IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

Before: DR. BRR Kumar, Vice President
And Shri T. R. Senthil Kumar, Judicial Member

ITA No: 466/Ahd/2025
Assessment Year: 2016-17

Sophos Technologies Private Limited Sophos House, Near Kalgi X Rasta, Gujarat College Road, Ellisbridge, Ahmedabad-380006, Gujarat, India **PAN: AACCC7727M** **(Appellant)**	Vs	The DCIT, Circle-4(1)(1), Ahmedabad **(Respondent)**

Assessee Represented: Shri DhaneshBafna, Shri Amol Mahajan & Ms. Nidhi Agarwal, A.Rs.

Revenue Represented: Shri Alpesh Parmar, CIT- DR

Date of hearing : 08-01-2026
Date of pronouncement : 29-01-2026

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 30-12-2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the assessment order passed under section 143(3) r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2016-17.

2. Brief facts of the case is that the assessee is a Private Limited Company provides Network Security Solutions, Contract Software Development and Contract Support Services. For the Assessment Year 2016-17 assessee filed its original Return of Income on 30-11-2016 declaring total income of Rs.148,86,82,230/- and revised return on 27-03-2018 declaring total income of Rs.149,22,97,140/-. The assessee company entered into an Advance Pricing Agreement (hereinafter referred as APA) with Central Board of Direct Taxes on 19-08-2019 under section 92CC of the Act for the Asst. Years 2016-17 to 2020-21. Therefore, a modified Return of Income under section 92CD was filed by the assessee company on 14-11-2019 declaring total income of Rs.157,70,06,240/- and paid the additional tax on the said income.

3. In the meanwhile, the return was taken for scrutiny assessment. During the course of assessment proceedings, the assessee requested for refund of excess Dividend Distribution Tax (DDT) paid by it contending that the rate of DDT paid on the dividends remitted to the shareholders (residents of United Kingdom), should not exceed the rate of 10% as prescribed in the Double Taxation Avoidance Agreement (DTAA) entered between India and United Kingdom. A reference was also made to the Transfer Pricing Officer for determining Arms' Length Price of the International Transaction undertaken by the assessee company and the TPO accepted the price at which International Transaction were recorded and no adverse inference was drawn by passing order dated 28-10-2019 under section 92CA(3) of the Act. Following the same, the Ld AO accepted the returned income filed by the assessee and no addition made by passing Assessment Order dated 31-08-2021 u/s. 143(3) r.w.s. 144B of the Act. However

the Ld. A.O. did not grant any relief in respect of the claim relating to refund of excess DDT paid by the assessee.

4. Aggrieved against the assessment order, assessee filed an appeal before Ld. CIT(A) challenging the non-grant refund of excess DDT as well as levy of interest u/s. 234B and 234C of the Act. Ld. CIT(A) directed the Ld A.O to verify the claim of refund of DDT paid in excess of the rate of tax on dividends as prescribed under Article 10 of the DTAA between India and U.K. and also consequential interest u/s. 234B and 234C of the Act. However, the Ld. A.O. still rejected the claim of the assessee relying on the decision of Hon'ble Supreme Court in Goetze India Ltd. thereby the assessee is in appeal before us raising the following Grounds of Appeal:

> Each of the grounds of the appeal are independent and without prejudice to the others.
>
> **1. Applicability of tax rate on dividends paid to non-resident shareholders**
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> On the facts and circumstances of the case and in law, the Hon'ble CIT(A)/Ld. AO erred in not appreciating that the Dividend Distribution Tax (DDT) prescribed under Section 115-0 of the Act is in substance and effect a tax on dividend income of non-resident shareholders and therefore, the DDT paid to the shareholders which are a resident of the United Kingdom, should be restricted to the more beneficial rate of 10% under Article 11 of India - United Kingdom tax treaty.
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> It is prayed that the Appellant be granted the beneficial rate under the treaty and the excess DDT be directed to be refunded to the Appellant.
>
> **2. Levy of interest under section 234B of the Act**
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> On the facts and circumstances of the case and in law, the Hon'ble CIT(A)/Ld. AO erred in levying interest under section 234B of the Act amounting to INR 55,60,425 on the incremental income offered to tax in

the modified return of income filed pursuant to the Advance Pricing Agreement (APA)

It is prayed that the Ld. AO be directed to delete the impugned interest under section 2348 of the Act.

3. Levy of additional interest under section 234C of the Act

On the facts and circumstances of the case and in law, the Hon'ble CIT(A)/Ld. AO erred in levying additional interest under section 234C of the Act amounting to INR 19,55,705 on the incremental income offered for tax in the modified return of income filed pursuant to the APA.

It is prayed that the Ld. AO be directed to delete the impugned interest under section 234C of the Act.

4. Short grant of credit of Tax Deducted at Source (TDS')

On the facts and circumstances of the case and in law, the Hon'ble CIT(A)/Ld. AO erred in not granting credit of TDS of INR 5,78,321 (i.e., INR 5,28,75.396 as per modified return of income less INR 5.22.97,075 as per assessment order) to the Appellant.

It is prayed that the Ld. AO he directed to grant the credit of TDS of INR 5,78,321/-.

5. Validity of the order passed by the Hon'ble CIT(A)

On the facts and circumstances of the case and in law, the Hon'ble CTT(A) erred in observing that the Ld. Assessing Officer (Ld. AO) be directed to verify the claim of the Appellant in relation to refund of excess DDT paid without appreciating that the Hon'ble CIT(A) does not have the jurisdiction to remand/set-aside any issue to the Ld. AO for verification.

It is prayed that the order of Hon'ble CIT(A) is bad in law and liable to be quashed.

The Appellant craves leave to add to, alter, amend, delete, modify or withdraw all or any of the Grounds of Appeal herein and to submit such statements, documents and papers as may be considered necessary either at or before or during the appeal hearing of the aforesaid matter.

5. Regarding Ground No.1: Applicability of the tax rate on dividend paid to non-resident shareholders. At the outset, the Ld Counsel appearing for the assessee submits that the issue involved in the present ground is squarely covered by the judgement of the Hon'ble Bombay High Court in M/s. Colorcon Asia Pvt. Ltd -Vs- JCIT in Tax Appeal No. 5 of 2024, which has specifically considered the negative decision of the Special Bench of the Mumbai ITAT in DCIT -Vs- Total Oil India (P) Ltd. and still held in Assessee's favour that the retention of excess DDT would be contrary to Article 265 of the Constitution of India and the rate of DDT has to be restricted to the rate prescribed under Article 11 of the DTAA. The Ld Counsel further submits that the judgement of the Hon'ble Bombay High Court was rendered in the context of the India-UK, DTAA and the non-resident shareholders are also a tax resident of UK and hence eligible for the relief under article 11 of India-UK, DTAA which restricts the rate to 10% and hence requested to grant of refund of excess DDT paid by the assessee company.

6. Per contra Ld CIT DR appearing for the Revenue supported the orders passed by lower authorities and requested to sustain the same.

7. We have given our thoughtful consideration and perused the materials available on record including the Paper Books and Case Laws compilation filed by the assessee. Brief facts of the case are that 99.98% of the Assessee company's shares were held by M/s. Sophos Limited and 0.02% of shares were held by M/s. Sophos Nominee Limited (both are Residents of United Kingdom). During the financial year 2015-16, the Assessee company paid dividend to its shareholders and paid DDT on the same at 20.36% (including surcharge and cess)

under section 115-0 of the Act amounting to INR 19,43.46.453/-. The tax paid on the distributed profits, has no connection whatsoever with the primary income-tax liability in respect of the profits of the company declared in the dividend. Further, section 90(2) of the Act provides an overriding effect to the provisions of DTAA over the Act, to the extent that they are more beneficial to the taxpayers.

7.1. It is undisputed fact that section 115-0 of the Act prescribes DDT rate at 20.36%. Whereas, the DTAA between India and United Kingdom provides for a lower rate of tax on dividend at 10% of the gross amount of dividend. The assessee company, with respect to the non-resident shareholders which are the tax residents of UK, inadvertently computed the DDT liability by applying the rate prescribed under section 115-0 of the Act instead of the lower rate of tax as provided in the India-UK, DTAA. Accordingly, the Assessee company paid excess DDT under the provisions of the Act, as against the DDT liability, if the benefit of Article 11 of the India-UK DTAA was adopted i.e., at 10% and claimed refund of excess DDT paid.

7.2. In this regard, the ld Counsel relied on the following judicial pronouncements:

a. Colorcon Asia Pvt. Ltd. v. JCIT - Tax Appeal No. 5 of 2024 (Bom. HC) dated 28 November 2025

b. Mitsui Kinzoku Components India Pvt. Ltd. v. CITIA), NFAC - ITA No. 3910/Del/2024 (Delhi-Trib.) dated 31-12-2025

c. Giesecke & Devrient (India) (P.) Ltd. v. ACIT [ITA 7075-Del-2017)

d. DCIT, Circle-10(1), Kolkata v. Indian Oil Petronas (P.) Ltd. (2021) 127 taxmann.com 389 (Kol-Trib.)

7.3. Very recent judgement of the Hon'ble Bombay High Court in the case of M/s. Colorean Asia Pvt. Ltd. (cited supra) clearly over ruled the Special Bench decision of the Mumbai Tribunal in M/s. Total Oil India (P) Ltd. and held that the Assessee is eligible for the benefit of the lower rate of 10% prescribed under Article 11 of the DTAA on the DDT paid. Operative portion of the judgement reads as follows:

> "…. 55. We find ourself fortified by the observation of Delhi Tribunal in Giesecke & Devrient Ltd. (supra), where with reference to the legislative history of Section 115-0, it emerges with clarity, that DDT, is a levy on the dividend distributed by payer company, being an additional tax is covered within "Tax' as defined in Section 2(43) of Act and, hence, is chargeable as per Section 4, which is subject to other provisions, which include Section 90 and sub-clause (2) thereof, then specially in case of Avoidance of Double Tax, the provisions more beneficial to assessee must be preferred. Considering that the international treaties involve extensive negotiations between two nations, and definitely being conscious of the respective Nation's power to tax, the benefits and detriments of a treaty and particularly a double tax treaty and its avoidance, can only be reciprocal when the flow of trade and Investment between treaty partners rests on balance and it is not allowed for one treaty partner to secure benefit to detriment of other. When a treaty is entered into, it is expected to have considered its impact on trade and investment and since it is mutual arrangement, it must be given full effect to and merely because there are unilateral amendments made on domestic front, the treaty cannot be made ineffective by construing the same in light of domestic law. The Parliament, is not within its power to change the terms of a bilateral treaty, which is a result of negotiated economic bargain between India and UK. A party may not follow the treaty, it may choose to renege from its obligations thereunder, but it cannot amend the treaty on the guise of its domestic law, having undergone change. Amendments to domestic law, cannot be read into treaty provisions, without amending Treaty itself. Since it is necessary for the contracting party to fulfill their obligations under a Treaty in good faith and this includes its accountability under it and act in a manner, not to defeat its purpose and object, we find that the benefit accruing under the DTAA, and Article 11 thereof, cannot be denied as Revenue is of the opinion that the Treaty do not cover 'Dividend' or it is not applicable to a domestic company.

56. In Tata Tea Company (supra), while pronouncing upon the constitutional validity of Section 115-0 of the Act of 1961, which is a provision for declaration, distribution or payment of dividend by domestic company and imposition of additional tax on dividend, it is held by the Apex Court that the source of the income may be agriculture, but when dividend is declared to be distributed and paid to shareholder of a company, its source is not relevant, as it remains dividend income. Nor does the fact that it is share of the company's profit, is held to be interfere with character of profit, from which it reaches hands of shareholder.

57. BFAR has based its decision on the definitional and conceptual framework of DDT holding that if it paid by the petitioner to its shareholder, it falls outside scope of DTAA as, (a) Dividend is an amount declared, distributed or paid by the Domestic Company out of the current or accumulated profits; (b) Dividend is additional income tax payable over and above the income tax chargeable in respect in total income of such company. BFAR has concluded that incidence of tax under Section 115-0 is only upon domestic company and not shareholder i.e. Colorcon U.K. and DTAA is not triggered and, therefore, there is no question of its being taxed @ 10% as per DTAA. It also render a finding that Article 11(2) is not triggered at all, as there is no mutual agreement settling the mode of application of tax rates.

On perusal of the impugned Ruling by BFAR and on its detail analysis, according to us BFAR has failed to appreciate that section 4 of the Act of 1961 levies income-tax, including additional income tax, in respect of the total income of the previous year of every person. Thus, it is the earning of the 'Income' that attracts the charge. 'Income' has been defined under Section 2(24) of the Act to include 'dividend'. Therefore, the Authority has erred in not appreciating that Section 115-0 levies additional tax on the company on the "amounts declared, distributed or paid by way of dividends". According to us, the declaration, distribution or payment of dividend by company cannot in any manner be regarded as 'income of the company distributing the dividend. Even Section 2(24) has not been amended by the Legislature in as much as regarding the "amounts declared, distributed or paid by way of dividends" as "income" of the company distributing dividends. Moreover, the Hon'ble Supreme Court in UOI v. Tata Tea Co. Ltd. (supra), has, in no uncertain words held that "income as defined in Section 2(24) 'dividend' and that "section 115-0 pertain to

declaration, of the 1961 Act is the inclusive definition including specifically distribution or payment of dividend by company and imposition of additional tax on dividend is thus clearly covered by subject as embraced by Entry 62 Once the Hon'ble Supreme Court has held that dividend connotes income, the natural corollary is that as per section 4, the said income should be chargeable to tax in the hands of the person earning such income. However, from a combined reading of Section 115-0 and 10(34), along with the legislative history narrated earlier, it is evident that DDT is a tax on the dividend income of the shareholder, though the incidence of tax has shifted from the shareholder to the company paying the dividend. Any other interpretation of the provisions will render the section 115-0 of the Act unconstitutional as it will fall foul of Entry 82, since what is sought to be taxed by the Respondent is not 'income' of the company.

58. The Board of Advanced Ruling has further failed to appreciate that in view of the statutory provisions and legislative background of Section 115-0 of the Act, DDT paid by a company distributing dividend is not an income tax on profits or income of the company, but, is a tax on the dividend, which is income of the shareholder of the company. Hence, DDT is tax on the dividend income of the shareholder, which is merely, for administrative convenience, charged in the hands of, and recovered from the company distributing dividend. There is no denying that dividend income is not chargeable to tax and is exempt in the hands of the shareholders in light of the provisions of Section 10(34) of the Act, since the burden of taxation has been shifted to the company distributing the dividend, from the shareholder. While the DDT is a tax payable by the company, and not the shareholders, in pith and substance, it is a tax on dividends that is income of the shareholders.

59. We must also note that BFAR has grossly erred in rejecting the distinction and has failed to consider the binding dictum of the Apex Court in Tata Tea (supra) and on the other hand its reliance upon Godrej and Boyce (supra) is misplaced, decision in Godrej & Boyce was rendered on an issue whether expenses incurred in relation to earning an exempt income by way of dividend was to be disallowed under Section 14A of the Act. The Assessee argued that dividend income could not be treated as 'exempt' as the income suffered tax under Section 115-0 in hands of the company distributing dividend. It was argued that DDT under Section 115-0 was nothing but tax paid on behalf of the shareholder and such income which had attracted tax could not be said to be 'exempt'.

