(2012) 09 SC CK 0134

In the Supreme Court Of India

Case No : Civil Appeal No. 1937 of 2007

Karanvir Singh Gossal APPELLANT

Vs

Commissioner of Income Tax and Another RESPONDENT

Date of Decision : 06-09-2012

Acts Referred:
Income Tax Act, 1961 — Section 119, 119(2), 234A, 234B, 234C

Citation : (2012) 254 CTR 96 : (2012) 349 ITR 692 : (2012) 210 TAXMAN 241

Hon'ble Judges : S.H. Kapadia, C.J;Madan B. Lokur, J

Bench : Division Bench

Advocate : Shobha and Sriram Krishna, for the Appellant; Rajiv Dutta with Arijit Prasad, Rahul Kaushik, Rupesh Kumar, Yatinder Choudhary, V.K. Biju, Ritesh Kumar, Piyush Sanghi, Shweta Gupta, Sidharth Tyagi, Arjun Pal and Anil Katiyar for B.V. Balaram Das, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Learned Counsel on both sides.

2. The short point Involved in the present case is whether levy of interest under Sections 234A/234B of the Income Tax Act, 1961 (for short, 'the Act'), is mandatory or not. At one point of time there was a doubt on the nature of interest payable by the Assessee under Sections 234A/234B of the Act. That controversy stood finally settled by a Five-Judge Bench decision of this Court in the case of Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, This judgment is binding on us. In the said judgment, this Court held in unequivocal terms that interest under Sections 234B/234C is mandatory in nature. In view of the said decision, we are of the opinion that there was no need for the AO to specifically recite in the order of assessment that penalty proceedings should be initiated, as contended on behalf of the Assessee.

3. It is true that at one point of time, prior to the decision in Anjum M.H. Ghaswala's case (supra), there was a conflict of opinion amongst various High Courts in India. One such case was the judgment of Patna High Court in the case

of Uday Mistanna Bhandar and Complex, Tej Kumari Devi and Ranchi Club Ltd. Vs. Commissioner of Income Tax and Others, Against the judgment of the Patna High Court, the civil appeal was dismissed by this Court in the case of Commissioner of Income Tax and Others Vs. Ranchi Club Ltd., However, that dismissal is by a Three-Judge Bench, whereas the judgment of Anjum Ghaswala's case (supra) is of a Five-Judge Bench of this Court. Be that as it may, the position that emerges after the judgment of this Court in Anjum Ghaswala's case (supra) is that if interest is leviable in a given' case under Sections 234B/234C, then in such a case that levy is mandatory and compensatory in nature. The recitation by the AO directing institution of penal proceedings is not obligatory and penal proceedings could be initiated for such default without a specific direction from the AO. In this particular case we have to follow the judgment in Anjum Ghaswala's case (supra) in toto. In the said judgment it has been held that in appropriate cases, the Chief CIT has an authority to waive the interest. We quote hereinbelow the relevant portion of the judgment in Anjum Ghaswala's case (supra), which reads as under:

The learned Solicitor General has pointed out that by virtue of the power vested in the Board u/s 119(2)(a) of the Act, the Board has issued circular by Notification No. F. No. 400/234/95-IT(B), dt. 23rd May, 1996. As per this circular, it has empowered that the Chief CIT and Director-General of IT may waive or reduce interest charged under Sections 234A, 234B and 234C of the Act in the class of cases or class of incomes specified in para 2 of the said order for the period and on conditions which are enumerated therein. He submitted that in view of the said circular, the same authority can be exercised by the Commission since the said circular would amount to relaxation of the rigour of Sections 234A, 234B and 234Cof the Act. We are in unison with this submission of the learned Solicitor General. This Court in a catena of cases has held that the circulars of the CBDT are legally binding on the Revenue: see UCO Bank, Calcutta Vs. Commissioner of Income Tax, West Bengal, . Since these circulars are beneficial to Assessees, such benefit can be conferred also on Assessees who have approached the Settlement Commission u/s 245C of the Act on such terms and conditions as contained in the circular. In our opinion, it is for this purpose that Section 245Fof the Act has empowered the Settlement Commission to exercise the power of an IT authority under the Act. We must clarify here that while exercising the power derived under the circulars of the Board, the Commission does not act as a subordinate to the Board but will be enforcing the relaxed provisions of the circulars for the benefit of the Assessee in the process of settlement.

For the reasons stated above, we hold that the Commission in exercise of its power u/s 245D(4) and (6) does not have the power to reduce or waive interest statutorily payable under Sections 234A, 234B and 234C except to the extent of granting relief under the circulars issued by the Board u/s 119 of the Act.

4. In the present case, the Assessee is placing reliance on the circular issued by

the CBDT, which has been referred to and mentioned in the above extracted portion in Anjum Ghaswala's case (supra). This aspect has not been considered in the present case by the High Court in its impugned order. It has not been considered even by the Tribunal.

5. For the above reasons, we set aside the impugned orders of the Tribunal as also of the High Court. We direct the Tribunal to consider whether the Assessee would be entitled to waiver of interest under the Circular bearing No. 400/234/95-IT(B) dt. 23rd May, 1996, which has been referred to by this Court in the case of Anjum Ghaswala (supra).

6. To this limited extent, the civil appeal stands allowed and the matter is remitted to the Tribunal to decide the question of applicability of the said circular to the facts of this case.

No order as to costs.

