

Vesuvius India Ltd. Vs. Assistant Commissioner of Income

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Court : Income Tax Appellate Tribunal ITAT Kolkata

Decided On : Mar-19-2007

Reported in : (2008)116TTJ(Kol.)393

Judge : D Tyagi, R Panda

Appellant : Vesuvius India Ltd.

Respondent : Assistant Commissioner of Income

Judgement :

1. This appeal filed by the assessee is directed against the order dt.

22nd May, 2006 of the learned CIT(A)-XII, Kolkata relating to asst. yr.

2003-04.

2. The facts in brief are that the assessee filed the return of income on 28th Nov., 2003 declaring a total income of Rs. 16,69,79,570. The details of payment of tax, i.e., TDS and advance tax as mentioned in the body of the CIT(A)'s order is as under:

Particulars	Amount	(Rs.)	Amount	(Rs.)
Tax on total income	6,13,64,992		Less : TDS	15,86,594
	5,97,78,398		Less: Advance tax paid on:	
	14.09.2002	1,82,00,000	14.12.2002	2,20,00,000
			15.03.2003	2,00,00,000

| 6,57,00,000 || | _____ | _____ || Tax payable/(refundable) | |
59,21,602
|| _____ | _____ | _____ |

The said return was processed under Section 143(1) of the IT Act, 1961 in which an amount of Rs. 21,18,571 was determined as interest under Section 234C of the IT Act, 1961. The said amount was calculated by considering in each of the four instalments the date of payment of advance tax under Section 208 as the date of realization as mentioned on the challan instead of date of tender of the cheque.

2.1 In appeal the learned CIT(A) did not accept the plea of the assessee that interest under Section 234C was chargeable only for the period of default and not for the entire period. Aggrieved with such order of the learned CIT(A) the assessee is in appeal before us with the following grounds of appeal: 1. That on the facts and in the circumstances of the case the learned CIT(A) was not justified rather grossly erred in failing to appreciate the plea of the appellant that interest under Section 234C was chargeable only for the period of default and not for the entire period of three months.

2. That on the facts and in the circumstances of the case, the learned CIT(A) failed to appreciate the fact that Section 234C of the IT Act contemplates chargeability of interest for the period of default subject to maximum of three months and not otherwise.

3. That the appellant craves leave to add, amend, modify, rescind, supplement, or alter any of the grounds stated hereinabove, either before or at the time of hearing of this appeal.

3. The learned Counsel for the assessee while reiterating the same submission as made before the learned CIT(A) further submitted that interest under Section 234C is compensatory in nature and therefore the same should be charged only for the period of default and not for the entire period of 3 months. Referring to the decision of the Amritsar Bench of the Tribunal in the case of Kattash Associates v. Dy. CIT , he submitted that interest under Section 234C is chargeable for the period of default subject to maximum period of 3 months and not for 3 months in all cases irrespective of period of default. Referring to the decision of the Tribunal

Mumbai 'J' Bench in the case of Panther Investrade Ltd. v. Dy. CIT vide ITA No.1361/Mum/2003, dt. 28th Feb., 2006 for asst. yr. 2000-01 and a copy of which was filed at the time of hearing, he submitted that the Mumbai Bench of the Tribunal following the decision of the Amritsar Bench has held that the interest is chargeable for the period of default.

4. Referring to the decision of the CEGAT, Eastern Bench, Kolkata in the case of CCE v. N.K. Modi & Co. 2006 (2) STR 78 CTri-Kolkata) and a copy of which was filed at the time of hearing, he submitted that decision given by any Bench of Tribunal is of precedent value and is binding on all the parties. He accordingly submitted that the orders of the Amritsar Bench and Mumbai Benches of the Tribunal are of binding value and therefore the appeal of the assessee should be allowed.

5. The learned Departmental Representative, on the other hand, relied on the orders of the Revenue authorities. Referring to the provisions of Section 234C, he submitted that the Act is very clear and there is no provision for calculation of interest for the period of default. It is for a period of 3 months even if the default is for a single day.

6. We have considered the rival submission made by both the sides, perused the orders of the Revenue authorities and the various decisions relied on by the learned Counsel.