The conclusion was therefore arrived that Section 14-A of the Act would apply to dividend income on which tax is payable under Section 115-0 of the Act. The decision in Godrej & Boyce is, therefore, in a completely different context as the issue before the Court was whether the dividend income not forming part of shareholders income attract Section 14-A qua the shareholder, but the issue before the BFAR was as to what could be taxed under Section 115-0 and the answer is to be found in Tata Tea Company Ltd. (supra), where it is held that DDT is a tax on dividend income of shareholder and it would fall in Entry 82 of the Union List.

Further reliance on decision by special bench in Tata Oil is also not well founded as the Apex Court in Godrej & Boyce observed that even if it assumed that the additional income tax under the aforesaid provision is on the dividend and not on the distributed profits of the dividend paying company, it would not have made any material difference to the applicability of Section 14-A.

The BFAR also erred in not appreciating that as per Section 90(2) of the Income Tax, the provision of DTAA would prevail over the domestic law to the extent they are more beneficial to the assessee who is subjected to tax in India and as per Article 1 of the DTAA, it shall apply to the persons who are residents of one or both of the Contracting States. Further, Article 2 of the Treaty apply in respect of income tax and also to any identical or substantially similar taxes which are imposed after DTAA is brought into force.

Since DDT is an 'Income Tax' as per the provisions of the Act, it definitely fall within ambit of Article 2 of DTAA as income tax includes surcharge and dividend and Article 2 (2) clearly apply to any identical or substantially similar tax in addition to or in place of tax. DDT is squarely covered under Article 11 of the DTAA. On its plain reading the payment being covered under definition of dividend under Article 11(3) which is paid by the Company, resident of India to a resident of UK and therefore, in our view, Article 11(1) is automatically triggered, consequently triggering the restriction in rate of tax under Article 11(2).

60. **Thus, the BFAR erred in not appreciating that the tax under Section 115-0 is an additional tax under its sub section (4) which in turn is a part of the Income tax statute and legislation subject to section 90 read with the relevant DTAA. Therefore, levy of tax on dividend paid/distributed by**

the Appellant in excess of 10% would squarely be contrary to the provision of India- UK DTAA.

The BFAR therefore erred in overlooking the settled legal principle that with respect to taxability of dividend income tax under India-UK DTAA, Article 11 allocates the taxing rights between the two contracting states. Para 1 thereof gives the primary right to tax dividend income to the state of residence. However, para 2 entitles the source state to tax the dividend paid in accordance with its domestic laws, but imposes a fetter viz. the tax so charged cannot exceed the rate of 10% under Article 11(2)(b) if the resident of UK is the beneficial owner of the dividend in all cases other than the case falling under Article 11(2)(a) where dividend is being paid out of income derived directly or indirectly from immovable properties, subject to such income from immovable property being exempt from tax. Article 11 therefore, restricts the right of India, as a source State, to levy tax in accordance with its domestic laws, that is, Section 115-0, but instead of the rate prescribed for therein, the tax has to be levied at the minimum rate of 10% to the extent the dividend is paid to a resident of UK. The BFAR erred in holding the respondent's submission by merely following the special bench's ruling stating that in order to invoke Article 11, the shareholder has to be taxed in India on the dividend earned from India. On a plain reading of the said Article, it is evident that the person on whom the tax on dividend is levied is an irrelevant and extraneous consideration for its application. There is nothing in the Article which suggests that the income has to be taxed in India in the hands of the shareholders. It merely deals with the nature of income, viz. dividend, which cannot be taxed in India at a rate exceeding 10%, if other stipulated conditions are met. The nature of income is a apropos element to invoke the said Article, and not the person who is subjected to tax, in whose hands the tax is levied, is not relevant for application of Article 11, as DDT is a 'tax on dividend Income of the shareholder'. The entire legislative history of Section 115-0 corroborates this. More importantly, the Apex Court in the case of Tata Tea (supra) too has confirmed the nature of income being dividend income, which is subject to DDT and under Section 115-0 the dividend income is sought to be taxed at a rate of 20.36%.

