008	81,08,12,141	76,80,20,310	80,19,02,615	85,38,63,270	
Tax liability	8,15,82,629	13,15,34,000	12,45,92,095	13,00,88,652	13,85,17,969	
Advance tax due (B)	1,22,37,394	5,91,90,300	9,34,44,071	13,00,88,652	13,85,17,969	
Interest income						
Advance tax due on interest income	10,83,441	32,50,322	54,17,204	72,22,938	72,22,938	
Total advance tax due (A) + (B) + (C)	1,33,20,835	10,79,08,206	17,46,40,581	23,83,50,665	24,67,79,982	
Less: Advance tax paid	13,99,845	23,62,89,483	24,22,43,822	24,22,43,822	24,82,33,608	
Shortfall	1,19,20,990	-	-	-	-	
Interest under section 234C	3,57,630	-	-	-	-	3,57,630

5.2. Assessee in its rejoinder contended that ld. CIT for the first time alleged that assessee has not demonstrated compliance with adequate documentary evidence in respect of set off of short term capital loss which according to assessee is contrary to the records before the authorities below. In this context, reference was made to the direction given by ld. CIT(A) to ld. Assessing Officer to compute interest u/s.234C after allowing set off of brought forward short term capital loss of Rs.7,53,94,809/- in the quarter from 15.03.2014 to 31.03.2014. While giving this direction, ld. CIT(A) observed that-

“The appellant has computed the advance tax liability on its own and adjusted brought forward loss of Rs.7,53,94,809/- against the short term capital gain that arose during the first quarter itself and it continued to be adjusted in the remaining quarters. Interest u/s.234C is leviable where there was failure on the part of the assessee to pay advance tax u/s.208 of the IT Act on or before the prescribed due dates. Section 208 of the IT Act provides that advance tax should be payable during the financial year computed in accordance with provisions of the Act under Chapter XVI of the IT Act and if tax liability exceeds Rs. 10,000/-. Section 209 of the IT Act provides for computation of advance tax. As per section 209(1)(a) where calculation of advance tax is made by the assessee, he should first estimate the current income and income-tax shall be calculated at the rate in force in that year. The appellant has computed the advance tax liability on its own and adjusted brought forward loss of Rs.7,53,94,809/- against short term capital gain arising in the first quarter. As per provisions of section 74 of the IT Act, brought forward short term capital loss should be set-off against the short term capital gain or long term capital gain of that assessment year. As per provisions of section 209(1)(a), advance tax is to be computed on estimation of current income. It does not provide to set-off brought forward losses while estimating the current income. Therefore, the advance tax liability was wrongly calculated by the appellant after adjusting brought forward capital loss of Rs.7,53,94,809/- in the first quarter and it also got adjusted in the cumulative short term capital gain of next quarter.”

6. In the written submissions made by the ld. Sr. DR, it is contended that provisions of section 234C are mandatory and automatic and compensatory in nature. We note that contentions so made, are not under challenge in the present appeal. The dispute is only in respect of manner of computing the interest chargeable u/s.234C vis-a-vis identification of capital gain including the loss for each quarter and arriving at tax liability thereon. Contention is also made by ld. Sr. DR in respect of verification of brought forward losses which again is not a matter of dispute since ld. Assessing Officer has assessed the total income the returned income, computation of which is similar to what was presented by the assessee in its return. Both the computations by assessee and ld. Assessing Officer are already extracted above for ready reference.

6.1. In respect of interest income earned by the assessee from investments in Government of India securities which is subject to concessional tax rate u/s.194LD, it is contended by the Revenue that in absence of sufficient evidence supporting eligibility for concessional tax rate, claim of assessee need to be disallowed for computing the interest u/s. 234C. In this respect, we note that assessee has received interest on investments made in Government of India securities and has offered it to tax in its computation of income amounting to Rs.13,35,72,600/- which has been accepted by the ld. Assessing Officer in the assessment so made. This interest is subjected to TDS u/s. 194LD which assessee has not taken into account while computing its advance tax liability for each of the quarter though the payer is casted with a liability to do TDS on the interest accrual/payment. From exhibit 2 extracted above, it is noted that assessee has computed advance tax on interest income for each quarter and accordingly deposited the same.

While arriving at the advance tax liability of each of the quarter, TDS on the interest has not been taken into account by the assessee. There appears failure on the part of payer to deduct TDS u/s.194LD for which assessee cannot be penalised for levy of interest u/s.234C. Assessee has diligently discharged its tax liability by paying entire advance tax on the interest income earned on investments made in Government securities. For this conclusion of ours, reliance is placed on the decision of the Coordinate Bench of ITAT, Mumbai in the case of Standard Chartered Bank (Singapore) Ltd. vs. DCIT [2024] 167 taxmann.com 52 (Mum). In this decision, similar issue was dealt with whereby assessee earned interest in certain investments and payer faulted in not deducting TDS u/s.194LD and assessee discharged its full tax liability by paying entire advance tax on interest income. It was held that assessee could not be penalised while levy of interest u/s.234C for failure on part of payer to deduct TDS.

7. Considering the above facts and submissions made before us, we find ourselves in agreement with the working given by the assessee in exhibit 2 as extracted above whereby short term capital loss for the current year has been identified for each of the quarter for the purpose of set off in the respective quarters. For brought forward short term capital loss, it has been rightly claimed for set off from quarter 1, since it was available with the assessee from the beginning of the year. Further, in respect of interest income on investment in Government securities, the same has been subjected to calculation of advance liability for each of the quarter, despite not taking into account TDS which the payer is ought to deduct u/s.194LD of the Act. Since the quarter wise working for short term capital loss has been furnished for the first time before us in the form of exhibit 2, we find it proper to remit

this matter to the file of Jurisdictional Assessing Officer (JAO) for the limited purpose of verification of the same for its identification quarter wise. Ld. JAO is directed to consider the computation made in exhibit 2 as extracted above for the purpose of levy of interest u/s.234C. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 10 February 2025

Sd/-

(Narender Kumar Choudhry)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 10 February 2025

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai