

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'सी' अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**AHMEDABAD BENCH "C" AHMEDABAD**

श्री मुकुल कुमार श्रावत, न्यायिक सदस्य एवं श्री ए.मोहन अलंकामोनी, लेखा सदस्य  
Before **Shri Mukul Kumar Shrawat, Judicial Member** and  
**Shri A Mohon Alankamony, Accountant Member**

आयकर अपील सं./ITA No.3436/Ahd/2009  
निर्धारण वर्ष / Assessment Year:-1997-98

Softough Hygiene Products (Mkt) Pvt. Ltd., Hansol, P.O. Sardarnagar, Ahmedabad <b>PAN No.AACCS9973P</b>	<b>बनाम</b> <b>/v/s.</b>	Dy. Commissioner Income-tax Office, Circle-12, Ahmedabad
अपीलार्थी/Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी/By Appellant	Shri Girish Mehta, AR
प्रत्यर्थी की ओर से / By Respondent	Shri Vinod Tanwani, SR-DR
सुनवाई की तारीख / Date of Hearing	21-02-2012
घोषणा की तारीख/Date of Pronouncement	24 -02-2012

**आदेश /ORDER**

श्री मुकुल कुमार श्रावत, न्यायिक सदस्य **/PER Mukul Kumar Shrawat, Judicial Member:-**

This appeal has been filed by the assessee arising from the order of Ld. Commissioner of Income-tax (Appeal)-XIV, Ahmedabad order dated 16-11-2009 for the assessment year 1997-98.

2. The assessee has raised following grounds:-

"1. The Id CIT(A) has erred in confirming the order of the AO u/s.143(3) r.w. 254 which is premature as it is passed by **charging interest u/s.234-B on the total income** which is not finally assessed as per the direction of Hon. Tribunal.

- 1.1 *The Id CIT(A) has erred in confirming the order u/s.143(3) r.w.s. 254 passed by the AO charging interest u/s. 234-B, though the **appeals filed by the appellants against the orders of the Hon. Tribunal against the quantum additions** and against charging of interest u/s. 234-B are admitted by Hon. Gujarat High Court and pending for final hearing.*
- 1.2 *The Id CIT(A) has erred in confirming the order of the AO u/s. 143(3) r.w.s. 254 though the decision reported in 247 ITR 209 (SC) which is followed in 261 ITR 220 (Delhi) and is sent back by Supreme Court as reported in 278 ITR 1 (SC) to consider the question of law of charging interest u/s.234-B which is still pending for hearing.*
- 1.3 *In view of the above facts and appellants submit that the order of AO charging interest u/s.234-B as per order u/s.143(3) r.w.s. 254 which is confirmed by the Id CIT(A) being illegal, be cancelled.”*

3. As far as the several grounds are concerned, the fundamental issue is the levy of interest u/s. 234B of IT Act. On the date of hearing, Ld. AR, Mr. Girish Mehta appeared and requested to decide the appeal as per a short written submission contents of the same are reproduced below:-

*“1. The following papers are filed on record:-*

- (a) Copy of the application filed with the Registrar on 30-12-09 with Appeal Memo u/s. 253(6)(d) for fees payable of Rs.500/- (Page 16 of P.B. 2) In support, copy of 291 ITR 314 (Karn) is filed. (Pages 31 to 35 of P.B.2)*
- (b) Paper Book No.1 is filed on 10-02-2010 on record.*
- (c) Paper Book No.2 is filed on 2-01-2012 on record.*
- (d) Declaration u/s. 158A(1) with Form No.8 in duplicate with copies of Hon Gujarat High Court orders dated 14-12-2007 is filed on 18-08-2011 on record.***

*2. We request Hon Bench to decide the following issues as per written Submissions filed on record:-*

*(i) Fees payable u/s. 253 (6)(d) are of Rs.500/- as the subject matter of the appeal relates to any matter other than those specified in clauses (a) (b) and (c). Rely on 291 ITR 314 (Karn). (Pages 31 to 35 of P.B 2).*

