



ITA No.7146/Mum/2018
Economic Laws Practice
Assessment Year: 2017-18

**आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI**

**माननीय श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI C.N. PRASAD, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.7146/Mum/2018

(निर्धारण वर्ष / Assessment Year: 2017-18)

Economic Laws Practice, 109, A Wing, Dalamal Towers Free Press Journal Road, Nariman Point, Mumbai- 400 021	बनाम/ Vs.	CIT(Appeals) - 59 Mumbai
स्थायी लेखा सं./ जी आइ आर सं./ PAN/TAN AABFE-1263-G / MUME-03963-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Ms. Vidushi Maheshwari – Ld. AR
Revenue by	:	Shri Amit Pratap Singh – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	12/12/2019
घोषणा की तारीख / Date of Pronouncement	:	12/12/2019

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2017-18 contest the order of Ld. Commissioner of Income-Tax (Appeals)-59, Mumbai [in short referred to as ‘CIT(A)’], Appeal No.CIT(A)-59/IT-143/2017-18, dated 12/10/2018 on following grounds of appeal: -



- “1. The Order of the learned Commissioner is contrary to law, facts and circumstances of the case;
2. The learned Commissioner has erred in law in concluding that interest on late payment of TDS under section 201(1A) of the Act is to be computed based on calendar months without having regard to the fact that the provisions of section 201(1A) of the Act does not specifically prescribe the term '*calendar month*'.
3. In the facts and circumstances of the case, the learned Commissioner has grossly erred in law in interpreting the term 'month' as '*calendar month*' without appreciating the settled law which provides that the interpretation of the provisions of the Act cannot be extended beyond the scope of the provisions under the Act.
4. In the facts and circumstances of the case, the learned Commissioner has erred in law in applying the provisions of section 3(35) of the General Clauses Act, 1897 to interpret the meaning of the term 'month' as 'calendar month'.
5. In the facts and circumstances of the case, by interpreting the term 'month' as 'calendar month', the learned Commissioner has failed appreciate that such an interpretation is analogous and shall result into undue hardship to the appellant.
6. The learned Commissioner has erred in rejecting the favorable decisions of the Hon'ble Gujrat High Court in the case of CIT vs Arvind Mills Limited (Appeal No. 2486 of 2009, dated 13/09/2011) and the Hon'ble Income-tax Appellate Tribunal, Hyderabad, the case of Navayuga Quazigund Expressway (P.) Ltd (Appeal No. 1651 of 2014, dated 13/03/2015) which are similar to the facts and circumstances of the case.
7. The learned Commissioner has grossly erred in rejecting the decisions of the higher appellate authorities which are similar to the facts and circumstances of the case without regard to the fact that a higher appellate authority's decision is binding on the lower appellate authorities.
8. In the facts and circumstances of the case, the learned Commissioner has erred in law in not appreciating the fact that the provisions of section 201(1A) of the Act ought to be read with the provisions of Rule 119A of the Income-tax Rules, 1962 ("the Rules").
9. In the facts and circumstances of the case, the learned Commissioner has erred in law in rejecting the application of Rule 119A of the Rules by concluding that the provisions of Rule 119A of the Rules are to be read only with the provisions of section 244A(1) of the Act without appreciating the fact that the language used by law under the provisions of section 201(1A) of the Act is identical to the language used under the provisions of section 244A(1) of the Act.

The Appellant submits that each of the above grounds/ sub-grounds are in the alternative and without prejudice to one another.



The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Hon'ble Tribunal to decide the appeals according to law.

The Appellant also craves leave to submit additional documents and facts as may be necessary for the purpose of disposal of this appeal.

2. The learned Authorized Representative for Assessee, Ms. Vidushi Maheshwari, at the outset, submitted that the sole issue under the appeal is squarely covered by recent decision of co-ordinate bench of this Tribunal rendered in ITA No.2295/Mum/2018 for AY 2014-15 order dated 01/07/2019 titled as **UTI Mutual Fund Vs. DCIT**. The copy of the order has been placed on record. The Ld. DR relied upon impugned order but could not place on record any contrary decision.

3.1 Facts in brief are that the assessee was saddled with interest on account of late payment of TDS for Quarter-3 of financial year 2016-17. The e-TDS return for the said period was filed on 31/01/2017, for which an intimation was received on 10/02/2017 raising demand of Rs.1,13,270/- on account of interest on late payment of TDS. Upon perusal of justification report showing computation of interest, it was noted that CPC-TDS calculated interest on late payment of TDS on the basis of each calendar month during which the default was in existence. The plea of the assessee was that interest should be calculated, based upon the concept of month starting from the date of commencement of the default. In other words, the assessee submitted that where the period of delay was more than 30 / 31 days, the interest was to be computed for two months but where it was less than 30 / 31 days, the interest was to be computed for one month. Reliance was placed on the decision of



Hon'ble Gujarat High Court in the case of **CIT V/s Arvind Mills Limited** (ITA No.2486 of 2009, dt.13-09-2011) and also on the decision of Co-ordinate Bench of Hyderabad Tribunal in **Navayuga Quazigund Expressway Vs. DCIT (2015 64 Taxmann.com 212)**.

