IN THE HIGH COURT OF JHARKHAND AT RANCHI
T.A. No.55 of 2019

The Principal Commissioner of Income Tax, Ranchi
..... Appellant

Versus

Manoj Kapoor .....Respondent

CORAM: Hon'ble Mr. Justice Rongon Mukhopadhyay
Hon'ble Mr. Justice Deepak Roshan

For the Appellant : Mr. R. N. Sahay Sr. S.C
Mr. Rahul Lamba, Adv.
Mr. Anurag Vijay, A.C. to Sr. S.C

For the Respondent : Mr. Ajay Poddar, Adv.

C.A.V. on 11.07.2023 **Pronounced on 16/08/2023**

Per Deepak Roshan J. The instant appeal is directed against the judgment dated 22.05.2019, passed by the learned Income Tax Appellate Tribunal (herein after referred as ITAT), SMC Bench, Ranchi in ITA No.86/Ran/19 preferred by the assessee-respondent; wherein the learned ITAT allowed the appeal of the assessee and reverse the order of CIT appeal who has sustained the addition of income and chargeability of interest passed by the Assessing Officer.

2. Brief fact of the case is that the Assessee is an individual and deriving income from trading of spare-parts of motorcar and mobile phones and filed its return of income declaring total income at Rs.6,61,080/- electronically on 17.09.2015. The case of the Assessee was selected for scrutiny assessment. In response to notices, the Assessee appeared and produced all books of accounts, papers & documents. In course of assessment proceedings, the Assessee voluntarily surrendered the LTCG for taxation. But the A.O added the entire receipt from sale of shares amounting to Rs.10,45,266/- including the cost price/investment made by the Assessee amounting to Rs.5,40,000/- as unexplained investment u/S 69 of the Act vide its order dated 30.11.2017 passed u/S 143 (3) of the

Income Tax Act, 1961.

Against which the Assessee carried the matter before the CIT(A). In the appellate proceeding, the CIT(A) upheld the action of A.O and dismissed the appeal of the Assessee.

Being aggrieved by the order of CIT(A), the Assessee preferred an appeal before the ITAT, SMC Bench Ranchi and the said appeal was allowed vide impugned order dated 22.05.2019 and the AO was directed to delete Rs.5,40,000/- out of the total addition made under Section 69 of the Act. The learned Tribunal has further directed the AO to delete the addition and charge the interest u/s 234B of the Act on returned income instead of assessed income.

3. The instant appeal was admitted on 03.08.2022 with following questions of law:-

> *(i) Whether on the facts & in the circumstances of the case and in law, the Hon'ble ITAT is justified in deleting the addition made by the A.O on the ground that the income of the past years cannot be taxed as an investment in purchase of shares during the year under consideration?*
>
> *(ii) Whether on the facts & in the circumstances of the case and in law, the Hon'ble ITAT is justified in interpreting the provisions of section 234B(1) read with explanation 1 and 234B(3) of the I.T. Act, 1961 while directing to calculate interest u/S 234B on returned income instead of assessed income?*
>
> *(iii) Whether on the facts & in the circumstances of the case and in law, the Hon'ble ITAT is justified in not taking into account the amendment made in Section 234B and 234C w.e.f. 01.04.2007 and when the said sections have not been declared ultra vires by any Court of law?*
>
> *(iv) Whether on the facts & in the circumstances of the case and in law, the Hon'ble ITAT is justified in following the findings of the Hon'ble Jharkhand High Court in the matter of Ajay Prakash Verma Vs. ITO (T.A. No.38 of 2010) which pertains to A.Y. 2003-04 and is a case prior to the amendment in the I.T. Act, 1961 w.e.f. 01.04.2007?*

4. Mr. R. N. Sahay, learned Sr. S.C representing the revenue submitted that so far as first question of law is concerned; the learned ITAT is not justified in deleting the addition made by the assessing officer on the ground that the income of past year cannot taxed as an investment in

purchase of shares during the year under consideration. He further relied upon the finding of A.O. that the Securities and Exchange Board of India (SEBI) has in the recent past, passed order on the issue of manipulation of share market for providing accommodation entry of bogus LTCG (Long Term Capital Gain).

