

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI**

**Before Sh. H.S.Sidhu, JM AND Sh. O.P.Kant, AM**

**ITA No.6264, 6265 & 6266/Del./2013**

**Asstt. Year : 2009-10**

**Asstt. Year : 2010-11**

**Asstt. Year : 2011-12**

Sandip Bhagat K-94, First Floor, Hauz Khas Enclave New Delhi <b>(APPELLANT)</b>	Vs	ACIT Circle-37(1)  New Delhi <b>(RESPONDENT)</b>
<b>PAN No. ADUPB2481M</b>		

**Appellant by : S. Srinivasam, Adv.**

**Respondent by : Sh. Sujit Kumar, SR. DR.**

**Date of Hearing : 20.08.2015**

**Date of Pronouncement :10.09.2015**

**ORDER**

**PER O.P.KANT, A.M.**

These three appeals of the assessee are directed against three separate orders of the Commissioner of Income-Tax( Appeals)-XXVIII, New Delhi dated 16.9.2013 in relation to assessment year 2009-10, 2010-11 and 2011-12. The main grievance raised in appeals is in respect of charging of interest u/s 234C of the Income Tax Act, 1961 (in short 'the Act'), the quantum of which charged in different years is as under:-

ITA No.	Assessment Year	Amount of interest charged u/s 234C of the Act
6224/Del/2013	2009-10	Rs.25,512/-
6265/Del/2013	2010-11	Rs.27,154/-
6266/Del/2013	2011-12	Rs.25,218/-

2. In all the appeals grounds of appeal raised are identical. For the sake of convenience, the appeal in ITA No.6264/Del/2013 is taken up as lead case and decided accordingly.

### **ITA No.6264/Del/2013**

The grounds raised in the appeal are reproduced as under:-

*“1. The order passed by the Learned Commissioner of Income Tax (Appeals) is bad on facts and in law.*

*2. The Learned Commissioner of Income Tax (Appeals) has erred in noting that Circular No. 261 dated 08.08.1979 is not binding and has further erred in noting that OLTAS system has replaced the tax payments and that the circular no. 261 issued in 1979 is not binding on the Department.*

*3. The Learned Commissioner of Income Tax (Appeals) has further erred in ignoring the facts of the case including the copies of the challan, bank statements to show that the payments were debited in the bank account before the due date and the clarification received from the Ministry of Finance, Department of Revenue produced before the Learned Commissioner of Income Tax (Appeals) that*

*i) Circulars are binding on CPC;*

*ii) Circular No. 261 of 1979 is still valid and not being over-ruled;*

*iii) Officers of Direct Taxes are borne by this circular.*

*4. The Learned Commissioner of Income Tax (Appeals) has further erred in confirming the interest of Rs.25,512/- levied u/s 234C.”*

*5. The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal*

3. Ground Nos. 1 and 5 being general in nature, no adjudication is required.

4. In Ground Nos. 2 and 3, the assessee has challenged the action of the Id commissioner of Income-tax (Appeals) [ in short ‘CIT(A)’] in ignoring the circulars issued by the CBDT in respect of giving credit for tax payment . In Ground No. 4, the assessee has challenged interest of Rs.25,512/- levied u/s 234C of the Act. The main issue agitated in the appeals is whether the interest u/s 234C of the Act has to be computed considering date of presentation of cheque of tax payment as date of clearing of cheque or not.

5. The facts in brief are that the assessee filed its return electronically declaring total income of Rs.41,37,610/-. While filing the return of income, the assessee computed liability of Rs.2,022/- u/s 234C of the Act for delay in making payment of advance tax. The return filed electronically was processed u/s 143(1) of the Act by the Centralized Processing Centre (in short ‘CPC’) of the Income Tax Department located at Bangalore. In the said order an interest of Rs.27,534/- u/s 234C of the Act was charged by the Assessing

Officer (in short 'AO') as against interest of Rs.2,022/- computed by the assessee. The assessee paid the advance tax payment through tendering of cheques in designated Banks. While computing the interest u/s 234C of the Act, the AO took the date of clearing of cheque by the bank as the date of payment of advance tax as against the date of tendering of cheque taken by the assessee. Further, while disposing off the rectification application of the assessee u/s 154 of the Act, the CPC observed as under:-

“VARIATION DUE TO INTEREST: THE ASSESSEE IS ADVISED TO USE THE SOFTWARE UTILITY AVAILABLE ON THE WEBSITE <http://www.incometaxindiaefiling.gov.in> FOR ENTERING AND UPLOADING THE ONLINE RECTIFICATION APPLICATION.”

6. Aggrieved, the assessee filed an appeal before the 1d CIT(A) raising the following grounds:-

- “a) Whether while framing the intimation u/s 143(1) the above said circular is being followed by CPC;*
- b) Whether if the glaring mistake is pointed out by the assessee by filing rectification online any steps are being taken by the CPC by either transferring it to the Jurisdictional ITO or asking for further information before rejecting the application u/s 154 of the Income Tax Act, by critically noting “THE ASSESSEE IS ADVISED TO USE THE SOFTWARE UTILITY AVAILABLE ON THE WEBSITE <http://www.incometaxindiaefiling.gov.in> FOR ENTERING AND UPLOADING THE ONLINE RECTIFICATION APPLICATION” especially when the rectification application has been done online.”*

7. Before the Id CIT(A), the assessee cited the Central Treasury Rules and the Circular No.261 issued by the Central Board of Direct Taxes (in short 'CBDT') and prayed that date of tendering of the cheque for tax payment should be treated as date of tax payment for the purpose of computing interest u/s 234C rather than the date of clearing of the cheque. The assessee also submitted details of the dates of tendering of cheques and clearing of the same, which is reproduced as under:-

<i>Due date</i>	<i>Date cheque tendered</i>	<i>Debited to assessee's bank A/c</i>	<i>Date of challan as per 26AS</i>	<i>Amount</i>
15.09.2008	12.09.2008	15.09.2008	16.09.2008	4,20,000
15.12.2008	12.12-2008	15.12.2008	16.12.2009	3,00,000
15.03.2009	12,03.2009	14.03.2009	17.03.2009	5,00,000

8. The CIT(A) , relying on the new procedure of giving tax credit i.e. Online Tax Accounting System (OLTAS) , declined the request of the assessee with following remarks:-

*“5.2 In terms of provisions of Income-Tax Act, 1961 (Act) the payment of taxes i.e. advance Income-Tax, fringe benefit tax, tax deducted/ collected at source are to be made before the specified due dates and even a day's delay in payment attracts penal interest or may lead to disallowance of expenses in tax assessments/ returns. In cases where taxes are paid through cheque, the date of payment could be the date of tender of cheque to the authorized banker or the date of clearance of cheque from the payer's account. Payments to government accounts were regulated by Central Treasury Rules (Old Rules). As per the said rules when a cheque/draft is honoured the payment shall be deemed to have been made on the date the*

*cheque/draft is handed over to the government's bankers or to a government officer authorized to receive money on behalf of the government. Central Board of Direct Taxes (CBDT) issued Circular No. 261 of August 8, 1979. This Circular was in confirmation to Central Treasury rules clause and according to this circular, the cheque tender date to banker will be deemed date of payment subject to realisation of cheque. Thereafter, Central Government Account (Receipts and Payments) Rules 1983 (1983 Rules) were framed. These rules provide that the date of payment of government dues tendered in form of cheque/draft shall be the date on which it was cleared and entered in the receipt scroll;*

*However a High Powered Committee (HPC) was constituted by Reserve Bank for setting up OLTAS in January 2003. The HPC set up a Sub-Committee to suggest the Accounting Procedure for Online Tax Accounting System. The Accounting procedure duly approved by CGA and CAG was introduced for OLTAS w.e.f June 01, 2004. The new accounting procedure was forwarded to all agency banks on April 16, 2004. The salient features of the new accounting procedure are the introduction of a single copy Challan with tear-off taxpayer's counterfoil, branding of acknowledgement stamp with unique serial number known as Challan Identification Number (CIN) on the single copy Challan and on taxpayer's counterfoil. Tax payers are now able to view the tax paid by them by logging. Further, the new file structure required by Income Tax Department was also forwarded to Agency banks for developing suitable software for the OLTAS. Under the new procedure, banks were advised to issue acknowledgement in respect of Challan tendered with clearing cheques/drafts (i.e. other than cash and transfer cheques/drafts) only after-the realization of such cheques/drafts. Banks were further advised to issue paper token in respect of such Challan indicating the date of tender and the date on which the counterfoil will be kept for delivery. The receiving banker was advised to return the*

*tear-off portion of taxpayers' counterfoil on realization of such cheques/drafts after branding with the rubber stamp acknowledging the payment with Challan Identification Number (CIN) comprising of the following:*

- i. BSR Code number of the bank branch (7 digits)*
- ii. Date of presentation of the Challan (DD/MM/YY)*
- iii. Serial number of the Challan in that branch on that day (5 digits)*

*It was further advised that the new accounting procedure under OLTAS will replace the existing procedure in so far as the sending of scrolls and Challan to the Income Tax Department is concerned.*

*Thus the interest has been computed as per this duly approved new procedure and as per the provisions of the Income Tax Act. The chargeability of interest is therefore upheld.”*

9. Aggrieved, the assessee is before us.

10. At the time of hearing, Id. AR of the assessee focused his arguments mainly on ground No.4 and in support relied on the CBDT Circular (supra), which was also submitted in the appellate proceeding before the CIT(A) and further placed reliance on the decision of the Hon'ble High Court of Madras in the case of CIT, Chennai vs. REPCO Home Finance Ltd.(2015) 53 taxman.com 47 Madras and argued that the issue is already settled in favour of the assessee. The Id. Sr. DR relied on the findings of the lower authorities.

