

## Assessee wasn't liable to pay advance tax till matter was pending before AAR: Madras HC

**Summary – The High Court of Madras in a recent case of Van Oord ACZ., (the Assessee) held that where case of assessee was pending before Advance Ruling Authority, assessee was not liable to pay tax till case was decided as liability to pay tax would be fasten on assessee only due to decision of said authority**

### Facts

- The assessee, a non-resident company, filed its return of income within the time limit prescribed under section 139(1). The return was processed under section 143(1) and interest was charged under section 234B and under section 234C.
- The petitioner filed an application before the Chief Commissioner seeking waiver of the interest on ground that the assessee could not pay any tax unless the case was decided by the Advance Ruling Authority (AAR). Further, it was contended that the liability to pay tax would be fastened on the assessee only due to the decision of the AAR and it could not pay any tax unless the case was decided by the AAR. Thus, it was submitted that the levy of interest was not sustainable. The Chief Commissioner rejected the application by observing that atleast 90 per cent of the amount should be paid as advance tax which the assessee failed to do. He further, held that the assessee commenced its operation in 1997 and having chosen to apply for AAR in April 1999 could not be attribute the delay in payment of taxes to the receipt of ruling of AAR in September 2000. The clear liability to pay advance tax on contract receipts by computing the income as per section 44BBB could not be postponed by filing an application before the AAR. Therefore, the application for waiver of interest was not acceptable.

### Held

- It may not be necessary for this Court to labour much to decide the controversy in the issue in the light of the two decisions. One being the decision of the Divisional Bench of this Court in the case of *Chennai Port Trust v. ITO* [\[2012\] 25 taxmann.com 261/210 Taxman 49 \(Mag.\) \(Mad.\)](#) which pertains to the very same contract between the Joint Venture Company and Chennai Port Trust and the other decision in the case of the petitioner's sister concern, who were the assessee on the file of the Income Tax Authorities at Mumbai. One of the ground which was canvassed before the Tribunal is with regard to levy of interest under sections 234B and 234C and the decision was rendered in favour of the Group Company, sister concern which was affirmed by the decision of Division Bench of High Court of Bombay in ITA.No.3172 of 2010 dated 23-6-2011 and the appeal filed against the said order before the Supreme Court in SLP No. 7409 of 2010 is dismissed.
- As pointed out earlier in the case of assessee's sister concern, who were also engaged in similar dredging contracts and registered with the Income Tax authorities and assessed on the file of the

Income Tax Authority, an appeal was preferred by the revenue before the Tribunal, against the order passed by the Commissioner (Appeals) for assessment year 1999-2000. One of the grounds raised in the appeal was with regard to the levy of interest under sections 234B and 234C. The Income Tax Appellate Tribunal dismissed the revenue's appeal. The revenue filed an appeal before the High Court of Bombay in ITA No.3172 of 2010 which was dismissed and this order was affirmed by the Supreme Court.

- Thus, the above decisions would clearly cover the case on hand and the circumstances which were considered by the division bench in the case of Chennai Port Trust, namely, with regard to conflict and confusion that was persisting till the Advance Ruling Authority passed the order. In fact, the division bench pointed out that till the Advance Ruling Authority pass an order, the department itself did not deem it fit to reject the assessee's (Chennai Port Trust) claim that payments were made under section 194C treating the joint venture as an association of persons.
- Thus, the attempt of the revenue in the instant case is to be accepted can be at best for statistical purposes. Thus, for the above reasons, the petitioner is entitled to succeed and, accordingly, the writ petition is allowed, the impugned order is set aside and consequently the petitioner is not liable to pay interest under sections 234B and 234C.