

RANCHI CLUB LTD. IS STILL GOOD LAW
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- By S.K. Tyagi

The Patna High Court in the case of *Ranchi Club Ltd. Vs. C.I.T. [1996] 217 ITR 72 (Pat.)*, rendered a very significant judgement that interest under Section 234A and 234B is to be levied on the income declared in the return of income and not on the assessed income. This judgement was passed on 13.11.1995. Thereafter, on 2.7.1996, another very significant judgement was rendered in the case of *Ranchi Club Ltd. & Others Vs. C.I.T. [1996] 222 ITR 44 (Pat.)*. It was held in this case that if there is no specific order levying interest under Sections 234A, 234B or 234C, in the assessment order, then interest cannot be levied through the notice of demand under Section 156 of the I.T. Act, 1961. Against the aforesaid judgements of the Patna High Court, the I.T. Department went in appeal to the Supreme Court. The Supreme Court dismissed the aforesaid appeals of the I.T. Department in the case of *C.I.T. Vs. Ranchi Club Ltd. [2001] 247 I.T.R. 209 (S.C.)*. Thus, the Apex Court affirmed both the aforesaid judgements of the Patna High Court. In view of the dismissal of the aforesaid appeals of the I.T. Department by the Apex Court, there was a stamp of approval of the Apex Court on the following *ratio-decidenti*-

- (i) The interest under Section 234A, 234B or 234C, is to be calculated with respect to the income declared in the return of income, and
- (ii) A specific direction to levy interest under Section 234A, 234B or 234C, is necessary in the assessment order and if there is no specific order, then interest cannot be levied through a notice of demand.

In order to nullify the first limb of the aforesaid judgement, the provisions of Sections 234A and 234B have been amended, vide Finance Act, 2001, with effect from 1.4.1989, retrospectively.

Vide the aforesaid amendment, Explanation 4 to S.234A has been omitted. The erstwhile Explanation 4 to Section 234A, before its omission stood, as follows-

Explanation 4 – In this sub-section, “tax on the total income as determined under sub-section (1) of section 143 or on regular assessment” shall, for the purposes of computing the interest payable under section 140 A, be deemed to be tax on total income as declared in the return.

As far as the amendment of Section 234B is concerned, for Explanation 1 to Section 234B, the following Explanation has been substituted-

Explanation 1 – In this section, “assessed tax” means the tax on the total income determined under sub-section (1) of section 143 or on regular assessment as reduced by the amount of 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.

 Before the aforesaid amendment, the erstwhile Explanation 1 to Section 234B, stood as follows-

Explanation 1 – In this section “ assessed ” tax means,-

- (a) for the purpose of computing the interest payable under section 140A, the tax on the total income as declared in the return referred to in that section;*
- (b) in any other case, the tax on the total income determined under sub-section (1) of section 143 or on regular assessment,*

as reduced by the amount of 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.

 The amendments brought about by Finance Act, 2001, have been explained vide Explanatory Notes in Circular No.14 / 2001, issued by the CBDT. The amendments relating to the provisions of Sections 234A and 234B have been explained vide para 67 of the aforesaid Circular. The same is reproduced as follows-

Modification of provisions relating to interest chargeable in certain cases

67.1 Under the existing provisions of sections 234A and 234B of the Income-Tax Act, interest is levied for defaults in furnishing return of income and in payment of advance tax respectively. Recently, the issue whether interest under these sections is chargeable on the basis of tax on returned income or assessed income has become a subject matter of litigation.

67.2 With a view to avoid litigation, the Act has amended sections 234A and 234B to clarify that the assessee shall be liable to pay interest under the said sections with reference to tax on the assessed income and not on returned income. It has further been clarified that for the purposes of section 140A, interest payable under sections 234A and 234B shall be computed with reference to tax on returned income.

67.3 The amendments will take effect retrospectively from 1st April, 1989, and will, accordingly, apply in relation to the assessment year 1989-90 and subsequent years.