Learned counsel also submitted that the script Kailash Auto Finance in which Assessee traded has also been put under surveillance measure by SEBI and due to this reason the A.O committed the entire receipt of sale of share amounting to Rs.10,45,265.55/- including the cost price/investment made by the assessee amounting to Rs.5,40,000/- and there was no error in the addition made by the A.O. for the bogus transaction which has also been sustained by the CIT(A).

He also contended that learned ITAT has committed an error by holding that income of the past year cannot be taxed as an investment in purchase of shares during the year under consideration.

5. For the subsequent questions of law with regard to charging of interest u/s 234 B of the Act, Mr. Sahay, counsel for the Revenue submitted that he doesn't want to press those questions of law as the same is covered by the judgment of the coordinate Bench of this Court.

Since the judgment mentioned in the impugned order and referred by the learned counsel for the Revenue was of the year 2012, and the instant appeal was admitted on 03.08.2022 on aforementioned questions of law, this Court felt it necessary to ask from the officials of the Revenue as to whether they want to press the questions of law with regard to charging of interest.

Thereafter, during course of proceeding the learned PCIT-Ranchi (Appellant herein), appeared before us and

informed us that Mr. Rahul Lamba, who was erstwhile advocate on record in this case, but later on changed due to change in panel, has again been instructed by the Commissioner of Income Tax (PCIT) vide letter dated 05.07.2023 to put forth argument in support of contention for the question of law Nos.2, 3 & 4 as the issue was having far-reaching effect.

6. Mr. Rahul Lamba learned counsel made following submissions in support of question Nos.2, 3 and 4.

(i) The learned ITAT was not justified in interpreting the provisions of Section 234B (1) read with explanation 1 and 234B (3) of the IT Act, 1961 while directing to calculate interest under Section 234 B on returned income instead of assessed income.

(ii) Learned ITAT should have taken into consideration that there was an amendment made in Section 234B and 234C pursuant to the order passed in the case of *Ranchi Club and Smt. Tej Kumari* which held that the interest should be charged on returned income and not assessed income and since the amendment put forth in the year 2001 was subsequent to the order passed by the Hon'ble Apex Court in the case of *Ranchi Club and Smt. Tej Kumari*. The learned tribunal should have considered that the said amendment was made applicable from retrospective effect and as such the learned tribunal should not have followed the judgment of *Ajay Prakash Verma Vs. ITO (T.A. No.38 of 2010)* which pertains to AY 2003-04 as the said judgment did not consider the amendment made in the year 2001, as such the judgment passed by this Court in the case of *Ajay Prakash Verma* was *per-incuriam* and will not affect any other case.

He lastly submits that the law with respect to charging of interest which is prevailing in the whole country

is that the interest is being charged on the assessed income and not on the returned income; whereas in the State of Jharkhand pursuant to the order passed in the case of *Ajay Prakash Verma* revenue is prevented from charging interest on the assessed income as such this question of law has a far-reaching effect.

7. Learned counsel for the respondent made following submissions: -

(a) The instant appeal is not maintainable in view of quantum of tax effect as CBDT vide circular No17/2019 dated 08.08.2019 has prescribed the monetary limit and other conditions for filing of appeal before the Appellate Tribunal, High Court and Supreme Court. Since the quantum of tax effect is below the monetary limit, the instant appeal is not maintainable.

(b) On merit, learned counsel for the Assessee submits that no error has been committed by the learned ITAT who has held that the A.O. could have added only income earned during assessment year 2015-16 and cannot tax the investment made in purchase of shares being income of past years.

(c) On the question of 234 B, he submits that in the case of *Ajay Prakash Verma* this Court has held that the revenue can levy the interest only on the total income declared in the return and not on income assessed by the A.O. He further submits that against this order the revenue also filed civil review application but the same was also dismissed as such there is no error committed by the learned ITAT, as such no interference is required with the impugned judgment.

