

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE
BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.2508/Bang/2019
Assessment Year : 2008-09

The Dy. Commissioner of Income-Tax, Circle-1(1)(2), Bengaluru.	Vs.	M/s Brindavan Beverages Pvt. Ltd., No.5/3, Jayamahal Extension 1 st Main Road, Bengaluru-560 027. PAN : AAACB 7390 R
APPELLANT		RESPONDENT

Assessee by	:	Shri Pradeep Kumar, CIT(DR)
Revenue by	:	Shri V Srinivasan, Advocate

Date of Hearing	:	08-02-2021
Date of Pronouncement	:	08-03-2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by revenue against order dated 27/09/2019 passed by the Ld.CIT(A)-1, Bangalore on following grounds of appeal:

- “1.The order of the Learned CIT(Appeals), in so far as it is prejudicial to the interest of revenue, is opposed to law and the facts and circumstances of the case.*
- 2.The Ld.CIT(A) erred in deleting the interest charged u/s.234B and 234C of the Act.*
- 3.The Ld.CIT(A) erred in deciding the issue which is not emanating from giving effect order.*

4.The Ld.CIT(A) erred in holding that retrospective amendment of provision without affect the charge of interest as on the date of giving effect order.

5.Forthese and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the Ld.CIT(A) be reversed and that of the Assessing officer be restored.

6.The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of approval.”

Brief facts of the case are as under:

2. Assessee is a private limited company and carries on business of manufacture and sale of aerated drinks, investment and real estate besides the business of generation of power using renewable source of energy. For year under consideration assessee filed its original return of income on 26/09/2008 declaring total income of Rs.13,82,01,580/- is. Assessee also reported in book profit of Rs.87,00,58,628/-under section 115 JB of the Act, which was adopted for computing the tax payable for year under consideration. The Ld.AO noted that assessee is also engaged in real estate business-investing in and letting out of properties on rent.

3. On 18/12/2012, search under section 132 of the Act was carried out in case of assessee and its franchisee bottlers of M/s Coca-Cola India Pvt. Ltd. Notice under section 153A was issued on 26/02/2014 requiring assessee to file return of income, in response to which, assessee filed return of income on 30/04/2014 declaring total income of Rs.13,94,66,290/- and the book profit of Rs.1,19,99,86,225/-. Subsequently, notice under section 143(2) and 142(1) were issued to assessee, calling for various details. In compliance to the notices, representative of assessee appeared before the Ld.AO and filed details as called for.

4. Ld.AO while passing the order under section 153A read with 143 (3) of the Act made addition to the book profit being investment written off amounting to Rs.98,73,900/-. The Ld.AO also made addition amounting to Rs.59,68,494/- under section 2 (22) (e) of the Act protectively.

5. Aggrieved by additions made by the Ld.AO, assessee preferred appeal before Ld.CIT(A).

6. The Ld.CIT(A) disposed off the appeal vide order dated 26/09/2016 partly allowing the appeal with respect to the income computed under regular provisions of the Act. The Ld.CIT(A) however upheld the income computed under section 115 JB of the Act. The Ld.AO while passing order giving effect to the order of Ld.CIT(A), determined the income of assessee under regular provisions of the Act at Rs.13,94,66,290/-, thereby reducing the addition made towards deemed dividend. Further, in the order giving effect, the Ld.AO retained the income assessed under section 115 JB of the Act at Rs.1,20,97,36,141/- that was confirmed in the appeal by the Ld.CIT(A). The Ld.AO however, varied the interest computed under section 234B and C in the order giving effect to, based upon the original assessment order under section 153A read with 143(3) of the Act, dated 30/03/2015, and worked out the tax payable at Rs.6,32,66,040/-.

