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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1169 OF 2006

COMMISSIONER OF INCOME TAX, DELHI ... Appellant

VERSUS

M/S. BHAGAT CONSTRUCTION CO. PVT. LTD. ... Respondent

WITH

CIVIL APPEAL NO. 1198 OF 2006

COMMISSIONER OF INCOME TAX, DELHI-XVII ... Appellant

VERSUS

M/S. M.R.G. PLASTIC TECHNOLOGIES AND ORS. ... Respondent

O R D E R

Civil Appeal No. 1169 of 2006

The present appeal by the Revenue raises a question which lies within a very narrow compass.

On the facts of the present case, it is an admitted position that the assessment order dated 29.03.1995 of the Assistant Commissioner of Income Tax, New Delhi, does not contain any direction for the payment of interest. Th
e
appellate order in the present case merely stated tha
t
interest is payable under Section 234B of the Income Tax Act (hereinafter referred to as 'Act'), without more.

In the first round, before the Income Tax Appellate Tribunal (hereinafter referred to as 'ITAT'), the ITAT's attention was not drawn to the payment of interest at all.

On an application made, the ITAT by its order dated 12.11.2002 specifically held that since no direction had actually been given in the assessment order for payment of

interest, the present case would be covered by the decision of this Court reported in 'Commissioner of Income Tax & Ors. v. Ranchi Club Ltd' [(2001) 247 ITR 209] which merely dismissed the appeal affirming the High Court judgment reported in 'Ranchi Club Ltd. v. Commissioner of Income Tax' [(1996) 217 ITR 72].

In an appeal to the High Court of Delhi under Section 260 A of the Act, the impugned judgment dated 23.07.2003 merely reiterates that the present issue has been decided by the judgment in 'Commissioner of Income Tax & Ors. v. Ranchi Club Ltd' [(2001) 247 ITR 209] referred to above.

Shri Guru Krishna Kumar, learned senior counsel appearing for the Revenue, presented three submissions before us and relied upon the decision contained in 'Kalyankumar Ray v. Commissioner of Income Tax, West Bengal-IV, Calcutta [1992 Supp (2) SCC 424].

According to him, the interest under Section 234B is, in any case, part of Form I.T.N.S. 150 which is not only signed by the assessing officer but it is really part of the assessment order itself. His other submissions are that the judgment in Ranchi Club Ltd.'s case is distinguishable

inasmuch as it arose only in a writ petition and arose in the context of best judgment assessment whereas on the facts of the present case, there was a shortfall of advance tax that was paid, which, therefore, led to the automatic levy of interest under Section 234B. In addition, he argued before us that not only is Section 234B a provision which is parasitic in nature, in that, it applies the moment there is shortfall of advance tax or income tax payable under the Act but that it is compensatory in nature. Countering this submission, Ms. Shipra Ghosh, learned counsel appearing for

the respondent, supported the judgment of the ITAT and the High Court by stating that the judgment in Ranchi Club Ltd.'s case squarely covers the facts of this case.

We have heard learned counsel for the parties. We do not feel the need to go into the various submissions made by Mr. Guru Krishna Kumar as this appeal can be disposed of on a short ground. In a three-Judges Bench decision, viz., 'Kalyankumar Ray v. Commissioner of Income Tax, West Bengal-IV, Calcutta' [1992 Supp (2) SCC 424], this Court took note of a similar submission made by the assessee in that case and repelled it as follows: -

> "6. In this context, one may take notice of the fact that, initially, Rule 15(2) of the Income Tax Rules prescribed Form 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 in 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 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 ITO, 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 ITO 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 ITO it is certainly an order in writing by the ITO determining the tax payable within the meaning of Section 143(3). It may be, as stated in CIT v. Himalaya Drug Co. only a tax calculation form for departmental purposes as it also contains columns and code numbers to facilitate computerisation 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 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 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."

The Supreme Court judgment in the Ranchi Club Ltd.'s case, is a one line order which merely states: -

"We have heard learned counsel for the appellant. We find no merit in the appeals.
The civil appeals are dismissed. No order as to costs."

The High Court judgment which was affirmed by this Court as aforesaid arose in the context of a challenge to

the vires of Sections 234A and 234B of the Act. After repelling the challenge to the vires of the two sections, the High Court found that interest had been levied on tax payable after assessment and not on the tax as per the return. Following this Court's judgment in JK Synthetics Ltd. [(1994) 94 STC 422], the High Court held that the assessee is not supposed to pay interest on the amount of tax which may be assessed in a regular assessment under Section 143(3) or best judgment under Section 144 as he is not supposed to know or anticipate that his return of income would not be accepted. The High Court further held that interest is payable in future only after the dues are finally determined.

Given the above controversy, it is necessary to set out the provisions contained in Section 234B. The relevant portion of Section 234B reads as under: -

"234B. Interest for defaults in payment of advance tax. - (1) Subject to the other provisions of this section, where, in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of section 210 is less than ninety per cent of the assessed tax, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period from the 1st day of April next following such financial year to the date of determination of total income under sub-section (1) of section 143 and where a regular assessment is made, to the date of

such regular assessment, on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax.

Explanation 1 - In this section, "assessed tax"

means the tax on the total income determined under sub-section (1) of section 143 and where a regular assessment is made, the tax on the total income determined under such regular assessment as reduced by the amount of, -

(i) any tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income;

(ii) any relief of tax allowed under section 90 on account of tax paid in a country outside India;

(iii) any relief of tax allowed under section 90A on account of tax paid in a specified territory outside India referred to in that section;

(iv) any deduction, from the Indian income-tax payable, allowed under section 91, on account of tax paid in a country outside India; and

(v) any tax credit allowed to be set off in accordance with the provisions of section 115JAA or section 115JD."

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

Form I.T.N.S.150 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.

CIVIL APPEAL NO. 1198 OF 2006

The appeal is disposed of in terms of the abovesaid order in Civil Appeal No. 1169 of 2006.

....., J.
[A.K. SIKRI]

....., J.
[ROHINTON FALI NARIMAN]

New Delhi;
August 06, 2015.

C.A. No. 1169/2006 7
ITEM NO.113+116 COURT NO.11 SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 1169/2006

COMMNR. OF INCOME TAX, DELHI Appellant(s)

VERSUS

M/S. BHAGAT CONSTURCTION CO. PVT. LTD. Respondent(s)
(With office report)

WITH

Civil Appeal No. 1198/2006

CIT, DELHI-XVII Appellant(s)

VERSUS

M/S. M.R.G. PLASTIC TECHNOLOGIES AND ORS. Respondent(s)
(With office report)

Date : 06/08/2015 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s) Mr. Guru Krishna Kumar, Adv.
Mr. Rupesh Kumar, Adv.

Mr. T. M. Singh, Adv.
Mr. Jitin Singhal, Adv.
Ms. Anil Katiyar, Adv.
Mr. B. V. Balaram Das, Adv.
Ms. Rashmi Malhotra, Adv.
Mr. S. A. Haseeb, Adv.

For Respondent(s) Ms. Shipra Ghose, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Civil Appeal No. 1169 of 2006 is allowed and Civil Appeal No. 1198 of 2006 is disposed of in terms of the signed order.

(Nidhi Ahuja)
COURT MASTER

(Suman Jain)
COURT MASTER

[Signed order is placed on the file.]