

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

I.T.A. No.157 of 2004
Date of decision: 13.10.2010

K.K. Kansal.

-----Appellant.

Vs.

Commissioner of Income Tax.

-----Respondent

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL**

Present:- Mr. D.K. Goyal, Advocate
for the appellant.

Mr. Sanjeev Kaushik, Sr. Standing Counsel
for the respondent.

ADARSH KUMAR GOEL, J.

1. This order will dispose of I.T.A. Nos.157 and 158 of 2004, as both the appeals have been filed by the same assessee raising common questions of law. While admitting the appeals vide order dated 27.7.2004, following questions were framed:-

In I.T.A. No.157 of 2004:-

“Whether on the facts and circumstances of the case, in the absence of any direction in the assessment order for levy of interest under Section 234B and 234C of the Income Tax Act, 1961, the Assessing Officer could charge such interest while computing the tax liability?

In I.T.A. No.158 of 2004:-

- “1. Whether on the facts and circumstances of the case, in the absence of any direction in the assessment order for levy of interest under Section 234B and 234C of the Income Tax Act, 1961, the Assessing Officer could charge such interest while computing the tax liability?
2. Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in not entertaining the additional ground of appeal raised before it challenging the validity of notice under Section 148 of the Income Tax Act, 1961?”

2. Learned counsel for the assessee states that he does not press question No.2 in I.T.A. No.158 of 2004.

3. Thus, common question in both the appeals which survives for consideration is levy of interest under Sections 234B and 234C of the Act, in absence of any direction in the assessment order.

4. The assessee received incentive bonus from Life Insurance Corporation which was held to be taxable under the head of 'Salary'. Appeal of the assessee was dismissed by the CIT(A). The CIT(A) also rejected the contention that interest was not leviable under Sections 234B of the Act. The Tribunal, on further appeal, upheld the said view relying upon judgment of the Hon'ble Supreme Court in **CIT v. Anjum Ghaswala and others** [2001] 252 ITR 1.

5. We have heard learned counsel for the parties.

6. Learned counsel for the assessee submits that since in the order of assessment, there is no direction for recovering interest, the interest could not be recovered. He submits that Section 156 of the Act provides for demand being raised for interest in pursuance of the assessment order and thus, without assessment order containing a direction for levy of interest, levy of interest under Sections 234B and 234C of the Act was not permissible. Reliance has been placed on **CIT v. Krishan Lal (HUF)** [2002] 258 ITR 359 (Delhi), **V.N. Dubey v. CIT** [2008] 10 DTR 175 (MP) and **Uday Mistanna Bhandar & Complex v. CIT & ors.** [1996] 222 ITR 44 (Patna).

7. We are unable to accept the submission. It has been held by the Hon'ble Supreme Court in ***Anjum Ghaswala and others*** that levy of interest under Sections 234B and 234C of the Act is mandatory. Mere non-mention of levy of interest in the order of assessment cannot render the said statutory provision nugatory. The interest being mandatory and not discretionary, the recovery thereof does not depend on the language of the assessment order. The judgments relied upon are either prior to judgment of the Hon'ble Supreme Court in ***Anjum Ghaswala and others*** or do not consider the Supreme Court judgment. The said judgments cannot, thus, be relied upon to hold that the levy of interest under Sections 234B and 234C of the Act was not

permissible in absence of mention of levy of interest in the assessment order.

8. Accordingly, we answer the question against the assessee and in favour of the revenue.

9. The appeals are dismissed.

**(ADARSH KUMAR GOEL)
JUDGE**

**October 13, 2010
ashwani**

**(AJAY KUMAR MITTAL)
JUDGE**