7. Aggrieved by the high interest imposed by the Ld.AO under section 234B and C while passing order giving effect to, assessee preferred appeal before the Ld.CIT(A). The Ld.CIT(A) after

considering the submissions, allowed the ground of assessee by holding as under:

“5.2. Ground No.2 relates to the computation of interest u/s 234B and 234C of the Act, on account of certain additional income offered pursuant the year under appeal, the appellant has been assessed on Rs.120,97,36,141/-. The appellant had originally filed return 26.09.2008 computing the Book Profit of Rs.87,00,58,628/-. The appellant was subjected to a scrutiny assessment u/s.143(3) 16.12.2010. In the said assessment order passed u/s.143(3), the Book Profit of the appellant was computed at Rs.87,03,95,824/-. After the completion of the assessment, Survey was conducted u/s,133A of the Act, by the A.O. On 24.07.2012. It was found in Survey that the appellant had claimed a deduction while computing Book Profit for the provisions made towards imp of Rs.16 Crores and 100% depreciation on Windmill of Rs.17,70,66,417/-. It was pointed out to the appellant in survey that the provisions of sec Act, were amended by the Finance No.2 Act, 2009, with retrospective from 01.04.2001. As per the Amendment made to Explanation 1 of the Act, clause (i) was introduced to provide that the book increased by the amount set-aside as provision for diminution it and therefore, the said claims were not allowable. Based on Amendment, appellant also agreed to re4se the Rs.119,98,62,241/- on account of the increase to the Book Profits the above provisions debited to the Profit & Loss Account. It also filed a revised return of income after the survey on 02-11-2012. Which has formed the basis for assessment made u/s. 143[3] r.w.s 153A of the Act. In the Search and seizure operations conducted u/s.132 of the Act in the business premises of the appellant on 18/12/2012 and appellant filed Return of Income on after the conclusion of the aforesaid search operations, the appellant filed its on 30/04/2014, declaring a book profit of Rs, 119,99,86,225/- as against the profits of Rs. 87,03,95,824/- assessed in the order of regular u/s 143[3] of the Act dated 16/12/2010 in response to notice Act. Order of re-assessment was passed u/s. 153A r.w.s 143[3] of cited 30/03/2015, in which the learned A.O. made an addition of Rs.98,73,900/-, in respect of the amounts written off by the appellant to the profit count while determining the income of the appellant u/s. 115JB of the appellant was assessed on the book profit of Rs 120,97,36,141/- u/s 115JB of the Act, as against the returned income of Rs 119,99,86,225/-. In the income so assessed, the following computation of additional book profits offered of the retrospective amendment is included:

<i>Provision for Impairment of Assets</i>	<i>16,00,00,000</i>
<i>Depreciation on Windmill at 100%</i>	<i>17,70,66,417</i>
<i>Total</i>	<i>33,70,66,417</i>

<i>Less : Depreciation on Crates claimed</i>	<i>76,00,000</i>
<i>Additional Book Profit offered</i>	<i>32,94,66,417</i>

5.3 It is the contention of the appellant that the levy of interest u/s.234B and 234C the Act, for the failure to pay advance-tax on the additional book profit justified because, the appellant cannot be expected to pay Advance-tax when there, was no requirement to treat the additional income as book profits u/s. 115JB of the Act as per the law in force during the ear under appeal. Such provisions were also not in the statute when ii r turn of income was filed by the appellant on 26.09.2008, as the said amendment was made by the Finance No.2 Act, 2009 with retrospective effect from 01.04.2001. Number of judgements have been relied upon before position that interest u/s.234B and 234C of the Act, cannot be advance tax is rendered payable due to retrospective amendment ring to tax certain income Many of the judgements cited are also in t of the provisions of section 115JB of the Act.

5.4 After considering the submissions made by the appellant and the facts of ant's case in the context of the decisions relied upon, I am of the view that the levy interest u/s234B and 234C of the Act, on the additional book profit of Rs.32,94,66,417/- is not warranted. in conclusion, I am relying upon the judgement of the Hon'ble Calcutta H the case of Emami Limited reported in 337 ITR 470 [Cal] wherein it has been held as follows:

"11. A mere reading of those provisions leaves no doubt that the advance tax is an amount payable in advance during a year in accordance with the provisions of the Act in res total income of the assessee which would be chargeable the assessment year immediately following that financial year. Thus, in order to hold an assessee liable for payment of advance liability to pay such tax must exist on the last date of advance tax as provided under the Act or at least on the financial year preceding the assessment year in such liability arises subsequently, when the last date of payment of advance tax or even the last date of the financial year prep assessment year is over, it is inappropriate to suggest that the assessee had the liability to pay "advance tax" within the meaning of the Act.