Thus, after the aforesaid amendment, the assessee shall be liable to pay interest under the said Sections with reference to the tax on assessed income. Accordingly, the first limb of the Supreme Court's judgement in the case of *Ranchi Club Ltd. (Supra)*, stands nullified and as a result thereof, interest is to be calculated on the income determined under Section 143(1) or on regular assessment under Section 143(3) of the I.T. Act.

As far as the second limb of the aforesaid judgement is concerned, there has been no amendment of the I.T. Act, in respect thereof. However, another judgement by the Apex Court, in the case of *C.I.T. Vs. Anjum M.H. Ghaswala [2001] 252 ITR 1 (S.C.)*, has created a lot of controversy regarding the issue as to whether the judgement of the Apex Court in the case of *Ranchi Club Ltd. (Supra)*, still continues to be a good law. Though in the judgement of *Anjum M.H. Ghaswala*, the case of *Ranchi Club Ltd.* has not been considered, yet the Income-Tax Department started ignoring the judgement in the case of *Ranchi Club Ltd.* on the basis of the argument that in the case of *Anjum M.H. Ghaswala*, the five member Bench of the Apex Court, has held that the levy of interest under Section 234B, etc. is mandatory. The aforesaid view of the Income-Tax Department is totally erroneous in the light of the various reasons which have been conveniently ignored by the Income-Tax Department.

The reasons that the judgement of the Apex Court in the case of *Anjum M.H. Ghaswala* has not in any way affected the judgement in the case of *Ranchi Club Ltd.*, are as follows-

1. Judgement in the case of Ranchi Club Ltd., is a direct judgement on this issue [Date of judgement: 1.8.2000]

The foremost reason is that the judgement in the case of *Ranchi Club Ltd.*, is a direct judgement on this issue. The judgement in the case of *CIT Vs. Ranchi Club Ltd. [2001] 247 ITR 209 (SC)*, is delivered by a Bench of three judges.

It was held in this case that an order of the AO in the assessment order to charge interest under Sections 234A, 234B and 234C, has to be specific and clear and the assessee must be made to know that the AO, after applying his mind has ordered charge of interest and under what section.

As already explained, this limb of the aforesaid judgement is not, at all, affected by the amendment of Sections 234A and 234B, vide Finance Act, 2001.

2. Judgment in the case of CIT Vs. Anjum M.H. Ghaswala & Ors. [2001] 252 ITR 1 (SC), is on a totally different issue [Date of judgement: 18.10.2001]

This is a judgement delivered by a five-judge Bench of the Apex Court. The issue before the Apex Court, in this case, was whether the Settlement Commission has jurisdiction to reduce or waive the

interest chargeable under Sections 234A, 234B and 234C of the Act, while passing order of settlement, under Section 245D(4) of the Act. It is, thus, clear that the issue before the aforesaid five-judge Bench was totally a different one, *vis-à-vis* the issue decided by the Apex Court in the case of *Ranchi Club Ltd. (supra)*. This is quite evident from the fact that the case of *Ranchi Club Ltd.* has not even been cited by either side, during the course of the hearing of the aforesaid case of *Anjum M.H. Ghaswala*. It is for this reason that the case of *Ranchi Club Ltd (supra)*, does not find any mention in the aforesaid case of *Anjum M.H. Ghaswala*.

In view of the aforesaid reasons, the judgement of the Supreme Court in the case of *Ranchi Club Ltd.*, is not at all affected by the aforesaid judgement in the case of *Anjum M.H. Ghaswala (supra)*

This position is further evidenced by a clear statement made by the Hon. Bench in the case of *Anjum M.H. Ghaswala*, on page 16 of the Report, which is reproduced, as follows:-

In conclusion, we must note that we have taken up for consideration Civil Appeals Nos. 4126 to 4150 of 2000 and have decided the issue pertaining to the power of the Commission to waive or reduce the interest chargeable under Sections 234A, 234B and 234C of the Act, while passing orders of settlement under Section 245D(4) of the Act. We have not decided any other issue that might arise in all the appeals / petitions.

