

01
ITEM NO.5

COURT NO.1

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.1937 OF 2007

KARANVIR SINGH GOSSAL

Appellant (s)

VERSUS

COMMR.OF INCOME TAX & ANR
(With office report)

Respondent(s)

Date: 06/09/2012 This Appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MADAN B. LOKUR

For Appellant(s) Ms. Shobha,Adv.

Mr. Sriram Krishna,Adv.

For Respondent(s) Mr. Rajiv Dutta,Sr.Adv.

Mr. Arijit Prasad,Adv.
Mr. Rahul Kaushik,Adv.
Mr. Rupesh Kumar,Adv.
Mr. Yatinder Choudhary,Adv.
Mr. V.K. Biju,Adv.
Mr. Ritesh Kumar,Adv.
Mr. Piyush Sanghi,Adv.
Ms. Shweta Gupta,Adv.
Mr. Sidharth Tyagi,Adv.
Mr. Arjun Pal,Adv.
Ms. Anil Katiyar,Adv.
for Mr. B.V. Balaram Das,Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel on both sides.

The civil appeal is allowed in terms of the signed order.

No order as to costs.

[Alka Dudeja]
A.R.-cum-P.S.

[Indu Satija]
Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1937 OF 2007

Karanvir Singh Gossal

...Appellant(s)

Versus

Commissioner of Income Tax and Anr.

...Respondent(s)

O R D E R

Heard learned counsel on both sides.

The short point involved in the present case is whether levy of interest under Section 234A/234B of the Income Tax Act, 1961, [for short, 'the Act'], is mandatory or not. At one point of time there was a doubt on the nature of interest payable by the assessee under Section 234A/234B of the Act. That controversy stood finally settled by a Five-Judge Bench decision of this Court in the case of Commissioner of Income-Tax vs. Anjum M.H. Ghaswala and Others, [2001] 252 ITR 1. This judgment is binding on us. In the said judgment, this Court held in unequivocal terms that interest under Section 234B/234C is mandatory in nature. In view of the said decision, we are of the opinion that there was no need for the Assessing Officer to specifically recite in the Order of Assessment that penalty proceedings should be initiated, as contended on behalf of the assessee.

...2/-

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It is true that at one point of time, prior to the decision in Anjum Ghaswala's case [supra], there was a conflict of opinion amongst various High Courts in India. One such case was the judgment of Patna High Court in the case of Ranchi Club Ltd. vs. Commissioner of Income-Tax and Others, [1996] 222 ITR 44. 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., [2001] 247 ITR 209. However, that dismissal is by a Three-Judge Bench, whereas the judgment of Anjum 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 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 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. We quote herein below the relevant portion of the judgment in Anjum Ghaswala's case [supra], which reads as under:

"The learned Solicitor General has pointed out that by virtue of the power vested in the Board under Section 119(2)(a)

of the Act, the Board has issued circulars by Notification No.F.No.400/234/95-IT(B), dated May 23, 1996. As per this circular, it has empowered that the Chief Commissioner of Income-tax and Director-General of Income-tax may waive or reduce interest charged under sections 234A, 234B and 234C of the Act in the class of cases or class of incomes specified in paragraph 2 of the said order for the period and on conditions which are enumerated therein. He submitted that in view of the said circular, the same authority can be exercised by the Commission since the said circular would amount to relaxation of the rigour of sections 234A, 234B and 234C of the Act. We are in unison with this submission of the learned Solicitor General. This court in a catena of cases has held that the circulars of the Central Board of Direct Taxes are legally binding on the Revenue : see UCO Bank v. CIT [1999] 237 ITR 889 (SC). Since these circulars are beneficial to assesseees, such benefit can be conferred also on assesseees who have approached the Settlement Commission under Section 245C of the Act on such terms and conditions as contained in the circular. In our opinion, it is for this purpose that section 245F of the Act has empowered the Settlement Commission to exercise the power of an income-tax authority under the Act. We must clarify here that while exercising the power derived under the circulars of the Board, the Commission does not act as a subordinate to the Board but will be enforcing the relaxed provisions of the circulars for the benefit of the assessee in the process of settlement.

For the reasons stated above, we hold that the Commission in exercise of its power under Section 245D(4) and (6) does not have the power to reduce or waive interest statutorily payable under sections 234A, 234B and 234C except to the extent of granting relief under the circulars issued by the Board under Section 119 of the Act."

....4/-

In the present case, the assessee is placing reliance on the Circular issued by the CBDT, which has been referred to and mentioned in the above extracted portion in Anjum Ghaswala's case [supra]. This aspect has not been considered in the present case by the High Court in its impugned order. It has not been considered even by the Tribunal.

For the above reasons, we set aside the impugned orders of the Tribunal as also of the High Court. We direct the Tribunal to consider whether the assessee would be entitled to waiver of interest under the Circular bearing No.400/234/95-IT(B) dated 23rd May, 1996, which has been referred to by this Court in the case of Anjum Ghaswala [supra].

To this limited extent, the civil appeal stands allowed and the matter is remitted to the Tribunal to decide the question of applicability of the said circular to the facts of this case.

No order as to costs.

.....CJI.
[S.H. KAPADIA]

.....J.
[MADAN B. LOKUR]

New Delhi,
September 06, 2012.
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