

CHAPTER XII: MINISTRY OF MINES

National Aluminium Company Limited

12.1.1 Avoidable payment of interest of Rs.2.76 crore due to short payment of advance Income Tax

Incorrect estimation of taxable income and consequent short payment of advance Income Tax by the Company resulted in avoidable payment of interest of Rs.2.76 crore in respect of the financial years 2003-04 and 2004-05.

In terms of Section 211 of the Income Tax Act, 1961 (IT Act), advance tax as calculated on current income is payable in four instalments on or before 15 June, 15 September, 15 December and 15 March of each financial year. In case the assessee does not pay advance tax or underestimates the instalment of advance tax, interest at the rate of one *per cent per month* is payable under Section 234 C of the IT Act.

Audit review (November 2006) of Income Tax returns filed by National Aluminium Company Limited (Company) for the assessment years 2004-05 and 2005-06, revealed that the Company did not correctly estimate its total taxable income and total tax payable thereon, resulting in short payment of advance tax in the different quarters. Consequently, the Company had to pay an amount of Rs.5.89 crore as interest under Section 234C due to short payment of advance tax for the financial years 2003-04 and 2004-05.

It was observed that incorrect estimation of income and consequent short payment of advance tax was due to:

- (i) The rising trend in rates of the metal as reflected in the London Metal Exchange (LME) rates was not fully considered while estimating taxable income.
- (ii) Deductions for depreciation allowance were included in the calculations for advance tax without taking into consideration the progress in implementing the assets and the probable deferment in the date of their capitalisation. The Company availed depreciation benefits in the first and second quarters of 2003-04 in respect of assets projected to be commissioned in the second half of the financial year. This was not realistic as actual completion and commissioning of certain project/unit took longer time than scheduled.

Incorrect estimation of taxable income and consequent short payments of advance tax instalments resulted in avoidable payment interest of Rs.2.76 crore* after taking into consideration the prevailing cost of capital.

The Management contended (May 2007) that due to operation in a global market, it was difficult to correctly estimate future tax liability and short payment of advance tax was

* Interest paid Rs.5.89 crore minus interest saved Rs.3.13 crore

beyond their control. The Management also stated that they considered additional increase based on LME rates and other factors in all the quarters and capitalisation amount had also been reviewed in each quarter for payment of advance tax. The Ministry endorsed (October 2007) the views of the Management.

The reply was not acceptable. Review of the taxable income calculations for 2003-04 and 2004-05 showed that the Management considered metal rates lower than the prevailing LME prices during the first and second quarters of both the years leading to underestimation of advance tax payable. Similarly, likely delays in capitalisation of assets were evident from the progress reports of the schemes and projects.

Thus, due to failure in assessing the profit with reasonable accuracy the Company made short payment of advance tax resulting in an avoidable payment of interest of Rs.2.76 crore.