

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

IA NO. GA/2/2017
(Old No. GA/1322/2017)
In
ITAT/150/2017

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-4,
KOLKATA
VS.
M/s. PHILIPS ELECTRONICS INDIA LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : February 9, 2022.

[Via Video Conference]

Appearance :
Mr. Smarajit Roy Chowdhury, Adv.
Mr. Radha Mohan Roy, Adv.
... for the appellant

Mr. J. P. Khaitan, Sr. Adv.
Mr. Pratyush Jhunjunwala, Adv.
Mr. A. K. Dey, Adv.
...for the respondent

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 20th July 2016 passed by the Income Tax Appellate Tribunal “C” Bench, Kolkata in ITA Nos. 1169 & 1294/Kol/2013 for the assessment year 2007-08 on the following substantial questions of law:-

- i) Whether in the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal – “C” Bench, Kolkata was justified in holding that the section 234C of the Income Tax Act, 1961 was applicable to the assessee only from the 4th Quarter i.e. 15th March, 2007 and not from the 3rd Quarter i.e. 15th December, 2006?
- ii) Whether the liability of the payment of advance tax by the assessee on the income under the heading “long term gains” become legally due on 15th March, 2007 and not from 15th December, 2006?
- iii) Whether the ITAT erred in law in reversing the order of the learned CIT (A) relying on a judgment reported in 337 ITR 470 (Emami Ltd. Vs. CIT) when the facts and questions of law are totally different from the instant case?”

We have heard Mr. Smarajit Roychowdhury, learned Counsel and Mr. Radhamohan Roy, learned Counsel for appellant and Mr. J.P. Khaitan, learned Senior Counsel with Mr. A.K. Dey, learned Counsel for the assessee. When the case was heard on 24th January, 2022 the learned Counsel appearing for the respondent submitted that revenue cannot pursue the appeal on the ground of low tax effect. In fact, it was explained to us as to how the Circular issued by the CBDT would be attracted to the facts of the case. In order to enable the appellant/department to give necessary instruction to the learned standing Counsel, we adjourned the matter by directing it to be put

up specifically in the list today. It appears that no written instruction has been given to the learned standing Counsel, therefore, we proceeded to consider as to whether the appeal is a case where the tax effect is lower than the threshold limit. The assessment order dated 25.05.2011 has levied interest under Section 234C to the tune of Rs.1,53,71,896/- for the period of four quarters. The assessee was on appeal against the said order before the Commissioner of Income Tax Appeals XII, Calcutta (CITA). By order dated 24.6.2011 the appeal was partly allowed holding that interest under Section 234C can be charged only from the third quarter i.e. from December, 2006. The assessee not being satisfied with the order filed an appeal before the Tribunal. The Tribunal allowed the appeal in its entirety by the impugned order. The correctness of the order of the Tribunal is challenged in this appeal. On perusal of the substantial questions of law, we find that revenue is aggrieved by the order passed by the CIT(A) and would contend that the liability to pay interest under Section 234C should start from the third quarter i.e. from 15.12.2006. We find that before the Tribunal the revenue has filed the cross appeal. Nevertheless, before us in this appeal the revenue has restricted their grounds only questioning the correctness of the order passed by the CIT(A) and did not seek for restoration of the order passed by the assessing officer. Thus if that portion of the order of the CIT(A) remains intact, as the revenue is not aggrieved by same, then interest liability would be half of what had been charged by the assessing officer in his order dated 25.05.2011.

Mr. Smarajit Roychowdhury, learned Counsel appearing for the revenue produced a written instruction given by the Joint Commissioner of Income Tax Range-12 stating that the tax effect is Rs.1,53,71,896/-. This instruction has been based upon the figure arrived at by the assessing officer for the relevant assessment year. In the preceding paragraphs we have discussed as to how the order stood modified by the CIT(A) wherein partial relief was granted to the assessee and the assessee took up the matter to the Tribunal where they were granted full relief. We have also noted that the appeal filed by the revenue is questioning the correctness of the relief granted by the CIT(A) as to whether interest needs to be calculated from third quarter or from fourth quarter and interest from the first two quarters is not called in question. Therefore, we are satisfied that this appeal will be below the threshold limit fixed by the CBDT Circular.

Accordingly, the appeal stands disposed of on the ground of low tax effect. Substantial questions of law are left open.

The written instruction is kept on record.

Consequently, the connected application stands disposed of.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)