



Whether interest u/s. 234C of the Income Tax Act 1961 can be charged in case of shortfall in payment of advance tax on account of impossibility to estimate income.

Issue:

Mr. X was assessed to Income Tax for A.Y. 2016-17, he has filed return of income declaring total income of Rs. 15 Crores which included Rs. 10 crore received as gift on 20/12/2015. The return has been processed u/s. 143(1) of the Act and interest u/s. 234C of the Act is charged on account of shortfall in payment of advance tax on first and second installments due on 15/09/2015 & 15/12/2015 in respect of gift received of Rs. 10 crore on 20/12/2015.

Proposition:

The income which regularly accrues to the assessee can be estimated by any given point of time up to that period and the income which accrues or arises on completion of a particular transaction only and not out of regular and current activity obviously cannot be the subject matter of estimate before the event occurs and no interest can be charged for non-payment of advance tax on such income.

View against the Proposition:

Let us refer to the section 234C which states as under:

Section 234C

Where in any financial year (a) an assessee, other than [the assessee referred to in clause (b), who is liable to pay advance tax u/s. 208 has failed to pay such tax or

- (I) the advance tax paid by such assessee on its current income on or before the 15th day of June is less than fifteen per cent of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of September is less than forty five per cent of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of December is less than seventy five per cent of the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of one per cent per month for a period of three months on the amount of short fall from fifteen per cent or forty five per cent or seventy five per cent, as the case may be, of the tax due on the returned income;
- (II) the advance tax paid by the assessee on the current income on or before the 15th day of March is less than the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of one percent on the amount of the shortfall from the tax due on the returned income.

Thus, levy of interest u/s. 234C is mandatory and is chargeable when there is a shortfall in payment of advance tax. Delhi High Court in the case of Bill & Peggy Marketing India Pvt. Ltd. Vs. ACIT (Delhi) reported in 350 ITR 465 has held as under:

Once it is held that interest u/s. 234C is mandatory and automatic, then the reason, cause for the delay and justification for deferment of advance tax, loses significance and importance. Whatever be the reason, when there is deferment in payment of advance tax as the stipulated amount has not been paid on the required date as per section 211,

compensatory interest u/s. 234C becomes payable. It does not matter if there was a good cause or sufficient reason why installment could not be paid. Section 234C is a complete code in itself and the proviso to sub-section (1) of section 234C provides two exceptions when deferment or shortfall in the payment of installment of advance tax can be condoned and taken into consideration for computing interest under the said section. This is possible in case there is under estimate or failure to estimate on account of capital gains or income by way of winnings from lottery, cross-word, puzzles, etc. This is not so in the present case.

Advance tax is payable only on estimate basis. An estimate always has an element of guess work. There could be various reasons why estimate may be faulty and was not accurate. This cannot be a ground not to charge, mandatory interest u/s. 234C of the Act.

View in favour of the assessee:

The ITAT Hyderabad Bench “A” the case of ACIT Vs. Jindal Irrigation Systems Ltd. reported in 56 ITD 164, has held as under:

It was a unique case where the AO accused the assessee of default in a duty which possibly it could not have performed, and where the principle of “lex non cogit and impossibilia” was fully applicable.

The liability to pay advance tax on the income chargeable to tax in an assessment year is not absolute on that income but is made dependent on the estimate to be made by the assessee. An estimate is not a guess or prediction. It has to be based on material available in the record and the facts and circumstances prevailing on the stipulated due date. When the law creates a duty or charge and the party is disabled to perform it, without there being any default on his part, and there is no remedy for him, the law will in general excuse him. When the

obligation is one implied by law, impossibility of performance is a good excuse.

In the instant case, it was just impossible for the assessee to anticipate such a spurt in the sales and consequently the resultant income when the assessee had not yet started earning income, the law could not expect it to estimate the advance liability and pay tax. No interest could, therefore, be levied on the facts and circumstances of the instant case. The order of the Commissioner (Appeals) deleting the interest levied was, therefore, upheld, dismissing the appeal of the revenue.

Also the ITAT Chennai Bench in the case of Express Newspaper Ltd. Vs. JCIT reported in 103 TTJ 122 has held as under:

It is a fact that the advance tax is collected even before the income-tax becomes due and payable, but the Act has given a scheme of payment, i.e. four installments in case of companies which are applicable in the present case. In the present case, the assessee has received the intimation regarding the adjustment of income tax refund only on 26th March, 1999 and the last installment of advance tax was paid over by that date, 15th March, 1999. The assessee could not anticipate the receipt of refund of income tax which event was after the last installment of advance tax. We have noticed that the liability to pay the interest arises only on income arrived by the assessee. The income which regularly occurs to the assessee can be estimated by any given point of time upto that period and the income which accrues or arises on completion of a particular transaction only and not out of regular and current activity, obviously cannot be the subject matter of estimate before the event occurs. In view of this, considering the impossibility for the assessee who estimated the income arising on a particular transaction which is not occurred or come into existence then it is impossible to pay advance tax

installment on that particular income and that particularly, If that occurs after the last installment.

Summation:

The Hon'ble Rajasthan High Court has very beautifully dealt with the issue and the view lies in that judgment which solves this issue. The Rajasthan High Court in the case of CIT Vs. Smt. Premlata Jalani reported in 264 ITR 744 (Raj.) has held as under:

“We have noticed above that the liability to pay advance tax arises on current income computed by the assessee or by the Assessing Officer, as the case may be. While income from a regular source like profits and gains of business, interest on deposits, rents, salaries which occur regularly can be estimated at any given point of time up to that period, the income which accrues or arises on completion of a particular transaction only and not out of any current or regular activity, obviously cannot be the subject matter of estimate before the event actually occurs. Considering the impossibility for the assessee or the Assessing Officer to estimate any income arising out of any particular transaction which has not occurred or come into existence, a proviso has been made to sub-section (1) of section 234C. It provides that the provisions that the provision relating to the liability on the basis of difference between the tax payable on the returned income and advance tax paid on assessment will not apply to any shortfall in the payment of tax on the basis of the returned income where such underestimate or failure to estimate the amount of capital gains, and the assessee has paid the amount of tax payable in respect of income referred to in clause (a) or clause (b), as the case may be, had such income been a part of the total income, as part of the remaining installment or installments which are due, or where no such installment is due, by the 31st day of March of the financial year.

Apparently, capital gains arise when the transfer of capital assets is complete. Such events or transaction are not regular or recurring events and the assessee or the Assessing Officer, at a given point of time cannot take into account while computing the current income to estimate tax liability on such current income, the capital gains where no such transfer has at all been taken place by such date. Clause (b) of the proviso refers to incomes arising out of lotteries or like events obviously such incomes are also contingent on happening of such event which cannot be predicted. Therefore, in both the cases, it envisages that no liability to interest arises merely because there is a short-fall in payment of tax on account of non-inclusion of capital gains in current income for computing advance tax instalment, vis-a-vis the tax computed on returned income.

The further provision that tax on such income arising out of transactions of capital gains is to be paid as part of the remaining instalments, which are to fall due after such capital gains have arisen or where no such instalments are due by the 31st day of March of the financial year, shows in clear terms that liability to pay tax by way of advance tax in respect of transactions resulting in capital gains arises only after the transaction has taken place or the event has occurred. Prior to that date, there is no liability to pay advance tax on income arising as capital gains. For example, the first instalment for payment of advance tax is due in the case of an assessee other than a company on the 15th of September, but the transaction giving rise to capital gains takes place on the 30th of September, the liability to pay tax by way of advance tax on any such income does not arise prior to the date of such accrual and that liability for payment of advance tax on such income arising with the next instalment falling due. Therefore, on a transaction which has taken place on the 30th September, the liability to pay advance tax, in respect of such income by

including in current income arises only when the next instalment becomes due on or before the 15th December. But no such liability to pay advance tax in respect of capital gains accruing on the 30th September, existed on the 15th September, non-payment of which can be considered as deficiency in payment of advance tax only when it became due. Therefore, no deficit amount can be determined in respect of advance tax payable on the current income on the 15th September. Likewise, if no capital gains have arisen prior to the 15th March of any financial year, as in the present case, the assessee had no liability to include the same in the computation of current income on that date and to pay tax in respect of such income with last instalment due on the 15th March. Therefore, he has no occasion to make payment of any advance tax on such part of the income during the previous year. To collect tax even on such taxing event which occurred after the 15th March, the proviso to Section 234C envisages that, the assessee pay advance tax in respect of such capital gains earned by the 31st March. However, it does not result in creating any obligation to pay advance tax on any capital gains prior to the date it accrues. The provision relating to payment of advance tax and consequence of non-payment or deficient payment has to be considered compendiously as part of one wholesome scheme and not divorced from each other.

In the aforesaid backdrop, it is reasonable to construe the provisions of this nature where interest is chargeable on delayed or deferred payment of advance tax, it shall be payable only with effect from the date the liability to pay advance tax in respect thereof has been incurred. There cannot be any interest prior to the date in respect of such liability when there was no liability to pay advance tax under any provisions of the Act. This being the clear position under Section 234C(1)(b) read with the proviso, referred to above, we have no hesitation in coming to the conclusion that the Tribunal was

right in construing Section 234C that since advance tax in respect of capital gains become payable only after it accrued, the liability to pay interest on delayed or deferred payment of advance tax on capital gains arises after the 15th March, can arise only with effect from the date, the advance tax in respect of such capital gains becomes payable and not earlier thereto.

The ITAT Mumbai Bench A in the case of Kumar Kumari Advani Vs. ACIT(cpc) Bangalore (ITA No. 7661/MUM/2013) A.Y. 2012-13 after considering the case of Bill & Peggy Marketing (India) Pvt. Ltd. Vs. ACIT reported 350 ITR 465 has held as under:

Furthermore, the reliance placed by the Revenue in the case of Peggy Marketing India Pvt. Ltd. (supra.) is also not appropriate considering the peculiar facts of the present case. No doubt, Hon'ble Delhi High Court upholds the proposition that the cause and delay and justification for deferment of advance tax lose significance for the purposes of levy of interest u/s. 234C of the Act. The Hon'ble High Court noted that the proviso to section 234C(1) of the Act prescribes cases for condoning levy of interest if the under estimate or failure to estimate is on account of capital gains or income by way of winnings from lottery, cross word, puzzles, etc. The Hon'ble High court did not find the fact-situation, before it, to be falling within the scope of the proviso to section 234C of the Act. Notably, the income which was considered by the High Court related to the business receipts of the assessee, whereas in the instant case, the income is by way of a windfall gain, being receipt of gifts. In our considered opinion, the two situations are incomparable. Therefore, the judgment of the Hon'ble Delhi High Court in the case Peggy Marketing India Pvt. Ltd. (supra) stands on its own facts and is not attracted to the facts of the present case.