From the aforesaid observations of the Hon. Bench of the Apex Court, it is absolutely clear that the Apex Court in this case has only decided the issue regarding the powers of the Settlement Commission to reduce or waive interest chargeable under Sections 234A, 234B and 234C. Accordingly, the judgement of the Apex Court in the case of *Ranchi Club Ltd.*, continues to be a good law which has to be followed by all the lower Courts and other authorities throughout the Indian territory.

4. Various High Courts, in a number judgements, have followed the judgement in Ranchi Club Ltd., even after the judgement in Anjum M.H. Ghaswala

Various High Courts, particularly Delhi and Rajasthan, in a number judgements, have followed the judgement in *Ranchi Club Ltd.*, even after the judgement in *Anjum M.H. Ghaswala*. Some of these judgements are as follows-

(i) *CIT Vs. Insilco Ltd. [2003] 261 ITR 220 (Del.) [Date of judgement : 14.11.2002]*

This judgement has upheld the deletion of interest levied under Section 234B, by the ITAT in view of the decision of the Apex Court in the case of *Ranchi Club Ltd.*

It may be noted here that this judgement has been delivered on 14.11.2002, much after the judgement passed in the case of *Anjum M.H. Ghaswala*, which was delivered on 18.10.2001. Thus, it is clear that even after the judgement by a five-judge Bench in the case of *Anjum M.H. Ghaswala*, the Delhi High Court has followed the judgement in the case of *Ranchi Club Ltd.*, which was delivered by a three-judge Bench of the Apex Court. It clearly proves that the judgement in the case of *Anjum M.H. Ghaswala* has not affected, in any way, the judgement in the case of *Ranchi Club Ltd.* and accordingly, the judgement in the case of *Ranchi Club Ltd.*, continues to be a good law.

(ii) *CIT Vs. Inchcape India (P) Ltd. [2003] 179 CTR 212 (Del.) [Date of judgement: 20.8.2002]*

This judgement has been rendered on 20.8.2002. In this case, the Tribunal deleted the levy of interest under Section 234B for the AY 1996-97, on the ground that the AO had not made any order for charging the interest, while completing the assessment. The Hon. High Court upheld the order of the Tribunal, as the same was in conformity with the decision of the Supreme Court, in the case of *Ranchi Club Ltd.*

(iii) *CIT Vs. Autolite (India) Pvt. Ltd. [2002] 256 ITR 303 (Raj.) [Date of judgement 7.2.2002]*

In this case, interests under erstwhile Sections 139 and 217 were not charged specifically in the assessment order. It was held that interest cannot be charged in the demand notice. The Honourable High Court followed the judgement of the Apex Court in the case of *Ranchi Club Ltd.*

(iv) *CIT Vs. Kishanlal, HUF [2003] 133 Taxman 102 (Del.) [Date of judgement 21.8.2002]*

In this case the Tribunal deleted the interest charged under Sections 234A and 234B, as there was no direction in the assessment order for charging the interest.

It was held that in view of the judgement of the Apex Court in the case of *Ranchi Club Ltd.*, notice of demand claiming interest can be issued only when there is a direction in the assessment order for levying interest.

4. There are a number of judgements of the I.T.A.T. where judgement in the case of Ranchi Club Ltd. was followed after the judgement in the case of Anjum M.H. Ghaswala

There are a number of judgements of the I.T.A.T., where judgement in the case of *Ranchi Club Ltd.* has been followed even after the judgement in the case of *Anjum M.H. Ghaswala*. Some of these judgements are as follows-

- (i) *V.V. Industries Vs. ACIT [2003] 78 TTJ 758 (Del.-T) [Date of judgement: 12.11.2002]*

This judgement has been delivered on 12.11.2002. In this judgement, levy of interest under Sections 234A and 234B, in the absence of the specific direction in the assessment order, has been held to be unsustainable. In this case, the judgement in the case of *Ranchi Club Ltd.* has been followed.

