



**DIT (INTERNATIONAL TAXATION) V. DELTA AIR LINES INC.
(2013) 358 ITR 0367 (BOMBAY HIGH COURT)**

ISSUE: *Are the provisions of section 234D levying interest on excess refund attracted in a case where the refund granted to the assessee in pursuance of the order of Commissioner (Appeals) was reversed on account of setting aside of such order by the Tribunal?*

FACTS OF THE CASE:

- 1.** *In the present case, the Assessing Officer disallowed the benefit of article 8 of the Double Taxation Avoidance Agreement between India and the U.S.A. (DTAA) to the assessee.*
- 2.** *The Commissioner (Appeals), on the other hand, held that the assessee was entitled to the benefit of article 8 of the DTAA.*
- 3.** *The Tribunal, however, set aside the order of the Commissioner (Appeals) and restored the order passed by the Assessing Officer.*
- 4.** *While giving effect to the order of the Tribunal, the Assessing Officer apart from levying interest under sections 234A and 234B, also levied interest under section 234D on the refund granted to the assessee pursuant to the order of Commissioner (Appeals).*

HIGH COURT'S DECISION:

- 5.** *The High Court observed that interest under section 234D is chargeable only where the refund has been granted to the assessee while processing the*

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return of income under section 143(1) and thereafter, such refund is found to be excessive under the regular assessment.

***6.** In the present case, the refund was not granted under section 143(1). The refund was not granted even by way of an assessment order passed under section 143(3) read with section 147. The same was granted pursuant to the order passed by the Commissioner (Appeals).*

***7.** Consequently, the High Court concurred with the Tribunal's view that the provisions of section 234D were not attracted in this case.*

***CONCLUSION:** in this case the refund to the assessee was due to order of CIT(A) and not the basis of regular assessment and hence interest under Section 234D is not leviable.*

PLEASE NOTE:

Section 234D(1) provides that where any refund is granted to the assessee under section 143(1) and –

(a) no refund is due on regular assessment; or

(b) the amount refunded under section 143(1) exceeds the amount refundable on regular assessment, the assessee shall be liable to pay simple interest @½% on the whole or the excess amount refunded, for every month or part of a month comprised in the period from the date of grant of refund to the date of such regular assessment.

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