

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA No.383/Bang/2013
Assessment year : 2001-02

The Joint Commissioner of Income Tax, Large Taxpayers Unit (LTU), Bangalore.	Vs.	M/s. IBM India Pvt. Ltd., (Earlier known as IBM Global Services India Pvt. Ltd.), Bannerghatta Main Road, Bangalore – 560 029. PAN: AAACI 4403L
APPELLANT		RESPONDENT

Appellant by	:	Shri Sanjay Kumar, CIT(DR)(ITAT)-3, Bengaluru
Respondent by	:	Shri Sharath Rao, CA

Date of hearing	:	07.12.2016
Date of Pronouncement	:	22.02.2017

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal was disposed of by the Tribunal vide its order dated 24.01.2014. Aggrieved by the order of Tribunal with regard to its finding on levy of interest u/s. 234D of the I.T. Act, 1961 [hereinafter referred to as “the Act”], the revenue filed an appeal before the Hon’ble High Court of

Karnataka and while disposing of this appeal, the Hon'ble High Court has remanded the issue i.e., question No.2 for levy of interest u/s. 234D of the Act to the Tribunal for its readjudication in the light of the observations of the Hon'ble High Court and also in the light of relevant provisions of the Act.

2. Accordingly the appeal was listed for hearing and the arguments were advanced by the Id. counsels for the parties.

3. During the course of hearing, the Id. counsel for the assessee has invited our attention that the Assessing Officer has charged the interest u/s. 234D while completing the assessment u/s. 143(3) of the Act vide his order dated 30.3.2004. The chargeability of interest was challenged before the CIT(Appeals) and the CIT(Appeals) being convinced with the arguments of the assessee, has held that the provisions of section 234D was introduced by the Finance Act, 2003 w.e.f. 01.06.2003 and hence applicable from the Assessment Year 2004-05. Since the provisions of section 234D of the Act are substantial in nature and they cannot be retrospectively applied as the assessment year in question is 2001-02. This order of the CIT(Appeals) was reversed by the Tribunal by holding that provisions of section 234D is consequential in nature.

4. Consequent to the Tribunal's order, the AO has recomputed the interest vide his order dated 24.05.2011 and calculated the interest u/s.

234D from 01.06.2003 to 06.01.2005 for 20 months and from March, 2005 to May, 2011 for 75 months.

5. The Id. counsel for the assessee submitted that the calculation made by the AO, consequent to the Tribunal's directions, is totally incorrect as it is not in accordance with the provisions of section 234D of the Act. He further invited our attention to Explanation 2 to section 234D with the submission that this Explanation was inserted by the Finance Act, 2012 with retrospective effect from 1.6.2003 and therefore, it would be applicable to assessment year commencing before the 1st day of June, 2003 if the proceedings in respect of such assessment year is completed after the said date. In the impugned case, the assessment was initiated before 1st March, 2003 and was completed on 30.03.2004. Therefore, by virtue of this Explanation, the provisions of section 234D of the Act will apply to the present case. In the light of this provision, the Id. counsel for the assessee has agreed that the findings of the CIT(Appeals) that this provision would not apply to the assessee's case is incorrect and wrong. Hence, it deserves to be reversed.

6. But so far as the finding in the consequential order passed by the AO vide his order dated 24.05.2011 is concerned, the Id. counsel for the assessee has contended that the calculation of interest u/s. 234D of the Act is not proper as the interest is to be calculated as per sub-section (1) of section 234D of the Act, according to which, the interest is to be calculated

from the date of grant of refund to the date of such regular assessment. But the AO in the consequential assessment order, has wrongly calculated the interest; whereas the calculation made by the AO in the original assessment is in accordance with sub-section (1) of section 234D of the Act.

7. The Id. counsel for the assessee has further contended that in the light of the aforesaid submissions, the order of CIT(Appeals) deserves to be reversed and the calculation made by the AO in the original assessment deserves to be upheld.

8. The Id. DR, on the other hand, did not dispute the factual aspect as demonstrated by the Id. counsel for the assessee.

9. Having carefully examined the order of lower authorities in the light of rival submissions, we find that the CIT(Appeals) has wrongly held that the provisions of section 234D of the Act would not be applicable to the assessee's case as the assessment year involved is 2001-02, as the assessment was completed on 30.3.2004. Therefore, we set aside the order of CIT(Appeals) in this regard. So far as the quantum made by the AO in the original assessment vide his order dated 30.03.2004 is concerned, we find that the calculation of AO is as per the provisions of section 234D of the Act. Therefore, we uphold the calculation of interest made by the AO in the assessment order dated 30.03.2004. Accordingly, the revenue's appeal stands allowed.

10. In the result, the revenue's appeal is allowed.

Pronounced in the open court on this 22nd day of February, 2017.

Sd/-

(A.K. GARODIA)
Accountant Member

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 22nd February, 2017.

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Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.