

*** THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on 27.02.2009

+ ITA 116/2007

THE COMMISSIONER OF INCOME TAX DELHI-II ... Appellant

- versus -

ANAND PRAKASH ... Respondent

With

ITA 118/2007

THE COMMISSIONER OF INCOME TAX DELHI-II ... Appellant

- versus -

ANAND PRAKASH ... Respondent

With

ITA 119/2007

THE COMMISSIONER OF INCOME TAX DELHI-II ... Appellant

- versus -

ANAND PRAKASH ... Respondent

With

ITA 120/2007

THE COMMISSIONER OF INCOME TAX DELHI-II ... Appellant

- versus -

ANAND PRAKASH ... Respondent

With

ITA 121/2007

THE COMMISSIONER OF INCOME TAX DELHI-II ... Appellant

- versus -

ANAND PRAKASH ... Respondent

With

ITA 122/2007

THE COMMISSIONER OF INCOME TAX DELHI-II ... Appellant

- versus -

ANAND PRAKASH ... Respondent

With

ITA 285/2007

THE COMMISSIONER OF INCOME TAX DELHI-II ... Appellant

- versus -

MAHA MAYA GENERAL FINANCE LIMITED ... Respondent

With

ITA 297/2007

THE COMMISSIONER OF INCOME

TAX DELHI-II ... Appellant

- versus -

MAHA MAYA GENERAL FINANCE LIMITED ... Respondent

With

ITA 298/2007

**THE COMMISSIONER OF INCOME
TAX DELHI-II** ... Appellant

- versus -

MAHA MAYA GENERAL FINANCE LIMITED ... Respondent

With

ITA 299/2007

**THE COMMISSIONER OF INCOME
TAX DELHI-II** ... Appellant

- versus -

MAHA MAYA GENERAL FINANCE LIMITED ... Respondent

With

ITA 300/2007

**THE COMMISSIONER OF INCOME
TAX DELHI-II** ... Appellant

- versus -

MAHA MAYA GENERAL FINANCE LIMITED ... Respondent

Advocates who appeared in this case :

For the Appellant : Mr R.D. Jolly

For the Respondent : Mr S.K. Khurana

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether Reporters of local papers may be allowed to see the judgment ? YES
2. To be referred to the Reporter or not ? YES
3. Whether the judgment should be reported in Digest ? YES

BADAR DURREZ AHMED, J

1. Admit.
2. The following substantial questions of law arise for determination in this set of eleven appeals under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the "said Act"):-

(1) Whether the Income Tax Appellate Tribunal was correct in law in holding that the levy of interest under Section 234B of the Income Tax Act, 1961 is in the nature of penalty and is not compensatory?

(2) Whether the Income Tax Appellate Tribunal has erred in law, in the facts and circumstances of the present cases, in deleting the levy of interest under Section 234B of the Income Tax Act, 1961?

3. These appeals pertain to two Assessees – Anand Prakash and Maha Maya General Finance Ltd. The appeals pertaining to the Assessee Anand Prakash arise out of the common order dated 20-04-2006 passed by the Income Tax Appellate Tribunal (hereinafter

referred to as the “Tribunal”) in ITA Nos 3424, 3425, 3432, 3433, 3434 and 3435/Del/2005 pertaining to the Assessment years 1990-91, 1991-92, 1992-93, 1993-94, 1994-95 and 1995-96 respectively. The five appeals pertaining to the assessee Maha Maya General Finance Company Ltd arise out of the common order dated 07-07-2006 passed by the Tribunal in ITA Nos 2215 to 2219/Del/2004 pertaining to the Assessment years 1987-88 to 1991-92 respectively. The Tribunal’s order dated 7.7.2006 merely follows its order dated 20.4.2006 in the case of Anand Prakash. The Tribunal noted that the facts in the case of Maha Maya General Finance Company Ltd for the relevant assessment years were identical to that of the Assessee Anand Prakash.

