

(2014) 07 AHC CK 0183

Allahabad High Court

Case No: Income Tax Appeal No. 386 of 2007

Commissioner of Income Tax

APPELLANT

Vs

Oswal Exports

RESPONDENT

Date of Decision: July 1, 2014

Acts Referred:

- Income Tax Act, 1961 - Section 119, 234A, 234B, 234C, 245B

Citation: (2014) 369 ITR 630

Hon'ble Judges: Tarun Agarwala, J; Mahesh Chandra Tripathi, J

Bench: Division Bench

Advocate: Shambhu Chopra, Advocate for the Appellant; Piyush Agarwal, Advocate for the Respondent

Judgement

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Tarun Agarwala, J.

The present appeal relates to the assessment year 1990-91. The assessee deals in marble goods and is exporting it to countries directly as well as selling the same at the counter of the emporium of the assessee to the foreign tourists in convertible foreign exchange. For the assessment year 1990-91, the assessee filed his return of income claiming deduction under section 80HHC of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), in respect of the goods sold at the counter in convertible foreign exchange in addition to the claim of deduction under section 80HHC of the Act against sales made directly by exporting it out of India. The Assessing Officer disallowed the assessee's claim of deduction under section 80HHC in respect of the goods sold at the counter in convertible foreign exchange, on the ground that the assessee failed to produce evidence to establish that the goods sold at the counter of the emporium in convertible foreign exchange were in fact

customs cleared. The assessee, being aggrieved, filed an appeal which was dismissed. The assessee, thereafter, preferred an appeal before the Tribunal, which was allowed and the order of the assessing authority was set aside and the Tribunal granted deduction under section 80HHC on the sale of goods made at the counter in convertible foreign exchange.

2. The assessing authority, while processing the income also directed that interest would be charged as per the Rules. The Tribunal also reversed this the finding contending that unless there is a specific order under a particular section to levy interest, no interest could be charged. The Tribunal further held that since the particular section under which levy of interest was not mentioned, the levy of interest could not be charged. The Revenue, being aggrieved by the decision of the Tribunal, has filed the present appeal under section 260A of the Act.

3. We have heard Sri Shambhu Chopra, the learned counsel for the Department and Sri Piyush Agarwal, the learned counsel for the assessee.

4. The learned counsel for the assessee has submitted that two substantial questions of law arises for consideration, namely, that the goods sold at the counter of the emporium were not liable for deduction under section 80HHC of the Act and that interest under sections 234A, 234B and 234C could be charged even though it was not specifically mentioned in the assessment order.

5. Having heard the learned counsel for the parties, we are of the view that with regard to the deductions under section 80HHC of the Act the controversy involved in the present case is squarely covered by a decision of this court in [Ram Babu and Sons and Another Vs. Union of India \(UOI\) and Another, , Commissioner of Income Tax Vs. Silver and Arts Palace,](#) delivered by the Supreme Court of India as well as a recent decision of this court in Kraft Palace v. CIT decided on March 19, 2013, in I.T.R. No. 71 of 1997.

6. In the light of the aforesaid decisions, we are of the opinion, that the assessee was entitled to get the deductions under section 80HHC in respect of counter sales against foreign currency.

7. With regard to the issue of charging interest, the court finds that the Assessing Officer had directed that "interest would be charged as per the rules".

8. In [Uday Mistanna Bhandar and Complex, Tej Kumari Devi and Ranchi Club Ltd. Vs. Commissioner of Income Tax and Others,](#) the Patna High Court held that an order of the Assessing Officer in the assessment order to charge interest has to be specific and clear, namely, that the assessee must know that the Assessing Officer after applying his mind had ordered charging of interest under a particular section and that a general order directing that interest would be charged as per the rules or directing that charge interest as per law was not a specific order for levying interest. The High Court held that where such general order was passed directing interest to

be charged as per the rules, the same would have no effect and that no interest could be leviable. The said decision of the Patna High Court was affirmed by the Supreme Court in [Commissioner of Income Tax and Others Vs. Ranchi Club Ltd.,](#) .

9. The learned counsel for the appellant submitted that the decision of the Patna High Court in Ranchi Club Ltd. (supra) was considered by the Supreme Court in [Karanvir Singh Gossal Vs. Commissioner of Income Tax and Another,](#) , wherein the Supreme Court held that where interest was leviable in a given case under section 234B/ 234C then in such a case that levy was mandatory and compensatory in nature. The Supreme Court held (page 693):

"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 the 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(s) 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 M.H. 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 M.H. Ghaswala's case (supra) is that if interest is leviable in a given case under section 234B/ 234C, then in such a case that levy is mandatory and compensatory in nature. The recitation by the Assessing Officer directing institution of penal proceedings is not obligatory and penal proceedings could be initiated for such default without a specific direction from the Assessing Officer. In this particular case we have to follow the judgment in Anjum M.H. Ghaswala's case (supra) in toto. In the said judgment, it has been held that in appropriate cases, the Chief Commissioner has an authority to waive the interest."

10. The learned counsel submitted that in the light of the said decision of the Supreme Court in Karanvir Singh Gossal (supra), the decision in the case of Ranchi Club Ltd. (supra) stands overruled. The learned counsel submitted that since the provision of charging interest under sections 234A, 234B and 234C of the Act was mandatory, it was not necessary that a specific direction was now required to be issued by the Assessing Officer in the assessment order.

11. Having heard the learned counsel for the parties and having perused the aforesaid decision in Karanvir Singh Gossal case (supra), we are unable to agree with the submissions made by the learned counsel for the appellant.

12. In [Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others,](#) , the issue was, whether the Settlement Commission constituted under section 245B of the Act had the jurisdiction to reduce or waive the interest chargeable under sections 234A, 234B and 234C of the Act while passing an order of settlement under section 245D(4) of the Act. The Supreme Court, after analysing various provisions

held that the Settlement Commission in exercise of its powers under section 245D(4) and (6) does not have the power to reduce or waive interest statutorily payable under sections 234A, 234B and 234C of the Act except to the extent of granting relief under the circulars issued by the Board and section 119 of the Act.

13. Having considered the decision of the Supreme Court in Karanvir Singh Gossal case (supra), we find that the position of law as propounded in Ranchi Club Ltd. (supra) does not change. The decision of the Patna High Court in Ranchi Club Ltd. (supra) still holds the field as the said decision was affirmed by a three-judge Bench of the Supreme Court in [Commissioner of Income Tax and Others Vs. Ranchi Club Ltd.,](#) . If interest is leviable under section 234A, section 234B or section 234C of the Act, then such levy of interest is mandatory and compensatory in nature, but, in order to levy interest under these sections, the Assessing Officer is specifically required to mention the specific section of charging interest, failing which, no interest could be levied under those sections.

14. Penal proceedings are totally different and distinct from charging interest. If penal proceedings are required to be undertaken, it is not necessary nor obligatory for the Assessing Officer to direct initiation of penal proceedings and that penal proceedings would be initiated without a specific direction from the Assessing Officer. For the reasons stated aforesaid, we do not find any merit in the appeal and is dismissed at the admission stage.