The Hon. Bench of the ITAT has, inter-alia, considered the judgement of the Apex Court in the case of *Anjum M.H. Ghaswala* and distinguished the same. In this context, relevant part of para (22) of the aforesaid order of the ITAT, on p.763 is reproduced, as follows:

Coming to the judgement of the Supreme Court in the case Anjum M.H. Ghaswala (supra) relied upon by the Department, the same pertains to the powers of the Settlement Commission to waive or reduce interest and does not overrule Ranchi Club Ltd. (supra) which is a direct decision on the point at issue. The decision in the case of Anjum M.H. Ghaswala was delivered on 18th Oct. 2001, whereas in recent decisions the Honourable Delhi High Court has upheld orders of the Tribunal quashing levy of interest following Ranchi Club Ltd.

 It may be stated here that the aforesaid judgement of the ITAT is a detailed one, wherein all the relevant judgements on the issue have been considered. It may be specifically stated that the judgement of the Apex Court in the case of *Kalyan Kumar Ray Vs. CIT [1991] 191 ITR 634 (S.C.)*, has also been considered by the Tribunal in the aforesaid judgement. After taking into consideration all the aspects of the issue the Tribunal has come to a conclusion that interest under Section 234A or 234B could not be charged in the absence of any direction in the assessment order for charging the same.

In view of the aforesaid reasons, there is absolutely no doubt that the judgement of the Apex Court in the case of *Anjum M.H. Ghaswala* has not, in any way, affected the judgement of the Apex Court in the case of *Ranchi Club Ltd.* and accordingly, the judgement in the case of *Ranchi Club Ltd.*, continues to be binding on all the lower Courts and other appellate authorities.

- (ii) *Centrex publication (P) Ltd.Vs. Dy.C.I.T. [2003] 79 TTJ 265 (Del.-T) [Date of judgement 18.9.2002]*

It was held in this case that in the absence of any direction in the assessment order to levy any

interest, the charge of interest under Section 234B was illegal, in view of the judgement of the Apex Court in the case of *Ranchi Club Ltd.*

- (iii) *Charbhai Beedi Works Vs. ACIT [2003] 264 ITR(ATS) 94 (Pune – T)(T.M.)[Date of judgement 3.3.2003]*

In this case, the third Member discussed both the judgements of the Apex Court, in the case of *Ranchi Club Ltd.*, as also *Anjum M.H. Ghaswala*. The Member noted that the AO has on his own made the calculation of interest in the body of the order. Therefore, in view of the judgement in the case of *Vinod Khurana Vs. C.I.T. [2002] 253 ITR 578 (P&H) [Date of judgement 31.7.2001]* the levy of interest under Section 234B and 234C was held to be valid. It may be noted here that in the aforesaid case of *Vinod Khurana*, the High Court has held that since the AO had given a direction ‘charge interest as per law’ and the same officer signed and issued demand notice simultaneously, mentioning the quantum of interest and the Section under which it is charged, the levy of interest under Section 234B was valid. Thus, neither the High Court nor the ITAT has held that in view of the judgement in the case of *Anjum M.H. Ghaswala*, the judgement in the case of *Ranchi Club Ltd.*, it is no longer a good law.

- (iv) *Kripa Chemicals Pvt. Ltd. Vs. Dy.C.I.T. [2003] 80 TTJ 458 (Pune-T) [Date of judgement 7.3.2003]*

In this case, it was held that in the absence of any specific direction of the A.O.in the assessment order for charging interest under Sections 234A and 234B, no interest can be recovered from the assessee merely by way of demand notice.

