

## TAX FLASH NEWS

### The expression 'month' used in Section 201(1A) of the Income-tax Act refers to a 'month reckoned according to the British calendar'

#### Background

Recently, the Ahmedabad Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Oil & Natural Gas Commission<sup>1</sup> (the taxpayer) held that the expression 'month', appearing in Section 201(1A) of the Income-tax Act, 1961 (the Act) refers to a month reckoned according to the British calendar i.e. a period of time which qualified to be treated as a 'month'.

In this case, the interest under Section 201(1A) of the Act was payable for a period of 24 months and 28 days. In accordance with the provisions of the General Clauses Act, 1897, for such period, interest under Section 201(1A) of the Act could not have been levied for more than 25 months.

#### Facts of the case

- In the present case, the Supreme Court vide its order dated 7 November 2012 directed that the taxpayer cannot be held as an 'assessee in default', in view of the directions of the High Court, for the period from 20 February 1996 to 15 March 2010. Therefore, the taxpayer was liable to pay interest only from 16 November 2010. Accordingly, the interest under Section 201(1A) of the Act was required to be computed for a period of 16 November 2010 to 14 December 2012.
- The Assessing Officer (AO) computed a period of 26 months on the basis that there were 24 calendar months in this period and it also included a part of November 2010 and December 2012.

- The taxpayer had filed a rectification petition against the AO's order of giving effect to the directions of the Supreme Court. The claim of the taxpayer was that since the total period was of 24 months and 28 days, the period for which interest under Section 201(1A) of the Act could be levied was only for 25 months. However, the AO did not agree with the contention of the taxpayer.
- The Commissioner of Income-tax (Appeals) [CIT(A)] upheld the order of the AO.

#### Tribunal's ruling

- Section 201(1A) of the Act indicates that the provision is quite simple and unambiguous in as much as interest is to be charged for 'every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted'.
- The context in which the expression 'month' is used in the present case is a measurement of period for which time value of money is to be compensated. If a person ought to have deducted tax on 21 October and he actually does so on 3 November, the period for which the government is deprived of its legitimate taxes is less than a month. However, as per the interpretation canvassed by the AO, this will be a period of two months – i.e. a part of October and also a part of November. Such a result was clearly incongruous.
- As for the alternate contention of the tax department, i.e. the period of a month could at best be taken as thirty days and, therefore, the period 7 November 2010 to 14 December 2012 should be constructed as 26 months, it was also devoid of any merits. If that is the principle to be

<sup>1</sup> Oil & Natural Gas Commission v. ACIT (ITA No. 1955 to 1965/Ahd/2015) – Taxsutra.com

followed, when a person required to deduct tax at source on 21 March, actually deducts the tax at source on 18 March in the subsequent year, the period of delay will have to be taken as 13 months (i.e.  $12 \times 30 = 360$  days plus 2 days as part of the month). This approach is also incongruous.

- There was no dispute about the fact that the expression 'month' is not defined for the purpose of Section 201(1A) nor there is any direct judicial authority in the context of Section 201 of the Act. Section 3(35) of the General Clauses Act, 1897 defines 'month' as, unless there is anything repugnant in the subject or the context, 'a month reckoned according to the British calendar'.
- The expression 'reckoned', in plain English, refers to 'count, compute or calculate'. In substance thus, the mandate of Section 3(35) is to count, compute or calculate according to, or as per, the British calendar. It is also important to note that even this definition is not in absolute terms in as much as when 'there is anything repugnant in the subject or the context', this definition can be discarded.
- The levy of interest under Section 201(1A) of the Act is compensatory in nature and it represents the time value of money attributable to delay in deduction of tax at source. Thus, what is to be seen is the gap of time between the point of time when tax ought to have been deducted at source vis-à-vis the point of time when the tax was actually deducted, and it is in this context that connotation of expression 'month' is to be examined.
- In the present case, the period of time gap between 16 November 2010 to 14 December 2012 was less than 25 months because, on 14 December 2012, the period of 25 months has not elapsed from 16 November, 2010. The period which is elapsed between these two dates is 24 months and 28 days. Therefore, going by the provisions of the General Clauses Act, for such period, interest under Section 201(1A) of the Act could not have been levied for a period of more than 25 months.
- The expression 'month' refers to 'a month reckoned according to the British calendar'. 'A month as per the British calendar' and 'a month reckoned as per British calendar' are not the same thing and cannot be used interchangeably. While the former refers to a calendar month by itself, the latter refers to a period of time which qualified to be treated as a 'month'. The subtle distinction between the scope of these two expressions cannot be ignored.
- The interest under Section 201(1A) of the Act could not be charged for more than 25 months. Accordingly, the AO was directed to re-compute the interest under Section 201(1A) of the Act.

## Our comments

The Madras High Court in the case of Kadri Mill Caimbatore Ltd.<sup>2</sup> held that the Act itself does not define the word 'month' however Section 3 of the General Clauses Act, 1897 define the word 'month' to mean a month reckoned according to the British calendar. The Allahabad High Court in the case of Munnalal Shrikishan<sup>3</sup> held in the context of limitation under Section 256(2) of the Act that the word 'month' refers to a period of 30 days and, therefore, the reference to 'six months' in Section 256(2) of the Act means 'six calendar months' and not '180 days'.

In the present case, the Ahmedabad Tribunal relying on the General Clauses Act, 1897 held that the expression 'month', appearing in Section 201(1A) of the Act refers to a month reckoned according to the British calendar i.e. a period of time which qualified to be treated as a 'month'. The Ahmedabad Tribunal in the case of Alkaben B. Patel<sup>4</sup> was also held on similar lines.



<sup>2</sup> CIT v. Kadri Mill Caimbatore Ltd. [1977] 106 ITR 846 (Mad)

<sup>3</sup> CIT v. Munnalal Shrikishan [1987] 167 ITR 415 (All)

<sup>4</sup> Alkaben B. Patel v. ITO [2014] 31 ITR(T) 231 (Ahd)

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