

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 321 of 2000****With****TAX APPEAL NO. 428 of 2000****With****TAX APPEAL NO. 937 of 2005****TO****TAX APPEAL NO. 941 of 2005****With****TAX APPEAL NO. 1048 of 2005****With****TAX APPEAL NO. 1479 of 2007****FOR APPROVAL AND SIGNATURE:**

HONOURABLE MR.JUSTICE M.R. SHAH **Sd/-**
and
HONOURABLE MR.JUSTICE S.H.VORA **Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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ASSTT C I T....Appellant(s)

Versus

NORMA DETERGENT (PVT) LTD.....Opponent(s)

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Appearance:**Tax Appeal Nos.321 to 428 of 2000:-**

MR NITIN K MEHTA, ADVOCATE for the Appellant

MR SN SOPARKAR, ADVOCATE for the Respondent

Tax Appeal Nos.937 to 941 of 2005, 1048 of 2005 & 1479 of 2007:-

MR NITIN K MEHTA, ADVOCATE for the Appellant

MR RK PATEL, ADVOCATE for the Respondent

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CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**
and
HONOURABLE MR.JUSTICE S.H.VORA

Date : 16/02/2016

CAV JUDGMENT**(PER : HONOURABLE MR.JUSTICE M.R. SHAH)**

1.00. As common question of law and facts arise in this group of Tax Appeals, they are disposed of by this Common judgement and order.

2.00. A common substantial question of law posed for consideration of this Court is that :

“Is it sine qua non for the Assessing Officer to mention / levy / charge interest under section 234B of the Income Tax Act (hereinafter referred to as “the Act” for short) in the assessment order before he consider / raises demand of the same in the notice issued under section 156 of the Act?

OR

Could Assessing Officer charge / levy interest in the notice under section 156 directly?"

3.00. For the sake of convenience, Tax Appeal No.321 of 2000 is considered as a lead matter and the facts in Tax Appeal No.321 of 2000 are considered, which, in nutshell, are as under :

3.01. That the Assessing Officer passed order of assessment for the year 1990-91 under section 143(3) of the Act. That while submitting original Return of Income, the assessee declared total income of Rs.1,15,57,730/- which was subsequently revised declaring total income of Rs.1,14,49,920/-. That the Assessing Officer finalized the assessment and assessed the income at Rs.3,16,81,450/-.

3.02. Feeling aggrieved and dissatisfied with the order passed by the Assessing Officer, the assessee preferred Appeal before the learned CIT(A). That the learned CIT(A) partly allowed the said appeal and also observed and passed an order that so far as the charging of the interest under section 234B of the Act is concerned, the same is consequential and therefore, the Assessing Officer will recalculate the interest while giving effect to order passed by him [CIT(A)].

3.03. That feelings aggrieved and dissatisfied with the order passed by the learned CIT(A), both, assessee as well as the revenue preferred Appeals before the learned Income Tax Appellate Tribunal.

3.04. One of the grounds raised by the assessee before the learned tribunal was regarding interest under section 234B of the Act. It was the case on behalf of the assessee that as in the order of assessment the Assessing Officer has not charged any interest under section 234 of the Act and therefore, no such interest is chargeable. That the assessee relied upon the decision of Patna High Court in the case of **Uday Mistanna Bhandar & Complex Versus Commissioner of Income Tax**, reported in **137 CTR 376 (Patna)** and decision of this Court in the case of **Commissioner of Income Tax, Gujarat-II, Versus Bharat Machinery, Hardware Mart**, reported in **136 ITR 875 (Gujarat)**.

3.05. That relying upon the aforesaid two decisions, the learned tribunal held that as in the order of assessment the Assessing Officer had not charged any interest and therefore, no such interest is chargeable.

3.06. Feeling aggrieved and dissatisfied with the impugned order passed by the learned tribunal in so far as holding that as in the order of assessment the Assessing Officer has not charged any interest under section 234 of the Act, no such interest is chargeable, the revenue has preferred the present Tax Appeal No.321 of 2000.

4.00. That while admitting present Tax Appeal No.321 of 2000, following substantial question of law is raised / framed :-

“Whether the Appellate Tribunal has erred in

law and on facts in holding that no interest under section 234B is chargeable as the same was not mentioned as chargeable in the order of assessment?"

4.01. In other Appeals also the aforesaid substantial question of law arise and therefore, all these appeals are heard, decided and disposed of together by this common judgement and 1 order.

5.00. Mr.Nitin Mehta learned counsel have appeared on behalf of the revenue and Mr.B.S. Soparkar, learned advocate has appeared on behalf of the respective assessee.

5.01. Mr.Nitin Mehta, learned counsel appearing on behalf of the revenue has vehemently submitted that as such in view of the subsequent decision of the Hon'ble Supreme Court holding that charging of interest is mandatory and automatic and therefore, even if there is no specific order passed by the Assessing Officer in the assessment order, charging interest under section 234B of the Act still the assessee is liable to pay interest on the "assessed income" and therefore, while issuing notice under section 156 of the Act, interest is mandatory and automatic and the assessee is liable to pay interest.

5.02. Mr.Mehta, learned counsel appearing on behalf of the revenue has further submitted that the Hon'ble Supreme Court in the case of **CIT Versus Anjum M.H. Ghaswala**, reported in **[2001] 252 ITR 1** and in the case of **Karanvir Singh Gossal Versus Commissioner of Income Tax,**

reported in **(2012) 349 ITR 692**, has specifically observed and held that the levy of interest under section 234B of the Act is mandatory and automatic.

5.03. Mr.Mehta, learned counsel appearing on behalf of the revenue has further submitted that when once levy of interest under section 234B of the Act is held to be mandatory and automatic, same can be demanded straightway in the notice under section 156 of the Act.

