Before Jawahar Lal Gupta and Ashutosh Mohunta, JJ

VINOD KHURANA,—Petitioner

versus

COMMISSIONER OF INCOME TAX, AMRITSAR AND ANOTHER,—Respondents

C.W.P. No. 8275 of 2000

31st July, 2001

Income Tax Act, 1961-S. 234-B—Assessee filing revised return for the assessment year 1994-95 after he was questioned in 1998–Delay in payment of the due tax—Levy of interest—Challenge thereto—After appliying his mind regarding the levy of interest as also the provision under which it was chargeable, the Assessing Officer himself passing the order of assessment and the notice of demand simultaneously—No legal infirmity in the order imposing interest under Section 234-B—Writ dismissed.

Held, that the assessment order and the demand notice have been passed on the same day and by the same Officer. It is only on the passing of these two orders that the assessment was complete and the demand was made. Resultantly, the test as laid down in Uday Mistanna Bhandar and complex v. Commissioner of Income Tax and others, 222 ITR 44 and Commissioner of Income Tax and others v. Ranchi Club Ltd. 247 ITR 209 is fully satisfied in the present case. It deserves mention that the orders relate to the assessment year 1994-95. The revised return had been filed by the petitioner after he had been questioned in April, 1998. The petitioner knew that there was delay in payment of the due tax. The amount is clearly payable under section 234-B. The petitioner was aware of his liability under the law. The amount due on account of interest had been determined by the Assessing Officer himself. It was made known to the petitioner. Thus, there was no infirmity in the order passed by the Assessing Officer.

(Para 23)

A.K. Mittal, Advocate with Akshay Bhan, Advocate *for the Petitioner*

R.P. Sawhney, Sr. Advocate with Rajesh Bindal, Advocate *for the Respondents*

JUDGMENT

JAWAHAR LAL GUPTA, J.

(1) Is the action of the respondents in holding that the pettioner is liable to pay interest, in respect of the assessment year 1994-95, under Section 234B of the Income Tax Act, 1961, illegal? This is the short questioin that arises for consideration in this case. A few facts as relevant for the decision of the case may be briefly noticed.

(2) The petitioner filed a return of income for the assessment year 1994-95. He declared an income of Rs. 98515/-. It appears that during the course of assessment proceedings, the Assessing Officer found that an amount of Rs. 5 lacs had been credited to the petitioner's account in his Bank Pass-Book. He was questioned. The petitioner claimed that he had received a gift. However, he stated that "to avoid prolonged litigation with the Income Tax Department and to win peace" he would surrender this amount as his income for the assessment year 1994-95 subject to the condition that no penal action or prosecution was initiated against him.

(3) On 20th April, 1998, the petitioner filed a Revised Statement of Taxable Income and paid the additional amount of tax. He appended the following note to the Revised Statement of Taxable Income :—

> "No interest u/s 234-A, 234B & 234C is payable since the assessee has surrendered the amount to win peace with the Income Department and to avoid unnecessary litigation much after the close of the A/Y".

(4) A copy of this document is at Annexure P.2 with the writ petition. On 6th August, 1998, a notice under Section 148 was issued to the petitioner. He filed a reply. On 12th January, 2000, the Assessing

Officer passed the order by which the taxable income was assessed at Rs. 5,98,520. It was further ordered that—

> "Charge interest as per law. Penalty proceedings under Section 271(1)(c) have been initiated. Issue demand notice and challan".

(5) On the same day viz. 12th January, 2000, a notice of demand under Section 156 of the Income Tax Act, 1961 was issued. The amount held payable by way of interest under Section 234B was Rs. 2,06,940. After adjusting the amount already paid by the petitioner, he was ordered to pay a sum of Rs. 2,05,865.

(6) Aggrieved by the order, the petitioner filed an appeal before the Commissioner of Income Tax (Appeals), Amritsar. A copy of the petiton of appeal has been produced as Annexure P.6. However, vide letter dated 28th February, 2000, the petitioner requested the Commissioner for permission to withdraw the appeal. A copy of this letter is at Annexure P.7 with the writ petition. This permission was granted by the appellate authority vide order dated 29th February, 2000. A copy of the order is at Annexure P.8. On 7th June, 2000, the petitioner was given notice of the penalty proceedings under Section 271(1)(c) of the Income Tax Act, 1961. A copy of the notice is at Annexure P.9.