12. In the case before us, the last date of the relevant financial year was March 31, 2001, and on that day, admittedly, the appellant had no liability to pay any amount of advance tax in with the then law prevailing in the country. Consequently the appellant paid no advance tax and submitted its regular return on October 31, 2001, within the time fixed by law wherein in its total income and the book profit both as nil. consequent to the amendment of the provisions contained 115JB of the Act by virtue of the Finance Act, 2002, it published in the Official Gazette on May 11,2002, retrospective effect to the amendment from April 1, appellant first voluntarily paid a sum of Rs.1,55,62,511/- of the tax payable on

book profit as provided in the provision of section 115JB and then filed its revised return on March 31, 2003, declaring its business income as nil but the L under section 115JB as Rs. 20,63,65,711, The Assess) accepted such return of income but imposed interest und 2348 and 234C of the Act amounting to Rs.44,00,937 and Rs.11,78,960 respectively.

13. In our opinion, the amended provision of section 1 come into force with effect from April 1, 2001, the appellant cannot be held defaulter of payment of advance tax. As pointed on the last date of the financial year preceding the assessment year, as the book profit of the appellant in a with the provision of law was nil, we cannot conceive any "advance tax" which in essence is payable within the last financial year preceding the relevant assessment year a. In sections 207 and 208 or within the dates indicated in s of the Act which inevitably falls within the last date of the financial year preceding the relevant assessment year. Consequently, the assessee cannot be branded as a defaulter in payment of advance tax as mentioned above".

5.5 Further, the Hon'ble Bombay High Court has taken the similar view in the case of CIT vs JSW Energy Ltd. reported in 379 ITR 36 [Born.] in the context of clause [h] of explanation 1 that was brought in by the Finance Act, 2008 with retrospective effect from 01.04.2001. The Hon'ble Bombay High Court has taken the view that the levy, of interest uls.234B by virtue of the retrospective Amendment is not warranted. The following observations of the Hon'ble Bombay High Court are relevant :

"17. In the present case, what the assessee has pointed out is that some of the amounts included in the book profits as per Explanation) 40 section 115JB were brought in by the Finance Act, 2008 with retrospective effect from 1st April, 2001. The assessee cannot be held be liable for failing to make a provision for payment of advance tax which was not possible on the last date as per the law then prevailing. Thus clause (h) which is reproduced above having been brought in with retrospective effect but by Finance Act 2008, the advance tax computation by the assessee for the year 2006-07 cannot be faulted and it cannot be said that the assessee is in default and therefore, there is any liability to pay interest in terms of section 234B of the Income-tax Act, 1961.

18. In the present case of Star India (P.) Ltd. v. CCE[2006] 280 ITR 321/150 Taxman 728 the Hon'ble Supreme Court held to be liable for failing to that the service of "broadcasting" was made a taxable service with effect from July 16, the Finance Act, 2001. The appellant disputed its liability to payment for service tax on the ground that it did not broadcast. The Commissioner, however, held against the appellant the matter was carried before the Commissioner of Income Tax and during pendency of appeal the Finance Act, 2001 was by the Finance Act, 2002. The effect of amendment, inter o make an agent, such as the appellant, before the Supreme Court to pay service tax as broadcaster.

19. The Supreme Court noted that the Appellants' appeal pending before the Commissioner was rejected by him on the basis of this amendment. The tribunal also maintained this order and that part of the order passed by the Commissioner was not challenged in appeal. However, the appellant was aggrieved by the fact that the tribunal held it liable to pay Interest on the amount which it was required to pay by reason of the 2002 amendment. The assessee contended that once the amendment was brought in, pending the appeal, there was no question of applying section 234B or any analogous provision and payment of interest. It is in that regard that the Hon'ble Supreme Court held as under:

"7. In any event, it is clear from the language of the validation clause, as quoted by us earlier, that the liability was extended not by way of clarification but by way of amendment to the Finance Act with retrospective effect. It is Well established that while it is permissible for the Legislature to retrospectively legislate, such, retrospectivity is normally not permissible to creak offence retrospectively. There were clearly judgn7n decrees or orders of courts and Tribunals or authorities, which required to be neutralised by t validation clause. We can only assume that the judgment decree or orders, etc., had, in fact, held that person situate like the appellants were not liable as service providers. This is also clear from the Explanation to t valuation section which says that no act or acts on the p of any person shall be punishable as an offence hi would not have been so punishable if the section had it come into force.

