

Assessee Not Liable To Pay Interest on Short Payment of Advance Tax Due To Default Of Payer in Deducting TDS before 2012-2013 FY - Supreme Court

Updated: 21 Sep 2021 10:00 AM

The Supreme Court has held that the amount of income tax which is deductible or collectible at source can be reduced by the assessee while calculating advance tax before 2012-2013 Financial Year.

Therefore, the assessee cannot be held liable for interest under Section 234B of Income Tax for short-fall of advance tax which arises due to reducing the income tax deductible or collectible at source from the advance tax. In other words, the assessee cannot be held liable to pay interest on the short-payment of advance tax due to the default of the payer in deducting TDS.

However, the Court also noted that this scenario changed after the amendment made to the Income Tax Act 1961 by the Finance Act 2012. After the said amendment, a proviso was added to Section 209(1)(d) of the Income Tax Act to provide that where a person has received any income without deduction or collection of tax, he shall be liable to pay advance tax in respect of such income.

A bench comprising Justices L Nageswara Rao and Aniruddha Bose pronounced the judgment in a batch of appeals filed by the Director of Income Tax, New Delhi against the Mitsubishi Corporation.

Arguments by parties

The Department had approached the Supreme Court against the High Court judgment which had upheld the ITAT's view favouring the assessee. The Department contended that the Corporation was liable to include in the advance tax the amount which should have been deducted as TDS by the payers to it. Since such amounts were not included in the advance tax, the Corporation is liable to pay interest under Section 234 B of the Income Tax, the Department argued.

The Department's counsel Advocate Zoheb Hossain argued that the obligation to pay advance tax is independent of the obligation of the payer to deduct tax at source and such obligation of the assessee continues under Sections 190 and 191 of the Act, even in case of non-deduction at source by the payer. Section 234B is compensatory in nature as the interest component is meant to compensate the Government for the loss accrued in terms of the tax which became due and was not paid. He contended that when there are two modes of recovery of tax, i.e., one from the assessee and other from the payer who had an obligation to deduct tax, the choice of the Revenue regarding the mode of recovery cannot be restricted. The Department put stress on the phrase "deductible or collectible at source" in Section 209(1)(b). According to the counsel, the phrase "deductible or collectible at source" would not take into its fold tax which was not deducted within the statutory time limit and was, in fact, paid to the assessee without deduction".

Mr. M.S. Syali, Senior Counsel appearing for the Respondent-Assessee, submitted that Section 234B of the Act cannot be read in isolation but should be construed in light of Section 209 of the Act. He

Making Corporate India Comply

argued that deduction of tax at source and payment of tax are two different components of tax-recovery under the Act. According to him, the assessee cannot be penalized for default on the part of the payer. The Act provides that the payer can be declared as an assessee in default for his failure to deduct tax at source and proceedings can be initiated against the payer for recovery, apart from invoking the penal provisions provided under the Act.

The High Court had observed that interest under Section 234B of the Act cannot be imposed on an assessee for failure on the part of the payer in deducting tax at source, when Section 201 provides for consequences of failure to deduct tax at source or failure to pay the tax after making deduction

Analysis by Supreme Court At the outset, the Court observed that the conundrum before it concerns the liability of an assessee to pay interest on short payment of advance tax due to default of the payer in not deducting tax at the time of payment, under the provisions of the Income-tax Act, 1961 Referring to Section 209 of the Act, the Court noted that the calculation of the advance tax is to be reduced by the amount of income-tax which would be deductible or collectible at source during the said financial year.

Referring to the proviso introduced by the 2012 amendment, the judgment authored by Justice Rao observed: "...the proviso makes it clear that the assessee cannot reduce the amounts of income-tax paid to it by the payer without deduction, while computing liability for advance tax. The memorandum explaining the provisions of the Finance Bill, 2012 provides necessary context that the amendment was warranted due to the judgements of courts, interpreting Section 209 (1) (d) of the Act to permit computation of advance tax by the assessee by reducing the amount of income-tax which is deductible or collectible during the financial year.

If the construction of the words "would be deductible or collectible" as placed by the Revenue is accepted, the amendment made to Section 209 (1) (d) by insertion of the proviso would be meaningless and an exercise in futility. To give the intended effect to the proviso, Section 209 (1) (d) of the Act has to be understood to entitle the assessee, for all assessments prior to the financial year 2012-13, to reduce the amount of income- tax which would be deductible or collectible, in computation of its advance tax liability, notwithstanding the fact that the assessee has received the full amount without deduction".

The Court said that Section 234B cannot be read in isolation and has to be read along with Section 209(1). "As we have already held that prior to the financial year 2012-13, the amount of income-tax which is deductible or collectible at source can be reduced by the assessee while calculating advance tax, the Respondent cannot be held to have defaulted in payment of its advance tax liability.

is no doubt that the position has changed since the financial year 2012-13, in view of the proviso to Section 209 (1) (d), pursuant to which if the assessee receives any amount, including the tax deductible at source on such amount, the assessee cannot reduce such tax while computing its advance tax liability".

The Court dismissed the appeals filed by the Revenue.

Case Details

Title : Director of Income Tax, New Delhi v. M/s Mitsubishi Corporation

Citation : LL 2021 SC 471