

No interest could be levied if advance tax liability arose due to retrospective amendment

Summary – The High Court of Gujarat in a recent case of National Dairy Development Board., (the Assessee) held that where there was no shortfall in advance tax payment when such liability arose, and advance tax liability arose later on only due to retrospective amendment in statute, no interest could be charged on advance tax

Facts

- The assessee had already paid advance tax during the relevant year. *Explanation 6* to section 43(6), was inserted by Finance Act, 2008 with retrospective effect from 1-4-2003. Thus, advance tax paid fall short on account of said retrospective amendment. The question arose as to whether the assessee was liable to pay interest under sections 234B and 234C on such short fall of the advance tax.
- The Tribunal held that interest could not be levied under sections 234B and 234C. Thus, the Tribunal deleted interest under sections 234B and 234C holding that the same would not have been charged on the assessee on account of increase in total income resulting from retrospective amendment to section 43(6).
- On appeal to the High Court:

Held

- In terms of section 207, advance tax is payable in respect of total income of the assessee, which would be chargeable to tax in the assessment year immediately following the financial year in question. Thus, the computation of advance tax would be made in advance and deposited with the Government revenue as per the provisions contained in the said chapter. In absence of the amendment in section 43(6), at the relevant time no liability to pay tax in case of assessee existed. Such liability arose by virtue of a subsequent amendment brought into the statute with retrospective effect. Therefore, at the relevant time when liability to pay advance tax arose, there was no short fall as per the statutory provisions prevailing. No interest can be charged on the ground that by virtue of subsequent amendment with retrospective effect the tax liability arose, the law does not expect the person to perform the impossible.