Section 90(2) of the Act of 1961 allow the appellant to apply the lower rate under the DTAA and Article 11(2) restrict tax rate of such dividend income to 10% and there is no embargo in Article 11 of the DTAA on the Appellant to apply the lower tax rate stipulated in Article 11(2).

> 61. In the wake of the above, the Authority has erred in not appreciating that DDT erroneously collected in excess of 10% as provided by India-UK DTAA is erroneous and contrary to law and retention of excess tax would be contrary to Article 265 of the Constitution of India.
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> As a result of the above, the Appeal is allowed by setting aside the Ruling dated 27/06/2024 passed by the Board For Advanced Rulings, New Delhi, by declaring that, on the facts and circumstances of the case and in law. Colorcon Asia Pvt. Ltd ("Colorcon India" or "the Applicant" or "Company") is entitled to restrict the tax rate on dividends distributed by it to Colorcon Ltd, United Kingdom (UK), at 10% under Article 11 of the India -UK Tax Treaty.
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> Upon the said question being answered the Department is at liberty to gross up the tax rate in an appropriate manner."

7.4. Thus Hon'ble Bombay High Court held that the Authority has erred in not appreciating that DDT erroneously collected in excess of 10% as provided by India-UK DTAA, which is contrary to law and violative of Article 265 of the Constitution of India. Thus, Hon'ble High Court concluded that the assessee is entitled to restrict the tax rate on dividends distributed by it to resident share-holders at United Kingdom at 10% under Article 11 of the India -UK Tax Treaty. Respectfully following the above judicial precedent we therefore direct the Jurisdictional Assessing Officer to charge DDT only to the extent of 10% invoking Article 11 of DTAA between India-UK and grant refund of the excess DDT paid by the assessee company. In the result **the ground no. 1 raised by the assessee is allowed**.

8. Regarding Ground No. 2 & 3 on levy of additional interest under sections 234B and 234C of the Act pursuant to the Advance Pricing

Agreement entered into with the CBDT. Ld Counsel submits that the issue involved in the present grounds of appeal are also squarely covered by the decision of the Hon'ble Delhi ITAT in the case of M/s. Colt Technology Services (I) Pvt Ltd. -Vs- DCIT in ITA No. 536/Del/ 2015, wherein it has been categorically held that the levy of additional interest u/s. 234B and 234C of the Act on additional income as per the Advance Pricing Agreement entered into with the CBDT was illegal and void and had directed the AO to delete the same. Applying the above decision of the Delhi Tribunal, the Ld Counsel humbly prayed that the JAO be directed to delete the additional interests levied under section 234B and section 234C of the Act. In further support the above contentions, Ld Counsel also placed reliance on the following judicial pronouncements:

a. Prime Securities Lid. v. ACIT (ITA NO. 711 OF 2004) (Bom. HC)
b. CIT, Vadodara-av. National Dairy Development Board [ITA No. 361 of 2017) (Guj. HC)
c. CIT, Mumbai v. JSW Energy Ltd. [ITA No. 1468 of 2013] (Bom. HC)
d. Fil India Business & research services Pvt. Ltd. vs. DCIT (ITA 1948/Del/2021 (Delhi Trib.)] dated 25 June 2025.

8.1. Per contra Ld CIT DR appearing for the Revenue supported the orders passed by lower authorities and Ld CIT[A] already set aside this issue to the file of Ld AO.

