



## Levy of interest under Section 234B(1) and Section 234B(3) of the Income-tax Act is complimentary and not exclusive

### Background

Recently, the Hyderabad Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of MBG Commodities Pvt. Ltd.<sup>1</sup> (the taxpayer) held that interest under Section 234B(1) of the Income-tax Act, 1961 (the Act) is to be levied from 1 April of the assessment year following the closure of the financial year till the date of intimation under Section 143(1) of the Act or completion of assessment under Section 143(3) of the Act. In case of reassessment and re-determination of income either under Section 147 or under Section 153A of the Act, the Act provides for further levy of interest under Section 234B(3) of the Act on the higher amount of tax determined in the reassessment proceedings. The period of levy is from the date of first order either under Section 143(1) or 143(3) to the date of revised order<sup>2</sup>. There are two separate calculations of interest under Section 234B(1) and Section 234B(3) of the Act. Thus the levy of interest under these provisions is complimentary and not exclusive.

### Facts of the case

- The taxpayer was a firm known as Maheswari Brothers. The firm was converted into a company in August 2012 under the name of MBG Commodities (P) Ltd.
- For the Assessment Year (AY) 2005-06 the taxpayer filed its return on 3 January 2006 declaring an income of INR6.9 million. After the return was processed under Section 143(1) of the Act, the intimation was received on 24 March 2006. For the shortfall of the advance tax paid, the Assessing Officer (AO) charged an amount of INR50,132 as interest under Section 234B of the Act.
- No scrutiny was taken up for this year. There was a search and seizure operation in the premises of the taxpayer and its sister concerns on 8 September 2010, consequent to which, a notice under Section 153A was issued on 6 January 2011 to the erstwhile firm Maheswari Brothers.
- The return was filed on 21 August 2012 in response to such notice, declaring a total income of INR207 million. The assessment was taken up in the Financial Year 2012-13. When the scrutiny assessment was in progress, an application under Section 245D was filed on 26 March 2013 before the Settlement Commission.
- The Settlement Commission passed an order on 30 July 2013. Subsequently, the assessment was completed in accordance with the directions of the Settlement Commission through an order under Section 143(3) read with Section 153A and read with Section 245D(4) of the Act on 3 December 2013.
- The AO issued a notice under Section 154 for charge of interest under Section 234B(1) from 1 April 2005 i.e. from the beginning of assessment year. In response to that notice, assessee filed a reply on objecting to the same relying on the provisions of the Act. However, rejecting the contentions of taxpayer, the AO passed an order under Section 154 charging interest under Section 234B from 1 April 2005.

<sup>1</sup> MBG Commodities (P) Ltd. v. DCIT (ITA No. 1321/Hyd/2015) – Taxsutra.com

<sup>2</sup> The Finance Act, 2015 amended the provisions of Section 234B(3) of the Act to provide that the period of levy shall be commencing from 1 April of the assessment year following the closure of the financial year and ending on the date of reassessment or re-computation under Section 147 or Section 153A of the Act. In the present case relevant AY is prior to the amendment.

- The CIT(A) held that intimation under Section 143(1) of the Act, even where adjustments are made under Section 143(1)(a) of the Act, can never be considered as an assessment. The CIT(A) held that the time period for interest calculation under Section 234B of the Act cannot therefore, be anything other than what is spelt out in Section 234B of the Act. To do otherwise would be to attribute redundancy to Explanation 2 to Section 234B(1) of the Act. .

### Tribunal's ruling

- The undisputed facts in this case are that the returns were accepted under Section 143(1) of the Act and there is no assessment under Section 143(3) of the Act initially. In the intimations issued when the taxpayer has filed returns, the intimations indicate that the interests were levied under Section 234B of the Act.
- As per the scheme of the Act, interest under Section 234B(1) of the Act is leviable from the period 1 April of the assessment year following the closure of the financial year till the date of intimation under Section 143(1) or completion of assessment under Section 143(3) of the Act.
- The explanation provided under Section 234B(1) of the Act states that where the assessment was done under Section 147 or under Section 153A for the first time, then, the interest is to be levied under Section 234B(1) of the Act. In other words, the interest liability under Section 234B(1) is attracted if there is any shortfall of any advance tax from the first day of the assessment year till the completion of/processing of return for the first time.
- Interest is compensatory in nature. Therefore, the legislature has provided for levy of interest for shortfall of advance tax and the interest is calculated from the first day of the assessment year till the taxpayer discharges its liability under Section 140A of the Act or if there is a further shortfall, till the completion of assessment for the first time either under Section 143(3) or 147 or 153A or processing under Section 143(1) of the Act. The AO accordingly levied interest under Section 234B(1) of the Act in the intimations given in respective assessment years.
- In case of reassessment and re-determination of income either under Section 147 or under Section 153A, the Statute provides for further levy of interest on the higher amount of tax determined in the reassessment proceedings. The period of levy is from the date of first order either under Section 143(1) or 143(3) or 147 or 153A as the case may be to the date of revised order. Thus, there is levy of interest from the first day of the assessment year till the completion of assessment/processing for the first time on the returned income/assessed income under Section 234B(1) and a further enhancement of interest under Section 234B(3) on the additional tax determined in the reassessment proceedings for the later period.
- There are two separate calculations of interest under Section 234B(1) and Section 234B(3) of the Act. Since interest was already demanded in earlier proceedings only fresh demand is raised under Section 234B(3) of the Act. Thus the levy of interest is complimentary and not exclusive.
- The Karnataka High Court in the case of Sri Vijay Kumar Saboo (HUF)<sup>3</sup> has held that interest under Section 234B(3) of the Act is attracted in the case of reassessment completed and AO is bound to give a finding whether it is an order made for the first time under Section 147 or it is a case of reassessment or re-computation under Section 147 of the Act.
- It was held that in a case where there is determination of tax under Section 143(1) of the Act or where regular assessment order is passed under Section 143(3) of the Act, then, order passed under Section 147 is treated as an order of reassessment or recomputation and in such case, interest under Section 234B of the Act is leviable not from the first day of April next following such financial year, but from the date of determination of tax under Section 143(1) or order of regular assessment under Section 143(3) of the Act. The similar view is also taken by the Kerala High Court in the case of Lakshmikanthan<sup>4</sup>.

