

ITA No. 336 of 2015
ITA No. 367 of 2015 and
ITA No. 362 of 2015

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

331

Date of Decision : 20.9.2019

ITA No. 336 of 2015

The Pr. Commissioner of Income Tax Faridabad Appellant

Versus

M/s. NHPC Ltd. Respondent

ITA No. 367 of 2015

The Pr. Commissioner of Income Tax Faridabad Appellant

Versus

M/s. NHPC Ltd. Respondent

ITA No. 362 of 2015

The Pr. Commissioner of Income Tax Faridabad Appellant

Versus

M/s. NHPC Ltd. Respondent

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present : Mr. Tajender K. Joshi, Sr. Standing Counsel
for the appellant.

Mr. Sunish Bindlish, Advocate
for the respondent .

AJAY TEWARI, J. (Oral)

1. This order shall dispose of ITA Nos.336, 362 and 367 of
2015 as according to the learned counsel for the appellant-revenue, the

questions of law involved in all these appeals are identical. However, the facts are being extracted from ITA No. 336 of 2015.

2. The revenue has filed the present ITA No. 336 of 2015 under section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 30-9-2014 (Annexure A-III) passed by the Income Tax Appellate Tribunal, Delhi Bench, New Delhi (hereinafter referred to as “the Tribunal”) in ITA No. 2618/Del/2008 for Assessment Year 2005-2006, claiming the following substantial questions of law:-

1. *“Whether, on the facts and in circumstances of the case and in law, the Hon’ble ITAT was right in law in dismissing appeal of the Revenue observing that ‘in view of categorical finding of the Supreme Court we hold that the CIT(A) was correct in holding that advance against depreciation cannot be added under the computation of the normal income’, whereas the Hon’ble Supreme Court in its decision dated 05.01.2010 has held that the ‘advance against depreciation’ is ‘income received in advance’, thus making the said income subject to ‘Charge’ under Chapter-II, as business income under Chapter-IV-D read with clause (i) of sub-section 24 of section 2 of the Income Tax Act?”*

2. *“Whether, on the facts and in circumstances of the case and in law, the Hon’ble ITAT was right in law in deleting the addition of Rs.131,75,00,000/- made by the Assessing Officer under section 143(3) (and not under section 115JB) on account of “Advance Against Depreciation” ignoring the provisions of section 2(24) read with section 28 of the Income Tax Act, 1961, which provides that “income” includes profits and gains and the profits and gains of any business or profession carried on by the assessee at any time during the previous year is taxable?”*

3. *“Whether, on the facts and in circumstances of the case*

and in law, the Hon'ble ITAT was right in law in confirming the order of the Ld. CIT(A) in deleting the addition of Rs.86,54,00,000/- made by AO in normal income as well as book profit computed u/s 115JB on a/c of tariff adjustments being unascertained liability?"

4. *"Whether, on the facts and in circumstances of the case and in law, the Hon'ble ITAT was right in law in holding that 'the contention of the AO that this liability has not crystalized is also not correct and the AO has not appreciated the facts in the right perspective' disregarding the fact that later on, the CERC actually approved the tariff rates which were different from the rates proposed by the assessee and the quantification of adjustment of tariff was evidently not an ascertained liability during the year under consideration?"*

5. *"Whether, on the facts and in circumstances of the case and in law, the Hon'ble ITAT was right in law in deleting disallowance of Rs. 26,94,93,951/- made by the Assessing Officer in computing the book-profit u/s 115JB on a/c of provisions made for gratuity, leave encashment, post retirement medical benefits, LTC, Baggage allowance and Matching Contribution on Leave Encashment even when the assessee has failed to establish these provisions to be of ascertained in nature?"*

6. *"Whether, on the facts and in circumstances of the case and in law, the Hon'ble ITAT was right in law in deleting disallowance of Rs.1,00,19,424/- made by the Assessing Officer in computing the book-profit u/s 115JB in respect of depreciation claimed on land after amortization of land by the assessee because there is no depreciation allowable on land under Companies Act and no rate of depreciation is provided in schedule XIV of Companies Act?"*

7. *"Whether, on the facts and in circumstances of the case and in law, the Hon'ble ITAT was right in law in applying*

ratio of decision in case of M/s Apollo Tyres 255 ITR 273 (SC) when the computation of book profit was not as per Companies Act and wrongly claimed depreciation on land not allowable in Companies Act.”

8. *“Whether, on the facts and in circumstances of the case and in law, the Hon’ble ITAT was right in law in confirming the order of Ld. CIT(A) to allow the contention of the assessee company for charging the interest u/s 234B at Rs.3,70,58,281/- instead of Rs.4,02,65,082/- and in justifying the contention of the assessee regarding applicability of provisions of Income Tax Act viz. Section 234B(2)(ii) read with section 140A disregarding the fact that the interest was rightly calculated as per the provisions of section 234B of the Income Tax Act and that the issue is highly debatable as stated by the Assessing Officer in the last para of his order?”*

Re: Questions No. 1,2,5,6 & 7.

