

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 218/Mum/2022 (A.Y. 2018-19)

M/s Hamilton Industries Pvt. Ltd.
Unit No. 8 & 9, Ground Floor,
Kakad, Chamber, 132, Dr. Annie Besant Road,
Worli, Mumbai-400018.

PAN: AAACH0375E..... Appellant

Vs.

ITO, Ward 7(1)(1),
Aayakar Bhavan,
Mumbai-400020..... Respondent

Appellant by	:	Sh. Piyush Chhajer, C.A
Respondent by	:	Sh. Prasoon Kabra
Date of hearing	:	18/05/2022
Date of pronouncement	:	10/08/2022

ORDER

PER GAGAN GOYAL, A.M:

This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi [hereinafter referred to as ('NFAC')] dated 23.12.2021 passed under section 250 for the Assessment Year (AY) 2018-19. The assessee has raised the following grounds of appeal:

"The Grounds of Appeal mentioned hereunder are without prejudice to one another:

1. On the facts and circumstances of the case, the learned Commissioner of Income Tax (A) erred in conferring the interest of Rs.12,31,304/- under section 234C of the Income tax Act, 1961 without appreciating that the book profit includes capital gain income which arose in 4th quarter therefore the liability to pay advance tax arise only on 15.03.2018 & 30.03.2018."

2. Brief facts of the case are that the assessee filed its return of income on 24-09-2018 u/s 139(1). There after assessee received an intimation u/s 143(1)(a) dated 15-05-2019. Assessee declared total income of Rs 10, 66, 15,871/- under the normal provisions and Rs 13, 95, 37,529/- under the provisions of MAT. Accordingly, the appellant company had paid taxes with interest under MAT provisions of Rs 2,97,79,541/-.

3. The above said book profit includes capital gain of Rs 17,77,44,323/- which arose in 4th quarter only i.e., on 28-02-2018 and 28-03-2018. Accordingly, assessee paid advance tax on 15-03-2018 and 31-03-2018 for the capital gains arose on 28-02-2018 and 28-03-2018 respectively. Subsequently an intimation u/s 143(1) received as mentioned (supra.) wherein all the calculations of tax payable, interest, figures of income returned and other figures embodied in the return were accepted by the CPC Bangalore. Except, interest u/s 234C was enhanced by Rs 12, 31,304/- by CPC, Bangalore.

4. In response to the said intimation the assessee had filed an application for rectification u/s 154. This application of the assessee, filed u/s 154 also rejected by CPC Bangalore. Being aggrieved, assessee preferred an appeal before the National Faceless Appeal Centre (NFAC), Delhi.

5. Ld. CIT (A), (NFAC) also endorsed the views taken by CPC Bangalore and appeal of the assessee was rejected. Against this action of (NFAC) assessee preferred an appeal before us for adjudication. We have examined the intimation issued u/s 143(1) by CPC Bangalore, order of Ld. CIT (A) and submission of assessee along with the paper book.

6. For sake of clarity and proper appreciation of the issue involved we are reproducing herein below the provisions of Section 234C:

“Interest for deferment of advance tax.

234C. (1) [Where in any financial year, —

[(a)]	an assessee, other than [the assessee referred to in clause (b)], who is liable to pay advance tax under section 208 has failed to pay such tax or—
	(i) the advance tax paid by such assessee on its current income on or before the 15th day of June is less than fifteen per cent of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of September is less than forty-five per cent of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of December is less than seventy-five per cent of the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of one per cent per month for a period of three months on the amount of the shortfall from fifteen per cent or forty-five per cent or seventy-five per cent, as the case may be, of the tax due on the returned income;
	(ii) the advance tax paid by the assessee on the current income on or before the 15th day of March is less than the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of one per cent on the amount of the shortfall from the tax due on the returned income:
	Provided that if the advance tax paid by the assessee on the current income, on or before the 15th day of June or the 15th day of September, is not less than twelve per cent or, as the case may be, thirty-six per cent of the tax due on the returned income, then, the assessee shall not be liable to pay any interest on the amount of the shortfall on those dates;]
(b)	[an assessee who declares profits and gains in accordance with the provisions of sub-section (1) of section 44AD or sub-section (1) of section 44ADA, as the case may be], who is liable to pay advance tax under section 208 has failed to pay such tax or the advance tax paid by the assessee on its current income on or before the 15th day of March is less than the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of one per cent on the amount of the shortfall from the

	<i>tax due on the returned income:]]</i>
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[Provided that nothing contained in this sub-section shall apply to any shortfall in the payment of the tax due on the returned income where such shortfall is on account of under-estimate or failure to estimate—

(a)	<i>the amount of capital gains; or</i>
(b)	<i>income of the nature referred to in sub-clause (ix) of clause (24) of section 2; [or]</i>
[(c)]	<i>income under the head "Profits and gains of business or profession" in cases where the income accrues or arises under the said head for the [first time; or]]</i>
[(d)]	<i>the amount of dividend income,]</i>

and the assessee has paid the whole of the amount of tax payable in respect of income referred to in clause (a) or clause (b) [or clause (c) [or clause (d)]], as the case may be, had such income been a part of the total income, as part of the [remaining instalments of advance tax which are due or where no such instalments are due], by the 31st day of March of the financial year:]

