

Interocean Shipping (India) Pvt. Ltd. v/s DCIT, New Delhi

I.T.A. No.3637 and 3638 /Del./2016

No interest to be levied u/s 201(1A) of the Income tax Act where TDS has been remitted on the due date, though realized subsequently as per the normal banking channels

1. Facts:

- a. Interocean Shipping (India) Pvt. Ltd. ('the Assessee') had deducted tax from various payments made and had remitted the same to the Government as under:

Assessment Year	Mode of payment	Due date / Date of payment	Date of clearing
2008-09	Cheque	07.07.2007	10.07.2007
2015-16	Online payment	07.07.2014	08.07.2014

- b. As per the Assessing Officer ('the AO'), tax deducted was remitted to the Government after the prescribed due date. Accordingly, the AO levied interest under section 201(1A) of the Income tax Act, 1961 ('ITA') at 1.5% per month for two months for default in remitting TDS by due date..

2. Issues under consideration before the Hon'ble Tribunal, Delhi

Whether interest under section 201(1A) of the ITA is justified in case where TDS is remitted to the Government on the due date although the payment through normal banking channels is cleared subsequent to the due date?

3. The Tribunal held in favour of the Assessee and held as under:

- a. The Tribunal observed that:
- In case of cheque payment of TDS for AY 2008-09, the Assessee had deposited the cheque on 07.07.2007 and undisputedly, sufficient funds were there in its account on that date.

- In case of online payment of TDS for AY 2015-16 too, the amount was debited from the Assessee's bank account on the date of payment itself (07.07.2014), although it was credited to the Government's account on the next day.
- b. The Tribunal ruled in favour of the Assessee that the payment for TDS has to relate back to the date of payment or presentation of the cheque and not to the date of its realization by the Government.
- c. The Tribunal relied on the following decisions while ruling in favour of the Assessee:
- Sandip Bhagat vs. ACIT – (2017) 88 taxmann.com 356 (Delhi – Trib.) - The interest under section 234C is to be computed from the date of presentation/tendering of cheque for tax payment into bank and not from the date of clearance from the bank account of the assessee.
 - DIT (Exemption) vs. Raunaq Education Foundation (2013) 350 ITR 420 (SC)- when the cheques issued have not been dishonoured the payment is to relate back to the date of receipt of the cheque.
 - K. Saraswathy vs. P.S.S. Somasundaram Chettiar – (1989) 4 SCC 587 (SC) – A payment by cheque should be taken as due payment if the cheque is subsequently encashed in the ordinary course.
 - P.L. Haulwel Trailers Ltd. vs. DCIT – (2006) 100 ITD 0485 (Chennai) - Where the assessee company deposited its cheques with authorized banker within due date for payment of advance tax but same were encashed after due date, date of presentation of those cheques should be taken as date of payment and no interest was leviable on assessee under section 234C.

4. Comments:

The aforesaid decision reinforces the law that for the purpose of the Act what is relevant is the date of deposit of cheque and not its date of clearance.