
(1996) 07 PAT CK 0020

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 2732, 2780, 3287, 3494, 3527, 3562, 3609 and 3782 of 1995 (R)

Uday Mistanna Bhandar and Complex, Tej Kumari Devi and
Ranchi Club Ltd.

APPELLANT

Vs

Commissioner of Income Tax and Others

RESPONDENT

Date of Decision : 02-07-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 156, 234A, 234B, 234C

Citation : (1996) 222 ITR 44 : (1997) 90 TAXMAN 500

Hon'ble Judges : D.P. Wadhwa, C.J.; S.K. Chattopadhyaya, J

Bench : Division Bench

Advocate : Ajit Moitra, for the Appellant; Debi Prasad, Senior Advocate and K.K. Jhunjhunwala, for the Respondent

Judgement

D.P. Wadhwa, C.J.—In these eight writ applications, we have heard common arguments. The questions raised are with respect to chargeability of interest under Sections 234A, 234B and 234C of the Income Tax Act, 1961 (for short, "the Act"). These sections were inserted by the Direct Tax Laws (Amendment) Act, 1987, with effect from April 1, 1989. A Bench of this court in Ranchi Club Ltd. Vs. Commissioner of Income Tax and Others, while interpreting Sections 234A and 234B of the Act, held that interest under these sections should not be charged on excess tax as per income determined under Sections 143(3)/144 of the Act and said that interest u/s 234A was leviable on the tax on the total income as declared in the return. The correctness of this decision has been doubted before us by the Revenue and it has been submitted that the matter be referred to a larger Bench for an authoritative decision.

2. While Section 234A deals with levy of interest for default in furnishing return of income; u/s 234B interest has to be levied for defaults in payment of advance tax and u/s 234C interest is payable for deferment of advance tax. Since the aforesaid decision of this court in Ranchi Club Ltd. Vs. Commissioner of Income

Tax and Others really interpreted the provisions of Section 234A, we may set out the relevant part of this section as under :

"234A. Interest for defaults in furnishing return of income.--(1) Where the return of income for any assessment year under Sub-section (1) or Sub-section (4) of Section 139, or in response to a notice under Subsection (1) of Section 142, is furnished after the due date, or is not furnished, the assessee shall be liable to pay simple interest at the rate of two per cent. for every month or part of a month comprised in the period commencing on the date immediately following the due date, and,--

(a) Where the return is furnished after the due date, ending on the date of furnishing of the return ; or

(b) Where no return has been furnished, ending on the date of completion of the assessment u/s 144, on the amount of the tax on the total income as determined under Sub-section (1) of Section 143 or on regular assessment as reduced by the advance tax, if any, paid and any tax deducted or collected at source.

Explanation 1.--In this section, "due date" means the date specified in Sub-section (1) of Section 139 as applicable in the case of the assessee.

Explanation 2.--In this sub-section, "tax on the total income as determined under Sub-section (1) of Section 143" shall not include the additional Income Tax, if any, payable u/s 143.

Explanation 3.--Where, in relation to an assessment year, an assessment is made for the first time u/s 147, the assessment so made shall be regarded as a regular assessment for the purposes of this section.

Explanation 4.--In this sub-section, "tax on the total income as determined under Sub-section (1) of Section 143 or on regular assessment" shall, for the purposes of computing the interest payable u/s 140A, be deemed to be tax on total income as declared in the return.

(2) The interest payable under Sub-section (1) shall be reduced by the interest, if any, paid u/s 140A towards the interest chargeable under this section. . . ."

3. While coming to the conclusion that interest u/s 234A was leviable on the tax on the total income as declared in the return this court had placed reliance on Explanation 4 to Section 234A, the decision of the Supreme Court in J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, and on the general principle that interest was payable in future only after the dues were finally determined.

4. In this batch of eight writ applications, five pertain to cases of the Ranchi Club itself. The earlier decision in the case of Ranchi Club Ltd. Vs. Commissioner of Income Tax and Others was with respect to the assessment year 1991-92. Now the assessment years involved are 1989-90, 1990-91, 1992-93, 1993-94 and 1994-95. In two cases for the assessment years 1989-90 and 1990-91, the

assessee is Tej Kumari Devi and in the last eighth case the assessee is Uday Mistana Bhandar and the assessment year involved is 1990-91.