6.1 We find that the Amritsar Bench of the Tribunal in the case of Kailash Associates (supra) after considering the provisions of Section 234C has held as under (short notes): Section 234C provides that where in any financial year the advance tax paid by the assessee on his current income: (i) on or before the due date of the first instalment (15th September) is less than 20 per cent of the tax due on the returned income; or (ii) on or before the due date of the second instalment (15th December) is less than 50 per cent of the tax due on the returned income; then the assessee shall pay simple interest at 1.5 per cent per month of the shortfall from 20 per cent in case falling in (i) above and of the shortfall from 50 per cent in the case falling in (ii) above. In each case interest shall be chargeable for a period of three months. If the restriction for the levy of interest for a maximum

period of three months has not been provided then it would result in the levy of interest twice and in some cases thrice for the same default. There being a requirement of making 50 per cent of the tax payable by 15th Dec, 1990 which includes 20 per cent payable by 15th Sept., 1990 there would be no justification for the levy of interest in respect of shortfall/non-payment of first instalment of advance tax beyond the period of three months when interest is chargeable for the entire amount of shortfall/non-payment of second instalment of advance tax which is to the extent of 50 per cent of the total tax payable. Similarly, there is rationale behind limiting the levy of interest in respect of second instalment of advance tax. Section 234B provides for the levy of interest on account of non-payment of advance tax/short payment of advance tax less than 90 per cent of assessed tax @ 2 per cent per month. Section 234 takes over after the expiry of the financial year. That explains the reason for limiting the levy of interest in respect of second instalment of advance tax for a period of three months only. Thus considering the provisions of Section 216, which have been replaced by Section 234C, the provisions of Section 234B and the overall scheme of payment of advance tax and levy of interest, simple interest at 1.5 per cent per month is chargeable under Section 234C for the period of default subject to the maximum period of three months and not compulsorily for a period of three months irrespective of the period of default.

That being so, the interest in this case chargeable under Section 234C works out to Rs. 19,701. The extra interest charged under Section 234C of Rs. 6,640 is accordingly deleted.

6.2 We further find that the Tribunal Mumbai Bench in the case of Panther Investrade Ltd. (supra) at pp. 8 and 9 of the order has held as under: In the light of the decision of the Bombay High Court in the case of Kotak Mahindra Finance Ltd. (supra), and also the decision of the Karnataka High Court in the case of Dr. Section Reddappa and Ors.

(supra), we agree with the reasoning given by the Amritsar Bench of the Tribunal in the case of Kailash & Associates (supra), wherein identical computation of income made by the assessee has been accepted. The interest, in our view, is

chargeable for the period of default subject to a maximum period of three months and not compulsorily for a period of three months irrespective of the period of default. In other words, if the assessee had delayed the payment of such advance tax, such payment cannot be receipted to, and accounted for to the next instalment due, but has to be considered as delayed payment. Subject to the rules for rounding off the period of default the interest should not be charged if the assessee has paid the money after the due date prescribed for the payment of advance tax. We would like to give an example. If the assessee is liable to pay Rs. 1,00,000 by 15th of June of a financial year and has paid it on 16th of June of the same financial year, the assessee should be liable to pay interest for the period of one month at 1.5 per cent on the amount of Rs. 1,00,000 and not for a period of three months on the said amount by ignoring such payment. A citizen who paid advance tax belatedly cannot be worse off than the person who has not paid at all. If the Departmental contentions were to be accepted, the person who did not pay the tax will stand to gain. If, as per the illustration given above, 'A' who has paid the tax on 16th of June, has to pay less interest than B who has not paid any advance-tax till the next instalment fallen due. If the Departmental stand were to be accepted both A and B will be charged with the same liability towards interest. This will act to the disadvantage of a person who has taken extra pain to pay the tax due to the Government as a true citizen. Moreover, the Government has already used the money of Rs. 1,00,000 deposited into its coffers on 16th June.

Ignoring such payment, it will be unfair and inequitable on the part of the Revenue to ask the taxpayer to pay interest on a sum which was already paid by him on 16th June. This will only result in absurd position. This cannot be the intention of the legislature.

7. In the light of the discussion above, and respectfully following the Amritsar Bench decision of the Tribunal, we accept the assessee's working of interest under Section 234C of the Act and direct the AO accordingly.

6.3 Considering the totality of the facts of the case and relying on the decisions of Amritsar Bench and Mumbai Benches of the Tribunal as cited above and in absence of any contrary decision brought before us by the Revenue and following

the rule of precedence, we are of the considered opinion that the interest chargeable under Section 234C is for the period of default subject to a maximum period of 3 months and not compulsorily for a period of three months irrespective of the period of default. In the instant case the appellant is liable to pay interest under Section 234C for one month and not for three months. We hold and direct accordingly. The grounds of appeal filed by the appellant are therefore allowed.

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