

**(2001) 05 DEL CK 0133****Delhi High Court****Case No:** C.W.P. No. 1539 of 2001

J.D. Properties Ltd.

APPELLANT

Vs

Chief Commissioner of Income  
Tax and Others

RESPONDENT

**Date of Decision:** May 2, 2001**Acts Referred:**

- Income Tax Act, 1961 - Section 234C

**Citation:** (2001) 252 ITR 222 : (2001) 118 TAXMAN 592**Hon'ble Judges:** Dr. Arijit Pasayat, C.J.; D.K. Jain, J**Bench:** Division Bench**Advocate:** K.C. Jain, for the Appellant; R.C. Pandey, for the Respondent**Judgement**

Arijit Pasayat, C.J.

The controversy in this case lies in a very narrow compass. The petitioner filed an application before the Chief Commissioner of Income Tax, Delhi (in short "the Commissioner"), praying for waiver of interest u/s 234C of the Income Tax Act, 1961 (in short "the Act"), in relation to the assessment year 1999-2000.

2. The petitioner's case for waiver was based on its claim that it could not anticipate the bumper profit in the fourth quarter of the year. It was engaged in the purchase and sale of shares in the nature of speculation. It had deposited Rs. 2,62,500 as the first Installment of advance tax and a further sum of Rs. 27,00,000 was paid on March 15, 1999, i.e., before the last date of payment of the Installment. It was claimed that during the first, second and third quarters it had incurred losses. It was indicated that though for the quarter ended December 31, 1998, there was a net profit, the same was wiped off by the accumulated losses for the preceding two quarters. Unaudited financial results were produced to indicate that the company was not in a position to anticipate the bumper profit in the fourth quarter of the year as aforesaid. It was also indicated that the unaudited results were published in

the newspapers as required under the Companies Act, 1956 (in short "the Companies Act"). Reliance was also placed on the circular dated May 23, 1996, issued by the Central Board of Direct Taxes (in short "the Board").

3. The Commissioner considered the case for waiver and directed that waiver was to be given to the extent of 50 per cent. The following observations were made for denying complete waiver :

"An effort has also been made to support his case by the learned representative of the assessed by showing copies of accounts of five prominent brokers from whom the purchase of shares were made. The unaudited results cannot be stated to be foolproof against any manipulation of transfer of profitability of any transaction from one period to another. Be that as it may, there is however some force in the stand that when higher advance tax than the actual total liability of tax had been paid a partial waiver of interest is called for."

4. Learned counsel for the petitioner submitted that on mere surmises and unfounded presumptions the Commissioner has declined to grant full relief. Learned counsel for the respondents, on the other hand, submitted that the totality of circumstances has been taken into consideration. According to him, waiver of interest being discretionary and the Commissioner having exercised his discretion fairly, there is no scope for any interference.

5. It is, no doubt, true, as contended by learned counsel for the respondents, that waiver of interest is at the discretion of the concerned official. But the discretion must be exercised in a judicial manner and cannot be the ipse dixit of the officer and the result of any whim. The quoted portion of the order goes to show that the Commissioner has acted on presumptions and surmises. It is not known as to what extent the same had influenced the ultimate result.

6. In the circumstances, without expressing any opinion on the merits, we feel it appropriate to direct the Commissioner for a fresh consideration of the matter. The impugned order is set aside.

7. The petition stands disposed of accordingly.