8. The liability to pay interest would only arise on and is really in the nature of a quasi punishment liability although created retrospectively could not the punishment of payment of interest with retrospective effect."

20. The Supreme Court held that the liability to pay interest would only arise on default and is really in the nature of a quasi punishment. The liability to tax although credited retrospectively could not entail punishment of payment of interest with retrospective effect. It is this principle which has been laid down which is followed by the Calcutta High Court. It is that principle relied upon by the High Court which has been applied by the Tribunal to the circumstances of the present case. We do not think that the assessee before us can be called upon to pay interest in terms of se once the explanation was introduced or brought in with retrospective effect but by Finance Act, 2008. Then, there was no liability to pay interest in terms of this provision. That was because the assessee cannot be termed as defaulter in payment of advance tax computation on the basis of the un-amended (sic) provision therefore could not have been entertained.

21. We do not see any broader or wider question arising for our determination as the view taken even on this question is perverse or neither vitiated by any error of law apparent on the on the record".

5.6 Following the said judgements, similar view has also by the Hon'ble Mumbai Bench of the Tribunal in the case of Voda No.880/Mum/2014 dated 03.02.2016; the Delhi Bench of the H the case of NHCP Limited reported in 47 ITR (T) 561 and the Kolkata Bench of Hon'ble Tribunal in the case of Usha Martin Telematics No.516/Kol/2010 dated 19.01.2012. All these judgements are liability to pay advance tax on the Book Profit computed retrospective amendments.

5.7 Respectfully following the said judicial precedents relied upon by the appellant, I hold that interest u/s.234B and 234C of the Act, cannot be levied on the tax payable on the additional book profit of Rs.32,94,66,417/-. Hence, the Assessing Office is directed to compute interest under Section 234B & 234C by excluding the said additional income brought to tax based on the amended provision which came into Statute subsequently. Thus, the Ground No.2 raised by the appellant is hereby allowed.

5.8 In Ground No.4, the appellant has challenged the levy of interest u/s.234B in the order giving effect to the appellate order as per provisions of section 234B(1) instead of the provisions of 234B(3) as it stood before the substitution w.e.f 01.06.2015. It is the contention of the appellant that the order giving the appellate order dated 25.11,2016 is passed modifying the it order passed u/s.143(3) rws 153A of the Act dated 30.03.2015. It out that there was an original assessment framed u/s.143(3) dated b and hence, the order passed uls.143(3) rws 153A of the Act dated 30.3.2015 is reassessment. It is the appellant's contention that in a case of reassessment, interest u/s.234B(3) alone can be levied and not interest) of the Act.

5.9 I have perused the provisions of section 234B(1) and 234B(3) as it was for the year under appeal. As per the said provisions interest u/s.234B(3) was leviable at 1%, per month for the period from the day following the regular assessment and ending with the reassessment. Further, this interest was leviable on an amount by which tax on reassessment exceeded the tax on regular assessment. In other words, in case of reassessment u/s.148 or 153A of the Act, the interest chargeable u/s.234B of the Act, will consist of the interest already levied u/s.234B(1) of the Act, as per the regular assessment and further interest fm the date of regular assessment to the date of reassessment. The interest us.24B(3) will be computed on the differential tax as a result of re-assessment, which is in addition to the interest already levied u/s. 23413[1] that has been imposed in the original assessment. I find from the regular assessment order u/s 143(3) dated 16.12.2010 that interest u/s.234B(3) of Rs.34,27,664/has been levied. The same has to be adopted in the reassessment order passed u/s.153A of the Act and thereafter, interest u/s.234B(3) should be computed from 17.12.2010 till the day of reassessment on the amount of tax determined in the order passed u/s,153A that exceeds the tax determined in the order passed u/s.143(3)

dated 16.12.2010. This is the mandate of the provisions of section 234B[3] of the Act, as it stands for the year under consideration. The Assessing Officer is directed accordingly. While doing so the Assessing Officer shall disregard the tax on the additional Book Profit due to retrospective amendment as per the directions contained in ground No.2 above. It is ordered accordingly.”

8. Aggrieved by the above findings, revenue is in appeal before us now.

9. We have perused submissions advanced by both sides in light of records placed before us.

10. Admittedly, additional income under section 115 JB of the Act came to be computed on account of retrospective amendment made to section 115 JB by Finance Act (No. 2), 2009, with retrospective effect from 01/04/2001, wherein clause (i) was introduced to provide for increase in book profit by the amount set aside for provision in diminution in the value of asset. Since the clause (i) was not on statute book during the relevant assessment year, the assessee did not increase the book profits while estimating the payment of advance tax.

11. The Ld.Counsel placed reliance on following decisions:

- *Decision of Hon’ble Karnataka High Court in case of Sh. Vijay Kumar Saboo in ITA No. 65 and 66 of 2005 by order dated 18/07/2011*
- *Decision of Hon’ble Calcutta High Court in case of M/s.Emami Ltd. vs CIT reported in 337 ITR 470*
- *Decision of Hon’ble Gujarat High Court in case of CIT vs National Dairy Development Board reported in 397 ITR 543*
- *Decision of Hon’ble Bombay High Court in case of CIT vs GSW Energy Ltd. reported in 379 ITR 36*
- *Decision of Hon’ble Punjab and Haryana High Court in case of CIT vs SAP Industries reported in (2013) 40 Taxmann.com 175*

- *Decision of ITAT Delhi bench in case of NHPC Ltd. vs ACIT reported in (2017) 85 Taxmann.com 215*
- *Decision of Mumbai ITAT in case of DCIT vs Mrs Vodafone India Ltd. in ITA No. 880/M/2014 by order dated 03/02/2016*
- *Decision of ITAT Kolkata bench in case of Usha Martine Telematics Ltd. vs ITO in ITA No.516/Kol/2010 by order dated 19/01/2012*

12. We are reproducing the observation of Hon'ble ITAT Delhi bench in case of *NHPC Ltd. vs ACIT(supra)* on similar issue, wherein all the above decisions relied by the Ld. Counsel has been referred to and relied as under:

20. *The Revenue has also preferred an appeal, for assessment years 2004-05 and 2005-06 vide appeal nos. 422 & 423/Del/2013 raising following grounds :-*

(1) Whether the ld. CIT (A) was right in law in deleting the interest amounting to Rs. 76,52,089/- charged u/s. 234B of the Act, since charging of interest u/s. 234-B is consequential in nature

(2) Whether the ld. CIT (A) was right in law in deleting the interest amounting to Rs. 76,52,089/- charged u/s. 234B of the Act consequent to the addition made in pursuant to the amended provisions of section 115JB of the Act

(3) That the appellant craves for the permission to add, delete or amend the grounds of appeal before or at the time of hearing of appeal.

21. *The main ground of the Revenue's appeal is regarding deletion of interest charged under Section 234B of the Act consequent to the addition made by Assessing Officer under Section 154 of the Act arising on account of retrospective amendment u/s. 115JB of the Act. We have already held in the appeal of the assessee, we have already held that the provisions of Section 154(1A) of the Act prohibits the actions taken by the Assessing Officer and held that the order passed under Section 154 of the Act by the Assessing Officer are invalid and, therefore, these appeals by the Revenue are also arising from that order, we dismiss both the grounds of Revenue's appeals.*

22. *Even on the merits of the appeal of revenue, issue is decided against the revenue. On identical issue considering levy of interest u/s. 234B of the act on retrospective amendment in section 115JB of the act Honourable Bombay high court in [2015] 60 taxmann.com 303/234 Taxman 133/379 ITR 36CIT v. JSW Energy Ltd. has held that interest*

u/s. 234B of the act cannot be charged when liability on the assessee has arisen because of retrospective amendment in the act. Honourable High court has held as under :—