(7) The petitioner alleges that the action of the respondents in raising a demand of Rs. 2,06,940 on account of interest under Section 234B is illegal and without jurisdiction. He also alleges that penalty proceedings have been illegally initiated. However, the challenge to the notice in respect of the penalty proceedings has not been pressed at the time of the hearing of this petition. Consequently, the claim only in respect of the challenge to the levy of interest has to be considered.

(8) A reply has been filed on behalf of the respondents by Mr. Rajiv Aggarwal, Deputy Commissioner of Income Tax, Amritsar. It has been averred by way of a preliminary objection that the petitioner has an effective alternative remedy of a revision petition before the Commissioner of Income Tax, Amritsar under Section 264 of the Act. On merits, it has been pleaded that the petitioner had filed the revised return after he was questioned by the Assistant Director about the

alleged gift of Rs. 5 lacs. As such, "the said return cannot be termed as revised return within the meaning of Section 139(5) of the Income Tax Act, 1961 firstly on the ground of the same being belated and, secondly, on the ground that the same was not filed as a result of discovery of any omission or any wrong statement therein". It was filed as the petitioner had failed to explain the gift. It was in pursuance to this detection that the petitioner had declared an income of Rs. 5,98,520. Still further, in pursuance to the notice under Section 148 of the Income Tax Act, the petitioner had relied on the revised return. He had not challenged the order of assessment in which he was held liable to pay additional tax and interest. The respondents maintain that the order of assessment and the demand notice were "issued simultaneously on 12th January, 2000". It is claimed that the two documents have to be treated as a "part of the assessment order". The demand is in conformity with law. As such, the respondents pray that the writ petition be dismissed.

(9) The petitioner has filed a replication to the written statement controverting the claim made on behalf of the respondents.

(10) Counsel for the parties have been heard.

(11) Mr. A.K. Mittal, counsel for the petitioner contended that the levy of interest under Section 234B is wholly illegal. He placed a strong reliance on the decision of their Lordships of the Patna High Court in *Uday Mistanna Bhandar and Complex* Vs. *Commissioner of Income Tax and others, (1).* He further pointed out that the decision had been affirmed by their Lordships of the Supreme Court in Commissioner of *Income Tax and others* Vs. *Ranchi Club Ltd. (2),* when the civil appeal was dismissed.

(12) Mr. R.P. Sawhney submitted that the petitioner has an effective alternative remedy of revision under Section 264. He further submitted that the liability to pay interest is laid down by the Statute. It is automatic. Thus, the Assessing Officer has committed no illegality in levying the interest.

(13) Admittedly, the Assessing Officer had found that the petitioner was liable to pay tax on a total income of Rs. 5,98,520.

(1) 222 ITR 44
(2) 247 ITR 209

He had also ordered. "Charge interest as per law . . . Issue demand notice and challan". simultaneously, on the same day, a demand notice was issued by which it was directed that the petitioner was liable to pay an amount of Rs. 2,39,454 by way of Income Tax and Rs. 2,06,940 on account of interest under section 234B. Out of the total amount of Rs. 4,46,394, the petitioner had already paid Rs. 2,40,529. Thus, a demand notice under Section 156 was issued for the payment of Rs. 2,05,865.

(14) The short question that arises is - Did the Department err in imposing interest under Section 234B?

(15) Mr. Mittal, counsel for the petitioner contended that in the assessment order, the Assessing Officer had merely ordered - "Charge interest as per law". It was not held that the petitioner was liable to pay interest under Section 234B. The amount had been specified in the demand notice under Section 156 only. Relying upon the decisions in Uday Mistanna/Ranchi Club's cases (supra), the counsel contended that the notice of demand cannot be sustained. He relied upon the following observations of their Lordships of the Patna High Court :—

> "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(8)] 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 under section 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 feal 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 under Section 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 Manohar Gidwany V. CIT, [1983] 139 ITR 498 and CIT v. Wiliard India Ltd. [1993] 202 ITR 423 and that of the Gauhati High Court in CIT v. Namdang Tea Co. India Ltd. [1993] 202 ITR 414" (emphasis supplied).

(16) The above observations seemingly support the petitioner. It also deserves notice that the decision was affirmed by their Lordships of the Surpreme Court in Commissioner of Income Tax versus Ranchi Club Limited, 247 ITR 209 (supra) with the following judgment :--

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

(17) On the basis of the above observations, Mr. Mittal contended that the order passed by the Assessing Officer has to be specific. It could be vague. Since a definite order for payment of interest under section 234-B has not been passed, the mere mention of the figure in the notice of demand cannot be sustained.