9. Brief facts are that pursuant to Advance Pricing Agreement dated 19 August 2019 entered with the CBDT, the assessee company filed a modified Return of Income under section 92CD of the Act on 14-11-2019 declaring a total income of INR 157,70,06,240/- and forthwith

paid the entire additional tax on the income. In the modified return filed, the Assessee company inadvertently paid interest u/s. 234B of the Act amounting to INR 55,60,425/- and interest u/s 234C of the Act amounting to INR 19,55,705/- by computing the said interest on the entire income of INR 157,70,06,240/- including the incremental/ enhanced income computed pursuant to the APA, amounting to INR 8,47,09,100/-. However, the lower authorities without appreciating that such interest was not leviable in the Assessee's case did not grant any relief. It is pertinent to note that there were no additions made by the TPO in his order. Ld Counsel further submits that the advance tax installments were due and payable during the period from April 2015 to March 2016 and the time limit for filing the original ROI subsisted only upto 30th November 2016. However, the incremental income got crystallized and determined only pursuant to the signing of the APA on 19-08-2019, which is a subsequent event which could not have been foreseen by the Assessee, it was impossible for the Assessee to estimate the increment in income pursuant to APA. Thus, advance tax could not have been paid on such incremental income and was accordingly, advance tax was paid only on the current income of the Appellant. On identical case co-ordinate Bench of the Delhi ITAT in the case of M/s. Colt Technology Services (I) Pvt Ltd. [cited supra] held as follows:

> *"33. The additional ground of appeal is directed against levying of interest u/s 234B and 234C of the Act on additional income arising on account of APA entered into by the assessee. The Ld. Counsel for the assessee submitted that, the assessee had entered into APA for AY 2015-16 to AY 2019-20 with roll back for the AY 2011-12 to AY 2014-15. Pursuant to the APA appellant has filed modified return for AY 2011-12 on 27/11/2017 declared an income of Rs. 58,72,70,320/- as against the income of Rs. 49,04,70,740/- declared in original return of income, thereby declared an additional income of Rs. 9,67,99,580/-. As per Section 92CD(2) of the Act the modified return filed pursuant to the APA, all*

other provisions shall apply as if the modified return is filed u/s 139 of the Act. Since, assessee cannot estimate the additional income at the time of advance tax instilment and at the time of filing income tax return, did not pay advance tax on such income. Therefore, submitted that interest u/s 234C and 234B of the Act for non/short payment of advance tax installment and delay in payment of income tax respectively should not be levied on such additional income declared by the assessee in its modified return of income.

34. Per contra, the Ld. DR has relied on the observations and conclusions of the Lower Authorities.

35. We have heard the Ld. AR and also Ld. DR on the issue in dispute, we are agreeing with the argument of the Ld. AR.

36. In the case of Prime Securities Ltd. Vs. Assistant Commissioner of Income Tax (Investigation), [2012] 20 taxmann.com 757 (Bombay), the Hon'ble High Court of Karnataka, while dealing with the issue of levying interest u/s sections 234A, 2348 and 234C for non/short payment of advance tax installment and delay in payment of income tax held as under:-

> *"9. Perusal of the above provisions shows that liability to pay interest arises on failure of the assessee to pay advance tax under section 208 or advance tax payable under section 210 is paid less than 90 per cent. Perusal of the provisions of sections 208 and 209 shows that for the purpose of payment of advance tax the assessee has to estimate his current income and then he has to calculate income-tax on that income at the rate in force in the financial year. Thus, the amount of advance tax is to be decided by the assessee after estimating his current income and then applying law in force for deciding the amount of tax. It is an admitted position in the present case that the date on which the appellant paid the advance tax it had estimated its income and liability for payment of advance tax in accordance with law that was in force. Therefore, it is obvious that there was no failure on the part of the appellant to pay advance tax in accordance with the provisions of sections 208 and 209. So far as the judgment of the Supreme Court in the case of Ghaswala (20011 252 ITR 1 is concerned, the Supreme Court was concerned with the powers of the Settlement Commission in granting waiver of interest and for that purpose the Supreme Court considered the provisions of sections 234A, 2348 and 234C. The Supreme Court in no uncertain terms held that the interest is compensatory in nature. The court read the provisions of sections 234A, 234B and 234C as mandatory in character holding that after the amendment in the provisions in the Finance Act, 1987, that with the use of the expression "shall" therein the Legislature clearly indicated that its intention to make the collection of statutory interest mandatory. It is for this purpose that the court proceeded to decide that even the Settlement Commission which was vested with the vast power had no power to waive the interest payable under these provisions. Going by this interpretation of sections 234A, 234B and 234C as given by the Constitution Bench of the Supreme Court, it is clear that the*