5.04. Mr.Mehta, learned counsel appearing on behalf of the revenue has also relied upon the decision of the Delhi High Court in the case of **Commissioner of Income Tax, Delhi-IV Versus Insilco Ltd.**, reported in **[2010] 321 ITR 105 (Delhi)**. It is submitted that in the aforesaid case, after the matter was remanded by the Hon'ble Supreme Court, the Delhi High Court has held that non-mentioning of section 234B of the Income Tax in the assessment order and straightway charging interest in the computation sheet would not be of much consequence and the same would be permissible.

5.05. Mr.Mehta, learned counsel appearing on behalf of the revenue has also referred to and relied upon para 5 of the decision of the Delhi High Court in the case of **Bill & Peggy Marketing India Pvt. Ltd. Versus Assistant Commissioner of Income Tax**, reported in **[2013] 350 ITR 465** with respect to the scheme of payment of advance tax.

5.06. Mr.Mehta, learned counsel appearing on behalf of the revenue has also relied upon the decision of the Hon'ble

Supreme Court in the case of **Joint Commissioner of Income Tax, Mumbai Versus Rolta India Ltd.**, reported in **330 ITR 470 (S.C.)**, more particularly para 6.

5.07. Mr.Mehta, learned counsel appearing on behalf of the revenue has also relied upon the decision of the Kerala High Court in the case of **Commissioner of Income Tax Versus R. Ramalingair** reported in **[2000] 241 ITR 753**, more particularly para 5 to 7 and has submitted that as observed by the Kerala High Court, liability to pay interest under section 234B of the Act is automatic and arises by operation of law.

5.08. Mr.Mehta, learned counsel appearing on behalf of the revenue has further submitted that in all subsequent decisions, all High Courts including this High Court have relied upon the decision of the Patna High Court in the case of Rachi Club Ltd. (supra) only. It is submitted that as such the decision of the Patna High Court in the case of Rachi Club Ltd. (supra) and decision of the Hon'ble Supreme Court in the case of Rachi Club Ltd. (supra) came to be considered by the Hon'ble Supreme Court in the subsequent decisions in which it is specifically held that charging of interest is consequential, mandatory and automatic.

5.09. Mr.Mehta, learned counsel appearing on behalf of the revenue has further submitted that as such notice under section 156 of the Act is consequent to section 143(3) of the Act and as such it is a notice of demand. It is submitted that notice under section 156 of the Act is not an empowering section to charge interest.

5.10. Mr.Mehta, learned counsel appearing on behalf of the revenue has further submitted that as such while passing order of assessment under section 143(3) of the Act, the Assessing Officer is required to assess the income and tax payable. It is submitted that interest leviable under section 234B of the Act is on the “assessed tax” assessed while passing order of assessment under section 143(3) of the Act. It is submitted that therefore, once in the subsequent decisions Civil Suit has held that the interest is not only mandatory but is also automatic, even in absence of any specific order passed by the Assessing Officer in the order of assessment, charging interest under section 234B of the Act, assessee is liable to pay interest under section 234B of the Act.

5.11. Mr.Mehta, learned counsel appearing on behalf of the revenue has further submitted that while passing assessment order under section 143(3) of the Act, Assessing Officer is not required to compute, assess and/or determine interest.

5.12. Mr.Mehta, learned counsel appearing on behalf of the revenue has further submitted that even in section 156 of the Act wordings are “consequent of assessment order” and not “arising out of assessment order”.

5.13. Mr.Mehta, learned counsel appearing on behalf of the revenue has further submitted that apart from the fact that decision of the Hon'ble Supreme Court in the case of Rachi Club Ltd. (supra) subsequently came to be considered by

the Hon'ble Supreme Court in the case of **CIT Versus Anjum M.H. Ghaswala**, reported in **[2001] 252 ITR 1**, even Patna High Court in the case of Rachi Club Ltd. (supra) and even the Hon'ble Supreme Court in the appeal against the order passed by the Patna High Court in the case of Rachi Club Ltd. (supra) had not considered the decision of the Hon'ble Supreme Court in the case of **Kalyan Kumar Ray Versus CIT**, reported in **[1996] 191 ITR 645**.

5.14. Mr.Mehta, learned counsel appearing on behalf of the revenue has further submitted that even notice under section 156 of the Act is issued by the Assessing Officer and therefore, reasons given by the Hon'ble Supreme Court in the case of Kalyan Ray (supra) shall be applicable.

5.15. Mr.Mehta, learned counsel appearing on behalf of the revenue has further submitted that in any case, in view of the subsequent decisions of the Hon'ble Supreme Court as well as decision in the case of Rachi Club Ltd. (supra) in which it is specifically observed and held that interest leviable under section 234B of the Act is mandatory and automatic.

Submitting accordingly, it is requested by Mr.Mehta, learned counsel appearing on behalf of the revenue to answer the substantial question of law in favour of the revenue and against the assessee, by holding that it is not sine qua non for the Assessing Officer to mention / levy / charge interest under section 234B of the Act in the assessment order before the raises demand of the same in the notice issued under section 156 and that the Assessing Officer can charge / levy interest in

the notice under section 156 of the Act directly.

