

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH " B "

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND  
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

I.T.A. No.1391/Bang/2014  
(Assessment Year : 2007-08)

Dy. Commissioner of Income Tax,  
Circle 11(4), Bangalore-560 001.

.... Appellant

Vs.

M/s. IBM India Pvt. Ltd.,  
No.12, Subramanya Arcade,  
Bannerghatta Road, Bangalore.

..... Respondent.

Appellant By : Shri Farhat Hussain Qureshi, CIT (D.R)  
Respondent By : Shri Ajay Rotti, C.A.

Date of Hearing : 19.6.2015.  
Date of Pronouncement : 14.8.2015.

O R D E R

Per Shri Jason P. Boaz :

This appeal by Revenue is directed against the order of the Commissioner of Income Tax (Appeals) - IV, Bangalore dt.22.9.2014 for Assessment Year 2007-08.

2. The facts of the case, briefly, are as under :-

2.1 The assessment for A.Y. 2007-08 in the case on hand was completed under Section 143(3) rws 144C of the Income Tax Act, 1961 (in short 'the Act') vide order dt.15.2.2011. Subsequently, the Assessing Officer observing that interest u/s. 220(2) and 234D of the Act had not been charged, rectified the order of assessment for A.Y. 2007-08 by an order

dt.27.7.2011 passed under Section 154 of the Act, inter alia, charging the assessee interest amounting to Rs.12,77,77,868 u/s. 220(2) of the Act holding as under :-

*" The order under Section 143(3) rws 144C was passed on 15.2.2011. It is seen that in this order interest under Section 234B and interest under Section 220 on delay of payment of Rs.12,77,77,868 has been not levied. Also there is a mistake in calculation of interest under Section 234D. As these are the mistakes apparent from records, the same are rectified after considering assessee's submission filed on 8.7.2011. Assessee's argument that interest under Section 220(2) for the period of one month on demand amount of Rs.12,77,77,868 shall not be leviable is not acceptable. The order under Section 143(3) is rectified....."*

From the computation recorded in this order, it is seen that the Assessing Officer has charged interest under Section 220(2) in 2 parts namely :-

- (i) Interest u/s.220(2) of the Act on 12,77,77,868 for one month (delay in payment);
- (ii) Interest under Section 220(2) from 1.4.2011 to 26.7.2011 on Rs.480,20,78,937.

2.2 Aggrieved by the order dt.27.7.2011 passed under Section 154 of the Act for A.Y. 2007-08, the assessee preferred an appeal before the CIT (Appeals) - IV, Bangalore. From the grounds of appeal before the learned CIT (Appeals), it is seen that the assessee has raised the following issues before the CIT (Appeals) with regard to the charging of interest u/s.220(2) of the Act.

(a) The Assessing Officer erred in charging interest u/s.220(2) of the Act amounting to Rs.12,77,779 for a period prior to the date of regular assessment order under Section 143(3) of the Act, without appreciating that the only occasion to charge interest till the date of regular assessment is under Section 234B/234D of the Act.

(b) There cannot be any double charge of interest under Section 220(2) and 234B of the Act for the same period.

(c) The first proviso to section 220(2) of the Act provides for reduction of interest pursuant to rectification order and hence interest cannot be increased pursuant to order under Section 154 of the Act.

The learned CIT (Appeals) disposed off the assessee's appeal vide order dt.22.9.2014 allowing the assessee's appeal and cancelling the charge of interest u/s.220(2) of the Act.

3. Revenue being aggrieved by the order of the CIT (Appeals) - IV, Bangalore dt.27.9.2011 for A.Y. 2007-08, has preferred this appeal before the Tribunal raising the following grounds

:-

*" 1. The order of the learned CIT (Appeals) is opposed to law and the facts and circumstances of the case.*

*2. The CIT (Appeals) erred in deleting the levy of interest of Rs.12,77,77,868 on the ground that the levy of interest under Section 220(2) prior to determination of final tax liability under Section 143(3) of the Act cannot be sustained in view of the decision of Apex Court, jurisdictional High Court and Madras High Court without appreciating that the interest under Section 220(2) was levied subsequent to the order under Section 143(3) and he relied upon judgments are distinguishable and not applicable to the facts of the case.*

*3. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT (Appeals) be reversed and that of the Assessing Officer be restored.*

*4. The appellant craves leave to add, to alter, amend or delete any of the grounds that may be urged at the time of hearing of the appeal."*

4. The Grounds raised at S.Nos. 1, 3 & 4 are general in nature and therefore no adjudication is called for thereon.

**5. Ground No.2 : Charge of Interest u/s.220(2) of the Act - Rs.12,77,77,868.**

5.1 In this ground of appeal, Revenue contends that the learned CIT (Appeals) erred in deleting the charge of interest u/s.220(2) of the Act amounting to Rs.12,77,77,868, following the decisions of the Hon'ble Apex Court in ITO Vs. Volkart Brothers 82 ITR 50 (SC), the Hon'ble Karnataka High Court in the case of CIT V Manjit Singh Sachdeva 310 ITR 357 (Kar) and of the Hon'ble Madras High Court in the case of Tamil Nadu Magnesite V CIT 196 Taxmann 271(Mad) which are distinguishable and not applicable to the facts of the case on hand and the issue involved. The learned Departmental Representative assailed the order of the CIT (Appeals) arguing that the impugned order was wrong on facts, in that the interest u/s.220(2) of the Act has been charged only after the order of assessment under Section 143(3) of the Act was passed and submitted that the various judicial pronouncements relied on by the CIT (Appeals) in the impugned order are either distinguishable or not applicable to the facts of the case and the issue involved. No submission was put forth before us to substantiate this claim or controvert the findings of the learned CIT (Appeals) thereon.