11. The rival submissions have been heard and the material on record perused. The only controversy in the case is whether the interest charged u/s 234C of the Act is to be computed from the date of

presentation/ tendering of cheque of tax payment into bank or from the date of clearance from the Bank Account of the assessee.

12. The aforesaid controversy has been settled by their lordship in recent judgment in the case of CIT vs. REPCO Home Finance ltd. (Supra). The relevant para of judgment is reproduced as under:-

*“5. The issue raised in this appeal is no longer res integra in view of the decision of the Supreme Court in CITv. Ogale Glass Works Ltd. 19541 25 ITR 529, wherein it is held as under:*

*“11. .... When it is said that a payment by negotiable instrument is a conditional payment what is meant is that such payment is subject to a condition subsequent that if the negotiable instrument is dishonoured on presentation the creditor may consider it as waste paper and resort to his original demand: (Stedman v. Gooch, ((1791) 1 Esp 5). It is said in Benjamin on Sale, 8th Edn. p. 788:*

*The payment takes effect from the delivery of the bill, but is defeated by the happening of the condition i.e. non-payment at maturity.*

*In Byles on Bills, 20th Edn., p. 23 the position is summarized pithily as follows: 'A cheque, unless dishonoured, is payment.'*

*To the same effect are the passages to be found in Hart on Banking, 4th Edn. Vol. I, p. 342. In Felix Hadley & Co. v. Hadley, [1898] 2 Chd. 680 Byrne, J. expressed the same idea in the following passage in his judgment at p. 682:*

*'In this case I think what took place amounted to a conditional payment of the debt; the condition being that the cheque or bill should be duly met or honoured at the proper date. If that be the true view, then I think the position is exactly as if an agreement had been expressly made that the bill or cheque should operate as payment*



*unless defeated by dishonour or by not being met; and I think that that agreement is implied from giving and taking the cheques and bills in question.*

*The following observations of Lord Maugham in Rhokana Corpn. v. Inland Revenue Commissioners, 1938 AC 380 are also opposite:*

*'Apart from the express terms of Section 33 sub-section 1, a similar conclusion might be founded on the well-known common law rules as to the effect of the sending of a cheque in payment of a debt, and in the fact that though the payment is subject to the condition subsequent that the cheque must be met on presentation, the date of payment, if the cheque is duly met, is the date when the cheque was posted.'*

*In the case before us none of the cheques has been dishonoured on presentation and payment cannot, therefore, be said to have been defeated by the happening of the condition subsequent, namely, dishonoured by non-payment and that being so there can be no question, therefore, that the assessee did not receive payment by the receipt of the cheques. The position, therefore, is that in one view of the matter there was, in the circumstances of this case, an implied agreement under which the cheques were accepted unconditionally as payment and on another view, even if the cheques were the payment related back to the dates of the receipt of the cheques and in law the dates of payments were the dates of the delivery of the cheques" (Emphasis supplied)*

6. *The above said view of the Supreme Court was reiterated by a recent decision of the Supreme Court in DIT (Exemption) v. Raunaq Education Foundation [2013] 350 ITR 420/213 Taxman 19/29 taxmann.com. 150.*

7. *It is not the case of the department that the cheque issued by the assessee was dishonored. Once the cheque issued by the assessee is encashed, in the light of the decisions referred*

*supra, the payment relates back to the date of receipt of the cheque.”*

13. Thus, the hon'ble High court of Madras has held that date of tendering of cheque should be taken as the date of payment of tax if the cheque is not dishonoured. The hon'ble High court has also taken note of the decision of the Supreme Court in the case of DIT(Exemption) v. Raunaq Education Foundation (2013) 350 ITR 420. Coming to the facts of the case in hand, cheques issued have not been dishonored and so the facts of the case are exactly identical to the case cited above, and therefore, respectfully following the judgment of the Hon'ble High Court of Madras in the case of CIT Vs. REPCO Home Finance Ltd (supra) and DIT( Exemption) v. Raunaq Education Foundation , we hold that interest u/s 234C of the Act should be computed from the date of presentation of the cheque of tax payment. We direct the Assessing Officer to compute the interest u/s 234C of the Act, accordingly,

14. Thus, the ground No. 4 of the assessee stands allowed. As the ground No.4 is allowed, the ground Nos.2 and 3 are rendered merely academic in nature and hence do not require adjudication at this point.

15. In the result the appeal of the assessee is allowed.

**ITA No.6265/Del/2013 and ITA No.6266/Del/2013**

16. As the facts of the years in consideration are exactly identical to the appeal decided in **ITA No.6264/Del/2013**, following the decision in said appeal, both the appeals of the assessee are allowed.

Order Pronounced in the Court on 10/09/2015.

-Sd/-

-Sd/-

**(H.S. Sidhu)**  
**JUDICIAL MEMBER**

**(O.P.Kant)**  
**ACCOUNTANT MEMBER**

**Dated:10/ 09/2015**

\*Binita/Ajay  
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**