6.00. All these appeals are opposed by Mr.B.S. Soparkar, learned advocate appearing on behalf of the respective assessee. It is vehemently submitted by Mr.Soparkar, learned advocate appearing on behalf of the assessee that as such the issue involved in the present appeals is squarely covered by the decision of the Patna High Court in the case of Rachi Club (supra) (222 ITR 44) affirmed by the Hon'ble Supreme Court. It is vehemently submitted that the Hon'ble Supreme Court in the decision in the case of Rachi Club Limited (Supra) [247 ITR 210 (S.C.)] decided two Civil Appeals i.e. Civil appeal No.10360 of 1998 and Civil Appeal Nos.145 to 149 of 1997. It is submitted that the aforesaid appeals arose out of the revenue's appeal against the order passed by the Patna High Court in the case of Rachi Club Ltd. (supra) [222 ITR 44 (Patna)]. It is submitted that the Patna High Court in the case of Rachi Club Ltd. (supra) decided the question of levy of interest to find place in the assessment order itself. It is submitted that even in the subsequent decision, the Patna High Court in the case of Tejkumari reported in 247 ITR 210 also recorded the aforesaid facts and also put note of earlier decision in the case of Rachi Club Ltd. (supra) (222 ITR 44). It is submitted that in the subsequent decision in the case of Tejkumari reported in 247 ITR 210, the Full Bench of the Patna High Court also put note of the dismissal of the Civil Appeal by the Hon'ble Supreme Court, which was against the decision of the Division Bench in the case of Rachi Club Ltd. reported in 222 ITR 44. It is submitted that the Full Bench of the Patna High Court in the case of Tejkumari (supra) has specifically observed that the issue is already concluded by the Division

Bench in Rachi Club Ltd. (supra) and the same has been affirmed by the Hon'ble Supreme Court in Civil Appeal and therefore, there is no question of taking any different view in the matter. It is submitted that in view of the aforesaid facts and the decision of the Patna High Court in the case of Rachi Club Ltd. (supra) taking the view that in absence of any specific order of charging interest under section 2354B by the Assessing Officer in the body of the assessment order, thereafter it is not open to levy charge / demand interest being confirmed by the Hon'ble Supreme Court by dismissing the Civil Appeals in a judgement reported in [247 ITR 209 (S.C.)] and therefore, it is requested to answer the question raised in the present appeals in favour of the assessee and against the revenue.

6.01. It is vehemently submitted by Mr.Soparkar, learned advocate appearing on behalf of the assessee that the decision of the Hon'ble Supreme Court in the case of Rachi Club Ltd. (supra) reported in [247 ITR 209 (S.C.)] is a Three Judge Bench decision and is a judgement of the Hon'ble Supreme Court under Article 141 of the Constitution of India and not under Article 136 of the Constitution of India and therefore, the same is binding. It is further submitted that as such the decision of the Hon'ble Supreme Court dismissing the Civil appeals was on merits and it was not a case where Special Leave Petition was summarily dismissed by the Hon'ble Supreme Court. It is submitted that civil Appeal was dismissed by the Hon'ble Supreme Court after hearing the parties and observing that the appeal has no merit. It is submitted that, therefore, such an order attracts Article 141 of the Constitution of India which provides that law declared by the Hon'ble Supreme Court shall

be binding on all courts within the territory of India.

6.02. In support of his above submission, Mr.Soparkar, learned advocate appearing on behalf of the assessee has heavily relied upon the following decisions :-

- (1) **Kunhayammed - 245 ITR 360 (S.C.) ;**
- (2) **Collector of Customs Versus East India Commercial Co. Ltd. - AIR 1963 S.C. 1124 and**
- (3) **V.M. Salgaocar & Bros. (P) Ltd. Versus CIT- 2000 (5) SCC 373 : 242 ITR 383 (S.C.)**

6.03. Mr.Soparkar, learned advocate appearing on behalf of the assessee has further submitted that the decision of the Hon'ble Supreme Court in the case of Anjum M. H. Ghaswala (supra) shall not be applicable to the facts of the case on hand, more particularly with respect to the issue / question involved in the present appeals and as such it does not lay down any contrary view than the law laid down by the Hon'ble Supreme Court in the case of Rachi Club Ltd. (supra). It is submitted that as such no contrary view has been taken by the Hon'ble Supreme Court to that of the view taken in decision in the case of Rachi Club Ltd. (supra) while deciding the question in Anjum M. H. Ghaswala (supra).

6.04. Mr.Soparkar, learned advocate appearing on behalf of the assessee has submitted that the Hon'ble Supreme Court in the case of Anjum M. H. Ghaswala (supra) has decided the order of the Settlement Commission comprising of 7 members of the Commission, which held that the Commission is vested with the power to waive or reduce interest chargeable under section 234A, 234B and 234C in the cases pending before it

for the Assessment year 1989-90 and onwards. It is submitted that the Settlement Commission further held that the aforesaid powers can be exercised by any of the Benches constituted to settle cases under section 245BA of the Act. It is submitted that while coming to this conclusion, the Commission held that the constitution of the Commission is based on the concept of “compromise and settlement” and hence it has necessary powers to waive or reduce interest even if statutorily mandated, in view of wordings of section 245D(6) of the Act. It is submitted that, it was further held that in view of the definition of the term “Income Tax Authority” under section 245A(D), Commission being an Income Tax Authority has all powers of the Board which are incidental to functions of the Commission which includes power under section 119 to relax rigors of section 234A, 234B and 234C of the Act. It is submitted that, therefore, the moot question which was posed for consideration before the Hon'ble Supreme Court was :

“Does section 245(D)(6) which contemplates providing for the term of settlement of tax, penalty or interest empowers the Commission, in any manner, either to waive or reduce the interest payable under section 234A, 234B or 234C, in any case that arises for settlement before the Commission? If so, would this waiver of interest be in accordance with provisions of the Act as mandated in sub-section (4)?”

It is submitted that, thus, the Hon'ble Supreme Court

was not seized with the question regarding charging of interest under section 234A/B/C in absence of levy / charge in the body of assessment by the Assessing Officer under section 143(3) / 144 of the Act. It is further submitted that even in the said decision, there is no mention of the earlier decision of the Hon'ble Supreme Court in the case of Rachi Club Ltd. (supra) [247 ITR 209 (S.C.)].