4. In respect of Anand Prakash, the Tribunal, by its impugned order dated 20.4.2006, inter alia, concluded that the chargeability of interest was in the nature of quasi-punishment and applied the decision in the case of **Star India Private Limited v. Chief Commissioner of Central Excise 280 ITR 321 (SC)** wherein the Supreme Court observed as under:-

“The liability to pay interest would only arise on default and is really in the nature of a quasi-punishment. Such liability although created retrospectively could not entail the punishment of payment of interest with retrospective effect.”

It may be pointed out that these observations were made in respect of the liability to pay service tax for the service of broadcasting. This was not a

case under the Income Tax Act, 1961. However, applying the same, the Tribunal concluded that the levy of interest under Section 234B in the case of the assessee Anand Prakash was not justified. The same conclusion was arrived at by the Tribunal in the case of Maha Maya General Finance Company Ltd by virtue of the said order dated 07.07.2006.

5. Some background facts would be necessary for us to answer the questions posed. We shall take up the factual position as obtaining in the case of the assessee Anand Prakash. Land belonging to the assessee had been acquired by the Government of Haryana on 08.03.1989 under the provisions of the Land Acquisition Act, 1994. Possession of the land was also taken over by the Government of Haryana on 18.03.1989. The assessee was not satisfied with the compensation granted initially and, therefore, an application was moved before the Additional District Judge for enhancement of compensation. By an order dated 04.04.2000, the learned Additional District Judge enhanced the compensation which also included solatium and interest. The interest amount was relatable to Assessment Years 1989-90 to 2000-01 but the same was, as a matter of fact, received by the assessee in the course of the year relating to the Assessment Year 2001-02. The Assessing Officer subsequently issued notice under Section 148 of the said Act in respect of all the Assessment Years in question. The view of the Assessing Officer was that the interest awarded under the Land Acquisition Act, 1894, was in the nature of income and that interest on enhanced compensation ordered by the

Court accrued from year to year. Consequently, since advance tax had not been paid thereon, interest under Section 234-B of the said Act became leviable, in the opinion of the Assessing Officer, on a year to year basis. It is in this context that the issue of levy on interest under Section 234B of the said Act has arisen in the present set of appeals before us. The position with respect of both the assessees is identical. The only difference being the amounts involved and the years in question. In the case of Anand Prakash, the Tribunal, by virtue of the impugned order, observed that at the time when assessee filed his original return of income for all the relevant years, there was no order for grant of interest on additional compensation and that the right to receive additional sums came to the assessee's knowledge by the order dated 04.02.2000 passed by the learned Additional District Judge, which was much later than the dates of completion of assessments by the Assessing Officer. It may also be relevant to note that the amount of interest so accrued to the assessee had been disclosed and taxed in the year of receipt. As noted above, the Tribunal was of the view that chargeability of interest was in the nature of quasi-punishment and, therefore, should not be imposed retrospectively. In coming to this conclusion, the Tribunal applied the decision of the Supreme Court in the case of *Star India Pvt. Ltd (supra)*. Consequently, the Tribunal directed the Assessing Officer to delete the interest so charged under Section 234B of the Act in respect of the years under appeal. This order dated 20.04.2006 was followed by the Tribunal in

the case of the other assessee, i.e. Maha Maya General Finance Company Ltd. by virtue of its order dated 07.07.2006.

6. Before us, Mr Jolly, the learned counsel appearing for the Revenue argued that interest under Section 234B was not of a penal nature and was clearly compensatory in nature and, therefore, the same could be levied retrospectively. He referred to the decision of the Supreme Court in the case of **Central Provinces Manganese Ore Co. Ltd v. CIT: [1986] 160 ITR 961**, which was rendered in the context of Section 215 of the said Act which is similar to Section 234B of the said Act. The Supreme Court observed that it was necessary to consider the nature of levy of interest under Section 139 (8) and Section 215. The Supreme Court observed:-

“it is not correct to refer to the levy of such interest as a penalty. The expression “penal interest” has acquired usage, but is, in fact, an inaccurate description of the levy. Having regard to the reason for the levy and the circumstances in which it is imposed, it is clear that interest is levied by way of compensation and not by way of penalty. The income-tax Act makes a clear distinction between the levy of a penalty and other levies under that statute. Interest is levied under Sub Section (8) of Section 139 and under Section 215 because, by reason of the omission or default mentioned in the relevant provision, the Revenue is deprived of the benefit of the tax for the period during which it has remained unpaid.”