3.2 However, not convinced, Ld. CIT(A), upon perusal of the statutory provisions of Section 201(1A) of the Act held that interest on late deposit of TDS was to be calculated for demands of October, 2016 and November, 2016 since it was due across both these part months. The findings given by Ld. CIT(A) are as under: -

“2.5 In the instant case, interest for late deposit of TDS will be calculated for the months of October, 2016 and November, 2016, since it was due across both these part months. The governing section, i.e., section 201(1A) of the Act is explicit that interest on late deposit of TDS is to be calculated from the date of deduction to the date of deposit at the rate of 1.5 percent per month or part of the month. The appellant deposited the tax it deducted after the applicable due date for doing so. That is to say, the due date for depositing the tax deducted by it was 07.11.2016, whereas, it actually and admittedly, deposited the same on the succeeding date. Accordingly, the appellant would be liable to pay interest for two months, viz. for October, 2016 and November, 2016. Both the parts of the months involved will be reckoned and included as full months since "part of a month" is also considered as a full month as per the clear stipulation of section 201(1A) of the Act.

2.6 When the said section of the statute itself mandates that any fraction of a month is to be deemed a full month, then there is little scope for reading it down or importing interpretational issues based on extraneous considerations such as equity or comparisons with other sections of the statute. For instance, there is no mention of the calculation of a "period" which has been specified in clause (a) and clause (b) of rule 119A of the Income-tax Rules, 1962, wherein it has been stated that where interest is to be calculated for every month or a part of the month comprised in a "period", any fraction of a month, shall be deemed to be a full month. Section 201(1A) of the Act has to be taken as a self-contained procedure where the modalities for calculation of interest payable has been laid out. It is well-settled that where the words of a statute are clear, plain and unambiguous, then the effect to that meaning has to be given irrespective of the consequences.

2.7 Adverting to the two judicial authorities pressed into service by the appellant, it is seen that the decision rendered in the case of CIT vs Arvind Mills Limited (supra) was in the context of section 244A and not in the context of 201(1A) of the Act which applies to the case under consideration. It deserves consideration that section 244A(l) refers to month or part of the month 'comprised in a the period' for all refund scenarios covered by sub-clauses (a), (aa) and (b) thereof. This corresponds to



reference to the determination of a 'period' in rule U9A of the Income-tax Rules, 1962, as discussed above. On the other hand, there is no reference to the computation of 'period' in section 201(1A) of the Act. The other decision, i.e., the one rendered by the Appellate Tribunal, Hyderabad, in *Navayuga Quazigund Expressway vs DCIT, Circle 15(1), Hyderabad (supra)* though on the computation of interest under section 201(1A) of the Act, is completely based on the aforesaid decision of the Hon'ble Gujarat High Court. No decision of a binding jurisdictional authority was cited by the appellant.

2.8 It may also be perhaps worthwhile to mention that interest levied need not wholly be compensatory in nature in all cases. Such a levy may also be penal-deterrent in nature, which is best exemplified by the differential rates of interest provided for in section 201(1A)(i) and section 201(1A)(ii) of the Act. It also perhaps deserves consideration that there was no bar on the statute itself in providing for a period in 'days' rather than 'month'. For example, the words 'thirty days' and 'sixty days' appear in section 249(2) and section 153 of the Act.

2.9 In view of the discussion as foregoing, no infirmity is found in the levying of interest in the impugned intimation of the CPC-TDS. The same requires no interference and is upheld. Consequently, the ground of appeal fails and is, therefore, dismissed. 3.0 In result, the appeal is dismissed. Order passed under section 250 read with section 251 of the Act".

Aggrieved, the assessee is under further appeal before us.

4. We have carefully heard the rival submissions and perused relevant material placed on record including decision cited by Ld. AR. Upon due consideration, we concur with the submissions of Ld. AR that the issue stood squarely covered in assessee's favor by the cited decision of this Tribunal rendered in ITA No.2295/Mum/2018 for AY 2014-15 order dated 01/07/2019 titled as **UTI Mutual Fund Vs. DCIT** wherein both the decisions as cited before learned first appellate authority has been considered by the co-ordinate bench. The findings, for ease of reference, could be extracted in the following manner: -

7. We have considered rival contentions and perused the material on record including cited laws. We have observed that the assessee has deducted Income-tax at source under Chapter XVII-B of the 1961 Act on various dates of the month of October 2013 which was required to be deposited to the credit of Central Government on 7th November 2013 but was deposited late to the credit of Central Government on 11.11.2013, which led to raising of additional demand towards interest payable by assessee for late deposit of TDS to the credit of Central Government, by Income Tax Department, TDS CPC, Ghaziabad, UP vide



intimation dated 30.03.2014 u/s. 200A of the 1961 Act, wherein further interest demand of Rs. 4,19,060/- were raised against the assessee in addition to suo motu voluntary deposit of interest for late deposit of TDS to the tune of Rs.5,73,046/- paid by assessee while filing 3rd quarter TDS return in form no 26Q for Financial Year 2013-14. The delay in deposit of TDS to the credit of Central Government ranged for the period from 15 days to 35 days. The assessee has submitted a chart to make its contention as to how the interest for late deposit of TDS is to be computed u/s 201(1A), as detailed here under:-

Date of payment	Date of deduction	Due Date	Date of Deposit	TDS amount	Delay in days both DATES inclusive	DELAY PERIOD IN MONTHS PER S.201(1A)	Rate of interest per month	Interest payable	REMARKS
7/10/2013	7/10/2013	7/11/2013	11/11/2013	5,131,710.00	35	2	1.50%	153,951.00	Period of delay is more than 30 days hence 2 months are considered
14/10/2013	14/10/2013	7/11/2013	11/11/2013	9,006,510.00	29	1	1.50%	135,098.00	Period of delay is less than 30 days hence 1 month is considered
21/10/2013	21/10/2013	7/11/2013	11/11/2013	9,330,686.00	22	1	1.50%	139,960.00	Period of delay is less than 30 days hence 1 month is considered
28/10/2013	28/10/2013	7/11/2013	11/11/2013	9,602,433.00	15	1	1.50%	144,037.00	Period of delay is less than 30 days hence 1 month is considered
		Total						573,046.00	

7.2 The assessee while computing interest payable to Central Government for such delay in deposit of TDS computed voluntarily interest payable of Rs. 5,73,046/- by taking period of delay in deposit of TDS in number of days wherein if the delay in deposit of TDS is upto 30/31 days, it was taken as one month delay but where it exceeded 30/31 days but up-to 61/62 days, the same was taken as 2 months delays while Revenue has taken rollover of



month as basis for computing interest payable by the assessee for late deposit of TDS, as where the TDS is deducted in the month of October 2013 but paid in November 2013, the interest is computed by taking delay for 2 months and hence the differential demand for interest payable raised by Revenue to the tune of Rs.4,19,060/- ,vide intimation dated 30.03.2014 issued by learned DCIT under Section 200A of the 1961 Act. We have observed that this issue had been subject matter of quite a controversy between the tax-payers and Revenue before the Hon'ble Courts/tribunals and consistent view has been taken by Hon'ble Courts and the tribunal that period of month in such cases is to be taken as period of 30/31 days as contemplated by the assessee in the instant case before us and not as by rollover of month viz. British Calendar Month as contemplated by Revenue . Reference is drawn to the decision of Hon'ble Gujarat High Court in CIT v. Arvind Mills Limited reported in (2011)16 taxmann.com 291(Guj), wherein Hon'ble Gujarat High Court held in context of provisions of Section 244A of the 1961 Act, as under:-

"21. Before dealing with the rival contentions it would be useful to take note of statutory provisions applicable. Since the adjustment of the tax previously paid occurred during the period of March, 1997 to November, 2000, we would be taking note of statutory provisions as applicable during the said period.

22. Relevant provisions of Section 244A(1)(a) of the Act at the relevant point of time read as under:

"244A. (1) [Where refund of any amount becomes due to the assessee under this Act], he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely :-

(a) where the refund is out of any tax [paid under section 115WJ or] [collected at source under section 206C or] paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of [one-half per cent] for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted. Provided that no interest shall be payable if the amount of refund is less than ten per cent of the tax as determined [under [sub-section (1) of section 115WE or] sub-section (1) of section 143 or] on regular assessment;"

23. Section 245 of the Act pertains to set off of refund against tax remaining payable and provides inter alia that when a refund is found due to any person the officers mentioned in the said section may in lieu of payment of refund set off the amount to be refunded or any part of that amount, against the sum, if any, remaining payable under this Act by the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this section.

24. Rule 119(A) of the said Rules applicable at the relevant time read as under:-

"119A. In calculating the interest payable by the assessee or the interest payable by the Central Government to the assessee under any provision Act,-



(a) where interest is to be calculated on annual basis, the period for which such interest is to be calculated shall be rounded off to a whole month or months and for this purpose any fraction of a month shall be ignored; and the period so rounded off shall be deemed to be the period in respect of which the interest is to be calculated;

(b) where the interest is to be calculated for every month or part of a month comprised in a period, any fraction of a month shall be deemed to be a full month and the interest shall be so calculated;

(b) the amount of tax, penalty or other sum in respect of which such interest is to be calculated shall be rounded off to the nearest multiple of one hundred rupees and for this purpose any fraction of one hundred rupees shall be ignored and the amount so rounded off shall be deemed to be the amount in respect of which the interest is to be calculated."

25. Section 3(35) of General Clauses Act reads as under,

"3(35) "month" shall mean a month reckoned according to the British calendar;"

26. From the above statutory provisions, it can be seen that Section 244A provides for payment of interest where refund of any amount becomes due to the assessee under the said Act. In such a case the assessee is entitled to receive in addition to the refund amount, simple interest at the prescribed rate. Clause (b) of section (1) of Section 244A of the Act in particular provides that such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted. In the other words, interest at the prescribed rate is to be paid to the assessee on the refund of tax paid for every month or part of a month comprised in the period from the date of payment of the tax to the date on which refund is granted.

27. Rule 119(A) of the said Rules further clarifies that in calculating the interest payable by the Government to the assessee under any provision of the act where interest is to be calculated for every month or part of a month comprised in a period, every fraction of month shall be deemed to be full month and the interest so calculated.

28. By reading of Section (1) of Section 244A of the Act with Rule 119(A) of the said Rules would bring about situation when an assessee who has paid the tax and such tax is to be refunded, the assessee is to be paid interest at the prescribed rate for every month or part of a month comprising the period from the date of payment of the tax to the date on which the refund is granted. If such period is a fraction of a month, the same shall be deemed to be a full month and the interest shall be calculated for the entire month accordingly. In other words while calculating the period for grant of interest, if there is any fraction of a month, such fraction shall be ignored and instead, the assessee shall be paid interest for the full month.



29. So much is clearly emerging from the plain language used in the statutory provisions noticed by us. The case of the assessee however is that the word 'month' should be considered as per British Calender as defined in Section 3(35) of the General Clauses Act and accordingly if there is a fraction of a month on either side of the events i.e. payment of tax or refund thereof, both fractions should be considered as full months and for both months the assessee must be held entitled to receive interest.

30. First and foremost it is not in dispute that term month has not been defined in the Act. Ordinarily, therefore, the definition of term month contained in General Clause Act would be a useful guide in the present case also. However, Section 3 of the General Clauses Act which is a definition section itself starts with rider i.e. "In this Act, in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context" Therefore if there is anything repugnant in Section 244A of the Act, the definition contained in Section 3(35) of the General Clauses Act would not be useful. We may also note that the decisions sought to be relied on by learned counsel for the respondents with respect to applicability or otherwise of the definition of the term 'month' contained in Section 3(35) of the General Clause Act was examined in the background of the provisions contained in Section 271(1)(a) of the Act.

31. Word 'month' is described in Webster's Third New International Dictionary (unabridged) as a measure of time corresponding or nearly corresponding to the period of time moon's revolution or as one of the twelve portions into which the year is divided in the Gregorian calender as also a period of time about the length of a lunar month but not necessarily coinciding with a calender month. The same dictionary also explains term 'calender month' as one of the months as named in the 'calender' or the period from a day of one month to the corresponding day of the next month if such exists or if not to the last day of the next month.

32. In 'Judicial Officer's Law Lexicon' by Justice C.K.Thakker term calender month is explained as under:

"A period of time consisting of 30 days in April, June, September and November; of 31 days in the remainder of the months, except February, which consists of 28 days, except in leap-year, when the intercalary day is added, making 29 days.

33. In Judicial Dictionary by Aiyar's, the term 'calender month' is described as a legal and technical term in computation the time by calender months, the time must be reckoned by looking at calender and by not computing test.

34. Black' s Law Dictionary describes the term 'month' as one of the twelve periods of time in which the calender is divided, any time period approximating 30 days.



35. In Law. Lexicon by T.P.Mukherjee [5th Edition], it is stated "the word 'month' would in its ordinary acceptance, mean a 'calender month' and not a 'lunar month'.

36. What is to be ascertained in the present case is as to which definition of term 'month' shall have to be adopted for Section 244A(1) of the Act. In other words the question is, should the definition of term "month" be adopted from General Clauses Act, or not. This exercise shall have to be done on the basis of relevant statutory provisions and the intention of the legislature to provide interest to the assessee whose tax paid is found refundable at a later date.