6.05. Mr.Soparkar, learned advocate appearing on behalf of the assessee has further submitted that even subsequently various high Courts have interpreted the law regarding charging of the interest under section 234A/B/C in absence of levy / charge in the body of assessment order by the Assessing Officer holding Three Judges Judgement of the Hon'ble Supreme Court in the case of Rachi Club Ltd. (supra) being relevant and applicable law and Five Judges decision of the Hon'ble Supreme Court in the case of Anjum M. H. Ghaswala (supra) being not relevant for that question.

6.06. In support of his above submission, Mr.Soparkar, learned advocate appearing on behalf of the assessee has drawn attention of the Court to the following decisions of the Allahabad High Court, Himachal Pradesh High Court, Uttarakhand High Court and Gujarat High Court :-

- (1) **Commissioner of Income-tax Versus Deep Awadh Hotels (P. Ltd.) - 351 ITR 185 (para 5 to 12);**
- (2) **Dehradun Club Limited - 351 ITR 296 (Uttarakhand) (para 7 to 17);**
- (3) **Ruchira Papers Ltd. - 259 CTR 692 (Himachal Pradesh) (para 17 and 18) and**
- (4) **S.K. Patel Family Trust - 251 CTR 427**

6.07. Mr.Soparkar, learned advocate appearing on behalf of the assessee has further submitted that at the time when this Court decided the case in the case of S.K. Patel Family Trust (supra), though judgement in the case of Anjum M. H. Ghaswala was very much available by that time, it was rightly not pointed out by the revenue and not examined by the Bench, the same being not relevant to the issue in hand.

6.08. Mr.Soparkar, learned advocate appearing on behalf of the assessee has further submitted that reasons on merits why above High Courts have held the issue in favour of the assessee is that even if any provision of law is mandatory and provides for charging for tax or interest, the view taken in Rachi Club Ltd. (supra) is that, such authority by the Assessing Officer should be specific and clear and the assessee must to be made to know that the Assessing Officer has applied its mind and has ordered charging of interest. It is submitted that mandatory nature of charging of interest and the actual charging of interest by application of mind and mention of proviso of law under which such interest is charged, are two different things.

6.09. Mr.Soparkar, learned advocate appearing on behalf of the assessee has further submitted that the assessment order must contained imposition of interest and only thereafter a notice of demand could be issued under section 156 of the Act. It is submitted that a notice of demand is somewhat like a decree in a Civil Suit which must follow the order. It is submitted that when the judgement in a Civil Suit does not specify any amount to be recovered, decree could not contain

such amount. It is submitted that similarly when the assessment order under section 143(3) of the Act does not indicate that interest would be leviable, notice of demand under section 156 of the Act to levy interest would be wholly illegal since interest is payable in consequence of an order passed as is clear from section 156 of the Act. It is submitted that consequently, notice of demand cannot go beyond the assessment order and the assessee cannot be served with any such notice demanding interest. It is submitted that there can be no dispute that if the Return is not filed within time or if advance tax is not paid within time, then the assessee is liable to pay interest and the payment of interest is mandatory. It is submitted that, however, if the Assessing Officer or the appellate authority does not pass order for payment of interest, assessee cannot be directed to pay interest by the demand notice. It is submitted that the Assessing Officer virtually acts like a judicial officer and if he passes a wrong order and not pass order to levy interest, then, the revenue authority must challenge such order and get the same set aside and an order must be passed directing interest should be paid. It is submitted that if no such order is there, revenue cannot claim interest.

6.10. Mr.Soparkar, learned advocate appearing on behalf of the assessee has further submitted that even decision of the Hon'ble Supreme Court in the case of Karanvir Singh Gossal (supra) which has been heavily relied upon by the learned advocate appearing on behalf of the revenue, is thoroughly misplaced. It is submitted that the decision of the Hon'ble Supreme Court in the case of Karanvir Singh Gossal (supra) shall not be applicable with respect to the question raised in

the present appeals. It is submitted that the Hon'ble Supreme Court in the case of Karanvir Singh Gossal (supra) was seized with the question as to "Whether levy of interest under section 234A/B is mandatory or not? It is submitted that before the Hon'ble Supreme Court there was no question that if the interest under section 234A/B could be levied vide notice of demand under section 156 of the Act in absence of any levy in the assessment order. It is submitted that hence the *ratio decidendi* in the case of Karanvir Singh Gossal (supra) is not relevant to the controversy at hand.

6.11. Mr.Soparkar, learned advocate appearing on behalf of the assessee has further submitted that even the observations made by the Hon'ble Supreme Court that "There was no need for the Assessing Officer to specifically recite in the order of assessment that penalty proceedings should be initiated" is mere observation / *obiter dicta* and not having any binding effect on subsequent proceedings.

6.12. In support of his above submission, Mr.Soparkar, learned advocate appearing on behalf of the assessee has heavily relied upon the following decisions of the Hon'ble Supreme Court :

- (1) **Deepak Bajaj Versus State of Makarashetra - 2009 SC 625 (para 7 to 16);**
- (2) **Hardeep Singh Sohal Versus State of Punjab - AIR 2004 SC 4778 (para 9 to 12);**
- (3) **Arun Kumar Aggarwal - (2014) 13 SCC 707 (para 24 to 34);**
- (4) **MCD Versus Gurunam Kaur - (1989) 1 SCC 101 (Para 11 to 13);**
- (5) **Narmada Bachao - 2011 (7) SCC 639 (Para 64 to 85) &**

(6) Delhi Administration Vs. Manoharlal - AIR 2002 SC 3088 (para 5)

6.13. Mr.Soparkar, learned advocate appearing on behalf of the assessee has further submitted that all the aforesaid three decisions of the Hon'ble Supreme Court namely (1) in the case of Anjum M. H. Ghaswala (supra); (2) in the case of Karanvir Singh Gossal (supra) and in the case of Rachi Club Ltd. (supra) came to be considered by the Allahabad High Court in the case of M/s. Oswal Exports Company. It is submitted that after analyzing the aforesaid three decisions of the Hon'ble Supreme Court Allahabad High Court has observed and held that decision of the Hon'ble Supreme Court in the case of Karanvir Singh Gossal (supra) does not change position of law as propounded in Rachi Club Ltd. (supra). It is submitted that it is specifically observed and held that the decision of the Patna High Court in the case of Rachi Club Ltd. (supra) still holds the field, as the said decision was affirmed by Three Judge Bench of the Hon'ble Supreme Court in the case of Rachi Club Ltd. (supra). It is further submitted that in the aforesaid decision, the Allahabad High Court further observed that the penal proceedings are totally different from charging interest and if the penal proceedings are required to be undertaken, it is not necessary not 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. Relying upon the aforesaid decision of the Allahabad High Court, it is requested to take the similar view.

6.14. Mr.Soparkar, learned advocate appearing on behalf

of the assessee has further submitted that even the interpretation of sections 143(3) and 156 of the Act show that the income, loss and the sum payable by the assessee on the basis of such assessment needs to be determined at the stage of assessment under section 143(3) of the Act only. It is submitted that notice under section 156 of the Act is a procedural requirement to let the assessee know that the demand is now raised upon him. It is submitted that notice per-se is not a charging provision but a procedural provision. It is submitted that words "in consonance of any order" clearly suggests that the notice of demand does not levy / charge any tax. It is submitted that it is only that a liability to pay tax arises at the time of service of notice. The quantum of such liability is determination by an order only. That the notice per-se does not increase or decrease the quantum of liability that is found in the order.

6.15. It is submitted that, therefore, before any interest is demanded while issuing notice under section 156 of the Act, reference of charging interest under section 234B of the Act is sine qua non in the order of assessment. It is further submitted that even in the latest judgement of the Hon'ble Supreme Court in the case of Bhagat Construction Pvt. Ltd. (supra), the Hon'ble Supreme Court has also held that every ITNS 150 Form must be treated as a part of assessment order in the waiver since in which expression has to be understood in the context of section 143, which is referred to in Explanation 1 to section 234B and hence levy of interest under section 234B was to be sustained. It is further submitted that in the aforesaid decision, the Hon'ble Supreme Court has not held that the decision of the the Hon'ble Supreme Court in the case

of Rachi Club Ltd. (supra) in any way overruled by the decision in the case of Anjum M. H. Ghaswala (supra). It is submitted that, therefore, combined reading of decision in the case of Rachi Club Ltd. (supra) and Bhagat Construction Pvt. Ltd. (supra) leads to a conclusion that as long as levy / charge is found in the assessment order (inclusive of ITNS 150 Form), the Assessing Officer can demand interest vide notice under section 156 but if there is no mention in the assessment order (inclusive of ITNS 150 Form), the same cannot be demanded vide notice under section 156 directly).

6.16. Mr.R.K. Patel, learned advocate appearing on behalf of assessee in Tax Appeal Nos.937 to 941 of 2005, Tax Appeal No.1048 of 2005 and Tax Appeal No.1479 of 2007 has, as such, reiterated what is submitted by Mr.Soparkar, learned counsel and therefore, the same is not repeated.

By making above submissions and relying upon the above decisions, it is requested to answer the substantial question of law raised in the present appeals in favour of the assessee and against the revenue.

7.00. Heard the learned advocates appearing on behalf of the respective parties at length.

7.01. As narrated hereinabove, substantial question posed for consideration of this Court is

“Is it sine qua non for the Assessing Officer to mention / levy / charge interest under section 234B of the Income Tax Act (hereinafter referred to as “the

Act” for short) in the assessment order before he consider / raises demand of the same in the notice issued under section 156 of the Act?

OR

Could Assessing Officer charge / levy interest in the notice under section 156 directly?”

7.02. While considering the aforesaid question of law, relevant provisions of the Income Tax Act i.e. 234B, 143 and 156 are required to be considered, which are as under :

“Section 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 115]AA [or section 115]D].]

Explanation 2. Where, in relation to an assessment year, an assessment is made for the first time under [section 147 or section 153A], the assessment so made shall be regarded as a regular assessment for the purposes of this section.

[Explanation 3. In Explanation 1 and in sub-section (3), "tax on the total income determined under sub-section (1) of section 143" shall not include the additional income-tax, if any, payable under section 143.]

(2) Where, before the date of [determination of total income

under sub-section (1) of section 143 or] completion of a regular assessment, tax is paid by the assessee under section 140A or otherwise,-

(i) interest shall be calculated in accordance with the foregoing provisions of this section up to the date on which the tax is so paid, and reduced by the interest, if any, paid under section 140A towards the interest chargeable under this section;

(ii) thereafter, interest shall be calculated at the rate aforesaid on the amount by which the tax so paid together with the advance tax paid falls short of the assessed tax.

(3) Where, as a result of an order of reassessment or re-computation [under section 147 or section 153A], the amount on which interest was payable under sub-section (1) is increased, 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 commencing on the day following [the date of determination of total income under sub-section (1) of section 143 [and where a regular assessment is made as is referred to in sub-section (1) following the date of such regular assessment]] and ending on the date of the reassessment or re-computation [under section 147 or section 153A], on the amount by which the tax on the total income determined on the basis of the reassessment or re-computation exceeds the tax on the total [income determined under sub-section (1) of section 143 or on the basis of the regular assessment aforesaid.]

(4) Where, as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260 or section 262

or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) or sub-section (3) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and--

(i) in a case where the interest is increased, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly;

(ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.

(5) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989 and subsequent assessment years.]

Section 143 : Assessment.

[(1) Where a return has been made under section 139 or in response to a notice under sub-section (1) of Section 142, Such return shall be processed in the following manner, namely:-

(a) the total income or loss shall be computed after making the following adjustments, namely:-

(i) any arithmetical error in the return; or

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(b) the tax and interest, if any, shall be computed on the basis of the total income computed under clause (a);

(c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax and interest, if any, computed under clause (b) by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest;

(d) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and

(e) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:

Provided that an intimation shall also be sent to the assessee in a case where the 1055 declared in the return by the assessee is adjusted but no tax or interest is payable by, or no refund is due to, him:

Provided further that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made.

Explanation. - For the purposes of this sub-section,-

(a) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the

return,-

(i) of an item, which is inconsistent with another entry of the same or some other item in such return;

(ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or

(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;

(b) the acknowledgment of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a).

*(1A) For the purposes of processing of returns under sub-section (1), the Board may make a scheme for centralised processing of returns with a view to expeditiously determining the tax payable by, or the refund due to, the assessee 35 required under the said sub-section.

+(1B) Save as otherwise expressly provided, for the purpose of giving effect *0 the scheme made under sub-section (1A), the Central Government may, by "Notification in the Official Gazette, direct that any of the provisions of this Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification; so, however, that no direction shall be issued [after [the 31st day of March, 2012]].

(1C) Every notification issued under sub-section (IB), along with the scheme made under sub-section (1A), shall, as soon as may be after the notification is issued, be laid before each House of Parliament]

[(1 D) Notwithstanding anything contained in sub-section (1), the processing of a return shall not be necessary, where a notice has been issued to the assessee under sub-section (2).]

[(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer shall,--

(i) where he has reason to believe that any claim of loss, exemption, deduction, allowance or relief made in the return is inadmissible, serve on the assessee a notice specifying particulars of such claim of loss, exemption, deduction, allowance or relief and require him, on a date to be specified therein to produce, or cause to be produced, any evidence or particulars specified therein or on which the assessee may rely, in support of such claim:

[Provided that no notice under this clause shall be served on the assessee on or after the 1st day of June, 2003;]

(ii) notwithstanding anything contained in clause (i), if he considers it necessary or expedient to ensure that the assessee has not under-stated the income or has not computed excessive loss or has not under-paid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced, any

evidence on which the assessee may rely in support of the return:

[Provided that no notice under clause (ii) shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished]

[(3) on the day specified in the notice, -

(i) issued under clause (i) of sub-section (2), or as soon afterwards as may be, after hearing such evidence and after taking into account such particulars as the assessee may produce, the Assessing Officer shall, by an order in writing, allow or reject the claim or claims specified in such notice and make an assessment determining the total income or loss accordingly, and determine the sum payable by the assessee on the basis of such assessment;

(ii) issued under clause (ii) of sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment]

[Provided that in the case of a-

(a)[research association] referred to in clause (21) of section 10;

(b) news agency referred to in clause (ZZB) of section

10;

(c) association or institution referred to in clause (23A) of section 10;

(d) institution referred to in clause (23B) of section 10;

(e) fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (V) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) of clause (23C) of section 10,

which is required to furnish the return of income under sub-section (4C) of section 139, no order making an assessment of the total income or loss of such [research association], news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical Institution, shall be made by the Assessing Officer, without giving effect to the Provisions of section 10, unless-

(i) the Assessing Officer has intimated the Central Government or the prescribed authority the contravention of the provisions of clause (21) or clause (22B) or clause (23A) or clause (23B) or sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, as the case may be, by such [research association], news agency, association or institution or fund or trust or university or other educational institution or any hospital, or other medical institution, where in his view such contravention has taken place; and

(ii) the approval granted to such [research association] or other association [or fund or trust]

or institution or university or other educational institution or hospital or other medical institution has been withdrawn or notification issued in respect of such news agency or fund or trust or institution has been rescinded:]

[Provided further that where the Assessing Officer is satisfied that the activities of the university, college or other institution referred to in clause (ii) and clause (iii) of sub-section (1) of section 35 are not being carried out in accordance with all or any of the conditions subject to which such university, college or other institution was approved, he may, after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned university, college or other institution, recommend to the Central Government to withdraw the approval and that Government may by order, withdraw the approval and forward a copy of the order to the concerned university, college or other institution and the Assessing Officer:]

[Provided also that notwithstanding anything contained in the first and the second proviso, no effect shall be given by the Assessing Officer to the provisions of clause (23C) of section 10 in the case of a trust or institution for a previous year, if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in such previous year, whether or not the approval granted to such trust or institution or notification issued in respect of such trust or institution has been withdrawn or rescinded.]

[(4) Where a regular assessment under sub-section (3) of this section or section 144 is made,-

(a) any tax or interest paid by the assessee under sub-section (1) shall be deemed to have been paid towards such regular assessment;

(b) if no refund is due on regular assessment or the amount refunded under sub-section (1) exceeds the amount refundable on regular assessment, the whole or the excess amount so refunded shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly.”

“**Section 156. Notice of demand.** - When any tax, interest, penalty, fine or any other sum [***] is payable in consequence of any order passed under this Act, the [Assessing Officer] shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable:

[Provided that where any sum is determined to be payable by the assessee or by the deductor under sub-section (1) of section 143 or sub-section (1) of section 200A, the intimation under those sub-sections shall be deemed to be a notice of demand for the purposes of this section.]”