[Provided further that nothing contained in this sub-section shall apply to any shortfall in the payment of the tax due on the returned income where such shortfall is on account of increase in the rate of surcharge under section 2 of the Finance Act, 2000 (10 of 2000), as amended by the Taxation Laws (Amendment) Act, 2000 (1 of 2001), and the assessee has paid the amount of shortfall, on or before the 15th day of March, 2001 in respect of the instalment of advance tax due on the 15th day of June, 2000, the 15th day of September, 2000 and the 15th day of December, 2000 :]

[Provided also that nothing contained in this sub-section shall apply to any shortfall in the payment of the tax due on the returned income where such shortfall is on account of increase in the rate of surcharge under section 2 of the Finance Act, 2000 (10 of 2000) as amended by the Taxation Laws (Amendment) Act, 2001 (4 of 2001) and the assessee has paid the amount of shortfall on or before the 15th day of March, 2001 in respect of the instalment of advance tax due on the 15th day of June, 2000, the 15th day of September, 2000 and 15th day of December, 2000.]

[Explanation 1]. —In this section, "tax due on the returned income" means the tax chargeable on the total income declared in the return of income furnished by the assessee for the assessment year commencing on the 1st day of April immediately following the financial year in which the advance tax is paid or payable, as reduced by the amount of, —

(i)	<i>any tax deductible or collectible at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income;</i>
[(ia)]	<i>any relief of tax allowed under section 89;]</i>

(ii)	<i>any relief of tax allowed under section 90 on account of tax paid in a country outside India;</i>
(iii)	<i>any relief of tax allowed under section 90A on account of tax paid in a specified territory outside India referred to in that section;</i>
(iv)	<i>any deduction, from the Indian income-tax payable, allowed under section 91, on account of tax paid in a country outside India; and</i>
(v)	<i>any tax credit allowed to be set off in accordance with the provisions of section 115JAA [or section 115JD].]</i>

[Explanation 2.—For the purposes of this sub-section, the term "dividend" shall have the meaning assigned to it in clause (22) of section 2, but shall not include sub-clause (e) thereof.]

(2) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989 and subsequent assessment years.]]”

7. Second proviso to section 234C clearly deals with the situation of assessee. As there is no challenge to the fact that assessee was prompt and regular in calculation and payment of advance tax u/s 234A, 234B and 234C. This fact is also not under challenge that to unanticipated transactions under the head capital gains arose in the case of assessee i.e., on 28-02-2018 and 28-03-2018. Assessee promptly discharged his liability of advance tax u/s 234C on 15-03-2018 and 31-03-2018 respectively. We have considered the order of Ld. CIT (A) wherein he relied on circular no 13/201-Income Tax, dated 09-11-2001, issued by the CBDT and the decision of hon’ble Supreme Court in the case of CIT Vs Rolta India Ltd. Vide CIVIL APPEAL NO. 135OF 2011 has upheld the levy of interest u/s 234B and 234C. in a case of assessee being a company on the basis of book profit u/s 115JB. An identical issue had been considered by the hon’ble Mumbai High Court in the case of JCIT Vs Summit Industries Ltd (Supra.) and decided in the favour of the revenue. Similarly, hon’ble Karnataka High Court in the case of Kwality Biscuits Ltd Vs CIT 243 ITR 519 and hon’ble ITAT Jaipur bench in the case of M/s GIE Jewels (ITA No. 794/JP/2017), decided in the favour of charging interest u/s 234C of the Act.

8. We have analysed circular no.13, cases decided in favour of revenue (supra.) and relied upon by the Ld. CIT (A). This circular and the case laws relied upon by the Ld. CIT (A) are distinguishable with the facts of the present appeal. This circular and the case laws relied upon deal with the applicability of sec 234C in the case of companies declaring income u/s 115JA/115JB. These case laws are not discussing the eventuality which may arise as provided in second proviso clause (a) i.e., the capital gains.

9. It is an established law that provisions of sec 234C is applicable in the case of Income chargeable to tax u/s 115JA/115JB but i.e., subject to the provisos provided in sec 234C.

10. We found force in the contentions of the assessee and we further relied on the following pronouncement of various hon'ble High Courts and co-ordinate benches of ITAT as under:

"Kumari Kumar Advani vs. ACIT (CPC) in [IT Appeal No. 7661 (MUM) of 2013 dated 13.07.16]

Express Newspapers Ltd v. Jt. CIT [2007] 15 SOT 41

Mahendra U. Shah v. ACIT [IT Appeal No. 3048 (MUM) of 2003

Hindustan International v. ITO (2010) 96 ITR 123 (Chnd)

[2003] 264 ITR 744 (Rajasthan) Commissioner of Income-tax v. Smt. Premlata Jalan

Section 234C of the Income-tax Act, 1961 – Interest chargeable – Assessment year 2000-01

– Whether liability to pay tax by way of advance tax in respect of transaction resulting in capital gains arises only after transaction has taken place or event has occurred - Held, yes

