

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 1115/Mum/2022
(A.Y.2019-20)

ASK Investment Managers Limited Birla Aurora, 16 Level, Office Floor 9, Dr. Annie Besant Road, Worli, Mumbai – 400030	Vs.	DCIT-6(1)(2) Aayakar Bhavan, M.K. Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAFCA2302P		
Appellant	..	Respondent

Appellant by :	J.D. Mistri & Shreyam Shah
Respondent by :	Mehul Jain

Date of Hearing	23.11.2022
Date of Pronouncement	13.12.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order passed by NFAC, Delhi, dated 31.03.2022 for A.Y. 2019-20. The assessee has raised the following grounds before us:

“A. THE LEARNED CIT (A) HAS FAILED TO PASS AN ORDER ON ALL GROUNDS OF APPEAL

1. *On the facts and circumstances of the case and in law, the learned CIT (A) erred in passing an order on all the Grounds of Appeal ignoring the submissions of the Appellant*
2. *In the view of the above, the learned CIT (A) be directed to pass a speaking order on all the Grounds of Appeal.*

B. THE LEARNED CIT (A) FAILED TO PASS ORDER ON EXCESS LEVY OF INTEREST UNDER SECTION 234C OF THE ACT RS. 8,51,047/-:

3. *On the facts and circumstances of the case and in law, the learned CIT (A) erred in passing order quoting that interest under section 234C of the Act at Rs.8,51,047 are consequential and do not require specific adjudication.*
4. *In doing so, the learned CIT (A) has failed to appreciate that the Appellant is engaged in the business of Portfolio Management Services The performance fees that the Appellant cars from its client could be ascertained only on the last day of the year based on the stock markets position as at the end on that day Hence, having regard to the volatility and uncertainty about the stock markets, it is impossible to estimate the performance fees that it will earn based on the stock markets as at the last date of the year*
5. *In view of the above, the learned CIT(A) be directed to re-calculate the interest under section 2340 of the Act after excluding Performance fees of Rs.12.13.63,859/- which is included in the income of Appellant*

C. THE LEARNED CIT(A) FAILED TO PASS ORDER ON EXCESS LEVY OF INTEREST UNDER SECTION 234B OF THE ACT RS. 2.49,653/-:

6. *On the facts and circumstances of the case and in law, the learned CIT (A) erred in passing order quoting that interest under section 234B of the Act at Rs.2,49,653 are consequential and do not require specific adjudication*
7. *Once the excess interest charged under section 234C of the Act as stated in Para B above is deleted, the interest under section 234B of the Act would work out to the figure as computed by the Appellant.*
8. *In view of the above, the ld. CIT(A) be directed to delete the excess interest charged under section 234B of the Act.”*

2. Fact in brief is that the assessee filed return of income on 24.07.2020. The CPC, Bangalore has processed the return of income vide order dated 18.03.2021 and charged interest of Rs.2,49,653/- u/s 23B and Rs.8,51,047/- u/s 234C of the Act.

3. The assessee filed the appeal before the ld. CIT(A) against the charging excess interest as referred above u/s 234C and 234B by the CPC, Bangalore. However, ld. CIT(A) has dismissed the appeal of the assessee.

4. During the course of appellate proceedings before us the ld. Counsel vehemently contended that the assessee was engaged in the business of Portfolio Management Services and because uncertainty of stock market the performance fees which the assessee earned from its client could be ascertained only on the last day of the year. The ld. Counsel also submitted that it was impossible to estimate the performance fees as its earning will be based on the performance of the stock market upto the last date of the year. The ld. Counsel has placed reliance on the decision of ITAT, Mumbai in the case of Kotak Securities Ltd. Vs. ACIT, Range 4(3) and in the case of ITAT, Mumbai, Ultratech Cement Ltd. Vs. DCIT, Circle 2(2), Hon'ble High Court of Madras in the case of MRF Ltd. and ITAT , Mumbai, in the case of Kumari Kumar Advani (ITA No. 7661/Mum/2013). The ld. Counsel also submitted that in the assessment year 2008-09 ld. CIT(A) has adjudicated the issue in favour of the assessee.

On the other hand, ld. D.R referred the provisions of Sec. 234C of the Act and supported the order lower authorities.

5. Heard both the sides and perused the material on record. The CPC, Bangalore has charged excess interest u/s 234C of the Act at Rs.8,51,047/- as referred supra in this order. The assessee has submitted that it is engaged in the business Portfolio Management Services and excess interest of Rs.8,51,047/- was charged by the CPC, Bangalore because of performance fees of Rs.1,21,13,63,859/- which was reported by the assessee from its client on 31.03.2019. In this regard, the ld. Counsel submitted that the ld. CIT(A) has not considered the material fact that the performance fees cannot be estimated before hand for the purpose of calculation of advance tax payable during the year

because of uncertainty about the equity market since the performance fees can be ascertained by the assessee only on the last day of the year based on the stock market position as at the end of that day. In this regard, we have also perused the decision of Id. CIT(A) in the case of the assessee itself for assessment year 2008-09 dated 05.05.2015 placed in the paper book wherein after considering the decision of Hon'ble Bombay High Court in the case of Prime Securities Ltd. Vs. ACIT (333 ITR 464) and decision of ITAT, in the case of Kotak Securities Ltd., vide ITA No. 1502/Mum/2007 and decision of ITAT, Mumbai in the case of Kumari Kumar Advani Vs. ACIT vide ITA No.7661/Mum/2013 held that in the case of the assessee it had estimated its income and liability for payment of advance tax in accordance with law that was in force, therefore, there was no failure on the part of the assessee to pay advance tax in accordance with provision of Sec. 208 and 209. In the case of Prime Securities as referred above it is held that it was not possible for the assessee to anticipate the events that were to take place in next financial year and pay advance tax on the basis of those anticipated events. After considering the findings of the Id. CIT(A) in the case of the assessee's case for assessment year 2008-09 and the finding of various judicial pronouncements as referred supra by the Id. Counsel, we observe that lower authorities had not controverted the facts reported by the assessee that because of uncertainty about the equity market it cannot estimate before hand amount of performance fees as discussed supra for the purpose of calculation of advance tax. No material has been brought by the revenue to controvert the aforesaid factual submission made by the assessee, therefore, following the finding of judicial pronouncements in the cases as referred above we consider that decision of Id. CIT(A) is not justified, therefore, we allow the ground of appeal of the assessee.

6. The other ground of appeal of the assessee pertaining to charging of excess interest u/s 234B of Rs.2,49,643/- is consequential, since, we have already allowed ground of appeal of the assessee on charging excess interest u/s 234C of the Act, therefore, this ground pertaining to charging interest u/s 234B become infructuous and not required any adjudication, therefore, the same stand dismissed.

7. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 13.12.2022

Sd/-
(Rahul Chaudhary)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 13.12.2022

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.