7.03. It is the case on behalf of the revenue that after the decisions of the Patna High Court in the case of Rachi Club Ltd. (supra) and in the case of Tejkumari (supra), the Hon'ble Supreme Court in the case of Anjum M.H. Ghaswala (supra) and in the case Karanvir Singh Gossal (supra) has specifically observed and held that charging of interest under section 234B of the Income Tax Act is mandatory and statutory. Therefore, it is the case on behalf of the revenue that once

levy and charge of interest under section 234B of the Income Tax Act is automatic and mandatory and levy of interest is on the “assessed tax” and that the provision does not confer any discretion upon the A.O. whether to levy / charge interest or not and/or even with respect to rate of interest, even if in the order of assessment no demand of interest can be raised in the notice issued under section 156 of the Act be raised. On the other hand, it is the case on behalf of the assessed that in view of the decision of the Patna High Court in the case of Rachi Club Ltd. (supra) which was confirmed by the Hon'ble Supreme Court by dismissing the SLP preferred against the decision of the Patna High Court in the case of Rachi Club Ltd., the view taken by the Patna High Court in the case of Rachi Club Ltd. (supra) is to be accepted and considered in which it was held that unless and until question of levy / charge of interest under section 234B of the Income Tax Act is mentioned by the A.O. while passing assessment order, subsequent demand for the first time in the notice issued under section 156 of the Income Tax Act is not permissible.

7.04. We have heard the learned advocates appearing on behalf of the respective parties and considered the decision of the Patna High Court in the case of Rachi Club Ltd. (supra), against which SLP was preferred, however the said SLP was dismissed and also considered the subsequent decision of the Patna High Court in the case of Tejkumari (supra) and subsequent decisions of the Hon'ble Supreme Court in the case of Anjum M.H. Ghaswala (supra) and in the case of Karanvir Singh Gossal (supra) and other decisions of other High Courts referred to hereinabove, which are relied upon by the learned counsel appearing on behalf of the assessee.

However, it is true that the SLP preferred against the decision of the Patna High Court in the case of Rachi Club Ltd. (supra) has been dismissed by the Hon'ble Supreme Court. It is also required to be noted at this stage that some of the High Courts in the cases referred to hereinabove have simply followed the decision of the Patna High Court in the case of Rachi Club Ltd. (supra). However, it is required to be noted that the decision of the Hon'ble Supreme Court in the case of Rachi Club Ltd. (supra) is a decision of bench of Hon'ble Three Judges, however, the decision of the Hon'ble Supreme Court in the case of Anjum M.H. Ghaswala (supra) is decision of a bench consisting of Hon'ble Five Judges. It is also required to be noted that even the Hon'ble Supreme Court in the case of Karanvir Singh Gossal (supra) also took note of its earlier decision in the case of Rachi Club Ltd. (supra). Therefore, while deciding the question posed for consideration before this Court, the binding decisions of the Hon'ble Supreme Court in the case of Anjum M.H. Ghaswala (supra) and in the case of Karanvir Singh Gossal (supra) which hold the field are required to be considered.

7.05. In the case of Karanvir Singh Gossal (supra), the Hon'ble Supreme Court also considered its earlier decision in the case of Rachi Club Ltd. (supra) as well as decision in the case of Anjum M.H. Ghaswala (supra) and thereafter after following and considering decision in the case of Anjum M.H. Ghaswala (supra), it is held by the Hon'ble Supreme Court that if interest is leviable under section 234B/234C, then in such a case that levy is mandatory and compensatory in nature. Under the circumstances, subsequent decision of the Hon'ble Supreme Court in the case of Karanvir Singh Gossal (supra),

in which the Hon'ble Supreme Court has considered its earlier decisions in the case of Rachi Club Ltd. (supra) and in the case of Anjum M.H. Ghaswala (supra), is binding to this Court and the same is required to be considered.

7.06. The learned counsel appearing on behalf of the assessed have tried to distinguish the decision of the Hon'ble Supreme Court in the case of Anjum M.H. Ghaswala (supra) and decision of the Hon'ble Supreme Court in the case of Karanvir Singh Gossal (supra) by submitting that the question that arose for consideration before the Hon'ble Supreme Court in the case of Anjum M.H. Ghaswala (supra), was with respect to powers of the Settlement commission constituted under section 245B and as to jurisdiction to reduce or waive interest chargeable under section 234A, 234B and 234C while passing orders of settlement under section 245D(4).

7.07. The learned counsel appearing on behalf of the assessee has also tried to distinguish the decision of the Hon'ble Supreme Court in the case of Karanvir Singh Gossal (supra) on the ground that the Division Bench of the Hon'ble Supreme Court has erred in holding that Five Judges Judgement in the case of Anjum M.H. Ghaswala (supra) overrules Three Judges Judgement in the case of Rachi Club Ltd. (supra) and also on the ground that both operate in separate realms and are not conflicting.

7.08. However, one aspect cannot be lost sight of the fact that in the case of Anjum M.H. Ghaswala (supra), and even in the case of Karanvir Singh Gossal (supra) it has been specifically observed and held by the Hon'ble Supreme Court

that charge and levy of interest under section 234B is mandatory and compensatory in nature. Therefore, as observed by the Hon'ble Supreme Court in the aforesaid decisions that once the levy of interest under section 234B is mandatory and recitation by the A.O. directing institution of penalty proceedings is not obligatory and penal proceedings could be initiated for such default without any specific direction from the A.O. In view of the above, the substantial question of law posed for consideration of this Court is required to be considered.

7.09. On conjoined reading of sections 143, 24B and 156 of the Income Tax Act and the Scheme of the Income Tax Act, it can be said that after the return is filed by the assessee under section 139 or in response to the notice under sub-section (1) of section 142, such return shall be processed in the manner provided under section 143(1). That thereafter A.O. is required to process the return considering sub-section (2) of section 143. That thereafter, A.O. is required to pass final order of assessment determining the sum payable by the assessee on the basis of such assessment.