***(ii) Order may be passed as per Declaration filed u/s. 158A(1) with Form No.8.***

***(iii) In the alternative, order may be passed on merits as per written submissions.”***

4. The background is like this, that Assessing Officer has passed an order u/s 143 r.w.s. 254 of IT Act dated 17-10-2008 and therein while giving effect of an order of the Tribunal bearing **ITA No.594/Ahd/2003 dated 16-03-2007** pronounced in assessee's own case, the AO has categorically mentioned that it was directed **to charge interest u/s. 234B of the Act** on the income finally assessed. The total income was finally assessed at Rs.10,68,231/-. It was requested before the AO that interest u/s 234B may not be charged because an appeal has been filed before the Hon'ble jurisdictional High Court u/s. 260A of I.T. Act against the afore-mentioned order of the Tribunal. It was informed to the AO that the said appeal has been admitted vide an order dated 14-12-2007 of the Hon'ble jurisdictional High Court. It was requested to wait for the final order of the Hon'ble jurisdictional High Court and keep the charging of interest u/s. 234B pending. The AO has held that no stay has been granted by the Hon'ble jurisdictional High Court therefore he had to follow the direction of the Hon'ble Tribunal and then gave the effect of those directions. The interest was charged as per law. The matter was carried before the First Appellate Authority.

5. The Ld. CIT(A) has examined the operative part of the directions of the Tribunal and the relevant portion is reproduced for ready reference.

*"2.3 I have considered the facts of the case and the submissions of the appellant. I have also perused the case laws as relied upon by the appellant. Before considering the appellant's submission, it is important to look about the operative part of the direction given by Hon'ble ITAT Ahmedabad 'B' Bench in the appellant's case (ITA No.594/Ahd/2003 and ITA No.7551/Ahd/2003) vide order dt: 16-03-07, At para 7 of this order, Hon'ble ITAT held that 'Having heard both the parties and perusing the record, we find that the CIT(A) has deleted the interest u/s. 234B on the ground that since the A.O has not specifically mentioned anything in respect of charging of interest u/s. 234B in the asstd. Order, the interest charged is to be cancelled. The CIT(A) has relied upon the decision of the Hon. Supreme Court in the case of Rachi Club, 164 CTR (SC) 200). But we hold that levy under sec. 234A & B is mandatory in accordance with the decision of Hon. SC in the case of CIT vs. Anjum M.H. Ghaswala, 254 ITR 1 and also following two decisions of the Special Bench:-*

- i) Motorola Income. Vs. DCIT 95 ITD (Del) 269
- ii) DCIT and another vs. Royala Jordanians Air Lines 97 TTJ (Del) (SB) 434.

*The relevant observations of the Special Bench in the case of DCIT vs. Royal Jordanians Airlines (supra) as under:-*

*'78. ....*

*79. It is important to note that the subsequent judgment of the larger Bench of Hon. Supreme Court in the case of Anjuim M.H. Ghaswala (supra) was not brought to the notice of Hon. Delhi High Court in the case of CIT vs. Kishan Lal (HUF) (2002) 258 ITR 359 (Del) and (Del) and CIT vs. Insilco Ltd. (2003) 179 CTR (Del) 214: (2003) 261 ITR 20 (Del).*

*80. We may mention here that the view being taken by us finds ample support from the judgment of the Hon. Punjab & Haryana High Court in the case of Vinod Khurana vs. CIT (2001) 170 CTR (P&H) 383: (2002) 253 ITR 578 (P&H) which is turn, has been based on the judgment of the Hon'ble Supreme Court in the case of Kalyan Kumar Ray vs. CIT. Above all, we find that the Hon. Supreme Court has, in the case of Anjum M.H. Ghaswala (supra) clearly held that interest u/s. 234A, 234B & 234C has to be charged in all the cases here it is required to be charged and the power to reduce or waive can be exercised only in the manner provided in the relevant CBDT Circular issued in exercise of special Powers of relaxation vested in CBDT u/s. 119. It is true that judgment has been delivered in connection with an order of Settlement Commission, but the law pronounced in that judgment is binding upon all authorities concerned. In our humble opinion there is no apparent conflict between the two judgments of Hon;ble Supreme Court in the case of Ranchi Club Ltd. (supra) and in the case of Anjum M.H. Ghaswala (supra). If there is one, the judgments of Hon. Supreme Court in the case of Anujum M.H. Ghaswala”*

5.1 ) Ld. CIT(A) has said that the directions given to be strictly followed.

