

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER.

ITA No. 7661 /MUM/2013
(Assessment Year : 2012-13)

Kumari Kumar Advani,
101, Manasarover, Mount Pleasant Road,
Malabar Hill, Mumbai- 400 006
PAN: AAHPA 0248D

... Appellant

Vs.

Asstt. CIT (CPC),
Bangalore.

.... Respondent

Appellant by : Shri Ajay R. Singh
Respondent by : Shri A.K.Kardam

Date of hearing : 29/09/2015
Date of pronouncement : /07/2016

ORDER

PER G.S.PANNU, A.M:

The captioned appeal filed by the assessee pertaining to assessment year 2012-13 is directed against an order passed by CIT(A)-27, Mumbai dated 25/10/2013, which in turn arises out of an order passed by the Assessing Officer under section 143(1) of the Income Tax Act, 1961 (in short 'the Act') dated 23/11/2012.

2. In this appeal, although assessee has raised multiple Grounds of appeal, but the solitary dispute relates to charging of interest under section 234C of the Act amounting to Rs.7,66,070/-.

3. Briefly put, the relevant facts can be summarized as follows. The appellant is an individual, who is deriving income majorly from deposits maintained with the bank and capital gains. The return of income for the assessment year 2012-13 was filed on 20/07/2012, declaring a total income of Rs.13,91,54,702/-. The said return was subject to processing under section 143(1) of the Act dated 23/11/2012. The only point of dispute by the assessee is that while processing such return under section 143(1) of the Act, interest under section 234C of the Act was levied on account of shortfall in payment of advance tax on first and second installments, due on 15/09/2011 and 15/12/2011, in respect of gift of Rs.10.00 crores claimed to have been received on 17/12/2011. On such deferment in payment of instalments, interest of Rs.7,66,070/- was charged under section 234C of the Act. Such levy has also been affirmed by CIT(A) and, hence, assessee is in further appeal before us.

4. Before CIT(A) as well as before us, assessee has raised varied submissions in order to assail the charging of interest under section 234C of the Act. The first and foremost plea of the assessee is that the income in question, namely gift of Rs.10.00 crores received on 17/12/2011 was in the nature of a windfall gain and, therefore, it was not possible for the assessee to estimate accrual or receipt of such income at any time when the payment for first and second installments were due on 15/9/2011 and 15/12/2011. It was, therefore, contended that assessee was not liable to pay advance tax on 15/9/2011 and

15/12/2011 as the receipt of gift was not estimable at the relevant point of time. Apart therefrom, an additional plea has also been raised, which is to the effect that the interest under section 234C of the Act could not be charged while processing the return under section 143(1) of the Act.

5. On the other hand, Ld. Departmental Representative pointed out that the CIT(A) made no mistake in upholding the levy of interest under section 234C of the Act because charging of interest under section 234C of the Act was mandatory in nature and that the judgment of the Hon'ble Delhi High Court in the case of Bill and Peggy Marketing India Pvt. Ltd. vs. ACIT, 350 ITR 465 (Del) supports the stand of the Revenue.

6. We have carefully considered the rival submissions. The liability to pay advance tax enshrined under the Act is based on the principle of '*pay as you earn*', as has been aptly noted by the Delhi High Court in the case of Bill and Peggy Marketing India Pvt. Ltd.(supra). Section 234C of the Act prescribes that the advance tax is payable in installments on the dates falling within financial year itself. Any failure or shortfall in payment of such installments attracts interest under section 234C of the Act. In the present case, the assessee has been charged interest under section 234C of the Act primarily on the ground that the requisite installments were not paid on the specified dates of 15/9/2011 and 15/12/2011. The assessee resists the levy on the ground that the income which has prompted the Revenue to levy interest was not received by the assessee on such specified dates, but it was received on 17/12/2011. Ostensibly, the income in question is by way of gifts

received, which has been received by the assessee after the date of instalments due on 15/9/2011 and 15/12/2011. Quite clearly, assessee could not have anticipated the receipt or accrual of such income before the event, and such event has taken place after the due dates of instalments. At this stage, one may gainfully refer to section 207 of the Act, which creates liability for payment of advance tax whereby, every person is obliged to pay advance tax in the financial year on total income chargeable to tax for assessment year immediately following that financial year. Section 209 of the Act provides the computational mechanism of calculating advance tax to be paid. Notably, section 209 envisages calculation of advance tax based on the 'estimate of current income' . A reading of section 209 would reveal that in order to calculate the amount of advance tax payable, an assessee is liable to estimate his income. Considered in this light, the facts of the present case clearly show that the gift of Rs.10.00 crores, which has been received by the assessee on 17/12/2011 could not have been foreseen by the assessee so as to enable him to estimate such income for the purpose of payment of advance tax on an anterior date, may it be 15/09/2011 or 15/12/2011. In such a situation, the decision of the Hyderabad Bench of the Tribunal in the case of ACIT v. Jindal Irrigation Systems Ltd. (56 ITD 164)(Hyd.), relied upon by the appellant, clearly militates against charging of interest under section 234C of the Act. As per the Hyderabad Bench of the Tribunal, an assessee could not be defaulted for a duty, which was impossible to be performed. The Hyderabad Bench of the Tribunal was also considering levy of interest under section 234C of the Act in a situation where on the relevant dates assessee was not in a position to estimate receipt of such

income. To the similar effect is the decision of the Chennai Bench of the Tribunal in the case of Express Newspaper Ltd (103 TTJ 122)(Chennai). Therefore, in this background, the levy of interest under section 234C of the Act in the present case is untenable.

6.1 In so far as plea of the Revenue that charging of interest under section 234C of the Act is mandatory in nature is concerned, the same in our view, cannot lead to a situation where levy of interest can be fastened even in situations, where there is impossibility of performance by the assessee. Charging of interest would be mandatory, only if, the liability to pay advance tax arises upon fulfilment of the parameters, which in the present case is not fulfilled on account of the peculiar fact-situation. Thus, such plea of the Revenue is untenable.

6.2 Furthermore, the reliance placed by the Revenue in the case of Peggy Marketing India Pvt. Ltd.(supra) is also not appropriate considering the peculiar facts of the present case. No doubt, Hon'ble Delhi High Court upholds the proposition that the cause and delay and justification for deferment of advance tax loses significance for the purposes of levy of interest under section 234C of the Act. The Hon'ble High Court noted that the proviso to section 234C(1) of the Act prescribes cases for condoning levy of interest if the under estimate or failure to estimate is on account of capital gains or income by way of winnings from lottery, crossword, puzzles, etc. The Hon'ble High Court did not find the fact-situation, before it, to be falling within the scope of the proviso to section 234C of the Act. Notably, the income which was considered by the High Court related to the business receipts

of the assessee, whereas in the instant case, the income is by way of a windfall gain, being receipt of gifts. In our considered opinion, the two situations are incomparable. Therefore, the judgment of the Hon'ble Delhi High Court in the case Peggy Marketing India Pvt. Ltd.(supra) stands on its own facts and is not attracted to the facts of the present case.

6.3 In view of the above, we set-aside the order of the CIT(A) and direct the Assessing Officer to delete the interest levied of Rs. 7,66,070/- under section 234C of the Act.

7. In the result, appeal of the assessee is allowed, as above.

Order pronounced in the open court on 13/07/2016

Sd/-

(RAM LAL NEGI)
JUDICIAL MEMBER
Mumbai, Dated 13/07/2016

Sd/-

(G.S. PANNU)
ACCOUNTANT MEMBER

Vm, Sr. PS

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai