

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' NEW DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. Nos.386 & 387/Del/2016
Assessment Year: 2013-14**

**E.I. DuPont India P. Ltd., vs Dy. Commissioner of Income-tax,
7th Floor, Tower C, DLF Cyber Green, CPC-TDS, Vaishali, Ghaziabad.
Sector 25A, DLF City, Phase-III,
Gurgaon.**

(PAN: AAACE2462M)

(Appellant)

(Respondent)

Assessee by: S/Shri Sandeep Bansal & Greenize Jain, CA
Department by: Ms Ashima Neb, Sr. DR

Date of hearing: 22.01.2019

Date of Pronouncement: 24.01.2019

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the common order dated 14.12.2015 in Appeal Nos. 54 & 78/14-15 for the Asstt. Year 2013-14 relates to the returns of tax deducted at source for salary and also for domestic cases other than salary, these two appeals are filed by the assessee. Since both the appeals relate to the identical grounds, they are heard together and are disposed of by way of this common order for the sake of convenience, by referring to the facts of ITA No.386/Del/2016.

2. Facts are simple and admitted. Assessee made the deduction of tax on 31.3.2013 and made the actual remittance on 2.5.2013 whereas the due date of remittance was 31.4.2013. Learned AO calculated the interest as per

the British calendar month and calculated interest for three months, namely, from 31.3.2013 to 31.3.2013- one month, 1.4.2013 to 30.4.2013 –second month and 1.5.2013 to 2.5.2013 – third month.

3. This treatment of month are part thereof by the AO by taking the month as per the British calendar is disputed by the assessee before the learned CIT(A). Learned CIT(A) recorded that the assessee furnished a chart containing 12 entries without giving actual calculation showing the discrepancies in the amounts calculated by the AO and the amounts calculated by them and failed to explain as to how the assessee company had arrived at the figures projected by them, except making a general claim that the calculation of interest made by the AO is incorrect. Holding the averments of the appeal are not complete and abridged information does not disclosed any cause of action, learned CIT(A) dismissed both the appeals.

4. Assessee, therefore, preferred these two appeals on identical grounds stating that the method and manner of calculation of interest by the learned AO is incorrect in law.

5. It is the argument of the learned AR that the learned AO had treated one day in the month of March and two days in the month of May, being the parts of the British calendar month, as two different months and put together with the month of April, learned AO calculated the interest for three months. Learned AR submits that in view of the decision of the Hon'ble Gujarat High Court in the case of CIT vs Arvind Mills Ltd. (2011) 16 Taxmann.com 291(Guj) and the decision of the Tribunal in the case of Navayuga Quazigund Expressway P. Ltd. vs DCIT, (2015) 39 ITD 612 (Hyderabad Tribunal) and Oil and Natural Gas Commission vs ACIT, ITA No.1955 to 1965 (Ahd0/2015, the term 'month' must be given the ordinary

meaning of the term of 30 days period and not the British calendar month as defined in Section 3(35) of the General Clauses Act.

6. Per contra, learned DR placed reliance on the orders of the authorities below and submitted that in the absence of any definition of 'month' in Section 201(1A), the definition provided in the General Clauses Act vide Section 3(35) had to be taken and, therefore, the orders of the authorities below are justified.

7. We have gone through the record. There is no dispute that in so far as the tax deducted at source for salary is concerned, the AO calculated the interest on late payment at Rs.9,80,607/- whereas the assessee calculated the same at Rs.9,48,970/-, and the difference being Rs.31,637/-. According to the assessee, the calculation of interest for three months by the Id. AO is incorrect. For the sake of clarity, we tabulate the interest calculation by the AO and the assessee as under:

Admitted Facts:

| | |
|---------------------------|------------|
| Date of deduction | 31.3.2013 |
| Due date of remittance | 30.04.2013 |
| Actual date of remittance | 01.05.2013 |

Calculation made by the AO

| | |
|------------------------|--------------|
| 31.3.2013 to 31.3.2013 | One month |
| 1.4.2013 to 30.4.2013 | One month |
| 01.05.2013 to 2.5.2013 | One month |
| Total | Three months |

Calculation made by the Assessee

| | |
|------------------------|---|
| 31.3.2013 to 30.4.2013 | One month |
| 01.05.2013 to 2.5.2013 | One month part of month considered as full month as per Rule 119A |
| Total | Two months |

8. It is, therefore, clear that the Id. AO had taken the month to be the British calendar month as defined in Section 3(35) of the General Clauses Act and it is only on that premise, he calculated one day in March and two days in May as two full months and calculated interest for three months including the month of April also.

9. In CIT vs. Arvind Mills Ltd. (supra, in the context of interest on refunds u/s 244A of the Act, the Hon'ble Gujarat High Court held that the term 'month' must be given the ordinary sense of the term i.e. 30 days of period and not the British calendar month as defined u/s 3(35) of the General Clauses Act and such a definition under the General Clauses Act cannot be adopted for the purposes of Section 244A of the Act inasmuch as such importation of definition would lead to anomalous situation. In the case of Navayuga Quazigund Expressway P. Ltd. (supra) , the Hyderabad Bench of this Tribunal, while respectfully following the decision of the Gujarat High Court in the case of Arvind Textile Mills, considered the definition of month in the context of Section 201(1A) of the Act and held that Section 244A(1) is analogous to provisions of Section 201(1A)(ii) read with Rule 119A of the Act and a month must be given ordinary meaning of the term by taking period of 30 days and not British calendar month as defined u/s 3(35) of the General Clauses Act. In the case of ONGC (supra), the Ahmadabad Bench of the Tribunal again considered this question in the context of Section 201(1A) of

the Act and reached a similar conclusion.

10. In view of this established position of law, we are unable to endorse the view of the Id. AO and accept the calculation of month reckoned by him. However, in view of the fact that the assessee did not furnish the requisite information as observed by the learned CIT(A) in para 2.3 of his order, we deem it just and necessary, while setting aside the impugned order, to remand the matter to the file of the learned CIT(A) to enable the assessee to submit the actual calculation showing the discrepancies in the calculation of interest by the AO and the assessee respectively. Learned CIT(A), after considering the same, would decide the matter in the light of our above observations that the month as occurred in Section 201(1A) shall mean a period of 30 days and not a British calendar month. We order so accordingly.

11. In the results, appeals of the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 24th January, 2019.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 24th January, 2019.

‘VJ’

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)

5. DR, ITAT

Asstt. Registrar, ITAT

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| Approved Draft comes to the Sr.PS/PS | |
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| Date of uploading order on the website | |
| File sent to the Bench Clerk | |
| Date on which file goes to the AR | |
| Date on which file goes to the Head Clerk. | |
| Date of dispatch of Order. | |