11. Then, Mr. Tejveer Singh vehemently contended that in relation to question no. 2, the findings require detailed probe by this Court. He submits that the Tribunal was not right in law when it held that no interest under section 234B of the I.T. Act can be levied. Though several items have to be calculated while computing book profit and in terms of explanation to section 115JB of the I.T. Act, that explanation has been brought on the statute book and with retrospective effect from 1st April, 2001, therefore, this calculation of the tribunal is erroneous in law.
12. However, Mr. Kaka, learned senior counsel invited our attention to section 234B of the I.T. Act to submit that this is provision to recover interest for default in payment of advance tax. It directs payment of simple interest and in terms of this provision provided any assessee who is liable to pay advance tax under section 208 has failed to pay such tax or where the advance tax paid is less than 90% of the assessed tax. Thus, this is a provision whereunder interest could be recovered wherein advance tax for the assessment year fails to take note of the amendment to the Income Tax Act which is brought in subsequently. When the Parliament stepped into to amend the Act though with retrospective effect but in 2008, then, there is no default in payment of advance tax for the assessment year 2006-07. The computation of income based on which the advance tax was paid was in tune with the law prevailing on the date on which tax was due and payable. Any further addition in the income by way of amended provisions and which were incorporated subsequently, therefore, does not attract payment of interest as there is no default.
13. Mr. Kaka also invited our attention to section 115JB and particularly, insertion of clause (h) in Explanation (1). That clause reads as under :

"(h) The amount of deferred tax and the provision therefor."
14. This clause has been substituted by Finance Act, 2008 with retrospective effect from 1st April, 2001. Prior to the same it read as under :

Prior to its substitution, read as under :

'4. Substituted for the portion beginning with the words "if any amount referred" and ending with the words "as reduced by " by the Finance Act, 2008, w.r.e.f. 1.4.2001."

"If any amount referred to in clauses (a) to (g), is debited to the Profit and Loss account, and as reduced by...."

15. *The Tribunal in this regard noted rival contentions and the admitted facts. It also relied upon and followed the judgment of Hon'ble Calcutta High Court in Emami Ltd. v. CIT [2011] 337 ITR 470/200 Taxman 326/12 taxmann.com 64.*
16. *In paragraph 13 of the Tribunal's impugned order the relevant portion from Calcutta High Court's judgment has been extracted. The Calcutta High Court, therefore, found that the provisions would indicate that they are mandatory. There is no scope for waiving of the provision. However, in order to attract the provisions contained in section 234B and 234C of the Act, it must be established that the assessee had the liability to pay advance tax as provided under sections 207 and 208 of the I.T. Act within the time prescribed under section 211 of that Act. Noting the rival contentions, the Calcutta High Court proceeded to hold that the last date of relevant financial year was 31st March, 2001 and on that date, admittedly, the appellant before it had no liability to pay any amount of advance tax in accordance with the then law prevailing in the country. Consequently, the appellant paid no advance tax and submitted its regular returns on 31st October 2001, within the time fixed by law wherein it declared its total income and the book profit both as Nil. The amendment to section 115JB by virtue of Finance Act, 2002 and which was referred to in the Calcutta High Court judgment has retrospective effect from 1st April, 2001.*
17. *In the present case, what the assessee has pointed out is that some of the amounts included in the book profits as per Explanation (h) to section 115JB were brought in by the Finance Act, 2008 with retrospective effect from 1st April, 2001. The assessee cannot be held to be liable for failing to make a provision for payment of advance tax which was not possible on the last date as per the law then prevailing. Thus, clause (h) which is reproduced above having been brought in with retrospective effect but by Finance Act 2008, the advance tax computation by the assessee for the year 2006-07 cannot be faulted and it cannot be said that the assessee is in default and therefore, there is any liability to pay interest in terms of section 234B of the Income Tax Act, 1961.*
18. *In the case of Star India (P.) Ltd. v. CCE [2006] 280 ITR 321/150 Taxman 128 the Hon'ble Supreme Court held that the service of "broadcasting" was made a taxable service with effect from July 16, 2001, by the Finance Act, 2001. The appellant disputed its liability to make any payment for service tax on the ground that it did not broadcast. The Commissioner, however, held against the appellant. The matter was carried before the Commissioner of Income Tax (Appeals) and during pendency of appeal the Finance*

Act, 2001 was amended by the Finance Act, 2002. The effect of amendment, inter alia, was to make an agent, such as the appellant, before the Supreme Court, liable to pay service tax as broadcaster.