Ld. CIT(A) has also cited CIT vs. Fundilal Rikhabchand (1994) 208 ITR 348 (Raj) . Finally the Ld. CIT(A) has mentioned that the question of levy of interest has again been considered by the **Hon'ble Supreme Court in the case of CIT v. Insilco Ltd. (2005) 278 ITR 1 (SC)** and remanded the matter back to High Court. According Ld. CIT ( A) presently the A.O. was justified in computing the interest U/s 234 B. Now the assessee is further in appeal before us.

6. As far as written submissions are concerned, the same has duly been considered by us. We have also heard Ld. AR, Mr. Mehta. Since an alternate plea has already been made to proceed on merits therefore we deem it proper to dispose off this old appeal accordingly, pending since long and no useful purpose is going to be served for keeping this appeal pending any more. At the outset, we may like to place on record that even if we will proceed with this appeal no prejudice shall be caused to the assessee because of the language of u/s. 234B of the Act. As per sub-section(4) of Section 234B where as a result of an order u/s 260A i.e. order of the Hon'ble High Court the amount on which interest was payable has been increased or reduced, as the case may be, the amount of interest be amended in consequence thereof which is payable under sub-section (1) or sub-section (3) of sec.234B. In case where the interest is increased, the A.O. shall serve a notice of demand. In case where the interest is reduced, the excess interest paid shall be refunded. Therefore we hereby clarify that on the occasion if the assessee gets relief from the Hon'ble High Court a consequential relief shall automatically be granted to the assessee under the provisions of Section 234B(4)(i) & (iii) of the Act. Rather, we deem it justifiable to give a direction in this regard, that this provisions of the Act should be followed while giving the effect of the order of Hon'ble High Court at the time of passing a consequential order.

6.1 ) It has also been brought to our notice that a declaration u/s 158A(1) on Form No.8 has been filed by this appellant. Considering this declaration we hereby proceed as per Section 158A(4) which prescribes that where a claim of identical question of law is pending is admitted then the appellate authority make an order disposing the relevant case, without awarding the final decision on the question of law in other case. However, we have already noted vide sub-section (5) of Section 158A when the decision on the question of law in other case, becomes final, then it shall be applied to the relevant case, and the Assessing Officer, as the case may be, shall amend the order referred.

7. As far as decision of the Hon'ble Delhi High Court pronounced in the case of **CIT v. Insilco Ltd. (2010) 190 Taxman 306 (Del)** is concerned it was held that mere non-mentioning of Section 234B in the assessment order would be of no consequence. When the said order of the Hon'ble Delhi High Court had gone further in appeal before the Honble Apex court , then the grievance of the appellant was that the High Court while admitting the appeal in respect of two Assessment Years U/s260A directed that only the appeal relating to A.Y. 90-91 would be admitted . As far as the second A.Y. 91-92 was concerned, the H.C.was of the view that the issue has been correctly decided in favour of the assessee by the Tribunal relying upon the decisions of the Patna High Court, and thereafter, by these comments the matter was remanded back to H.C. after admitting the appeal for the A.Y. 1991-92. We are therefore convinced that in the absence of any stay given by the Hon'ble jurisdictional High Court the Assessing Officer has rightly proceeded to follow the directions of the Tribunal. Likewise, the Ld. CIT(A) has judiciously affirmed the said action of the AO. Resultantly, grounds raised are hereby dismissed subject to the directions given hereinabove.

**8. In the result, grounds of the assessee are hereby dismissed with the directions mentioned supra.**

इस आदेश की घोषणा दिनांक: 24/02/2012 को खुले न्यायालय में की गई ।

This Order pronounced in Open Court on 24/2.012.

Sd/-

(ए.मोहन अलंकामोनी)

(लेखा सदस्य)

(A. Mohan Alankamony)  
(Accountant Member)

Sd/-

(मुकुल कुमार श्रावत)

(न्यायिक सदस्य)

(Mukul Kumar Shawart)  
(Judicial Member)

दिनांक:- 24/02/2012 अहमदाबाद ।

DKP\*

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी / Appellant
2. प्रत्यर्थी / Respondent
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

//True copy//

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद ।