WP(C) 2102/2004
BEFORE
HON'BLE MR. JUSTICE AMITAVA ROY

Both these proceedings raise a common question of law though the facts vary marginally. Having been analogously heard, these are being disposed of by a common determination.

2. I have heard Mr. G.K. Joshi, Sr. Advocate assisted by Mr. R.K. Joshi, Advocate for the petitioner and Mr. U. Bhuyan, learned Standing Counsel, Revenue.

3. The pleaded versions of the parties need be noticed to appropriately appreciate the arguments based thereon. The petitioner No. 1 has presented itself to be a registered partnership firm under the Partnership Act, 1932, carrying business of supply of goods to various Government Departments. It is an assessee under the Income Tax Act, 1961 (hereafter referred to as the Act). For the financial years 1991-92 and 1992-93 relevant to the assessment years 1992-93 and 1993-94, the assessment of its income was completed by the Joint Commissioner of Income Tax, Investigating Circle, Dibrugarh, Assam, respondent No. 1, on 2/2/2009 under sections 144/147 of the Act. Though there was no reference and/or mention of any interest in the assessment orders in the corresponding demand notice varying amounts by way thereof under sections 234A, 234B and 234C of the Act were charged. Being aggrieved, the petitioner preferred appeals against the assessment order dated 2/2/1999 before the Commissioner of Income Tax (Appeals), Dibrugarh, which were registered as Appeal No. 49/DIB/98-99 and 50/DIB/98-99 respectively. In these appeals, it was inter alia urged on behalf of the petitioner that the levy of interest under the aforementioned provisions of the Act was illegal and unauthorised in absence of any specific determination to that effect in the orders of assessment. The Commissioner of Income Tax (Appeals), however, by a common order dated 27/9/2002 disposed of these appeals with a direction to the Assessing Officer to recompute the interest under the various sections of law. Pursuant thereto, the Assessing Officer, respondent No. 2, revised the original assessments and vide his order dated 10/3/2003 under sections 144/147/251 of the Act, charged different amounts of interest under sections 234A, 234B and 234C of the Act. The petitioners being dissatisfied are before this Court questioning the validity of levy of interest.

4. In his affidavit in opposition, the respondent No. 1 has endorsed the levy and demand of interest contending inter alia that the tax calculation sheets being a part of the orders of assessment, the impost under challenge is valid in law. As the tax calculation sheets set out in details the manner of computation of the interest charged under sections 234A, 234B and 234C of the Act, the assailment on its legality and admissibility in law is misplaced.

5. Mr. Joshi has assiduously contended that having regard to the unambiguous language of section 156 of the Act, tax, interest, penalty or fine is payable only in consequence of an order passed thereunder and that the same cannot be realised in absence thereof only by a notice of demand. Relying on the decision of the Patna High Court in Uday Mistanna Bhandar and Complex versus Commissioner of Income Tax and others, 222 ITR 44, the learned Sr. Counsel has endeavoured to persuade this Court to annul the impugned demand of interest in absence of a determination of any liability therefor in the corresponding assessment orders. Mr. Joshi has urged that as this decision has since been upheld by the Apex Court in Commissioner of Income Tax and others versus Ranchi Club Ltd., 247 ITR 209, the issue is no longer res integra and, therefore, the impugned levy of interest and the notice of demand ought to be adjudged illegal, null and void.

6. Mr. Bhuyan as against this has maintained that omission of a specific finding of liability for interest in the assessment orders notwithstanding, as the required computations in clear terms have been made in the calculation sheets accompanying those, the impugnment made in the teeth of the enunciation made by the Apex Court in Kalyankumar Ray versus Commissioner of Income Tax, 191 ITR 634 is patently flawed. As the calculation sheet accompanying the assessment order in obvious terms evince the petitioners' liability to pay interest under

sections 234A, 234B and 234C for which the required quantification of the amounts due have been made, the challenge on the ground urged is patently untenable and is liable to be negatived. To testify that the demand of interest under sections 234A, 234B and 234C is mandatory in nature, the decision of the Apex Court in Commissioner of Income Tax versus Anjum M.H. Ghaswala and others, 252 ITR 1 has been pressed into service by the learned Standing Counsel, Revenue.

7. Mr. Joshi, however, sought to contend that the decision in Kalyankumar Ray, supra, being distinguishable on facts, the same cannot be construed to be of binding effect for the present adjudication.

8. The competing pleadings and the arguments outlined hereinabove have received the thoughtful consideration of this Court. There is no wrangle at the Bar that the initial assessment orders dated 2/2/1999 and 10/3/2003 (following the order dated 27/9/2002 passed in the appeals) do not embody any finding with regard t o the liability of the petitioner for interest under section 234A, 234B and 234C of the Act. Admittedly, however, in the calculation sheet on both the occasions different amounts have been worked out under these heads signed by the Assessing Officer on the very same date. Whereas in the assessment order dated 2/2/1999, there is no reference of any interest whatsoever in the one dated 10/3/2003 the following observation was made charge interest as per law .

9. In Kalyankumar Ray, supra, the Apex Court while responding to the contention of the petitioner therein, questioning the validity of the assessment orders under the Act on the ground of absence of computation of tax, interest etc therein had held that though assessment is one integrated process involving not only assessment of the total income but also the determination of tax, the statute does not mandate that the computation of the levy should be done on the same sheet of paper superscribed assessment order . While observing that once the assessment of total income is complete, the calculation of net tax payable is a process which is largely arithmetical it was opined that no fault can be attached to the process of quantification of the amount made by the office if it is approved by the Assessing Officer and that it is only when the computation sheets are signed and initialled by him that the process envisaged in section 143(3) would be complete. Their Lordships noticed two forms in vogue for the purpose (i) I.T. 30 or I.T.N.S. 65 and (ii) I.T.N.S. 150. Whereas the first Form is to contain the assessment order, the second is to record the computation of the amount leviable and to be demanded. The Apex Court also noticed the practice that after the assessment order is made by the Income Tax Officer, the tax is computed in the necessary columns of the I.T.N.S. 150 showing the assessment of the concerned year. It also recorded that this Form is generally prepared by the staff but is checked or signed by the Income Tax Officer to be followed by the notice of demand. It was decisively held that I.T.N.S. 150 is also a Form for determination of Tax payable and on being signed and initialled by the Income Tax Officer, it is definitely an order in writing by him determining the tax payable within the meaning of section 143(3) of the Act. Their Lordships, therefore, held the view that this document approved and initialled by the Income Tax Officer ought to be treated as a part of the assessment order in the context of section 143(3) of the Act and in compliance of the prescribed statutory essentialities in that regard. The Apex Court, however, to avoid controversies of the like projected before it, required the department in future to incorporate the entire tax calculations in I.T.N.S. 65 Form itself or in the alternative make the I.T.N.S. 150 an annexure to form part of the assessment order.

10. In the case in hand, the calculation sheets containing the computation of interest payable by the petitioner for both the assessment years under section 234A, 234B and 234C admittedly form an annexure to the corresponding assessment orders.

11. This view was adopted by a Division Bench of this Court in Commissioner of Income Tax, Guwahati-II versus M/s Assam Mineral Development Corporation Limited, in I.T.A. No. 9 of 2007 in an identical fact situation.

12. Reading between the lines, the decision in Uday Mistanna Bhandar and Complex, supra, does not disclose that the assessment orders containing endorsements like charge interest, if any & & & & & &. charge interest as per r

etc. were accompanied by calculation sheets revealing computation of the interest claimed in the notices of demand. The appeal preferred by the Revenue against this decision though dismissed by the Apex Court in Commissioner of Income Tax and others versus Ranchi Club Ltd., 247 I.T.R. 209, in the present contextual facts is thus of no definitive relevance. While there is no dissension at the Bar on the peremptory nature of the levy under sections 234A, 234B, and 234C, the same in the above premise is not considered pertinent to be dilated upon in view of the limited contours of scrutiny herein. The decision of the Apex Court in Kalyankumar Ray, supra, being squarely applicable to the facts of the present case and is not in conflict with the one rendered by it in Commissioner of Income Tax and others versus Ranchi Club Ltd., supra, being founded on a different factual setting.

13. The distinction sought to be offered on behalf of the petitioner to exclude the applicability of the determination in Kalyankumar Ray, supra, to the proceedings in hand does not commend for acceptance. The essence of the debate centres around the validity of the demand of interest in absence of any decision with regard thereto in the assessment order recorded in the Form I.T.N.S. 65. The materials on record reveal that the assessment orders had been made in the Form I.T.N.S. 65 for both the assessment orders and the calculation sheets are annexures thereto forming an integral part thereof.

In view of the decision of the Apex Court in Kalyankumar Ray, supra, and on an overall considerations as above the petitions are adjudged to be lacking in merit and are therefore dismissed. No costs.