Interest under Sections 234B and 234C not payable by employee for the employer’s failure to withhold taxes

Background
Recently, the Supreme Court of India (the Supreme Court) in the case of Ian Peters Morris¹ (the taxpayer) held that the employee would not be liable to pay interest under Sections 234B and 234C of the Income-tax Act, 1961 (the Act), in relation to any income chargeable to tax as salary, since tax on such income would be the responsibility of the employer.

Facts of the case
- The taxpayer had received a payment of INR 21,00,000 for not carrying on any business of computer software development and marketing for a period of five years from Synergy Credit Corporation Limited, which had taken over the business promoted by the taxpayer.
- The taxpayer had claimed such receipt to be a capital receipt and therefore not taxable.
- The Madras High Court² had held the nature of receipt to be salary and therefore taxable, with consequent interest under Section 234B and 234C.
- Aggrieved by the order of the High Court, the taxpayer filed an appeal with the Supreme Court of India, with the limited question whether such interest was chargeable.

The Supreme Court’s observations and ruling
- The Supreme Court, on perusal of Part B of Chapter XVII³ of the Act observed that any person responsible for paying any income chargeable under the head “Salaries” would need to deduct income-tax on the amount payable, at the time of payment, failing which the employer is liable to pay simple interest⁴.
- In case where the receipt is by way of salary, deduction under Section 192 would be applicable under Part A of Chapter XVII, and there would be no question of payment of advance tax, which falls under Part C of the said Chapter.
- Therefore, since advance tax would not be applicable, interest under Section 234B⁵ and 234C⁶, falling under Part F of the said Chapter, would have no application.
- Therefore, the appeal was allowed, and the interest levy as provided by the High Court, was set aside.

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¹ Ian Peters Morris v. ACIT (Civil Appeal No. 11385-11386 of 2016) – Taxsutra.com
² Ian Peters Morris v. ACIT (Nos. 225 and 226 of 2006)
³ Referred to as Chapter VII in the judgment
⁴ Section 201(1A) of the Act
⁵ Section 234B – Interest for default in payment of advance tax
⁶ Section 234C – Interest for deferment of advance tax
Our comments

The Supreme Court has clarified in this judgment that in case the payment is in the nature of salary, Section 192 of the Act would be applicable and taxes would need to be necessarily discharged only by way of withholding tax by the employer, with no applicability of advance tax provisions and consequently, interest under Section 234B and 234C of the Act.

This ruling would come as a relief to individual taxpayers with salary income. This ruling also underlines the fact that the primary obligation to deduct tax at source on salary income lies with the employer, as has been also held in other judicial precedents⁷ and that the employee should not be liable to pay interest for such default of the employer.

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