– Whether where interest is chargeable on delayed or deferred payment of advance tax, it shall be payable only with effect from date when liability to pay advance tax in respect thereof has been incurred – Held yes - Advance tax was payable by assessee on capital gains earned by her after 15-3-2000 when date of payment of last instalment of advance tax had already expired - Assessee paid interest under section 234C for period of one month, until said liability was discharged in April 2000 - Assessing Officer held that assessee was liable to pay interest for entire period to extent there was short fall in payment of advance tax calculated as per income returned by assessee including capital gains from 15-9-1999, when first instalment of advance tax became due - Tribunal,

however, held that Assessing Officer was not justified in charging interest for period prior to date when liability to tax arose - Whether order of Tribunal was justified - Held, yes

*[2010] 127 ITD 257 (MUM.) Torrential Investments (P.) Ltd. * v. Income-tax Officer, Ward-2(3)(3), Mumbai*

Section 234C of the Income-tax Act, 1961 - Interest, chargeable as - Assessment year 1996-97 - Capital gains accrued to assessee on account of sale of an asset in months of May 1995 and July 1995 - It filed its return for assessment year 1996-97 showing long-term capital gains - Assessee had paid advance tax in instalments after date of sale of assets in view of amendment to proviso to section 234C by Finance (No. 2) Act, 1996 with effect from 1-4-1997 - Revenue authorities held that capital gains in instant case had accrued in months of May, 1995 and July, 1995 and assessment year in question being assessment year 1996-97, amended provision was not applicable as it came into effect from assessment year 1997-98 - Whether amendment to proviso to section 234C by Finance (No. 2) Act, 1997, with effect from 1-4-1997 is clarificatory in nature and same is to be applied retrospectively - Held, yes - Whether since assessee had paid taxes as part of instalments due after date of sale of asset in accordance with amended provisions of section 234C, as such, there was no default on assessee's part and, thus, no interest was chargeable from it - Held, yes

[2011] 12 taxmann.com 64 (Calcutta) Emami Ltd. v. Commissioner of Income-tax, Central-I, Kolkata

Interest, chargeable as - Assessment year 2001-02 - Whether in order to hold an assessee liable for payment of advance tax, liability to pay such tax must exist on last date of payment of advance tax as provided under Act or at least on last date of financial year preceding assessment year in question - Held, yes - Whether if such liability arises subsequently when last date of payment of advance tax or even last date of financial year preceding assessment year is over, it is inappropriate to suggest that still assessee had liability to pay 'advance tax' within meaning of Act - Held, yes - Whether, therefore, where assessee had no liability to pay any advance tax under section 208 on any of due dates for payment of advance tax instalments and it became liable to pay tax by virtue of a retrospective amendment made long after close of financial year, assessee could not be branded as a defaulter in payment of advance tax and no interest could be imposed upon it under sections 234B and 234C - Held- Yes."

11. Then provisions of S. 234C (1) regarding payment of interest shall not apply to any shortfall in the payment of the advance tax due on the returned income. However, this is subject to condition that the assessee has paid the whole of the amount of tax payable in respect of his total income (including windfall gains, if any), as part of the remaining instalments of advance tax which are due (after accrual of windfall gain) or where no such instalments are due, i.e., in cases of

windfall gain accruing after 15th of March of financial year, by the 31st day of March of the financial year. Therefore, when it is not possible for the assessee to estimate accrual or receipt of such income at any time when the payment of first, second, third or fourth instalment of advance tax, as the case may be, is due, the assessee is not liable to pay advance tax on the respective due dates in respect of such windfall gain.

12. If on a particular due date for payment of advance tax, the facts show that there is no liability to pay advance tax, non-payment of advance tax on the due date may not be considered sufficient to attract interest u/s 234C. If the returned income is higher due to unexpected income received subsequent to earlier due dates, the shortfall in payment of advance tax instalment in earlier date may not attract interest. As far as income under the head business/profession is concerned, interest under section 234C of the Act shall not be chargeable on default in payment of advance tax in respect of such income only in the first year of business/profession. For income in the nature of windfall gain/unexpected income under other heads of income, provisions of S. 234C (1) shall not apply to any shortfall in the payment of the advance tax due on such income if the same is of the nature which can't be foreseen by the assessee so as to enable him to estimate such income for the purpose of payment of advance tax. However, the above relaxation in payment of advance tax instalments is subject to condition that the assessee has paid the whole of the amount of tax payable in respect of his total income (including windfall gains, if any), as part of the remaining instalments of advance tax which are due (after accrual of windfall gain) or where no such instalments are due, i.e., in cases of windfall gain accruing after 15th of March of financial year, by the 31st day of March of the financial year.

13. In the light of discussion above, considering the facts of the case and pronouncements of various authorities, we delete the interest charged amounting to Rs. 12, 31,304/- u/s. 234C and allowed the ground of appeal raised by the appellant.

14. In the result, appeal filed by the assessee is **allowed**.

Order pronounced in the open court on 10th day of August, 2022.

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, Dated: 10/08/2022

SK, 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