7. The learned counsel also referred to the decision of the Supreme Court in **Ganesh Das v. Income Tax Officer: 169 ITR 221** wherein, the question of levy of interest under Section 139 (1) was considered. It had been contended before the Supreme Court on behalf of the assessee therein that the interest

levied takes the character of penalty. The Supreme Court observed that it had already been decided by it in ***Central Provisions (supra)*** that interest is levied by way of compensation and not by way of penalty. The Supreme Court also observed that a similar view had been taken in **CIT v. Chandershekher: 151 ITR 433.**

8. Mr Jolly submitted that the observations contained in ***Star India Pvt. Ltd (supra)***, which have been relied upon by the Tribunal, would not be applicable to the question of chargeability of interest under the Income Tax Act. He submitted that the decision of the Supreme Court in ***Star India Pvt. Ltd (supra)*** was rendered in the context of the liability to pay service tax in respect of the service of broadcasting. Reference was also made to the decision of the Division Bench of this Court in the case of **Union Home Products Ltd v. Union of India and Another: 215 ITR 758,** wherein this Court observed, in the context of interest under Section 234A of the said Act, that it is manifest that the amount of which interest is levied, is the amount, which can legitimately be said to be public revenue payable by the assessee but not paid by him. Levy of interest on such amount which an assessee withholds and makes use of cannot be said to be anything but a compensatory measure, meant to offset loss or prejudice which the Revenue suffers on account of non-payment of the said amount. In the context of Section 234 B also, this Court held the interest liability to be only of a compensatory nature.

8. Mr Jolly finally referred to the Supreme Court decision in **Bikram Singh and Others v. Land Acquisition Collector and Others:** **224 ITR 551**: where one of the questions considered was whether the interest on delayed payment on the acquisition of the immovable property under the Land Acquisition Act would not be exigible to Income Tax? The Supreme Court observed that interest on delayed payment of the compensation amount was in the nature of a revenue receipt. The Court further held that once it is considered to be a revenue receipt, necessarily, unless there is an exemption under the appropriate provision of such Act, the Revenue receipt would be exigible to tax. The Supreme Court further observed:-

“.....the appellants are entitled to spread over the income for the period for which payment came to be made so as to compute the income for assessing tax for the relevant accounting year.”

9. In the context of the above observations Mr Jolly submitted that undoubtedly, the interest receipt was income of the assessee and as indicated by the Supreme Court, the same was liable to be spread over the relevant year for which the payments came to be made. Consequently, according to him, the same became amenable to payment of advance tax in the respective years. Since, admittedly, the advance tax was not paid in those orders, interest under Section 234B became chargeable. He also contended that in the light of the aforesaid

decisions, the Tribunal's orders that the levy of interest under Section 234B was in the nature of quasi-punishment cannot be sustained.

10. The learned counsel appearing for the assesseees contended that under the advance tax scheme, an assessee who earns income in a particular year is required to pay tax in that financial year. Section 234B applies to situations where there is a default in payment of advance tax. But it would only apply where there is a liability upon the assessee to pay the advance tax in that year and if he has failed to do so. Section 208 of the said Act clearly stipulates that advance tax is payable during the financial year. Section 209 also indicates that it must be paid in that year. The learned counsel submitted that in the present cases in the relevant years the assessee was not in default in those years inasmuch as the assessee had no way of knowing as to whether there would be enhancement of the compensation and interest amount on a subsequent date. It was, of course, contended on behalf of the assesseees/respondents that the Tribunal's conclusion that the levy of interest was in the nature of quasi-punishment, was an additional argument available to them. In case, it is held to be a levy in the nature of a penalty or a quasi-punishment, it cannot be imposed retrospectively following the principle laid down in *Star India Pvt Ltd* (*supra*).

