

Default period of assessee-in-default shall be counted as per British Calendar month

Summary – The Ahmedabad ITAT in a recent case of Oil & Natural Gas Commission., (the Assessee) held that Levy of interest under section 201(1A) is compensatory in nature and thus gap of time between point of time when tax ought to have been deducted at source vis-à-vis point of time when tax was actually deducted are to be seen and it is in this context that connotation of expression 'month' is to be examined

Facts

- Pursuant to directions of Supreme Court, the assessee was required to pay interest under section 201(1A) for TDS default with reject to period commencing from 16-11-2010 to 14-12-2012.
- The Assessing Officer computed it for a period of 26 months on the basis that there were 24 calendar months in this period as this period included a part of calendar month November 2010 as also a part of calendar month December 2012 which were considered as full months.
- The assessee moved a rectification petition contending that since the total period was of 24 months and 28 days, the period for which interest under section 201(1A) could be levied was only 25 months. However the Assessing Officer rejected this plea of the assessee.
- On appeal, the Commissioner (Appeals) also upheld the order of the Assessing Officer.
- On appeal to the Tribunal:

Held

- The provision of section 201(1A) is quite simple and unambiguous inasmuch as interest is to be charged 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'. The context in which the expression 'month' is used here is a measurement of period for which time value of money is to be compensated. If a person ought to have deducted the tax on, say, 21st of October and he actually does so on 3rd of November, the period for which the Government is deprived of its legitimate taxes is less than a month. However, on going by the interpretation canvassed by the Assessing Officer, which has the approval of the Commissioner (Appeal) as well, this will be a period of two months *i.e.* a part of October as also a part of November. Such a result is clearly incongruous. As for the alternate contention of the revenue, *i.e.* the period of a month could at best be taken as thirty days and, therefore, the period of 7-11-2010 to 14-12-2012 should be constructed as 26 months, it is also devoid of any merits. If that is the principle to be followed, when a person required to deduct tax at source on 21st March, actually deducts the tax at source on 18th March in the subsequent year, the period of delay will have to be taken as 13 months (*i.e.*, 12 X 30= 360 days plus 2 days as part of the

month). This approach also, thus, leads to incongruous, and, somewhat absurd results. Clearly, therefore, approach followed by the authorities below does not merit approval.

- There is no dispute that the expression 'month' is not defined for the purpose of section 201(1A) nor there is any direct judicial authority in the context of section 201. Section 3(35) of the General Clauses Act defines 'month' as, unless there is anything repugnant in the subject or the context, 'a month reckoned according to the British calendar'. The expression 'reckoned', in plain English, refers to 'count, compute or calculate'. In substance thus, the mandate of section 3(35) is to count, compute or calculate according to, or as per, the British calendar. It is also important to note that even this definition is not in absolute terms inasmuch as when 'there is anything repugnant in the subject or the context', this definition can be discarded. It is the context in which the matter is being examined that must be treated as decisive factor. The levy of interest under section 201(1A) is compensatory in nature and it represents the time value of money attributable to delay in deduction of tax at source. What is to be thus seen is the gap of time between the point of time when tax ought to have been deducted at source *vis-à-vis* the point of time when the tax was actually deducted, and it is in this context that connotation of expression 'month' is to be examined. Now, if one has to compute the months as per the British calendar, the period from 21st October to 3rd November, as taken in the first example, is less than a month because it is only when the same date comes in the next month, the period of one month can be said to have elapsed. Similarly, the period of 21st March to 18th March of the subsequent year, as per the British calendar, is less than 12 months since the period of twelve months has not elapsed in between these two dates. Coming to the instant case, the period of time gap between 16-11-2010 to 14-12-2012 is less than 25 months because, on 14-11-2012, the period of 25 months has not elapsed from 16-11-2010. The period which is elapsed between these two dates is 24 months and 28 days. Going by the provisions of the General Clauses Act, therefore, the period of time between 16-11-2010 to 14-12-2012 is less than 25 months, and, accordingly, interest under section 201(1A) could not have been levied for a period of more than 25 months.
- The expression 'month' refers to 'a month reckoned according to the British calendar'. 'A month as per the British calendar' and 'a month reckoned as per British calendar' are not the same thing and cannot be used interchangeably. While former refers to a calendar month by itself, the latter refers to a period of time which qualified to be treated as a 'month'. The subtle distinction between the scope of these two expressions cannot be ignored.
- In view of the above discussions, interest under section 201(1A) could not have been charged for more than 25 months. The Assessing Officer is, accordingly, directed to re-compute the interest under section 201(1A). Accordingly the appeals are allowed.