interest is payable in case the advance tax is not paid in consonance with the law in force at the time when the advance tax is paid and there is a default. Therefore, for charging interest under section 234B, committing of default in payment of advance tax is condition precedent. Perusal of the judgment of the Delhi High Court, which is relied on by the learned counsel appearing for the respondent, shows that in that case also the Delhi High Court has held that for charging of interest establishment of default in payment of advance tax is necessary. In the present case, it is nobody's case that the appellant at the time of payment of advance tax has committed any default or that payment of advance tax made by the appellant was not in consonance with law. The Division Bench of this court in its judgment in the case of the appellant, referred to above, has held that the return filed by the appellant was in consonance with law and there was only a formal defect and the moment that defect was cured, the return related back to the original date. In our opinion, when the Supreme Court in Ghaswala's case (2001) 252 ITR 1 says that charging of interest under section 234B is mandatory, what it really means is that once the assessee is found liable to pay interest, then recovery of interest is mandatory and recovery of that interest cannot be waived for any reason But for charging interest under that section, it has to be established that the assessee has committed default in payment of advance tax. In our opinion, as in the present case it is nobody's case that the appellant has committed a default in payment of advance tax when it actually paid it, the appellant cannot be held liable to pay interest under section 234B. In so far as the observations in the order of the Tribunal, that the appellant should have anticipated the events that took place in March, 1992 are concerned, in our opinion, they have no substance. In our opinion, it is rightly submitted that it was not possible for the appellant to anticipate the events that were to take place in the next financial year and pay advance tax on the basis of those anticipated events."

36.1. The similar views have been taken by the Hon'ble Delhi High Court in the case of Escorts Ltd. Vs. CIT [2003 127 Taxman 574 (Delhi), City Union Bank Ltd. Vs. Assistant Commissioner of Income Tax [2020] 116 taxmann.com 139 (Madras), CIT, Meerut Vs. Prem Kumar (2008) 169 Taxman 351 (Allahabad) and CIT Vs. Akbar Ali Dhala [2014] 226 Taxman 254 (Mad).

37. By following the ratio laid down in the judgment mentioned supra, we hold that, the levy of interest u/s 234B and 234C of the Income Tax Act on additional income agreed as per advance pricing agreement entered between appellant and the CBDT is illegal. Ergo, we allow the additional grounds of appeal.

9.1. Following the above judicial precedents we hereby direct the Ld JAO to delete the levy of additional interest u/s. 234B and 234C of the Act and refund the same as per the provisions of law.

10. Regarding Ground No. 4: Short grant of credit of Tax deducted at source (TDS) of Rs.5,78,321/-. The JAO is directed to verify the same and grant TDS credit as claimed in the modified return and as per the provisions of law.

11. Ground No. 5: Validity of the order passed by the Hon'ble CIT(A). Consequential to the relief given to the assessee, this ground is does not require separate adjudication and dismissed.

12. In the result the **appeal filed by the assessee is allowed.**

Order pronounced in the open court on 29 -01-2026

Sd/- **Sd/-**
(DR. BRR KUMAR) **(T.R. SENTHIL KUMAR)**
VICE PRESIDENT ***True Copy*** **JUDICIAL MEMBER**
Ahmedabad :
Dated 29/01/2026

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद