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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA NO.1013/2011**

% **Date of Decision : 30th November, 2011.**

BILL & PEGGY MARKETING INDIA PVT LTD..... Appellant
Through Mr. Ajay K. Aren with Mr. Achin
Aren, Advs.

versus

ASSISTANT COMMISSIONER INCOME TAX Respondent
Through Mr. Anupam Tripathy, sr. standing
counsel

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V. EASWAR

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not ?

Yes

3. Whether the judgment should be reported in the Digest?

Yes

SANJIV KHANNA,J: (ORAL)

By order dated 17th August, 2011 the following substantial
questions of law were framed :

“1. Whether the learned Tribunal had erred in interpretation
of the letter dated 04.11.2004 issued by the Principal and



consequently upholding the interest charged by Assessing Officer under Section 234C amounting to Rs.4,17,074.00?

2. Whether the payment of installment is based upon the intimation dated 04.11.2004 given by the principal about earning of commission is a matter of deliberation and debate?”

2. The appellant is a company and the assessment year in question is 2004-05. During the said assessment year the appellant had paid advance tax as per the details given below :

“Advance Tax Date	Advance tax paid
12.06.2004	4,75,000.00
12.06.2004	75,000.00
14.09.2004	6,00,000.00
14.12.2004	1,25,00,000.00
15.12.2004	23,00,000.00
15.03.2005	50,00,000.00
31.03.2005	25,00,000.00”

3. It is noticeable that the assessee had paid advance tax of Rs.1,25,00,000/- on 14.12.2004. The contention raised by the appellant is that vide letter dated 4.11.2004, it was informed by their Principal, Amway India Enterprises Ltd., that they were entitled to additional incentive of Rs.6,07,44,583/-. This incentive was paid in view of the sale of Rs.636 crores in the previous year i.e. 2003-04 in which growth of



9.8% over last year was recorded. The contention of the appellant is that prior to letter dated 4.11.2004 they were not aware and did not have any knowledge that this income towards growth incentive would become payable. Thus, the appellant could not have presumed that they would be entitled to this substantial payment towards growth incentive before the letter dated 4.11.2004 was received by them. It is accordingly submitted that the assessee had bonafidely paid their advance tax as per their tentative estimates and once the letter dated 4.11.2004 was received by them, the appellant accordingly, had paid advance tax of Rs.1,25,00,000/- on 14.12.2004.

4. Section 234C postulates payment of interest on deferment of payment of advance tax. The said provision reads as under:

“(1) Where in any financial year, - (a) The company which is liable to pay advance tax under section 208 has failed to pay such tax or -

(i) The advance tax paid by the company 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 company shall be liable to pay simple interest at the rate of one and one-half per cent per month for a period of three months on the amount of the shortfall 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 company on its current income on or before the 15th day of March is less than the tax due on the returned income, then, the company shall be liable to pay simple interest at the rate of one and one-half per cent on the amount of the shortfall from the tax due on the returned income:

Provided that if the advance tax paid by the company on its current income on or before the 15th day of June or the 15th day of September, is not less than twelve per cent or, as the case may be, thirty-six per cent of the tax due on the returned income, then, it shall not be liable to pay any interest on the amount of the shortfall on those dates;

(b) The assessee, other than a company, who is liable to pay advance tax under section 208 has failed to pay such tax or, - (i) The advance tax paid by the assessee on his current income on or before the 15th day of September is less than thirty 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 sixty 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 and one-half per cent. per month for a period of three months on the amount of the shortfall from thirty per cent or, as



the case may be, sixty per cent. of the tax due on the returned income;

(ii) The advance tax paid by the assessee on his 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 and one-half per cent on the amount of the shortfall from the tax due on the returned income:

Provided that nothing contained in this sub-section shall apply to any shortfall in the payment of the tax due on the returned income where such shortfall is on account of under-estimate or failure to estimate - (a) The amount of capital gains; or

(b) Income of the nature referred to in sub-clause (ix) of clause (24) of section 2, and the assessee has paid the whole of 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 instalments of advance tax which are due or where no such instalments are due, by the 31st day of March of the financial year 1933.