5.2 Per contra, the learned Authorised Representative supported and relied on the impugned order of the learned CIT (Appeals) in cancelling the interest charged u/s.220(2) of the Act and cited/relied on various case laws, in support of his contentions, which are as under

:-

- (i) Birla Cotton Spinning and Weaving Mills Ltd. V ITO in 211 ITR 610 (Cal)
- (ii) ABB Ltd. V Addl. CIT in ITA No.437 &439/Bang/2012 (ITAT, Bangalore).
- (iii) Kapurchand Shirmal V CIT (131 ITR 0451)(SC)

5.3.1 We have heard the rival contentions and perused and carefully considered the material on record; including the judicial decisions relied on by the learned CIT (Appeals) in the impugned order. At the outset, we are constrained to observe that the order of the learned CIT (Appeals) is not a speaking order. While the impugned order cites certain decisions of the Hon'ble Apex Court / High Courts and states that the facts of the cited cases are identical to the facts of the assessee's case, it does not specify or elaborate as to how the facts of the cases are identical and how the decisions in the cited cases are applicable to the facts of the assessee's case. In fact, we find that the issues involved in the decisions cited by the learned CIT (Appeals) are different from the issue on hand, i.e. the charging of interest under Section 220(2) of the Act.

5.3.2 The learned CIT (Appeals) has relied on the following decisions to conclude that interest u/s.220(2) of the Act is not chargeable in the case on hand :-

- (i) CIT V Gujarat Electricity Board (260 ITR 84) (SC)
- (ii) CIT V Manjit Singh Sachdeva (310 ITR 357) (SC)
- (iii) Spaco Carburattors India Ltd. V Raj Kumar, DCIT reported in 284 ITR 611 (Bom)
- (iv) Tamil Nadu Magnesite V CIT reported in 196 Taxmann 271 (Mad)

In all the above cases, as seen from the extracts reproduced in the CIT (Appeals)'s order, the issue is different from the issue at hand. In the case of Gujarat Electricity Board (supra), the issue was on the jurisdiction of the Assessing Officer to commence proceedings under Section 143(1) of the Act and wherein it was held that as regular assessment proceedings having been commenced by issue of notice under Section 143(2), there is no need for summary

proceedings under Section 143(1)(a) of the Act. In the case of Manjit Singh Sachdeva (supra), it was held that no action under Section 154 of the Act could be initiated once assessment proceedings have commenced by issue of notice under Section 143(2) of the Act. The other two decisions cited are also on the same issue that intimation under Section 143(1)(a) of the Act and its rectification does not survive once regular assessment proceedings under Section 143(2) are commenced.

5.3.3 In the case on hand, however, the facts are different. It is clear from the face of the impugned order of the Assessing Officer that the order under Section 154 of the Act has been passed to rectify the order passed under Section 143(3) of the Act and not intimation under Section 143(1)(a) of the Act. It is also clear that interest u/s.220(2) of the Act has been charged for the period after passing of the order of assessment under Section 143(3) of the Act. In this factual matrix, the reliance placed by the learned CIT (Appeals) on the above decisions is, in our view, totally misplaced.

5.3.4 We also find that in the grounds of appeal raised by the assessee before the learned CIT (Appeals), the facts of the case have been wrongly stated. For instance, the assessee raised the ground that the Assessing Officer was wrong in charging interest u/s.220(2) of the Act for a period prior to the date of regular assessment order under Section 143(3) of the Act and that there cannot be double charge of interest under Section 220(2) and 234B of the

Act for the same period. However, from the computation given in the impugned order under Section 154 of the Act, we find that interest under Section 234B has been charged for the period 1.4.2007 to 15.2.2011, the date of the order of assessment, whereas interest u/s.220(2) of the Act has been charged for the period after passing of the assessment order under Section 143(3) of the Act, i.e. from 1.3.2011 to 11.4.2011 (one month period and from 1.11.2011 to 26.7.2011).

5.3.5 We also find that the assessee had raised the contention before the learned CIT (Appeals) that the proviso to section 220(2) of the Act only provides for reduction of interest charged u/s.220(2) by passing of rectification order under Section 154 of the Act.

5.3.6 From the discussion of the facts and circumstances of the case from para 5.1 to 5.3.5 of this order (supra), it emerges that the learned CIT (Appeals) has cancelled the charging of interest by placing reliance on the decisions which are not germane to the issue under consideration. We are also of the view that the decision of the learned CIT (Appeals) appears to have been based on facts which have not been placed in the proper perspective before him. It is also seen that the learned CIT (Appeals) has not dealt with and adjudicated on the specific grounds related to the issue raised before him. In view of all of the above, in our considered view, we feel that it would be in the fitness of things to remand the matter back to the file of the CIT (Appeals) to examine the issue afresh after affording the assessee

adequate opportunity of being heard and make submissions and file details required in this regard. It is ordered accordingly.

6. In the result, Revenue's appeal is treated as allowed for statistical purposes.

Order pronounced in the open court on 14<sup>th</sup> Aug., 2015.

Sd/-  
**(VIJAY PAL RAO)**  
Judicial Member

Sd/-  
**(JASON P BOAZ)**  
Accountant Member

\*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

(True copy)

By Order

Asst. Registrar, ITAT, Bangalore