5. Mr. Moitra, learned counsel for the assessee, submitted that the common issues involved in the writ applications were :

(i) Whether interest under Sections 234A and 234B was liable to be charged on the tax payable on the returned income or the assessed income ?

(ii) Whether interest was chargeable under these sections only on the tax payable on such returned income which the assessee bona fide and in good faith believed to be the income liable to tax ?

(iii) Whether interest could be levied merely through a notice of demand u/s 156 of the Act where there was no specific order in the assessment order that interest was leviable and for charging such interest ?

(iv) Whether mere insertion of the words in the assessment order "charge interest, if any" or "charge interest as per rules" was sufficient for charging interest through the notice of demand ?

(v) Whether appeal lay against the order for charging interest under Sections 234A and 234B of the Act ?

6. Mr. Moitra did not challenge the vires of Sections 234A and 234B as the validity had been upheld in the earlier Bench decision of this court in the case of Ranchi Club Ltd. Vs. Commissioner of Income Tax and Others . Mr. Moitra strongly relied on the aforesaid decision in support of his first two submissions.

7. To understand the rival contentions better it will be advantageous to refer to some of the proceedings before the Income Tax authorities in each of these matters.

8. C. W. J. C. No. 3287 of 1995(R)-Uday Mistana Bhandar (Assessment year 1990-91) :

Assessment order is dated September 22, 1994. The operative portion of the order reads :

"Assessed u/s 143(3)/251 on total income at Rs. 87,060 charge interest, if any. Issue D. N. and challan."

9. Then as per notice of demand u/s 156 of the Act, interest is charged u/s 234A at Rs. 8,854 and that u/s 234B at Rs. 16,756. The petitioner challenges the assessment order and the notice of demand.

10. C. W. J. C. No. 2732 of 1995(R)--Tej Kumari Devi (Assessment year 1989-90) :

Assessment order is dated July 7, 1994, and is u/s 143(3) of the Act on the total income of Rs. 1,80,040. In the assessment order there is specific order to charge

interest under Sections 234A, 234B and 234C. However, as per notice of demand u/s 156, interest u/s 234A is charged at Rs. 84,332 and that u/s 234B at Rs. 93,056. When the assessee filed the appeal challenging this charging of interest, the Commissioner of Income Tax (Appeals) in his appellate order dated December 15, 1994, observed as under :

"The next objection of the appellant is regarding the charging of interest under Sections 234A and 234B of the Income Tax Act. According to learned counsel the appellant was not liable to pay any interest. In my opinion any order for charging interest under Sections 234A and 234B is not an appealable order. I, therefore, refrain from making any comment on chargeability of the interest under these two sections in the case of the appellant. However, I direct the Assessing Officer to examine the appellant's claim and take appropriate decision in the matter."

11. C. W. J. C. No. 2780 of 1995(R)--Tej Kumari Devi (Assessment year 1990-91) :

Regular assessment was made u/s 143(3)/144A on a total income of Rs. 12,89,760. There was a specific order to charge interest under Sections 234A, 234B and 234C of the Act. The interest charged under these sections respectively was Rs. 94,304, Rs. 5,72,864 and Rs. 15,156. The appeal filed against the assessment order was partly allowed by the order dated March 3, 1994, by the Commissioner of Income Tax (Appeals) and after giving effect to the appellate order interest charged under Sections 234A and 234B was levied in the sum of Rs. 15,980 and Rs. 55,930, respectively.

12. Out of the remaining five cases which are of Ranchi Club in the cases for the assessment year 1992-93 (C. W. J. C. No. 3494 of 1995(R)), the assessment year 1993-94 (C. W. J. C. No. 3527 of 1995(R)) and the assessment year 1994-95 (C. W. J. C. No. 3609 of 1995(R)), the operative portions of the orders read as under :

"Assessed u/s 143(3) of the Income Tax Act, 1961, on total income of (as determined in each case). Issue demand notice, challan and copy of order and charge interest, if any."

13. In the demand notices interest has been charged under Sections 234A, 234B and 234C.

14. In C. W. J. C. No. 3562 of 1995(R), the assessment year is 1990-91. After arriving at the total income, the operative portion of the order reads as under :

"Penalty proceedings u/s 271(1)(c) is initiated. Charge interest as per rules.

Assessed u/s 143(3). Issue D.N., etc., tax as per ITNS-150 enclosed."

15. In the notice of demand, interest has been charged under Sections 234A, 234B and 234C.

16. In the 5th case of Ranchi Club, C.W.J.C. No. 3782 of 1995(R), the

assessment year is 1989-90. We do not find the assessment order though a notice of demand u/s 156 has been filed. It is stated that a sum of Rs. 1,80,379 is payable as per details on the reverse of the notice. There are, however, no such details. The assessee has filed the Income Tax computation form in which, however, there is a mention of the amount of interest charged under Sections 234A, 234B and 234C. Though in the other writ applications, there is a challenge to the order charging interest, with respect to interest charged in this writ application (C.W.J.C. No. 3782 of 1995(R)), the prayer is that judgment be given in terms of the earlier decision of this court in Ranchi Club Ltd. Vs. Commissioner of Income Tax and Others .

17. So far as the issues (iii) and (iv) raised by Mr. Moitra are concerned, we see no difficulty in setting aside the notices of demand claiming interest under any of these Section 234A, 234B or 234C.

18. Section 156 of the Act is as under :

"156. Notice of demand.--When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Assessing Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable."

19. From the bare reading of Section 156 it is clear that notice of demand claiming interest can be issued only when there is order in the assessment order levying interest. Except in the cases of the assessee Tej Kumari Devi (C. W. J. C. No. 2732 of 1995(R) and C. W. J. C. No. 2780 of 1995(R)) there is no order in any of the assessment orders levying interest under any of the Sections 234A, 234B or 234C. To use the expression "charge interest, if any" or "charge interest as per rules" cannot be read to mean that the Assessing Officer has passed orders "charge interest under all the aforesaid sections". The order to charge interest has to be specific and clear, as for that matter any order to charge any tax, penalty or fine. It is different thing as in the case of Tej Kumari Devi where there is an order levying interest but it left the calculation to the office. The assessee must be made to know that the Assessing Officer after applying his mind has ordered the charging of interest and under which of the sections of the Act. Interest is payable under various provisions like for default or delay in furnishing the return of income [Sections 139(8) and 139(9)] and also under the various sections for default in payment of advance tax (Sections 215, 216, 217, 234B and 234C). A notice of demand is somewhat like a decree in a civil suit which must follow the order. When a judgment does not specify any amount to be charged under any particular section, the decree cannot contain any such amount. Similarly when the assessment order is silent if any interest is leviable, the notice of demand u/s 156 of the Act cannot go beyond the assessment order and the assessee cannot be served with any such notice demanding interest. We, therefore, do not feel any difficulty in coming to the conclusion that the notices of demand in C.W.J.C. Nos. 3609 of 1995(R), 3287 of 1995(R), 3562 of 1995(R), 3494(R) of 1995 and 3527 of 1995(R), have to be quashed so far these relate to

charging of interest u/s 234A, 234B or 234C of the Act. We get support for the view which we have taken from the decisions of the Calcutta High Court in *Monohar Gidwany and Others and Smt. Bhagwanti Gidwany and Another Vs. Commissioner of Income Tax and Others*, and *Commissioner of Income Tax Vs. Wiliard India Ltd.*, and that of the Gauhati High Court in *Commissioner of Income Tax Vs. Namdang Tea Co. India Ltd.*, .

20. A preliminary objection was raised by Mr. Debi Prasad, learned counsel for the Revenue, that the petitioners in these cases could have questioned the levy of interest under Sections 234A, 234B and 234C in the quantum appeal filed by them. We do not think we should go into this question particularly when the Commissioner of Income Tax (Appeals) in one of the appeals has observed that the order charging interest u/s 234A, 234B and 234C was not an appealable order. On the analogy of the decision of the Supreme Court in *Central Provinces Manganese Ore Co. Ltd. Vs. Commissioner of Income Tax*, , it could certainly be said that in the quantum appeal the assessee could challenge the levy of interest otherwise it is apparent that there is no provision of appeal against the charging of interest under any of these sections. An appeal is a statutory right and when the statute does not give such a right it cannot be said that an appeal could be filed against the charging of interest. We do not think the assessee in the quantum appeal is bound to challenge the charging of interest though he may do so. He can certainly challenge levy of interest in a writ jurisdiction. This objection by the Revenue, therefore, fails.

21. A great deal of arguments were addressed on the correctness of the decision of this court in *Ranchi Club Ltd. Vs. Commissioner of Income Tax and Others* . Mr. Moitra said that the decision rightly held that interest u/s 234A or 234B could be charged only on the tax payable on the returned income and not on the tax payable on the assessed income. Mr. Debi Prasad said that the learned judges in the earlier case did not properly interpret the expression "be deemed to be tax on total income as declared in the return" as contained in Explanation 4 to Sub-section (1) of Section 234A. He gave an example that if in a given case the returned income was Rs. 50,000 and the assessed income Rs. 1,00,000 then under the deeming provision as contained in Section 234A interest can be calculated on the amount of assessed income, i.e., Rs. 1,00,000. He submitted that the Explanation was for the purpose of calculation of interest.

22. The Act provides for filing of a return of income u/s 139. The return of income can be called for under Sub-section (1) of Section 142 and Section 147 of the Act. In cases where the total tax liability of the year exceeds Rs. 1,500, the assessee has to pay tax in advance as per various provisions contained in Sections 208 to 210 of the Act. u/s 140A, the assessee will make his own assessment and pay the remaining tax (as reduced by the advance tax already paid, if any) and also interest payable u/s 234A, 234B and 234C. u/s 234A, it may be noticed, that if the assessee is caught within the mischief of this provision, then the interest on the prescribed rate has to be paid on the amount

of tax on the total income as determined under Sub-section (1) of Section 143 or the regular assessment under Sub-section (3) of Section 143 as reduced by the advance tax, if any, paid and any tax deducted or collected at source. The question which arises for consideration is as to how the assessee would pay interest u/s 234A when he had not even filed a return of income. It will appear that in a case like this there would be no question of determination of the amount of tax on the total income as determined u/s 143(1) or on regular assessment, because the event of determination of income either u/s 143(1) or on regular assessment could follow only after the return had been filed. It will appear to us that for the limited purpose of enabling the assessee to pay the interest payable by him along with the self-assessment tax to be paid u/s 140A of the Act, Explanation 4 has been inserted to give a different meaning to the word "tax" on the total income as determined under Sub-section (1) of Section 143 or on regular assessment. The deeming provision under Explanation 4, to our mind, means that the assessee's income either u/s 143(1) or on regular assessment shall be deemed to be the returned income of the assessee u/s 140A and he has to pay interest on the basis of tax calculated on the assessed income. We also feel that the ratio of the Supreme Court decision in J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, , may not, perhaps, be fully applicable while interpreting Section 234A read with Explanation 4, thereto. We are, therefore, inclined to agree with Mr. Debi Prasad that the decision of this court in Ranchi Club Ltd. Vs. Commissioner of Income Tax and Others needs reconsideration and, accordingly, we refer the following question to a larger Bench in C. W. J. C. No. 3287 of 1995(R), C. W. J. C. No. 2732 of 1995(R) and C. W. J. C. No. 2780 of 1995(R) :

"Whether interest under Sections 234A and 234B read with Explanation 4 is liable to be charged on the returned income or assessed income ?"

23. Thus while we refer the aforesaid question to a larger Bench in the cases of Uday Mistanna Bhandar (C. W. J. C. No. 3287 of 1995(R)) and Tej Kumari Devi (C. W. J. C. No. 2732 of 1995(R) and C. W. J. C. No. 2780 of 1995(R)), we will allow the writ applications filed by the Ranchi Club Limited (C. W. J. C. Nos. 3494 of 1995(R), 3527 of 1995(R), 3609 of 1995(R), 3562 of 1995(R) and 3782 of 1995(R)).

S.K. Chattopadhyaya, J.

24. I agree.