



Global Business Tax Alert Sharp Insights

Supreme Court holds that interest under Section 234B is leviable even if assessment order does not contain any direction for payment of such interest.

Issue no: GBTA/50/2015

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Background

S. 234B interest is automatic if conditions of such section are met. Even if there is no mention of S.234B interest in the assessment order, it is sufficient if the levy of interest is stated in tax computation form (I.T.N.S 150) as it forms part of the assessment order.

Facts

- Assessment order passed in the case of assessee did not contain any direction for the payment of interest under Section 234B of the Income Tax Act, 1961 (Act).
- However, assessment order contained a calculation of interest payable on the tax assessed as part of tax computation form (I.T.N.S. 150).
- On appeal, ITAT and High Court relying on the decision of the Supreme Court in the case of Ranchi Club Ltd¹ held that since no direction had actually been given in the assessment order for payment of interest, no interest can be recovered.
- Before Supreme Court, Tax Department contended the following:
 - Interest u/s 234B of the Act is part of tax computation form which is not only signed by the assessing officer but it is a part of the assessment order itself.
 - The judgment in Ranchi Club Ltd.'s case is distinguishable on facts
 - Section 234B is an automatic provision which becomes applicable the moment there is shortfall in payment of advance ta

¹ [(2001) 247 ITR 209]

Issues for consideration before the Supreme Court

Whether interest u/s 234B of the Act can be levied even if no direction in this regard is contained in the assessment order

Decision of the Supreme Court

- Supreme Court held that interest u/s 234B of the Act is automatic and assessee becomes liable to pay such interest the moment he fails to pay advance tax or where the advance tax paid by him is less than 90 per cent of the assessed tax
- Supreme Court relying on the case of Kalyankumar Ray v. Commissioner of Income Tax [1992 Supp (2) SCC 424] held that the tax computation Form (I.T.N.S. 150) must be treated as part of the assessment order for the purposes of Sections 143 and 234B of the Act.
- Supreme Court held that the judgment in Ranchi Club Ltd.'s case is distinguishable inasmuch as it arose only in a writ petition and arose in the context of best judgment assessment whereas on the facts of the present case, there was a shortfall of advance tax that was paid.

Comments

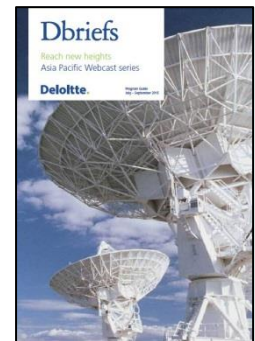
Supreme Court observed that interest under Section 234B forms part of income-tax computation form (I.T.N.S. 150). This form must be treated as part of the assessment order. Therefore, it was held on the facts of the case that levy of interest under Section 234B of the Act was valid even if assessment order did not contain any direction for payment of such interest.

Source: Commissioner of Income Tax, Delhi vs M/s. Bhagat Construction Co.Pvt.Ltd (Civil Appeal No. 1169 of 2006) (Supreme Court)

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