

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.466 of 2005

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1. Commissioner of Income-Tax (I), Patna, P.O. G.P.O.
2. Assistant Commissioner of Income-Tax, Circle-2, Patna, P.O. G.P.O.
..... Assessing Officer/Appellants

Versus

M/s. Natraj Engineers (P)Ltd., 146, P.P. Colony, P.O. Patliputra Colony, Patna-13
..... Assessee/Respondent

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Appearance :

For the Appellant/s : Mrs. Archana Sinha, Sr. Standing Counsel, I.T. Dept.
with Mr. Alok Kumar & Mrs. Vijay Laxmi
Srivastava, Advocates

For the Respondent/s : Mr. Sanjeev Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 07-09-2015

Heard learned counsel for the appellants-Revenue and
learned counsel for the respondent-Assessee.

The appeal has been filed against the order dated
15.6.2005 passed by the Income-tax Appellate Tribunal, Patna
Bench, Patna in ITA No. 327/Pat/2003 for the assessment year
1996-97 by which the order of the Commissioner of Income-tax
(A)-II has been set aside holding that interest under Section 234B
and 234C cannot be charged in absence of any order of the
assessing officer.

The facts of this case lie in a narrow compass. The
assessment was made under Section 143(3)/263 on total income of



Rs.65,35,430/- but the assessment order itself did not speak about the charging of any interest under Sections 234B and 234C. Vide ITNS 150 computation form, the amount of interest under Sections 234B and 234C were also shown. The appellants challenged the assessment order including charging of interest under Sections 234B and 234C under the ITNS 150 form.

The contention of the assessee was that the interest should have been charged with reference to the income tax return and not the assessed income and further that the assessee also challenged the inclusion of demand notice with reference to the same in the assessment order. The CIT (Appeal), referring to the retrospective amendment in the provisions of interest under Section 234B and 234C, held that interest was required to be levied with reference to assessed income as per the statute relying upon the decision of the Supreme Court in the case of **Kalyan Kumar Roy vs. Commissioner of Income-Tax : 191 ITR 634 (SC)**. Aggrieved by the same the assessee preferred an appeal before the Income-tax Appellate Tribunal. The ITAT reversed the order of the CIT appeal holding that there is nothing in the order to show that the Assessing Officer has decided to charge interest under Sections 234B and 234C and thus following the decision of the Supreme Court in the case of **Ranchi Club Limited vs. Commissioner of Income-tax :**

(2001) 247 ITR 209 (SC) it held that the interest under Sections 234B and 234C cannot be charged in absence of any order of the Assessing Officer and so the interest charged under Section 234C was deleted.

Before this Court the appeal has been admitted on the following substantial questions of law :-

“(1) Whether on the facts and in the circumstances of the case the Tribunal should have held that computation sheet in ITNS 150 is part and parcel of assessment order and as such charging of interest is legal and valid?

(2) Whether on the facts and in the circumstances of the case in view of amendment in proviso to Section 234A & 234B by Finance Act 2001 with retrospective effect from 1.4.1989 the case decided by the Hon’ble Supreme Court in 247 ITR page 209 and relief by the Tribunal could be said to be still applicable as the amendment makes the charging of interest mandatory and not directory?”

So far as the first question is concerned, learned counsel for the Revenue relies upon a decision of the Apex Court in the case of **Kalyan Kumar Ray vs. Commissioner of Income-Tax : 191 ITR 634 (SC)**, at page 638 of which, it has been held as

follows :

“The statute does not, however, require that both the computations (i.e., of the total income as well as 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 for 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 Income-tax Officer 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 Income-tax Officer that the process described in section 143(3) will be complete.

In this context, one may take notice of the fact that, initially, rule 15(2) of the Income-tax Rules prescribed Form No.8, a sheet containing the computation of the tax, though there was no form prescribed for the assessment of the income. This



sub-rule was dropped in 1964. Thereafter, the matter has been governed by departmental instructions. Under these, two forms are vogue. One is the form of what is described as the “assessment order” (I.T. 30 or I.T.N.S. 65). The other is what is described as the “Income-tax Computation Form” or “Form for Assessment of Tax/Refund” (I.T.N.S. 150). The practice is that, after the “assessment order” is made by the Income-tax Officer, the tax is calculated and the necessary columns of I.T.N.S. 150 are filled up showing the net amount payable in respect of the assessment year. This form is generally prepared by the staff but it is checked and signed or initialed by the Income-tax Officer and the notice of demand follows thereafter. The statute does not, in terms, require the service of the assessment order or the other form on the assessee and contemplates only the service of a notice of demand. It seems that while the “assessment order” used to be generally sent to the assessee, the other form was retained on file and a copy occasionally sent to the assessee. I.T.N.S. 150 is also a form for determination of tax payable and when it is signed or initialed by the Income-tax Officer, determining the tax payable, within the meaning of section 143(3). It may be, as stated in CIT v. Himalaya Drug Co. [1982] 135 ITR 368 (All), only a tax calculation



form for departmental purposes as it also contains columns and code numbers to facilitate computerization of the particulars contained therein for statistical purposes but this does not detract from its being considered as an order in writing determining the sum payable by the assessee. We are unable to see why this document, which is also in writing and which has received the imprimatur of the Income-tax Officer, 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 Income-tax Officer has signed the Form I.T.N.S. 150. We, therefore, think that the statutory provision has been duly complied with and that the assessment order was not, in any manner, vitiated.”

