

Sec. 234B interest leviable if advance tax liability arose due to additions made towards explained investment

Summary – The Chandigarh ITAT in a recent case of Satish Katoch, (the Assessee) held that where reassessment order was passed against assessee making addition to assessee's income in respect of unexplained investments, and as a consequence thereof, there resulted a liability for payment of advance tax as per relevant provisions, since such advance tax was not paid by assessee, interest as per section 234B(3) had to be mandatorily levied upon assessee

Facts

- The assessee had filed its return of income declaring an income of certain amount which was processed under section 143(1) and no interest under section 234B was charged.
- Later on, the assessment was reopened under section 147/148 and reassessment was made making addition to the income of the assessee on account of unexplained investment as partner in a firm. As a consequence thereof, there resulted a liability for payment of advance tax, which having not been paid, interest under section 234B was levied in the order passed under section 148.
- On appeal, the Commissioner (Appeals) also upheld the order of the Assessing Officer.
- On second appeal:

Held

- In the present case, since the assessee's income had been initially determined under section 143(1), the levy of interest under section 234B was to be determined as per provisions of section 234B(3) on account of addition made to the income of the assessee on re-assessment of income under section 147. And since on account of the reassessment the assessee was, undisputedly, liable to pay advance tax as per the relevant provisions, which was not paid by the assessee, the liability to pay the same stood increased and interest under section 234B had to be mandatorily paid. It may be pointed out that payment of interest under section 234B, is mandatory once the default occurs. Sub-section (1) and (3) only lay down the manner of calculating the quantum of interest payable. In sub-section (1), the same is payable on the shortfall of the advance tax for the period as beginning from the end of the financial year to the date of intimation under section 143(1) or regular assessment. And in case of reassessment, under sub-section (3), on the excess advance tax payable on account of reassessment, from the date of intimation under section 143(1) or regular assessment to the date of order passed under section 147. The words used in sub-section (3) to section 234B 'the amount on which interest was payable in respect of shortfall in payment of advance is increased' cannot be read to mean that only if initially there was a liability to pay advance tax, there shall be treated to be an 'increase' on account of addition made on reassessment under section 147. There need not be an initial liability to pay of interest under section 234B, for there to be an

increase in the said liability and the interest liability can be said to have increased even if initially there is no liability to pay interest as per determination of income under section 143(1) and on regular assessment and the liability arose on account of the determination of income in the reassessment proceedings. At the cost of repetition it is stated that the charge of interest under section 234B is mandatory once the default occurs and there is no escape from the same. Logically also it makes no sense why interest should be levied only if initially there existed a liability to pay which stood increased on account of additions made on reassessment, when otherwise the assessee is liable to pay the same and would have been liable in case the income was added in regular assessment, as per section 234B(1), or would have been liable to pay if initially there existed a liability. There appears no reason to exclude cases where initially there existed no liability to pay advance tax, from charging the same in reassessment proceedings. And such an interpretation would only lead to an absurdity. The contention of the assessee to this effect is therefore dismissed as totally devoid of any merits.

- In the present case, no taxes had been paid initially by the assessee and the addition made under section 147 was on account of unexplained investment made by the assessee in partnership firm. The said addition cannot be said to be on account of an issue on which there existed a *bona fide* dispute. Therefore, the assessee was liable to include the same while estimating his income for payment of advance tax and having not done so the assessee had defaulted initially in the payment of advance tax and was thus liable to pay interest when the said amount was added to his income in reassessment proceedings as per section 234B(3).