7.10. Section 234B provides levy of interest for defaults in payment of advance tax. Section 234B provides that subject to other provisions of the said 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 advance tax paid by such assessee under the provisions of section 210 is less than 90% of the **“assessed tax”**, **assessee shall**, be liable to pay simple interest at the rate of 1% for every month or part of a month comprised in the period from the first 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 regular assessment is made to the date of such **regular assessment**, on the amount equal to assessed tax, or, as the case may be, on the amount by which advance tax paid, as aforesaid, falls short of **assessed tax**. As per explanation 1 to section 234B “**assessed tax**” means tax on the total income determined under sub-section (1) of section 143 and where regular assessment is made, tax on the total income determined under such regular assessment.

7.11. As observed hereinabove, levy of interest under section 234B of the Income Tax Act is held to be mandatory and automatic and at the rate prescribed and mentioned under section 234B of the Income Tax Act. The A.O. has no discretion to levy any interest other than right of interest mentioned in section 234B of the Income Tax Act. The A.O. has no jurisdiction and/or authority to reduce and/or charge interest less than provided under section 234B of the Act.

7.12. That thereafter, section 156 of the Income Tax Act is required to be considered. Section 156 provides that when any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under Income Tax Act, A.O. shall serve upon the assessee a notice of demand in the prescribed form specifying sum to be payable.

7.13. Now, so far as the initiation of penal proceedings is concerned, in the case of Karanvir Singh Gossal (supra), the Hon'ble Supreme Court has specifically observed and held that recitation by the A.O. directing initiation of penal

proceedings is not obligatory and the penal proceedings could be initiated for such default without a specific direction from the A.O.

7.14. Considering the totality of the facts and on conjoint reading of the aforesaid provisions of sections 143, 234B and 156 of the Income Tax Act and when levy of interest under section 234B of the Act is held to be mandatory and automatic, and the same is on the difference between the advance tax paid and assessed tax and as observed hereinabove, A.O. has no discretion to levy any other interest other than provided under section 234B of the Act. Thereafter, levy of interest under section 234 of the Act would be consequential only and only arithmetically amount of interest is required to be calculated, we are of the opinion that even in absence of any direction by the A.O. while passing assessment order under section 143(3) of the Income Tax Act, which according to under section only for determining assessed tax, there can be demand of levy and demand of interest under section 156 of the Income Tax Act. It would have been a different fact if the A.O. had any discretion with respect to rate of interest and/or to levy any interest considering the facts and circumstances of the case. As observed hereinabove, as such, A.O. had no such discretion and moment he determines the "assessed tax" and on the eventuality as mentioned in section 234B, i.e. (i) an assessee who is liable to pay advance tax under section 208 has failed to pay such tax, or, where advance tax paid by such assessee under the provisions of section 210 is less than 90% of the "**assessed tax**", assessee shall, be liable to pay simple interest at the rate of 1% for every month or part of a month comprised in the period from

the first day of April next following such financial year to the date of **determination of total income** under sub-section (1) of section 143 and (ii) where regular assessment is made to the date of such regular assessment, on the amount equal to assessed tax, or, as the case may be, on the amount by which advance tax paid, as aforesaid, falls short of **assessed tax**. Under the circumstances and considering the subsequent decisions of the Hon'ble Supreme Court in the case of Anjum M.H. Ghaswala (supra) and in the case of Karanvir Singh Gossal (supra), question of law posed for consideration of this Court is to be answered in favour of the revenue and against the assessee.

7.15. Now, so far as the decisions of the other High Courts, relied upon the learned counsel appearing on behalf of the assessee, which are referred to hereinabove, are concerned, it is required to be noted that in all such cases, concerned High Courts have relied upon the decision in the case of Rachi Club Ltd. (supra). However, in view of the aforesaid two subsequent decisions of the Hon'ble Supreme Court and for the reasons stated hereinabove, in respectful submission we are not in agreement with the contrary view taken than what we are taking in the present case.

7.16. Similarly, the submissions on behalf of the assessee that the decision of the Patna High Court in the case of Rachi Club Ltd. (supra) came to be merged in the decision of the Hon'ble Supreme Court in view of the dismissal of the SLP against the said decision of Patna High Court in the case of Rachi Club Ltd. (supra) and therefore, the said decision is binding to this Court is concerned, it is required to be noted

that subsequent decision of the Hon'ble Supreme Court in the case of Anjum M.H. Ghaswala (supra) is a decision of a bench consisting of Five Hon'ble Judges and in the subsequent decision of the Hon'ble Supreme Court in the case of Karanvir Singh Gossal (supra) had taken note of the earlier decision in the case of Anjum M.H. Ghaswala (supra), in which the Hon'ble Supreme Court has categorically laid down the law that levy of interest under section 234B is mandatory and automatic and that it cannot be reduced [in case before the Hon'ble Supreme Court in the case of Anjum M.H. Ghaswala (supra), which was with respect to power of Settlement Commission to reduce the interest leviable under section 234B of the Act] and therefore, subsequent decision laying down the aforesaid law is binding to this Court.

8.00. In view of the above and for the reasons stated above, substantial question of law posed for consideration of this Court namely :-

“Is it sine qua non for the Assessing Officer to mention / levy / charge interest under section 234B of the Income Tax Act (hereinafter referred to as “the Act” for short) in the assessment order before he consider / raises demand of the same in the notice issued under section 156 of the Act?

is held in favour of the revenue and against the assessee and it is held that it is not sine qua non for the Assessing Officer to mention / levy / charge interest under section 234B of the Income Tax Act in the assessment order before he consider / raises demand of the same in the notice issued under section 156 of the Act?

It is also held that the Assessing Officer could charge / levy / interest as per section 234B of the Income Tax Act in the notice issued under section 156 of the Act directly.

Both the aforesaid questions are held in favour of the revenue and against the assessee. All these appeals are accordingly disposed of.

Rafik..

Sd/-
(M.R.SHAH, J.)

Sd/-
(S.H.VORA, J.)