19. *The Supreme Court noted that the Appellants' appeal pending before the Commissioner was rejected by him on the basis of this amendment. The tribunal also maintained this order and that part of the order passed by the Commissioner was not challenged in appeal. However, the appellant was aggrieved by the fact that the tribunal held it liable to pay interest on the amount which it was required to pay by reason of the 2002 amendment. The assessee contended that once the amendment was brought in, pending the appeal, there was no question of applying section 234B or any analogous provision and payment of interest. It is in that regard that the Hon'ble Supreme Court held as under:*

"7. In any event, it is clear from the language of the validation clause, as quoted by us earlier, that the liability was extended not by way of clarification but by way of amendment to the Finance Act with retrospective effect. It is well established that while it is permissible for the Legislature to retrospectively legislate, such, retrospectivity is normally not permissible to create an offence retrospectively. There were clearly judgments, decrees or orders of courts and Tribunals or other authorities, which required to be neutralised by the validation clause. We can only assume that the judgments, decree or orders, etc., had, in fact, held that persons situate like the appellants were not liable as service providers. This is also clear from the Explanation to the valuation section which says that no act or acts on the part of any person shall be punishable as an offence which would not have been so punishable if the section had not come into force.

8. The liability to pay interest would only arise on default and is really in the nature of a quasi-punishment. Such liability although created retrospectively could not entail the punishment of payment of interest with retrospective effect."

20. *The Supreme Court held that the liability to pay interest would only arise on default and is really in the nature of a quasi punishment. The liability to tax although credited retrospectively could not entail the punishment of payment of interest with retrospective effect. It is this principle which has been laid down which is followed by the Calcutta High Court. It is that principle relied upon by the Calcutta High Court which has been applied by the Tribunal to the facts and circumstances of the present case. We do not think that the assessee before us can be called*

upon to pay interest in terms of section 234B, once the explanation was introduced or brought in with retrospective effect but by Finance Act, 2008. Then, there was no liability to pay interest in terms of this provision. That was because the assessee cannot be termed as defaulter in payment of advance tax. The advance tax computation on the basis of the unamended (sic) provision therefore could not have been entertained.

21. *We do not see any broader or wider question arising for our determination as the view taken even on this question is neither perverse or neither vitiated by any error of law apparent on the face of the record.'*

23. *Therefore, respectfully following the decision of Honourable Bombay high court we also hold that no interest shall be chargeable u/s. 234B of the act on tax liability arising on the assessee by virtue of retrospective amendment u/s. 115JB of the Act*

13. Therefore, respectfully following the decisions reproduced hereinabove, we also hold that no interest shall be chargeable under section 234B and C of the Act on tax liability arising on assessee by virtue of retrospective amendment under section 115 JB of the Act.

Accordingly, the grounds raised by revenue stands dismissed.

In the result appeal filed by revenue stands dismissed.

Order pronounced in the open court on 8th March, 2021

Sd/-

(CHANDRA POOJARI)

Accountant Member

Bangalore,

Dated, the 8th March, 2021.

/Vms/

Sd/-

(BEENA PILLAI)

Judicial Member

Copy to :

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

By order

Assistant Registrar, ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-3-2021		Sr.PS
3.	Draft proposed & placed before the second member	-3-2021		JM/AM
4.	Draft discussed approved by Second Member.	-3-2021		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-3-2021		Sr.PS/PS
6.	Kept for pronouncement on	-3-2021		Sr.PS
7.	Date of uploading the order on Website	-3-2021		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-3-2021		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS