
(2008) 03 RAJ CK 0142
In the Rajasthan High Court

Hari Narain Soni

APPELLANT

Vs

Income Tax Officer and Another

RESPONDENT

Date of Decision : 13-03-2008

Acts Referred:

Income Tax Act, 1961 — Section 234B, 234C

Citation : (2009) 224 CTR 424 : (2010) 322 ITR 444

Hon'ble Judges : R.S. Chouhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Chouhan, J.—Mr. Hari Narain Soni, the petitioner ("the assessee", for short) has challenged the orders dt. 31st March, 1993 and 11th April, 2001 passed by the Dy. CIT, the respondent No. 1. By the former order, dt. 31st March, 1993, the respondent No. 1 had computed the taxable income of the assessee and had charged an interest under Sections 234A, 234B and 234C of the IT Act, 1961 (in short, "the Act"). By the latter order, dt. 11th April, 2001, the respondent No. 1 had revised the total taxable income of the assessee and had created a demand of Rs. 37,795. A computation sheet attached with order dt. 11th April, 2001 reveals that interest was levied under Sections 234A, 234B and 234C of the Act.

2. The brief facts of the case are that the assessee was carrying on the business of manufacturing of jewellery. According to the assessee, he was regularly submitting his returns to the IT Department. For the asst. yr. 1990-91, the assessee had declared his income as Rs. 45,000. However, on 17th Sept., 1989, his residential premises were searched by the officers of the IT Department and certain documents were recovered. On the basis of the documents, a notice u/s 143(2) of the Act was issued to the assessee. The assessee had appeared before the respondent No. 1 from time to time. However, vide order dt. 31st March, 1993, the respondent No. 1 had computed the taxable income of Rs. 12,09,130. The respondent No. 1 computed the tax at Rs. 6,30,142 and charged interest at Rs. 4,99,175. However, according to the assessee, in the order dt. 31st March,

1993, no specific direction was given indicating that the interest was being charged under Sections 234A, 234B and 234C of the Act. The order merely directed, "charge interest as per law".

3. Since, the assessee was aggrieved by the order dt. 31st March, 1993, he filed an appeal before the CIT(A). Vide order dt. 18th Feb., 1994, certain relief was granted by the CIT(A) to the assessee. Against the order dt. 18th Feb., 1994, the assessee as well as the respondent-Department preferred appeals before the learned Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (in short, "the learned Tribunal"). Vide order dt. 12th Feb., 2001, the learned Tribunal partly allowed the appeals of both the parties. Consequently, the respondent No. 1 passed an order dt. 21st March, 2001 and created an additional income of Rs. 1,43,888 along with interest. The assessee moved an application u/s 154 of the Act and in pursuance of which the respondent No. 1 passed an order on 11th April, 2001 under Sections 143(3)/250/154/253/154 of the Act and computed the total revised income at Rs. 3,19,000 and created a demand of Rs. 37,795. Further, the case of the assessee is that in the order dt. 11th April, 2001, no specific direction has been given to charge the interest under Sections 234A, 234B and 234C of the Act. However, the assessee admits that in the computation sheet attached to the said order it is clearly mentioned that interest at Rs. 11,958, Rs. 1,02,462 and Rs. 233 is being charged under Sections 234A, 234B and 234C of the Act respectively. Thereafter, on 7th Sept., 2001, the assessee moved an application before the respondent No. 1 and requested that the interest which is wrongly levied/charged under Sections 234A, 234B and 234C of the Act should be cancelled/deleted/waived. Since, the respondent No. 1 did not pay any heed to the said application, the assessee has filed the present petition before this Court challenging the orders mentioned above.

4. Mr. J.K. Ranka, the learned Counsel for the assessee, has raised the following contentions before this Court : firstly, the orders dt. 31st March, 1993 and 11th April, 2001 are non-speaking orders. For, the orders do not specifically mention that the interest is being levied under Sections 234A, 234B and 234C of the Act. Secondly, neither of these two orders reveals the "satisfaction" of respondent No. 1 for levying the interest under aforementioned sections of the Act. Thirdly, it is not sufficient in the eyes of law for the orders to merely read "charge interest as per law". According to the learned Counsel, the requirement of law is that the specific provisions of the Act have to be mentioned and the interest has to be computed and mentioned in the order itself. Fourthly, in case, the orders do not mention the specific provision of law under which the interest is being levied, then interest cannot be levied by the Department. In order to buttress his contentions, the learned Counsel for the assessee has relied upon the cases of Ranchi Club Ltd. Vs. Commissioner of Income Tax and Others , Commissioner of Income Tax and Others Vs. Ranchi Club Ltd., Smt. Tej Kumari and Ors. v. CIT and Ors. (2000) 164 CTR 201(Pat)(FB) : (2001) 247 ITR 210 (Pat)(FB), Commissioner of Income Tax Vs. Autolite (I) Pvt. Ltd., and Zakir Hussain Vs. Commissioner of Income Tax and Another,

5. On the other hand, Mr. J.K. Singhi along with Mr. Anuroop Singhi, the learned Counsel for the respondents, have contended that in the facts and circumstances of the case, interest could be charged only under Sections 234A, 234B and 234C of the Act. Therefore, when the AO directed "charge interest as per law", naturally he was referring only to the provisions mentioned above. Moreover, the order dt. 31st March, 1993 was accompanied with the Income Tax Computation Form, ITNS-150, which clearly reveals that the interest payable by the assessee is under Sections 234A, 234B and 234C of the Act. The said form also shows the amount to be paid by the assessee by way of interest as being Rs. 4,99,175. Therefore, not only the provision of law, under which the interest was being charged, was specifically mentioned, but even the amount of interest being charged, was computed and mentioned in the assessment order.

6. Secondly, even in the order dt. 11th April, 2001, passed as a consequence of order passed by the Tribunal, it has been revealed that the interest is being charged under Sections 234A, 234B and 234C of the Act. Therefore, again the provision of law and the amount chargeable as interest has been mentioned. In order to buttress their contentions, the learned Counsel has drawn the attention of this Court to Annexs. 1 and 2 of the writ petition. Hence, merely the non-mentioning of sections would not absolve the assessee from paying the interest.

7. Thirdly, since Form ITNS-150 clearly mentions the provisions of law under which the interest is being charged, and since the said form is attached with the assessment order, it should be read as a part and parcel of the assessment order itself. Likewise, in the order dt. 11th April, 2001, the words "charged accordingly" have been mentioned and in the attached form not only the provisions of law, but also the amount of interest has been mentioned. Therefore, the requirement of the law has been met. In order to support their contentions, the learned Counsel have relied upon the case of Kalyan kumar Ray Vs. Commissioner of Income Tax, West Bengal-IV, Calcutta,

8. Fourthly, according to the learned Counsel, Sections 234A, 234B and 234C of the Act use the word "shall". Therefore, these are mandatory provisions which do not leave any discretion to the AO. Hence, if the requirements of these provisions are satisfied, then the interest is to be charged as indicated in the said provisions. In order to buttress his contention, the learned Counsel has relied upon the case of Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others,

9. Fifthly, the learned Counsel have distinguished the present case from the cases relied upon by the learned Counsel for the assessee. The learned Counsel has contended that the case of Ranchi Club Ltd. v. CIT (supra) decided by the Patna High Court, and subsequently upheld by the Hon"ble Supreme Court in the case of CIT v. Ranchi Club Ltd. (supra), did not deal with the assessment order, but with the demand notice. Moreover, in the case of Ranchi Club Ltd. v. CIT (supra), the assessment order did not reveal the fact that interest would be charged. Yet still, a demand notice was issued where the interest was charged.

However, in the present case the assessment order clearly mentions that interest shall be charged. Therefore, the decision rendered in the case of Ranchi Club Ltd. v. CIT (supra) by the Patna High Court is distinguishable from the present case. Similarly, the other cases namely, Autolite (supra), Zakir Hussain (supra) and Smt. Tej Kumari (supra), the demand notice and not the assessment order was under challenge. Hence, on factual matrix, the cases are distinguishable.

10. Lastly, in the case of Kalyankumar Ray (supra), the Hon"ble Supreme Court was specifically seized with the issue whether the Form ITNS-150 is deemed to be part and parcel of the assessment order or not ? In this case, the assessment order was under challenge. The apex Court had held the said form to be part of the assessment order. Therefore, the present case is squarely covered by the case of Kalyankumar Ray (supra).

11. We have heard the learned Counsel for the parties, have perused the impugned orders and have examined the documents available on record.

12. The following legal issues arise for the consideration by this Court : whether it is the requirement of law that the specific provision under which the interest is to be charged should be mentioned in the assessment order or not ? Whether, it is sufficient for the AO merely to state in the assessment order that "the interest be charged in accordance with law" ? Whether, if the relevant provision of law is not indicating in the assessment order, can the IT Department still charge the interest under Sections 234A, 234B and 234C of the Act or not ? Whether, the Form ITNS-150, where the provision of law is clearly indicated and the interest amount is clearly computed, attached to the assessment order, should be read as a part of the assessment order or not ?

13. Interesting as these legal issues may well be, but they are no longer res Integra. For, these issues have already been answered by the Hon"ble Supreme Court. Of course, the learned Counsel for the assessee has heavily relied upon the case of Ranchi Club (supra) decided by the Patna High Court, upheld by the apex Court and subsequently followed in the case of Autolite (supra) and Zakir Hussain (supra) by this Court. But, the cases cited by him, at the Bar, are not applicable to the present case. The learned Counsel has strenuously argued that the judgment of the Patna High Court in Ranchi Club (supra) was subsequently upheld by the Hon"ble Supreme Court as the apex Court had dismissed the civil appeal in limine arising from the decision of the Patna High Court. In the case of Smt. Tej Kumari (supra), the position with regard to the dismissal of the said civil appeal by the apex Court was duly explained. Thus, it seems that the case of Ranchi Club (supra) decided by the Patna High Court is the bedrock of the entire contention of the learned Counsel for the assessee. Therefore, let us turn to the case of Ranchi Club (supra).

14. The Ranchi Club Ltd. was a company registered under the Companies Act. It had challenged the validity of the assessment order and the consequential demand notice under the Act for the asst. yr. 1991-92, so far as it related to the

levy of interest. It had also challenged the vires of Sections 234A and 234B of the Act. However, we need not be concerned with the vires of the said two sections, as the said issue is not involved in the present case. Although, with respect, the factual matrix of the case is unclear, but it seems that the Ranchi Club had filed a return for the asst. yr. 1991-92 on 19th Aug., 1992. It had clearly declared that it had collected Rs. 1,58,000 by way of "entrance fee". However, it had denied its liability to pay any tax on the said amount on the principle of mutuality. Subsequently, a best judgment assessment was made u/s 144 of the Act after the petitioner failed to file a revised return u/s 139(4) of the Act. The assessment order, however, did not mention anything about the levy of any interest. Interestingly, neither did the demand notice mention "as to under which provision of the Act the interest has been levied". Yet, in the demand notice, u/s 156 of the Act, the sum of Rs. 78,322 was mentioned as the interest payable on tax due, i.e., Rs. 69,434".

The issue which arose before the High Court was "whether the levy of interest on the tax assessed to the best of judgment u/s 144 after the assessee has filed the return u/s 139 of the Act is legally sustainable" or not ? The Court noticed that the Ranchi Club "had filed return showing an income of Rs. 9,080 on 19th Aug., 1992, along with proof of payment of self-assessed/advance tax of Rs. 5,418. The return was also accompanied by a written statement that although the club had received a sum of Rs. 1,58,000 as entrance fee from new members the amount was not liable to be included within the taxable income as being exempt from taxation on the principle of mutuality. According to the petitioner, a dispute had been coming (sic) on since the asst. yr. 1981-82 in this regard and in that view the petitioner could not have submitted a fresh return showing the aforesaid sum of Rs. 1,58,000 within the taxable income which would have virtually to renouncing its claim". From these facts, the Court held that "it is clear that there was no default in filing the return and payment of self-assessed/advance tax.... Thus, it cannot be said to be case of suppression or concealment of income". The Court further observed, "where the assessee fails to file the return of income either u/s 139(1) or (4) or Section 142(1), pursuant to the notice issued thereunder, or files the same after the due date in terms of Section 234A he is no doubt liable to pay interest. He is also liable to pay interest if he commits any default in payment of advance tax under the provisions of Section 234B. Where, however, return is filed within time but a particular item of income is in dispute as being includible within taxable income or not, the mere issue {sic} of notice u/s 142 will not confer Jurisdiction upon the authority to levy interest". Lastly, the Court held, "in my considered opinion, therefore, the necessary conditions as required u/s 234A are not made out in the instant case and, therefore, the levy of interest is not justified".

15. The case of Ranchi Club (supra) is inapplicable on the present case. For, there are material differences between the two cases. Firstly in the Ranchi Club case (supra), the assessee had clearly mentioned that the point of taxability of income generated under the heading of "Entrance fee" is a questionable

proposition. Although it had clearly mentioned the generation of Rs. 1,58,000 as the amount generated from "entrance fee" but it had argued that the same is not taxable on the principle of mutuality. Moreover, since the issue was still alive between the assessee and the Revenue, the assessee did not want to concede this point before the Revenue. But in the present case there is not a single item that is debatable between the assessee and the Revenue. Secondly, in the Ranchi Club case (supra), the assessment order did not mention about levy of any interest. Moreover, even the demand notice did not mention as to under which provision of the Act the interest has been levied. However, in the demand notice u/s 156 of the Act, the sum of Rs. 78,322, was mentioned as the interest payable on the tax due, i.e., Rs. 69,434. However, in the present case, the ITNS-150 form accompanied the assessment order. The said form not only revealed the fact that the interest was chargeable under Sections 234A, 234B and 234C of the Act but also computed the amount charged as interest under the specific provisions. Thus, unlike the Ranchi Club case (supra) in the present case, the provision and the amount leviable as interest is unequivocally mentioned in the assessment order. Similarly, in the demand notice the specific provision of law as well as the amount leviable as interest is mentioned. This was not the situation in the Ranchi Club case (supra). Lastly and most importantly, in the Ranchi Club case (supra) the condition for applicability of Section 234A of the Act was not fulfilled. However, in the present case, the conditions for applicability of Section 234A of the Act has been fulfilled. Hence the Ranchi Club case (supra) is distinguishable on the basis of the factual and legal matrix.

16. Of course, the apex Court had upheld the decision of the Ranchi Club case (supra) in the case of CIT v. Ranchi Club Ltd. (supra). However, as the decision of the Patna High Court is inapplicable to the present case, therefore, the confirmation of the said decision by the apex Court does not come to the rescue of the assessee. Although, the decision of the Ranchi Club (supra) has been followed by this Court in the cases of Autolite (supra) and Zakir Hussain (supra), but these two judgments have overlooked the existence of the decision of the Hon'ble Supreme Court in the case of Kalyankumar Ray (supra). In fact, the case of Kalyankumar Ray (supra) covers the present case.

17. In Kalyankumar's case (supra), the assessee had contended that the assessment order itself should contain the calculation of the tax, interest etc., and of the net sum payable/leviable. According to him, these details could not be relegated to the demand notice. Furthermore, since these statutory requirements were not complied with, the assessee had argued that the assessment order should be held to be void and consequently annulled. However, dismissing the contention raised by the petitioner, the Hon'ble Supreme Court has held as under:

The statute does not, however, require that both the computations (i.e., of the total income as well as of the sum payable) should be done on the same sheet of paper, the sheet that is superscribed "assessment order". It does not prescribe

any form of (sic) the purpose. It will be appreciated that once the assessment of the total income is complete with indications of the deductions, rebates, reliefs and adjustments available to the assessee, the calculation of the net tax payable is a process which is mostly arithmetical but generally time consuming. If, therefore, the ITO first draws up an order assessing the total income and indicating the adjustments to be made, directs the office to compute the tax payable on that basis and then approves of it, either immediately or some time later, no fault can be found with the process, though it is only when both the computation sheets are signed or initialed by the ITO that the process described in Section 143(3) will be complete.

The Hon'ble Supreme Court further observed that Form ITNS-150 is also a form for determination of tax payable and when it is signed or initialed by the ITO, it is certainly an order in writing by the ITO determining the tax payable within the meaning of Section 143(3) of the Act. The Hon'ble Supreme Court further held that "we are unable to see why this document, which is also in writing and which has received the imprimatur of the ITO, should not be treated as part of the assessment order in the wider sense in which the expression has to be understood in the context of Section 143(3). There is no dispute in the present case that the ITO has signed the Form ITNS-150. We therefore, think that the statutory provision has been duly complied with and that the assessment order was not in any manner vitiated".

18. A bare look at the assessment order dt. 31st March, 1993 clearly reveals that Form ITNS-150 had accompanied the assessment order. The said Income Tax computation form was duly signed by the ITO. The said form clearly reveals that the interest payable by the petitioner-assessee was under Sections 234A, 234B and 234C of the Act and the amounts payable under the provisions were also clearly mentioned. The total amount of interest to be paid was also unequivocally mentioned. Since the said form was attached to the assessment order, since the said form was signed by the ITO, relying on the case of Kalyankumar Ray (supra), this Court has no hesitation in holding that the assessment order had specified all the provisions of law, under which the interest was leviable and the amount of interest to be charged from the assessee. Moreover, the impugned order dt. 11th April, 2001 was passed in consequence of order passed by the learned Tribunal. The said order also reveals that the interest is being charged under Sections 234A, 234B and 234C of the Act and also reveals the amount of interest to be charged. Thus, it cannot be held that the assessment order did not reveal the specific provision of law under which the interest is to be charged. Similarly, the impugned order dt. 11th April, 2001 also clearly revealed the specific amount to be charged as the interest. Therefore, the contention of the learned Counsel for the assessee that the specific provisions of law and the amount, to be charged as interest, have not been revealed in the assessment order dt. 31st March, 1993 and in the order dt. 11th April, 2001, is without force.

19. Prior to the Finance Act, 1987, Sections 234A, 234B and 234C of the Act had

used the word "may". However, in 1987, the word "shall" was substituted for the word "may". Since the word "may" has been substituted by the word "shall", such a substitution clearly indicates that the intention of the legislature was to make the payment of interest as mandatory in nature and not merely directory. This view has been confirmed in the case of Anjum M.H. Ghaswala and Ors. (supra). Therefore once the conditions of Sections 234A, 234B and 234C of the Act are satisfied, the AO has no option but to charge the interest at the rate mentioned in the said provisions. Therefore, the contention of the learned Counsel for the assessee that the AO must indicate his "satisfaction" in the assessment order for charging the interest is without force.

20. Lastly, the assessee had challenged the assessment order before the CIT(A) and had raised the issue about the charging of interest. The same issue was also raised before the learned Tribunal. However, both the CIT(A) and the learned Tribunal have rejected his contentions and according to our opinion, rightly so.

21. For the reasons stated above, this writ petition has no merit and it is hereby dismissed. No order as to costs.