37. To our mind the words appearing in sub-section (1) of Section 244A "comprised in a period" are significant. In clause (b) of section 244A(1) it is provided that the interest shall be calculated at the prescribed rate for every month or of part of a month comprised in the period from the date the tax is paid to the date on which refund is granted. Similarly, in Rule 119(A) of the Rules, in clause-b thereof, it is provided that every month or part of a month comprised in a period, fraction of a month shall be deemed to be a full month. Therefore, in order to ascertain for how many months assessee would be entitled to receive interest, the number of months comprised in the period shall have to be found out. In this context, the term 'month' in our opinion, must be given the ordinary sense of the term i.e. 30 days of period and not the British calender month as defined under Section 3(35) of the General Clauses Act.

38. We are of the opinion that the definition contained in Section 3(35) of the General Clauses Act defining the term 'month' cannot be adopted for the purpose of sub-section (1) of Section 244A of the Act. Such importation of the definition would lead to anomalous situation. For example, the assessee who pays tax on 1st January of a particular year and is granted refund on 28th of February of the same year, would be entitled to receive interest for two months. If the contention of the assessee in the present case is accepted, in a case where the assessee pays tax on 31st January and is granted refund on 1st February of the same year, shall also be entitled to interest for two full months. This would be so because the assessee contends that for the purpose of sub-section (1) of Section 244A the term 'month' should be understood as British Calender month and since Rule 119(A) of the Rules provides for ignoring a fraction of month and granting interest for the full month instead, the assessee in the second example given above should receive interest for month of January as well as for the month of February. To our mind such interpretation would only lead to anomalous situation and should therefore be avoided.

39. As already noted earlier, various decisions cited before us adopting the definition of term month contained in section 3(35) of the Act were rendered in the background of penal provisions contained in Section 271(1)(a) of the Act. The said provision prescribes penalty for non-filing or late filing of returns and the penalty is to be calculated on every month of such default. Under this background various Courts were of the opinion that the term 'month' must be understood as defined under Section 3(35) of the General Clauses Act. The Courts were of the opinion that there



is nothing repugnant in Section 271(1)(a) of the Act so as to reject the applicability thereof. In the present case, however, we find that there are inbuilt indications why the term month must not be understood as British calendar month. Any other interpretation as already observed would lead to anomalous situation.

40. Before closing we may also notice the decision of the Bombay High Court in the case of Asian Paints Ltd. (supra) which was arising in the background of controversy whether the tax calculated by an authorized agent of the Central Government would be sufficient to complete the tax payment or whether any delay on the part of such authorized agent to credit such amount to the account of Central Government would be relevant factor for calculating interest under Section 244A of the Act. It was the case wherein the assessee deposited a cheque for the amount of tax demanded with authorized agent of Central Government on 29th December, 2003 and account of assessee was debited to that extent on 30th December, 2003 but credited to the Central Government account only on 1st January, 2004. The question was can the tax be said to have been paid on 30th December or on 1st January. Of course after holding that the tax was paid on 31st December 2003, the High Court further went out to observe that as per the Rule 119(A)(b) of the said Rules, upon refund, the assessee had to be granted interest for the entire period of December, 2003. We cannot, however, read such observation as the ratio of the decision of the Court. What was the controversy and what was decided by the Court was the actual date of payment of the tax i.e. 30th December, 2003 when the assessee's account was debited and not 1st January, 2004 when such amount was credited to the account of the Central Government. Any further observation regarding the eligibility of the assessee to receive interest for full month of December, 2003 must, therefore, be understood as passing remarks. This issue was not be debated before the Bench and the observations made hereinabove cannot be understood as ratio of the decision.

41. In the result we are of the opinion that Tribunal committed error in holding that the assessee would be entitled to interest for both the months in entirety irrespective of dates when the tax was paid and refunded /adjusted. We answer the question in favour of the Revenue and against assessee. The judgment of the Tribunal is set aside.”

7.3 The above decision in the case of Arvind Mills Limited (supra) was rendered in the context of provisions of Section 244A of the 1961 Act. We have also noted that Hon'ble Allahabad High Court in the case of CIT v. Laxmi Rattan Cotton Mills Co. Ltd., reported in (1974) 97 ITR 285 (All. HC) has also interpreted 'month' in context of Section 271(1)(a) of the 1961 Act, by holding as under:-

“The Income-tax Appellate Tribunal, Allahabad, has under section 256(1) of the Income-tax Act, 1961, referred the following two questions for our opinion:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the word 'month' occurring in section 271(1)(a)(i) referred to English calendar month?



2.*****

The assessee did not file his return for the assessment year 1958-59 by November 15, 1958, up to which date the Income-tax Officer had allowed time. The return was filed on February 18, 1959 after about three months of the expiry of that date. After the assessment had been completed on April 1, 1962, the Income-tax Officer initiated penalty proceedings under section 271(1)(a) of the Income tax Act, 1961, and after giving an opportunity to the assessee, imposed a penalty of Rs. 1,00,348.

In respect of two questions which have been referred to us, it was urged by the assessee that inasmuch as the word "month" had not been defined in the Act, the meaning given to that word in section 3(35) of the General Clauses Act should be adopted, and the word "month" should be taken to be the English calendar month, and as such the period of default committed by the assessee would be of only two months, inasmuch as a part of November and a part of February in which default occurred was not for the whole calendar month, and had as such to be excluded. As regards the amount of penalty that could be imposed for the default, it was contended that while computing "the tax payable" on which the penalty had to be imposed, the advance tax and the taxes paid as per provisional assessment had to be deducted, and the penalty had to be worked out on the basis of this reduced amount. The Tribunal held that the word "month" occurring in section 271(1)(a)(i) of the Act meant a full calendar month, and inasmuch as the assessee was in default for only two full calendar months, i.e., December and January, the penalty could be levied only in respect of two months' default. It also held that inasmuch as the penalty is imposable under section 271(1)(a) of the Act, on the basis "of tax, if any, payable" and not on the total amount of tax, the penalty that was imposable on the assessee was to be calculated with reference to tax found due on the date of the completion of the assessment, subject to its final computation by the appellate authorities. Inasmuch as the answer to the question referred depends on the interpretation to be put on section 271(1)(a)(i) of the Act, we are extracting that section:—

"In the cases referred to in clause (a), in addition to the amount of the tax, if any, payable by him, a sum equal to two per cent. of the tax for every month during which the default continued, but not exceeding in the aggregate fifty per cent. of the tax."

Coming now to the first question, section 271(1)(a)(i) of the Act is a penal provision, and in the event of the default contemplated by this section, an assessee becomes liable to payment of penalty at the rate of 2% of the tax for "every month during which the default continued". The word "month" has not been defined in the Act. The Tribunal has, however, taken this word to mean "a calendar month" by referring to



section 3(35) of the General Clauses Act, which defines "a month" as meaning a month reckoned according to the English calendar month. This definition, however, in view of the opening part of section 3 of the General Clauses Act, can be read into a statute provided there is nothing repugnant in the subject or context of the statute. It as such has to be seen whether the meaning given in the General Clauses Act to the word "month" is repugnant to the context. It is settled that the word "month" is normally understood to mean "a lunar month", i.e., a period of thirty days. (See *Simpson v. Margitson* [1847] 11 QB 23, 31, *Ryalls v. R.* [1848] 11 QB 781, 798, *Rogers v. Kingstonupon-Hull Dock Co.* [1864] 4 New Rep. 494, 496, *Schiller v. Peterson & Co. Ltd.* [1924] 1 Ch. 394, 420, 421 (CA), *Phips (P.) & Co. (Northampton and Towcester Breweries) Ltd. v. Rogers* [1925] 1 KB 14, 26, 27 (CA) and *South British Fire and Marine Insurance Co. v. Brojo Nath Shaha* [1909] ILR 36 Cal. 516 [FB]. Although these cases do not deal with the interpretation to be put on the word "month" as occurring in a statute, and relate to cases relating to contract, they throw light on the meaning of the word as commonly understood. This court in the case of *Misri Lal v. Jwala Prasad* [1962] ILR 1 All. 761 has, however, taken the view that, in some cases, the word "month", as occurring in a statute, may be taken to mean a period of thirty days. On an examination of the scheme and purpose of this section, we are of the view that the word "month" as occurring in this sub-section must be taken to mean a period of thirty days. This provision was enacted for the purpose of imposing a penalty on an assessee who had not filed his return during the prescribed time, and was enacted to serve as a deterrent for such lapses. The penalty is imposable for every month during which the default continues. If the meaning ascribed to this word in the General Clauses Act is adopted, it may in some cases lead to a defaulting assessee escaping penalty altogether, in spite of default. To take an illustration: Let us assume that time is given to an assessee up to the 30th of January in a particular year for filing a return and he defaults. He, thereafter, files his return on the 27th February. If the word "month" occurring in the section is taken to mean a full calendar month, the assessee in such a case would not be liable for any amount of penalty. Such a result is not contemplated by the language of the sub-section, for the sub-section in clear and unambiguous terms makes every assessee liable for penalty during the period of default. In the circumstances, it is not appropriate to import the meaning of the word "month" given in the General Clauses Act in the sub-section, for it does not fit in with the context and scheme of the section, and results in some cases in setting at naught the purpose of the enactment. We are thus of the view that the Tribunal was not right in holding that the word "month" occurring in this sub-section refers to the English calendar month.

We, therefore, answer the first question in the negative and in favour of the Commissioner,.....bear their own costs”

7.4 . We have also noted that Delhi Tribunal in the case of *E.I DuPont India Private Ltd. v. DCIT* in ITA no. 386 & 387/Del/2016 vide order dated 24.01.2019 in context of section 201(1A) has interpreted month as period of 30 days and not a British calendar month by relying upon aforesaid decision of Hon'ble Gujarat High Court in the case of *Arvind Mills Limited(supra)* , by holding as under:-



“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 month

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”.

7.5 Further , we have noted that Ahmadabad-tribunal in SMC Bench in ITA no. 1955 to 1965/Ahd/2015 vide common order dated 15th September 2015 in context of section 201(1A) of the 1961 Act has interpreted the „month” as period of 30 days , wherein Hon’ble tribunal held the said provision to be compensatory in nature, by holding as under:-

“4. I have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. Section 201(1A), for ready reference, is reproduced below:

(1A) Without prejudice to the provisions of subsection (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—

(i) at one per cent 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; and

(ii) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid, and such interest shall be paid before



furnishing the statement in accordance with the provisions of sub-section (3) of section 200:

Provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso to sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident

6. The provision is quite simple and unambiguous inasmuch 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 here is a measurement of period for which time value of money is to be compensated. If a person ought to have deducted the tax on, say, 21st of October and he actually does so on 3rd of November, the period for which the Government is deprived of its legitimate taxes is less than a month. However, if we go by the interpretation canvassed by the Assessing Officer, which has the approval of the CIT(A) as well, this will be a period of two months – i.e. a part of October as also a part of November. Such a result is clearly incongruous. As for the alternate contention of the revenue, i.e. the period of a month could at best be taken as thirty days and, therefore, the period of 7th November 2010 to 14th December 2012 should be constructed as 26 months, it is also devoid of any merits. If that is the principle to be followed, when a person required to deduct tax at source on 21st March, actually deducts the tax at source on 18th 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 also, thus, leads to incongruous, and, if I may say so, somewhat absurd results. Clearly, therefore, approach followed by the authorities below does not merit my approval

7. There is no dispute 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. Section 3(35) of the General Clauses Act 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 inasmuch as when —there is anything repugnant in the subject or the context”, this definition can be discarded. It is the context in which the matter is being examined that must be treated as decisive factor. The levy of interest under section 201(1A) is compensatory in nature and it represents the time value of money attributable to delay in deduction of tax at source. What is to be thus 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. Now, if one has to compute the months as per the British calendar, the period from 21st October to 3rd November, as taken in the first example, is less than a month because it is only when the same date comes in the next month, the period of one month can be said to have elapsed. Similarly, the period of 21st March to 18th March of the subsequent year, as per the British calendar, is less than 12 months since the period of twelve months has not elapsed in between these two dates. Coming to the case in hand, the period of time gap between 16th November 2010 to 14th December 2012 is less than 25 months because, on 14th December 2012, the period of 25 months has not elapsed from 16th November, 2010. The period which is elapsed between these two dates is 24 months and 28 days. Going by the provisions of the General Clauses Act, therefore, the period of time between 16th November 2010 to 14th December 2012 is less than 25 months, and, accordingly, interest under section 201(1A) could not have been levied for a period of more than 25 months.

8. During the course of arguments before me, the connotations of 'calendar month' were argued at length but these discussions proceeded on the fallacious assumption that the expression 'month', appearing in Section 201(1A), is either required to be interpreted as a calendar month or a period of thirty days. As a matter of fact, as evident from the discussions above, the expression 'month' refers to "a month reckoned according to the British calendar". "A month as per the British calendar" and "a month reckoned (emphasis supplied by me) as per British calendar" are not the same thing and cannot be used interchangeably. While 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.

9. As I have decided the matter on the first principles and in the light of the plain meanings of the statutory provisions in the given context, and as learned Departmental Representative has not invited my attention to any judicial precedent holding to the contrary in this context, it is not really necessary to deal with judicial precedents in somewhat similar situations or to draw strength from those judicial precedents. I leave it at that.

10. In view of the above discussions, as also bearing in mind entirety of the case, I uphold the grievance of the assessee that, on the facts of this case, interest under section 201(1A) could not have been charged for more than 25 months. The Assessing Officer is, accordingly, directed to recompute the interest under section 201(1A) in the light of my observations above.

11. In the result, all the eleven appeals are allowed. Pronounced in the open court today on the 15th day of September, 2015."