<sup>3</sup> Vijay Kumar Saboo (HUF) v. ACIT [2011] 201 Taxman 366 (Kar)

<sup>4</sup> CIT v. B. Lakshmikanthan [2011] 198 Taxman 485 (Ker)

- The provisions of the Act and various case law support the view that where intimation under Section 143(1) of the Act was issued levying interest under Section 234B(1) of the Act, the subsequent proceedings will attract only Section 234B(3) on the enhanced income/tax whereas interest levied originally under Section 234B(1) will stand as such. Thus, interest u/s. 234B(1) is to be levied, from 1 April following the financial year till the date of processing under Section 143(1), under Section 234B(1) of the Act and then on enhanced income/enhanced tax under Section 234B(3) of the Act.
- In view of the specific exclusion of the period considered under Section 234B(1), the balance of the period till the completion of assessment under Section 147/153A as the case may be was only be considered for levy of interest under Section 234B(3) of the Act on the enhanced amount of tax.
- The amendment brought out by the Finance Act, 2015 in fact modifies the then existing provisions which are applicable for the impugned assessment years. In fact under the new Section 234B(3) of the Act, it was provided that interest will be calculated on the enhanced amount from the period commencing on 1 April next following the relevant financial year for which advance tax was payable and ending on that date of the reassessment or recomputation under Section 147/153A of the Act.
- Thus, where in a case interest under Section 234B(1) was levied on regular assessment, enhanced interest was payable for the entire period and not on broken period as it was provided earlier. This is the substance of the amendment brought to Section 234B(3) by the Finance Act, 2015.
- In view of this, the interest under Section 234B(1) is to be calculated on the originally accepted amount under Section 143(1) of the Act and the interest under Section 234B(3) of the Act is to be calculated on enhanced amount from the date of intimation till the date of consequential order passed under Section 143(3) read with Section 153A and Section 245D(4).

## Our comments

The issue with respect to computation of interest under Section 234B of the Act has been a matter of debate before the courts.

In the present case, the intimation was issued under Section 143(1) of the Act to the taxpayer, however no assessment under Section 143(3) of the Act was made. Subsequently, due to search and seizure, the taxpayer filed an appeal with the Settlement Commission. The Settlement Commission passed the order enhancing the income. While dealing with such type of cases some of the courts<sup>5</sup> have held that in reassessment/recomputation while determining additional tax liability, interest on the enhanced amount shall be computed from the date of first order (either under Section 143(1) or 143(3) or 147 or 153A) to the date of revised order as per Section 234B(3) of the Act. Further for the period from the 1st day of the assessment year till the date of intimation under Section 143(1) or completion of assessment under Section 143(3) of the Act, interest has to be computed under Section 234B(1) of the Act. However, in some cases relying on Explanation 2 to Section 234B of the Act, interest has been computed only under Section 234B(1) of the Act for the entire period i.e. from 1<sup>st</sup> day of assessment year till the date of revised order instead of computation under Section 234B(3) and 234B(1) for broken period.

The Hyderabad Tribunal in the instant case has held that levy of interest under Section 234B(1) and Section 234B(3) of the Act are complimentary and not exclusive. Interest under Section 234B(1) is to be calculated for the period from the 1st day of the assessment year till the date of intimation under Section 143(1) or completion of assessment under Section 143(3) of the Act and interest under Section 234B(3) of the Act is to be calculated on enhanced amount from the date of intimation till the date of consequential order passed under Section 143(3) read with Section 153A and Section 245D(4) of the Act.

<sup>5</sup> Vijay Kumar Saboo (HUF) v. ACIT [2011] 201 Taxman 366 (Kar), CIT v. B. Lakshmiathan [2011] 198 Taxman 485 (Ker)

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