

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 887 of 2015**

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THE PRI.COMMISSIONER OF INCOME TAX-1....Appellant(s)

Versus

APPLITECH SOLUTION LTD.....Opponent(s)

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Appearance:

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MR.JUSTICE MOHINDER PAL

Date : 01/12/2015

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. This appeal is filed by the Revenue challenging judgement of the Income Tax Appellate Tribunal dated 10.04.2014 raising following question for our consideration:

“Whether the Appellate Tribunal has substantially erred in directing the Assessing Officer to charge interest u/s 234B of the Act after giving effect to the order of the Tribunal till the date of order of original assessment?”

2. As can be seen from the question, the issue pertains to the date upto which, interest under Section 234B of the Income Tax Act, 1961 can be admitted. As is well known, Section 234B pertains to interest for default in payment of advance tax. Sub section (1)

need to be noted, relevant portion of which reads as under:

“234B. Interest for defaults in payment of advance tax.

(1) Subject to the other provisions of this section, where, in any financial year, an assessee who is liable to pay advance tax under Section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of Section 210 is less than ninety percent of the assessed tax, the assessee shall be liable to pay simple interest at the rate of [one] per cent for every month or part of a month comprised in the period from the 1st day of April next following such financial year [to the date of determination of total income under sub section (1) of section 143 [and where a regular assessment is made, to the date of such regular assessment, on an amount]] equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax.

[Explanation 1:- In this section, "assessed tax" means, the tax on the total income determined under sub section (1) of section 143 and where a regular assessment is made, the tax on the total income determined under such regular assessment as reduced by the amount of-

- (i) any tax deducted or collected 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.*
- (ii) any relief of tax allowed under Section 90 on account of tax paid in a country outside India;*
- (iii) any deduction, from the Indian income tax payable, allowed under section 91, on account of tax paid in a country outside India; and*
- (v) any tax credit allowed to be set off in accordance with the provisions of section 115JAA [or section 115JD]*

Explanation 2. Where in relation to an assessment year, an assessment is made for the first time under section 147[or section 153A], the assessment so made shall be regarded as a regular assessment for the purposes of this section.

Explanation 3. In Explanation 1 and in sub-section (3), "tax on the total income determined under sub-section (1) of section 143" shall not include the additional income-tax, if any, payable under section 143.]”

3. Under sub-section (1) of Section 234B of the Act whenever advance tax paid by the assessee is found to be less than 90 per cent of the assessed tax, the assessee is liable to pay interest at the prescribed rate for every month or part thereof from 1st day of April next, following such financial year upto the date of determination of total income under sub-section (1) of Section 143 and where a regular assessment is made to the date of such regular assessment. Such interest liability would be on the amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid falls short of the assessed tax.
4. It can thus be seen that the interest liability flowing from sub-section (1) of Section 234B has two parameters. One is the principal on which such interest would be computed and the other is the period, during which, such interest liability would arise. Two terminal points of the liability are the 1st of April next following the financial year in question and the date of determination of total income under Section 143(1) assessment or the date of regular assessment as the case may be. Sub-

section (4) of Section 234B, however, further provides that where, as a result of an order under rectification or revision etc., the amount on which interest is payable under sub-section (1) is increased or decreased, the interest will also correspondingly increased or decreased. Sub section (4) of Section 234B of the Act thus only pertains to the adjustment of the principal on the basis of any change in the principal liability of the tax of the assessee and has no reference to the two terminal points of time for which the interest liability would arise under sub-section (1). Here, the liability would end on the date of determination of total income under Sub-section (1) of Section 143 of the Act or, in case of regular assessment, the date of such assessment. In view of such clear language of sub-section (1) of Section 234B of the Act, there is no scope for extending such liability to a later date and relate it to a revisional appellate or a rectification order as is desired by the revenue.

5. We notice that the Tribunal, in the present case, has followed the decision in case of ***Frightship Consultants P. Ltd. vs. Income Tax Officer*** reported in ***[2008] 300 ITR (AT) 96(Delhi)***. The Tribunal referred to the decision of Supreme Court in case of ***Modi Industries Ltd. vs. CIT [1995] 216 ITR 759 (SC)*** to hold that the term 'regular assessment' would mean the original order of assessment and would not include any other debt of the consequential order which can be treated as the debt of the regular assessment. The Tribunal rejected the

revenue's contention on this count making following observations:

“14. From a plain reading of the relevant provisions of section 234B it is clear that if the advance tax paid by the assessee is less than 90 per cent of the assessed tax, the assessee is liable to pay interest under Section 234B of the Act at the prescribed rates on the assessed tax or as the case may be on the amount of which the advance tax paid falls short of assessed tax. In Explanation 1, it has also been defined what is assessed tax. As per this Explanation, the assessed tax means the tax on the total income determined under sub section (1) of section 143 or on regular assessment as reduced by the amount of tax deducted or collected 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. From the above provisions noted and discussed above, it is clear that for determining the liability under Section 234B of the Act, the assessed tax is to be taken into consideration for working out the liability as noted above. It is also provided in this section itself, how the interest under section 234B of the Act is required to be calculated.

15. Whereas section 234B(4) specifically deals with a situation where the assessment made under section 143(1), 143(3) or 144 is altered/modified revised by an order of rectification, appeal, revision or reference or even by an order of settlement passed under Section 245D(4) of the Act. Interest under section 234B shall be increased or reduced accordingly.

16.

17. Now, the other important point which needs to be considered is the terminus date up to which the interest under section 234B of the Act is required to be charged by the Assessing Officer and payable by the assessee. Sub section (4)

of section 234B simply provides that if the amount on which interest is payable under sub section (1) is increased or reduced on account of any of the afore specified orders, the interest shall be increased or reduced accordingly. Obviously, the statutory mandate only provides for the quantification of the amount of interest without whispering about the terminus date up to which the interest should be payable.”

6. In the result, tax appeal is dismissed.

(AKIL KURESHI, J.)

(MOHINDER PAL, J.)

Jyoti