Learned counsel for the Revenue further relies upon a recent decision of the Apex Court by order dated 6.8.2015 in Civil Appeal No. 1169/2006 (Commissioner of Income Tax V. M/s. Bhagat Construction Company Private Limited) in which both the substantial questions of law as raised herein, according to learned counsel, have been answered in favour of the revenue and against the assessee. The relevant part of the said decision is as follows:-

“It will be seen that under the provisions of

Section 234B, the moment an assessee who is liable to pay advance tax has failed to pay such tax or where the advance tax paid by such an assessee is less than 90 per cent of the assessed tax, the assessee becomes liable to pay simple interest at the rate of one per cent for every month or part of the month.

Shri Guru Krishna Kumar is right in stating that levy of such interest is automatic when the conditions of Section 234B are met.

We are of the view that the facts of the present case are squarely covered by the decision contained in Kalyankumar Ray's case inasmuch as it is undisputed that contained a calculation of interest payable on the tax assessed. This being the case, it is clear that as per the said judgment, this Form must 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, which is referred to in Explanation 1 to Section 234B. This being the case, we set aside the judgment of the High Court and allow the appeal of the Revenue. There will be no orders as to cost. The appeal is disposed of in terms of the abovesaid order in Civil Appeal No. 1169 of 2006."

Learned counsel for the respondent assessee, faced with the aforesaid two decisions of the Apex Court tried to pull

back upon the decision of the Apex Court in the case of **Ranchi Club Limited vs. Commissioner of Income-tax : (2001) 247 ITR 209 SC.**

The aforesaid decision has also been considered by the Apex Court in the case of M/s. Bhagat Construction Company Pvt. Ltd. (supra) and it was explained that the High Court judgment was given in the context of challenge to the vires of Sections 234A and 234B of the Income Tax Act and ultimately it has been held in the said case that under the provisions of Section 234B where the advance tax paid by the assessee is less than 90% of the assessed tax, levy of such simple interest at the rate of one per cent for every month or part of the month is automatic.

We may here also point out that the provisions of Section 234B which were inserted by the Direct Tax Law (Amendment) Act, 1987 with effect from 1.4.89 underwent further amendments after the decision of the Supreme Court in Ranchi Club Limited case (supra) by further adding an Explanation in the said provisions with retrospective effect from 1.4.1989 by the Finance Act, 2001 which reads as under:-

“Explanation 1.- In this Section, “assessed tax” means the tax on the total income determined under sub-section (1) of Section 143 or on regular assessment as reduced by the amount of tax in

accordance with the provisions of Chapter XVIII on any income which is subject to such deduction or collection and which is taken into account in computing such total income.”

The said provision has further been amended by the Finance Act, 2006 with effect from 1.4.2007 which however, is not relevant for ever purpose. It is evident from the aforesaid Explanation introduced by the Finance Act, 2001 that the decision of this Court as confirmed by the Apex Court in Ranchi Club Limited, will in no way be applicable to the present matter and the assessed tax on the total income determined under Section 143(1) or on regular assessment and not as computed by the assessee while paying the advance tax shall be treated as the basis for the purpose of payment of interest on advance tax paid short. In fact, there is a clear distinction made by the Income Tax Act in the provisions of Section 234B and 234C: with regard to interest under Section 234B, the calculation is to be made not on the returned income but on the tax as may be finally assessed and determined by the assessment whereas under Section 234C, what is to be determined is tax due on the returned income for the purpose of calculation of the shortfall in the advance tax paid.

It is further clear that both the provisions are in mandatory terms and would apply automatically, as has been held

by the Apex Court also in the Bhagat Construction Company case (supra), the moment there is any shortfall in deposit of advance tax in terms of the provisions of Sections 234B and 234C of the Act. Thus, we are of the view that the present matter is squarely covered in favour of the appellant revenue by the decision of the Supreme Court in Kalyan Kumar Ray’s case (supra). The first substantial question of law is, accordingly, answered in favour of the Revenue and it is held that the Tribunal should have held the computation sheet and demand notice as integral parts of the assessment order and thus charging of the interest was legal and valid.

With regard to second substantial question of law it is held that the decision in Ranchi Club Limited case (supra) would not be applicable in the present matter as the amendment of the provisions of Sections 234A and 234B of the Finance Act, 2001 having retrospective effect from 1.4.1989, has the effect of making chargeable interest mandatory and not directory.

The appeal is, accordingly, allowed.

(Ramesh Kumar Datta, J)

Spal/S.Pandey

(Sudhir Singh, J)

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