7.6 Further , we have noted that Hyderabad-tribunal in Navayuga Quazigund Expressway Private Ltd. v. DCIT in ITA No. 1651/Hyd/14 vide order dated 13.03.2015 has held that „month" is to be interpreted as period of 30 days and not



British Calendar Month in context of Section 201(1A) of the 1961 Act, by holding as under:-

“ 5. We have heard the arguments of both the sides and also perused the relevant material on record. The issue involved in this appeal relates to the computation of interest payable by the assessee under S.201(1A), the provisions of which read as under-

“201.(1)..... (1A) Without prejudice to the provisions of subsection (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deduction fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest, -

(i) At one percent 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; and

(ii) At one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid; and such interest shall be paid before furnishing the statement in accordance with the provisions of subsection (3) of section 200; Provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso to sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident:ll

The procedure to be followed for calculating the interest payable by the assessee or by the Central Government is given in Rule 119A of Income-tax Rules, 1962 as under-

“119A. In calculating the interest payable by the assessee or the interest payable by the Central Government to the assessee under any provisions of the Act-

(a) where interest is to be calculated on annual basis, the period for which such interest is to be calculated shall be rounded off to a whole month or months and for this purpose any fraction of a month shall be ignored; and the period so rounded off shall be deemed to be the period in respect of which the interest is to be calculated;

(b) where the interest is to be calculated for every month or part of a month comprised in a period, any fraction of a month shall be deemed to be a full month and the interest shall be so calculated;



(c) the amount of tax, penalty or other sum in respect of which such interest is to be calculated shall be rounded off to the nearest multiple of one hundred rupees and for this purpose any fraction of one hundred rupees shall be ignored and the amount so rounded off shall be deemed to be the amount in respect of which the interest is to be calculated.¶

6. In the present case, clause (ii) of S.201(1A) read with Clause (b) of Rule 119A is applicable and it provides that where the interest is to be calculated for every month or part of a month comprised in a period, any fraction of a month shall be deemed to be a full month, and the interest shall be so calculated. The dispute in this context as involved in the present case is whether the month for such calculation of interest is to be taken as a British calendar month or a period of 30 days. It is observed that similar controversy had arisen in the case of CIT V/s. Arvind Mills Limited (2011)16 Taxman.com.291 (Guj), wherein the assessee claimed interest under S.244A on the basis of British calendar month. The claim of the assessee, although was not allowed by the Assessing Officer as well as the learned CIT(A), the Tribunal allowed the same. When the matter was carried before the Hon'ble Gujarat High Court in an appeal filed by the Revenue, Their Lordships held that a reading of sub-section (1) of S.244A, the relevant provisions of which are analogous to the provisions of clause (ii) of S.201(1A) read with Rule 119A, would make it clear that 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 S.3(35) of the General Clauses Act. It was held that the definition given in General Clauses Act cannot be adopted for the purposes of subsection (1) of S.244A as such importation of the definition would lead to anomalous situation. In our opinion, the ratio of the decision of the Hon'ble Gujarat High Court in the case or CIT V/s. Arvind Mills Limited (supra) is squarely applicable in the present case, and there being no decision cited by the learned Departmental Representative of any High Court taking a contrary view, we respectfully follow the decision of the Hon'ble Gujarat High Court in the case of Arvind Mills Limited (supra) and direct the Assessing Officer to recompute the interest payable under S.201(1A) by taking a period of 30 days as a month instead of British calendar month.

7.7 The learned DR could not controvert the above position and no contrary decision is brought on record. As could be seen from above, the Hon'ble High Court as well tribunal has taken a consistent view that „month“ is to be interpreted as period of 30 days and not British calendar. There are other judgments also relied upon by assessee wherein similar view has been taken. Thus , Respectfully following the ratio of aforesaid decisions, we allow the appeal of the assessee, by holding that for purpose of computation of interest payable u/s. 201(1A)(ii) of the 1961 Act read with Rule 119A(b) of the 1962 Rules, month is to be interpreted as period of 30 days and not British Calendar Month. However, now for the purpose of computation of interest payable by the assessee in accordance with our decision in this order, we are restoring the mater back to the file of AO for limited purpose of computing the interest payable by assessee u/s 201(1A)(ii) of the 1961 Act. The AO is directed to compute interest payable by the assessee u/s 201(1A) of the 1961 Act in accordance with our decision in this order. We order accordingly.

8. In the result, appeal of the assessee in ITA no. 2295/Mum/2018 for AY 2014-15 is allowed as indicated above.”



5. Since the factual matrix as well as issue before us is identical, respectfully following the above decision of this Tribunal, taking the same view, we hold that for the purpose of computation of interest, the expression *month* is to be interpreted as period of 30 days and not British calendar. The Ld. AR has placed on record computation to submit that excess interest levied would be Rs.49,363/- which need to be reversed. We direct Ld. CPC-TDS / concerned AO to verify the same and charge interest accordingly in terms of our above order.

6. In the result, the appeal stands allowed as above.

Order pronounced in open court on 12th December, 2019.

Sd/-

(C.N. Prasad)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 12/12/2019
Sr.PS, TNMM

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**