Explanation : In this section, "tax due on the returned income" means the tax chargeable on the total income declared in the return of income furnished by the assessee for the assessment year commencing on the 1st day of April immediately following the financial year in which the advance tax is paid or payable, as reduced by the amount of tax deductible or collectible at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income.



(2) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989 and subsequent assessment years.”

5. Advance tax is based on the principle of ‘pay as you earn’. It is collected even before the income tax becomes payable and the installments are payable during the financial year itself. Deferment in payment of installment of advance tax i.e. failure to pay particular percentage/amount of advance tax as stipulated in Section 211, attracts interest under Section 234C of the Act. The aforesaid section along with Sections 234A and 234B were inserted by Direct Tax Laws (Amendment) Act, 1987 w.e.f. 1st April, 1989, with a view to simplify and remove discretion of the assessing authorities which had led to litigation and consequent delays in realizing dues. Earlier, the authorities had discretion not to levy interest on deferment of payment of advance tax on just or sufficient cause being shown and this discretion had generated litigation. Sections 234A, 234B and 234C were inserted to provide mandatory charging of interest. The aforesaid provisions including Section 234C are applicable automatically. If there is default or deferment of payment of



advance tax as required under Sections 208 to 211, interest under Section 234C is chargeable. Interest under Section 234C is required to be calculated and mentioned in the return of income and is payable along with self assessment tax by the assessee. The aforesaid sections have been held to be constitutional valid in several decisions of the High Courts on the ground that the interest provisions are not penal but merely compensatory in character. Interest is payable because the Government/Revenue is deprived of money, as the proper amount of advance tax has not been paid. (see **R. Raghwan vs. CIT (Asst.)**, (1994) 77 Taxman 448 (Mad.); **Union Home Products Ltd. vs. Union of India**, (1995) 215 ITR 758 (Kar) and **Sant Lal vs. UOI**, (1996) 222 ITR 375 (Puj.).

6. Referring to the aforesaid provisions and the nature and character of interest, in **CIT v. Anjum Mohd. Hussain Ghaswala**, (1998) 252 ITR 1, the Supreme Court has observed as under:-

“Sections 234A, 234B and 234C in clear terms impose a mandate to collect interest at the rates stipulated therein. The expression “shall” used in the said section cannot by any stretch of imagination be construed as



“may”. There are sufficient indications in the scheme of the Act to show that the expression “shall” used in sections 234A, 234B and 234C is used by the Legislature deliberately and it has not left any scope for interpreting the said expression as “may”. This is clear from the fact that prior to the Amendment brought about by the Finance Act, 1987, the Legislature in the corresponding section pertaining to imposition of interest used the expression “may” thereby giving a discretion to the authorities concerned to either reduce or waive the interest. The change brought about by the Amending Act (Finance Act, 1987) is a clear indication of the fact that the intention of the Legislature was to make the collection of statutory interest mandatory.”

7. Once it is held that interest under Section 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 under Section 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) to 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.

8. 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 under Section 234C of the Act.

9. We may notice that while upholding constitutional validity of the said sections, the High Courts had referred to Section 119(2)(a) of the Act and the power of the Central Board of Direct Taxes to relax provisions of Section 234A, 234B and 234C in whole or in part. The Board has issued circulars in this regard and the Chief Commissioners and Director General have been given power to reduce the interest payable under Section 234A, 234B and 234C in specified and specific cases. In the present case, the appellant assessee has not moved any application and we need not express whether the appellant's case is covered under the circulars. If deemed



appropriate, the appellant can make an application. We say no more and express no opinion.

10. The substantive question of law is accordingly answered against the appellant-assessee and in favour of the respondent-Revenue. The appeal is disposed of. No costs.

SANJIV KHANNA,J

R.V.EASWAR, J

NOVEMBER 30, 2011

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