- (v) *Dy.C.I.T. Vs. Surface finishing equipment [2003] 81 TTJ 448 (Jd.-T) [Date of judgement 14.7.2003]*

In this case interest levied under Section 234B was directed to be deleted, as there was no specific mention to charge interest by the AO in the assessment order.

- (vi) *Sangrur Vanaspati Mills Ltd. Vs. A.C.I.T. [2003] Taxman (Mag.) 37 (Chd. – T) [Date of judgement 11.7.2003]*

It was held in this case that as the AO had not passed a specific order mentioning therein specific sections under which interest was chargeable, the assessee cannot be served with a notice demanding interest. It was also observed that the notice of demand under Section 156 cannot go beyond the assessment order.

(vii) *Madanlal Saboo Vs. A.C.I.T. [2004] 82 TTJ 941 (Jd.-T) [Date of judgement 27.3.2002]*

It was held in this case that when in the assessment order the AO has issued direction that interest be charged as per rules and simultaneously the same AO has signed the ITNS 150 mentioning the sections and amount of tax chargeable, charge of interest of under Section 234B and 234C was valid.

It has also been held in this case that if the AO fails to make a specific direction in the assessment order that interest be charged as per rule / law, then there would be no valid order for the charging of interest, even if section and amount of interest is mentioned in the demand notice under Section 156 of the I.T. Act or in tax computation sheet (ITNS 150).

5. Conclusion

From the aforesaid discussion, it may be seen:

- (i) The judgement of the Apex Court in the case of *Ranchi Club Ltd.* is a direct judgement on the issue relating to levy of interest under Section 234A, 234B or 234C.
- (ii) The judgement of the Apex Court in the case of *Anjum M.H. Ghaswala*, is not a direct judgement on the issue. Besides, the Apex Court in its judgement in the case of *Anjum M.H.Ghaswala*, has itself restricted the scope of that judgement to the facts of that case. In other words, the Apex Court has clearly stated therein that they have only decided the issue pertaining to the power of the Settlement Commission to waive or reduce the interest chargeable under Sections 234A, 234B and 234C of the Act, while passing orders under Section 245D(4) of the Act.
- (iii) The Delhi High Court in three cases and Rajasthan High Court in one case, in their judgements passed much after the judgement of the Apex Court in the case of *Anjum M.H.Ghaswala*, have followed the judgement of the Apex Court in the case of *Ranchi Club Ltd.*
- (iv) The various Benches of the ITAT, in their judgements passed after the judgement of the Apex Court in the case of *Anjum M.H. Ghaswala*, have also followed the judgement of the Apex Court in the case of *Ranchi Club Ltd.*

- (v) The ITAT, Delhi Bench, in the case of *V.V. Industries*, has discussed in detail the impact of the judgement of the Apex Court in the case of *Anjum M.H.Ghaswala*, on its judgement in the case of *Ranchi Club Ltd.* and thereafter, has come to a conclusion that the judgement of the Apex Court in *Ranchi Club Ltd.*, continues to be a good law and therefore, interest under Sections 234A and 234B could not be charged in the absence of any direction in the assessment order for charging the same and any indication in the notice of demand about the figure of interest. The ITAT, has also considered the judgement of the Apex Court in the case of *Kalyan Kumar Ray Vs. C.I.T. [1991] 191 ITR 634 (S.C.)*

In the light of the aforesaid reasons, the judgement of the Apex Court of *Ranchi Club Ltd.*, continues to be a good law and the same is not in any way affected by the judgement of the Apex Court in the case of *Anjum M.H. Ghaswala*.

S. K. TYAGI	☎ Office	: (020) 2613 3012	Flat No.2, (First Floor)
M.Sc., LL.B., Advocate	Fax	: (020) 2612 1131	Gurudatta Avenue
Ex-Indian Revenue Service	Residence	: (020) 2668 2032	Popular Heights Road
Income-Tax Advisor		: (020) 2668 2444	Koregaon Park
	E-mail	: sktyagidt@vsnl.com	PUNE - 411 001