11. We have examined the decisions cited by the counsel on both sides and after considering the submissions made by them, we agree with the learned counsel for the Revenue that the levy under Section 234B of the said Act is compensatory in nature and is not in the nature of penalty. We may also note the decision of the Bombay High Court in the case of **CIT v. Kotak Mahendra Finance Ltd: 265 ITR 119 (Bom)**, wherein the Bombay High Court observed that it was well settled that interest under Section 234B was compensatory in character and that it was not penal in nature. Another decision which would be relevant is of a Division Bench of this Court in the case of **Dr Prannoy Roy v. Commissioner of Income-tax and Another : 254 ITR 755 (Del.)**. In that case, the provisions of Section 234A were in issue. The question before the court was whether interest could be charged under Section 234A when, though the return had not been filed in time, the tax had been paid. The argument raised on behalf of the Revenue that such payment of tax did not strictly comply with the meaning of advance tax and would therefore, have to be disregarded for the purposes of charging interest under Section 234A, was rejected. The Court also held that interest under section 234A was compensatory in nature and unless any loss was caused to the Revenue, the same could not be charged from the assessee. It may be relevant to point out that the matter was taken up in appeal before the Supreme Court and by its decision dated 17.09.2008 in **CIT v. Prannoy Roy [Civil 'Appeal No.**

448/2003], the Supreme Court noted that: “*the High Court, while accepting the writ petition and setting aside the interest charged under section 234A of the Act, has come to the conclusion that interest is not a penalty and that the interest is levied by way of compensation to compensate the revenue in order to avoid it from being deprived of the payment of tax on the due date.*”.

“ Having heard counsel on both the sides we entirely agree with the finding recorded by the High Court as also the interpretation of Section 234A of the Act as it stood at the relevant time.”

12. Coming back to the present appeals, we are of the view that Section 234A, Section 234B and Section 234C are of the same class. On going through these provisions, it is clear that interest is sought to be charged on account of the fact that the Government is deprived of its revenue. Under Section 234A, interest is charged if tax whichever to be paid at the time of filing of the return is not paid at that point of time, Section 234B provides for levy of interest for default in payment of advance tax and Section 234C stipulates the charging of interest for default in the payments of advance tax on the appointed dates of payment. It is clear that under the said Act tax is payable at different dates and, through different modes. Where specific dates of payment of tax are not adhered to, it can be said that the Government is deprived of tax on those dates. Interest is chargeable under the provisions of

the Act such as Sections 234A, 234B and 234C in order to compensate the Government for such deprivation. It is clear from the scheme of the Act and the nature of these provisions that they are compensatory and not penal. We, therefore, conclude that the levy of interest under Section 234B of the Income Tax Act is compensatory in nature. The Tribunal, having taken a contrary view has clearly erred.

13. This takes us to the second question as to whether the Tribunal has erred in law in deleting the levy of interest under Section 234B of the Income Tax Act. We feel that although the conclusion of the Tribunal with regard to the levy of interest under Section 234B being penal in nature is not correct, the ultimate conclusion arrived at the Tribunal cannot be interfered with. We are of this view because interest under Section 234B is clearly by way of compensation. What the Revenue proposes to do in the facts and circumstances of the cases is to charge interest for the default in payment of advance tax in the years in question. It can only justify such a levy or charge if it has suffered a loss. This follows from the conclusion that the levy of interest under Section 234B is compensatory in nature. The fact remains that no money belonging to the Government was withheld by the assessee in the years in question. In fact, the interest payable on account of enhanced compensation was not even known to the assessee till much latter. How could the assessee then be expected to have paid advance tax on something which had not been received by the assessee and which would not have even

been in their contemplation. In other words the assessee could not have included the interest received on enhanced compensation in the assessment year under consideration while estimating his income for the purposes of calculation of advance tax for the relevant years. It is a well known principle that the law cannot compel any one to do the impossible. The Government, itself, on the one hand delayed the payment of compensation to the assesseees and on the other it expects to levy interest on the assessee for having allegedly defaulted in making payments towards advance tax. We are clear in our minds that the Revenue has not suffered any loss and, therefore, there can be no question of levying interest under Section 234B of the said Act.

14. Thus, while we decide question 1 in favour of the Revenue and against the Assesseees, question 2 is decided in favour of the Assessee.

In view of this, the appeals are liable to be dismissed. It is ordered accordingly. The parties shall bear their own costs.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

**February 27, 2009
J**