



Tax Insights

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Supreme Court holds no interest liability under section 234B of the Act for payee, where payer defaulted to withhold tax on payments made prior to 1 April 2012

In brief

The Supreme Court of India in a recent decision¹ held that, there is no liability to pay interest on the default in payment of advance tax by the payees, for the years prior to the assessment year (AY) 2013–14 (financial year [FY] 2012–13), where the payer has not withheld tax on income chargeable to tax in India.

In detail

Facts

- The taxpayer is a non-resident company incorporated in Japan engaged in trading activities.
- During the assessment proceedings for AYs 1998–99 to 2004–05 (FYs 1997–98 to 2003–04), the income of the taxpayer attributable to its business activities in India was held as chargeable to tax in India as per the provisions of the India–Japan Double Tax Avoidance Agreement (tax treaty).
- Considering that the payer had not deducted any taxes at source, the taxpayer did not have any credit of prepaid taxes. Accordingly, interest under section 234B of the Income-tax Act, 1961 (the Act), was levied for default in payment of advance tax.
- The Income-tax Appellate Tribunal and Delhi High Court held that the taxpayer was not liable to pay interest when the tax at source was deductible from the payment made to it.
- The primary contention of the Revenue before the Supreme Court was that the Delhi High Court had committed a serious error in interpreting the phrase “deductible or collectible at source”, as provided in section 209(1)(d) of the Act and it would not take into its fold tax that was not deducted within the statutory time limit. As per the Revenue, section 234B of the Act is a standalone provision being a complete code in itself. The words used in section 209(1)(d) of the Act cannot be imported into section 234B of the Act.

¹ Civil Appeal No.1262 of 2016

Supreme Court's decision

- The amount of advance tax should be computed in accordance with the provisions of section 209 of the Act. As per section 209(1)(d) of the Act, while computing the amount of advance tax, the amount of tax that was 'deductible at source' should be reduced from the tax liability, even though the tax has not been deducted.
- The proviso to section 209(1) of the Act was introduced *vide* the Finance Act, 2012, pursuant to which, if the taxpayer receives any amount without the tax being deducted at source, the taxpayer cannot reduce the tax so deductible on such an amount while computing its advance tax liability.
- It is a well-recognised principle² that in dealing with matters of construction, subsequent legislation may be looked at to understand the proper interpretation of the Act, where the existing provisions are ambiguous, or more than one interpretation is possible.
- In the present case, the memorandum explaining the provisions of the Finance Bill, 2012, clearly provided the context that the amendment was warranted due to the judgements of certain courts, which had interpreted section 209(1)(d) of the Act as permitting the computation of advance tax by reducing the amount of income tax that is deductible or collectible.
- Further, the Supreme Court explained that in case the phrase "would be deductible or collectible" was to be interpreted as 'actually deducted', even before the amendment, then the amendment would become meaningless and futile exercise.
- Thus, to ensure the intended effect to the proviso, while computing the amount of advance tax, section 209(1)(d) of the Act should entitle the taxpayer to reduce the amount of income tax that is deductible or collectible for all AYs prior to FY 2012–13, notwithstanding the fact that the taxpayer has received the full amount without deduction of tax at source.

The takeaways

The issue of applicability of interest under section 234B of the Act in the hands of the recipient in cases where tax should have been withheld, and has not been done, has been examined by various tribunals and courts in the past. This decision of the Supreme Court confirms the position that interest under section 234B of the Act will not apply to taxpayers in cases where appropriate tax has not been withheld on payments prior to 1 April 2012. The tax position from FY 2012–13 (AY 2013–14) onwards was made clear by the Finance Act, 2012, and its memorandum through insertion of the proviso to section 209(1) of the Act thereby rendering applicability of interest to payments post 1 April 2012.

² State of Bihar v. S.K. Roy [1966] Supp. SCR 259

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