3. It is agreed by the learned counsel for the parties that questions No. 1, 2, 5, 6 & 7 are covered against the appellant-revenue by an order and judgment dated 28-2-2018 in the assessee’s case in ITA No. 136 of 2015. Accordingly, these questions are decided against the appellant-revenue in terms of order and judgment dated 28-2-2018 in ITA No. 136 of 2015.

Re: Questions No. 3 & 4.

4. It is also agreed by the learned counsel for the parties that questions No. 3 & 4 are covered against the appellant-revenue by an order and judgment dated 21-3-2018 in the assessee’s case in ITA No. 356 of 2015. Accordingly, these questions are decided against the appellant-revenue in terms of order and judgment dated 21-3-2018 in ITA No. 356

of 2015.

Re: Question No. 8.

5. The facts are admitted. As per the facts on record, the AO charged interest under Section 234B of the Act at Rs.4,02,65,082/- as against Rs.3,70,58,281/- chargeable as per the assessee. Thus, the difference in interest chargeable under Section 234B of the Act as per the Assessing Officer and the assessee was of Rs.32,06,801/-. It was the contention of the assessee that liability to pay interest arises on the date of filing the return in terms of Section 140A read with section 234B(2)(ii) of the Act and hence, AO was not correct in computing the interest payable at each date of payment of tax by the assessee and reducing such interest, so computed from the tax paid.

6. The CIT(Appeals) upheld the assessee's contention holding that the adjustment towards interest payable under Section 234B(2)(ii) of the Act is to be considered only at the time of filing return of income i.e. when payment of Self-Assessment Tax under Section 140A of the Act is required to be made.

7. The revenue filed appeal before the ITAT and challenged the order passed by the CIT(A). Dismissing the appeal of the revenue the Tribunal upheld the order of the CIT(A) relying upon the judgment in the case of **M/s Patson Transforms Ltd. Vs. DCIT (2006) 6 SOT 673 (Ahd.)**. It was held by the Tribunal that as per provision of Section 140A of the Act, it is only at the time of filing of return, the issue of computation of interest under various provisions of the Act i.e. 234A, 234B & 234C arise and at that time, if any, interest is payable under these

provisions, the amount paid shall first be adjusted towards such interest.

Accordingly, interest cannot be computed on the date when amount has been paid after 1st April but before filing of return.

8. The question of law that arises is whether the Assessing Officer was correct in computing interest on the date of payment of taxes by the assessee and adjusting the amount so paid towards interest. The provision of Section 140A of the Act in this respect are unambiguous. For the clarity the relevant provisions of Section 140A are reproduced here under:-

“..140A. (1) Where any tax is payable on the basis of any return required to be furnished under [section 139](#) or [section 142](#) or [section 148](#) or [section 153A](#) or, as the case may be, [section 158BC](#), after taking into account the amount of tax, if any, already paid under any provision of this Act, the assessee shall be liable to pay such tax, together with interest payable under any provision of this act for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return and the return shall be accompanied by proof of payment of such tax and interest.

Explanation: Where the amount paid by the assessee under this sub-section falls short of the aggregate of the tax and interest as aforesaid, the amount so paid shall first be adjusted towards the interest payable as aforesaid and the balance, if any, shall be adjusted towards the tax payable.

(1A) For the purpose of sub-section (1) interest payable under [section 234A](#) shall be computed on the amount of the tax on the total income as declared in

the return as reduced by the advance tax, if any, paid and any tax deducted or collect at source.

(1B) For the purpose of sub-section (1), interest payable under section 234B shall be computed on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tad paid fails short of the assessed tax.

Explanation:- For the purpose of this sub-section, 'assessed tax' means the tax on the total income as declared in the return as reduced by the amount of tax deducted or collected at source, in accordance with the provisions of chapter XVII, or any income which is subject to such deduction or collection and which is taken into account in computing such total income.

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9. As per section 140A of the Act where any tax is payable on the basis of any return, the assessee shall be liable to pay such tax together with interest and the return is required to be accompanied by proof of payment of such tax and interest. Thus, the computation of interest and liability to pay such interest arises at the time of filing return. The Explanation below this Section 140A of the Act in fact supports the above interpretation. As per this explanation, where the amount paid by the assessee under this section falls short of the aggregate of the tax and interest, the amount so paid shall first be adjusted towards the interest payable and the balance shall be adjusted towards the tax payable. The amount paid here will be the aggregate of the amount paid under this section not the individual amount. This exercise is to be done at the time when the return is being filed so that in case any assessee has not paid the

full amount i.e. tax and interest then, the amount paid shall first be adjusted towards interest and liability to pay interest on balance tax shall continue.

9. The learned counsel for the appellant could not controvert the above interpretation. The judgment delivered in the case of M/s Patson Transforms Ltd. Vs. DCIT (Supra) relied upon by the CIT (Appeals) and the Tribunal has examined this issue in detail with example. We are in agreement with the conclusion of CIT(Appeals) and the Tribunal based on the above judgment.

10. Question No. 8 is therefore answered in favour of the assessee and against the Revenue.

11. Consequently, all the appeals stand disposed of.

12. Since the main case have been disposed of, pending C.M if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

20.9.2019
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Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No