


# Nangia Andersen LLP



## NEWSFLASH

Non-resident recipients not liable to pay interest u/s 234B on account of TDS default by payer for years prior to FY 2012-13

September 2021



Non-resident recipients not liable to pay interest u/s 234B on account of TDS default by payer for years prior to FY 2012-13

## Background

The Supreme Court (SC) has established its view on the question of levy of interest under section 234B in case of non-resident payees. It has held in respect of cases prior to FY 2012-13, non-resident payees would not be liable to pay interest under section 234B for sums on which tax was deductible at source but was not deducted by the payer.

## Brief Facts and Contentions

- The assessee-company is incorporated in Japan and trades in carbon crude oil, LPG, industrial machinery, mineral, textiles, automobiles etc. through its liaison offices in India.
- The Revenue was of the view that part of assessee's income was attributable to its activities in India and was subject to taxation in India, under Articles 4, 5 and 6 of the tax treaty between India and Japan, read with the provisions of the Act. Accordingly, it passed an assessment order determining the income chargeable to tax in India and interest liability.
- The assessee challenged the assessment order before the CIT(A) in respect to levy of interest under Section 234B of the Act, which were dismissed.
- Subsequently, on appeals filed by the assessee, the Tribunal and High Court held in favour of the assessee. Aggrieved, the Revenue preferred appeals before the Supreme Court.
- The Revenue submitted that Section 209 requires an assessee to estimate his income and pay tax at the rates in force in the financial year. The advance tax

liability is to be reduced by the amount of income-tax *deductible or collectible* at source during the said financial year. In case of failure to pay advance tax or where the advance tax paid by the assessee is less than ninety per cent of the assessed tax, the assessee is liable to pay interest on the amount of shortfall from the assessed tax under Section 234B of the Act.

- The Revenue contended that Section 234B is a standalone provision and the words used in Section 209 cannot be imported into Section 234B. The High Court erred in interpreting the phrase “*deductible or collectible at source*” as it would not take into its fold tax which was not deducted within the statutory time limit and was, in fact, paid to the assessee without deduction.

## Supreme Court’s Judgement

- The Supreme Court expounded that for all assessments prior to the financial year 2012-13, Section 209 (1) (d) by the Finance Act, 2012 entitles the assessee to reduce the amount of income-tax which would be *deductible or collectible*, in computation of its advance tax liability, notwithstanding the fact that the assessee has received the full amount without deduction.
- However, the position has changed after FY 2012-13 after the insertion of proviso to section 209(1) (d) whereby the assessee is not entitled to reduce tax deductible/ collectible if he receives the amount without actual deduction.
- Since the instant case pertained to a period prior to the introduction of the said proviso, the Supreme Court held that provisions of Section 209 cannot be ignored while construing the contents of Section 234B.

- The payee would therefore not be liable to pay interest under section 234B for sums on which tax was deductible at source but was not deducted by the payer.

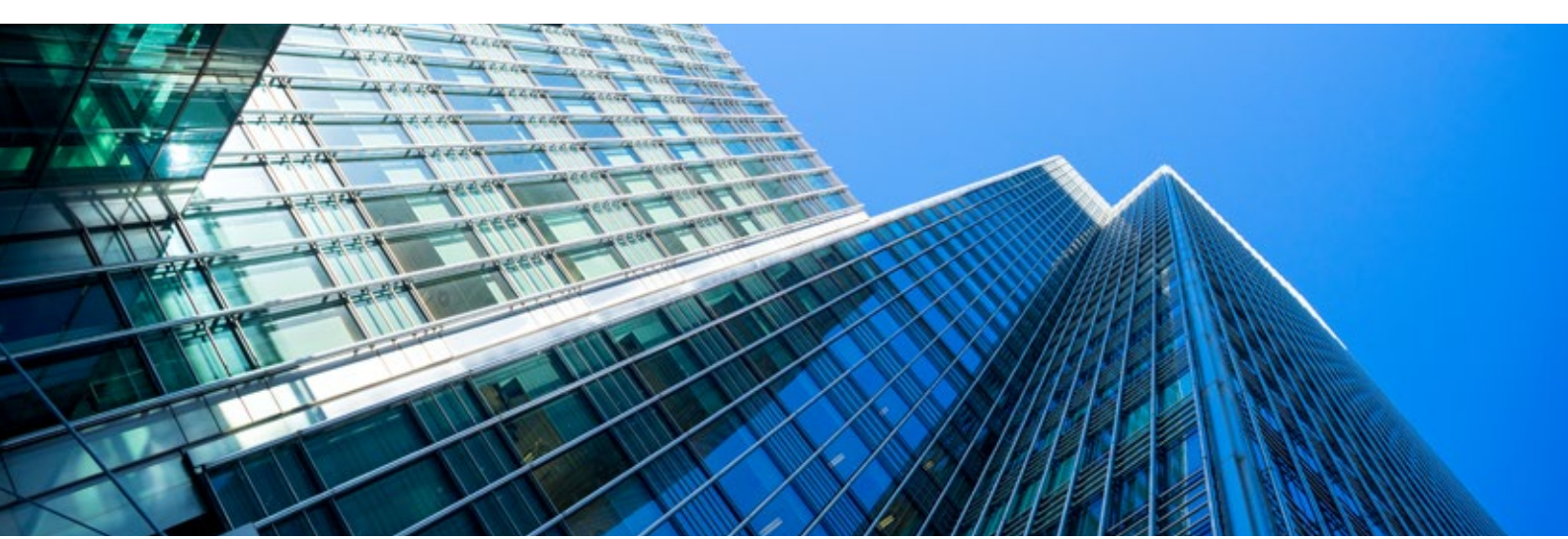


## Nangia Andersen LLP’s Take

The Finance Act, 2012 inserted a proviso to Section 209 (1) (d) which prescribes that for computing liability for advance tax, income-tax calculated shall not be reduced by income-tax which would be deductible or collectible at source during the said financial year under any provision of the Act from any income, if the person responsible for deducting tax has paid or credited such income without deduction of tax or it has been received or debited by the person responsible for collecting tax without collection of such tax.”

In the instant case, the Supreme Court has allowed the assessee to reduce the amount of income-tax which would be deductible or collectible as the matter pertains to assessment prior to the financial year 2012-13. As the legal position has changed from FY 2012-13, the assessee can no more reduce the income on which tax is deductible or collectible at source while computing advance tax liability. By way of this judgement, a genuine benefit under the law has been granted to the taxpayers.

[Source: SC Civil Appeal No.1262 of 2016- Mitsubishi Corporation]



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