(18) On a consideration of the matter, we find that the primary rationale for the view taken by their Lordships of the Patna High Court is that "the assessee must be made to know that the Assessing Officer after applying his mind has ordered the charging of interest and under which sections of the Act". Is this test not fulfilled in the present case ?

(19) Admittedly, the order of assessment and the notice of demand have been issued by Mr. K. K. Mahajan. It is true that in the order at Annexure P. 4, Mr. Mahajan's designation has been disclosed as Assistant Commissioner of Income Tax, Circle 1(2), Amritsar, while in the order at Annexure P. 5, he has been described as an Income Tax Officer of the same Circle. We asked the counsel about the factual position. Mr. Sawhney, on instructions, has informed us that Mr. K.K. Mahajan was posted at Amritsar as the Assistant Commissioner of Income Tax and that both the orders have been passed by one officer. He has further clarified that he was wrongly described as an Income Tax Officer in the order Annexure P. 5. Both the order were passed on the same day. In this situation, it is clear that the Assessing Officer had applied his mind regarding the levy of interest as also the provision under which it was chargeable. It also appears that both the orders had been passed simultaneously . Thus, the test as laid down in Uday Bhandar's case (supra) is fully satisfied. There is no infirmity in the orders.

(20) The position may be different in a case where the Assessing Officer merely gives a direction-- "Charge interest as per rules" and the provision under which interest is to be charged as also the amount are determined by some other officer. Such an order shall, as observed by their Lordships of the Patna High Court, be vague. The application of mind by the competent authority shall not be apparent. However, in a case like the present where the provision and the amount are decided and determined by the Assessing Officer himself on the same day, the position would be totally different.

(21) It deserves notice that even calculations etc. are a part of the process of assessment. The 'Assessment' is complete only when the 'taxable income' and the 'due amount' are duly determined. In the

case of *Kalyankumar Ray* versus *Commissioner of Income Tax, (3)* their Lordships of the Supreme Court were pleased to observe as under :—

> Assessment' is one integrated process involving not only the assessment of the total income but also the determination of the tax. The latter is as crucial as the former. The Income-tax Officer has to determine, by an order in writing, not only the total income but also the net sum which will be payable by the assessee for the assessment year in question and the demand notice has to be issued under section 156 of the Income-tax Act, 1961, in consequence of such an order. The statute does not, however, require that both the computations (i.e. of the total income as well as of 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. 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 of some time later, no fault can be found with the process, though it is only when both the computation sheets are signed or initialled by the Income-tax Officer that the process described in section 143(3) will be complete". (emphasis supplied)**

(22) In view of the above observations, it is clear that the Assessing Officer has to pass the assessment order. He has to determine the total income on which tax is leviable. The job of making calculations can even be performed by the office. However, it is only when order of assessment and the computation sheet are signed or initialled by the the Income Tax Officer that the process of assessment is complete.

(3) 191 ITR 634

(23) What is the position in the present case ? The assessment order, a copy of which has been produced as Annexure P.4 and the demand notice, a copy of which is at Annexure P.5 have been passed on the same day and by the same officer. It is only on the passing of these two orders that the assessment was complete and the demand was made. Resultantly the test as laid down in the cases of Uday Mistanna/Ranchi Club is fully satisfied in the present case. It deserves mention that the orders relate to the assessment year 1994-1995. The revised return had been filed by the petitioner after he had been questioned in April, 1998. The petitioner knew that there was delay in payment of the due tax. The amount is clearly payable under Section 234-B. The petitioner was aware of his liability under the law. The amount due on account of interest had been determined by the Assessing Officer himself. It was made known to the petitioner. Thus, there was no infirmity in the order passed by the Assessing Officer.

(24) In view of our above conclusion, it is not necessary for us to go into the question of alternative remedy as raised on behalf of the Revenue.

(25) No other point was raised.

(26) Resultantly, the writ petition has no merit. It is, consequently, dismissed. However, in the circumstances of the case, we make no order as to costs.

R.N.R.

Before J.S. Khehar, J

VIJAY SOMANI,—*Petitioner*

versus

CAPT. AJAY SINGH,—*Respondent*

E.P.No. 8 OF 2000

20th August, 2001,

Representation of People Act, 1951—Ss. 80, 81, 83, 86(5), 100 & 123—Code of Civil Procedure, 1908—O. VI Rls. 15 & 16, O.VII Rl. 11—Conduct of Election Rules, 1961—Form 25—Election petition—Challenge on the ground of commission of corrupt practice—Full