# Interest on Delayed TDS to be charged by taking month as a period of 30 days

M/s. Navayuga Quazigund Expressway (P)Limited V/s. Dy. Commissioner of Income-tax (ITAT Hyderabad), ITANo.1651/Hyd/14, Date of Pronouncement-13.3.2015, [2015] 64 taxmann.com 212 (Hyderabad – Trib.)

The assessee in the present case is a company incorporated on 21.5.2010 for execution of BOT Road and Tunnel Project at Quazigund, Jammu and Kashmir. A survey under S.133A was carried out in the case of the assessee on 17.9.2012 to verify the compliance of TDS provisions. As found during the course of survey, the assessee company had purportedly deducted tax under S.194C and 194J and also remitted the same to the Government M/s. NavayugaQuazigund Expressway (P)Limited Hyderabad account. There was, however, delay in the said remittance, for which, according to the assessing officer, interest of Rs.32,28,121 was payable by the assessee under S.201(1A). Since interest under S.201(1A) only to the extent of Rs.17,84,625 was paid by the assessee, the assessing officer passed the order dated 23.11.2013, treating the assessee as liable for payment of balance interest under S.201(1A) amounting to Rs.14,43,496.

 Against the order passed by the assessing officer under S.201(1)/201(1A), an appeal was preferred by the assessing officer before the learned CIT(A). During the course of appellate proceedings before the learned CIT(A), it was contended on behalf of the assessee that interest under S.201(1A) was computed by the assessing officer by considering part of the calendar month as full month, whereas such interest was chargeable by taking the month as a period of 30 days. The following example was also given by the assessee to support and substantiate its stand.

“……if we take the first transaction as an example:

Date of payment – 04.04.2011

Due date of remittance – 07.05.2011

Actual date of remittance – 01.06.2011

(c) The assessing officer charged interest for three calendar months as under:

05.05.2011 to 30.04.2011 – One month

01.05.2011 to 31.05.2011 – One month

01.06.2011 – One month

(d) The appellant’s version is sicne the interest is compensatory in nature, which is levied on late remittance of tax deducted, the basis should be a month of 30 days period as under:

05.04.2011 to 30.04.2011 – One month

05.05.2011 to 01.06.2011 – One month

Total Two months

The issue involved in this appeal relates to the computation of interest payable by the assessee under S.201(1A), the

provisions of which read as under-

“201.(1)……

(1A) Without prejudice to the provisions of sub- section (1), if any such person, principal officer or

company as is referred to in that sub-section does not deduct the whole or any part of the tax or after

deduction fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,

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(i) At one percent for every month or part of a month on the amount of such tax from the date on which

such tax was deductible to the date on which such tax is deducted; and

(ii) At one and one-half per cent for every month or part of a month on the amount of such tax from the

date on which such tax was deducted to the date on which such tax is actually paid;

and such interest shall be paid before furnishing the statement in accordance with the provisions of subsection (3) of section 200;

Provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso to sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident:”

The procedure to be followed for calculating the interest payable by the assessee or by the Central Government is given in Rule 119A of Income-tax Rules, 1962 as under-

M/s. Navayuga Quazigund Expressway (P)Limited Hyderabad “119A. In calculating the interest payableby the assessee or the interest payable by the Central Government to the assessee under any provisions of the Act-

(a) where interest is to be calculated on annual basis, the period for which such interest is to be calculated shall be rounded off to a whole month or months and for this purpose any fraction of Cl month shall be ignored; and the period so rounded off shall be deemed to be the period in respect of which the interest is to be calculated;

(b) where the interest is to be calculated for every month or part of a month comprised in a period, anyfraction of a month shall be deemed to be a full month and the interest shall be so calculated;

(c) the amount of tax, penalty or other sum in respect of which such interest is to be calculated shall berounded off to the nearest multiple of one hundred rupees and for this purpose any fraction of one hundred rupees shall be ignored and the amount so rounded off shall be deemed to be the amount in respect of which the interest is to be calculated.”

In the present case, clause (ii) of S.201(1A) read with Clause (b) of Rule 119A is applicable and it provides that where the interest is to be calculated for every month or part of a month comprised in a period, any fraction of a month shall be deemed to be a full month, and the interest shall be so calculated. The dispute in this context as involved in the present case is whether the month for such calculation of interest is to be taken as a British calendar month or a period of 30 days. It is observed that similar controversy had arisen in the case of CIT V/s. Arvind Mills Limited (2011)16 Taxman.com.291 (Guj), wherein the assessee claimed interest under S.244A on the basis of British calendar month.

The claim of the assessee, although was not allowed by the Assessing Officer as well as the learned CIT(A), the Tribunal allowed the same. When the matter was carried before the Hon’ble Gujarat High Court in an appeal filed by the Revenue, Their Lordships M/s. Navayuga Quazigund Expressway (P)Limited Hyderabad held that a reading of subsection (1) of S.244A, the relevant provisions of which are analogous to the provisions of clause (ii) of S.201(1A) read with Rule 119A, would make it clear that the term ‘month’ must be given the ordinary meaning of the term of 30 days period and not the British calendar month as defined in S.3(35) of the General Clauses Act. It was held that the definition given in General Clauses Act cannot be adopted for the purposes of sub- section (1) of S.244A as such importation of the definition would lead to anomalous situation. In our opinion, the ratio of the decision of the Hon’ble Gujarat High Court in the case or CIT V/s. Arvind Mills Limited (supra) is squarely applicable in the present case, and there being no decision cited by the learned Departmental Representative of any High Court taking a contrary view, we respectfully follow the decision of the Hon’ble Gujarat High Court in the case of Arvind Mills Limited (supra) and direct the Assessing Officer to recompute the interest payable under S.201(1A) by taking a period of 30 days as a month instead of British calendar month.

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