8. Having heard learned counsel for the rival parties and after going through the grounds taken by the respective counsels; at the outset it is necessary to decide the

question of maintainability with regard filing of appeal being below the monetary limit. In this regard reference may be made to the circular No.23/2019 dated 06.09.2019 (Annexure-1 to the supplementary affidavit dated 18.01.2023 filed by the Appellant). For brevity, relevant portion is extract hereinbelow: -

> ***Subject; -Exception to monetary limits for filing appeals specified in any Circular issued under Section 268A of the Income-tax Act, 1961-reg***
>
> *Reference is invited to the Circulars issued from time to time by Central Board of Direct Taxes (the Board) under section 268A of the Income-tax Act,1961 (the Act), for laying down monetary limits and other conditions for filing of departmental appeals before Income Tax Appellate Tribunal (ITAT), High Courts and SLPs/appeals before Supreme Court.*
>
> *2. Several references have been received by the Board that in large number of cases where organised tax-evasion scam is noticed through bogus Long-Term Capital Gain (LTCG)/Short Term Capital Loss (STCL) on penny stocks and department is unable to pursue the cases in higher judicial fora on account of enhanced monetary limit. It has been reported that in large number of cases ITATs and High Court have recognized the unique modus operandi involved in such scam and have passed judgements in favour of the revenue. However, in cases where some appellate fora have not given due consideration to position of law or facts investigated by the department, there is no remedy available with the department for filing further appeal in view of the prescribed monetary limits.*
>
> *3. In this context, Board has decided that notwithstanding anything contained in any circular issued u/s 268A specifying monetary limits for filing of departmental appeals before Income Tax Appellate Tribunal (ITAT), High Courts and SLPs/appeals before Supreme Court, appeals may be filed on merits as an exception to said circular, where Board, by way of special-order direct filing of appeal on merit in cases involved in organised tax evasion activity.*

In view of the aforesaid circular, we have decided to decide the case on merit looking to the facts and circumstances of this case.

9. So far as first question of law is concerned; it appears that the Assessee & his HUF had purchased **30,000 shares** of M/S. Kailash Auto Ltd., on 16.05.2013 for Rs.5,40,000/- out of past income & savings duly shown in the accounts. It

further appears that the shares purchased by HUF were also transferred to the Assessee as there was no DEMAT account in the name of HUF. Subsequently the shares were sold by the Assessee for Rs.10,45,266.55 earning LTCG of Rs.5,05,265.55 and the Assessee claimed exemption u/s 10(38) of the Act in his return as due security transaction tax was paid by the Assessee. When the Assessee came to know that the said transaction is not correct and therefore to buy peace the assessee surrendered the aforesaid LTCG as income from other sources in his revised computation of taxable income. Thereafter, the A.O. issued notices u/s 143 (3) of the I.T. Act, 1961 dated 06.12.2017 and added the entire sale consideration of Rs.10,45,265.55/- received from sale of shares to the total income of the appellant as unexplained investment u/s 69 of the I.T. Act, 1961.

From the fact available on record, we are of the view that the A.O. should have added the Long-Term Capital Gain of Rs. 5,05,265/- only instead of Rs.10,45,265/- being the income of the Assessee and not the entire sale receipts, which included Rs.5,40,000/- being the investment made by the Assessee in purchase of shares, as the investment was duly shown in balance sheet of the Assessee in previous year and was made out of past earning & savings. The copy of balance sheet as on 31.03.2014 is also on record which was placed before the learned Tribunal. On perusal of the same, it reveals that Rs.3,60,000/- and Rs.1,80,000/- totaling to Rs.5,40,000/- have been shown in the balance sheet in the name of Kailash Auto on purchase of 20000 and 10000 shares respectively for the assessment year 2014-2015, which is the investments of previous year and cannot be taxed in the subsequent year.

Therefore, in our opinion, the A.O. could have added only income earned during Assessment Year 2015-16 and

cannot tax the investment made in purchase of shares being income of past years, as there were no findings given by the A.O. that the purchase transactions were bogus transactions.

Thus, looking the entirety, learned Tribunal has rightly directed the A.O. to delete Rs. 5,40,000/- out of the total addition made u/s 69 of the Act on account unexplained investment. We have no hesitation in holding that question of law No.1 is decided against the revenue and in favour of the Assessee.

10. So far as question of law Nos. 2, 3 & 4 are concerned; i.e., whether the interest, under Section 234B of Income Tax Act, 1961, can be charged on the income of an Assessee declared in his return filed with the Income Tax Department or can be charged on the assessed income i.e., the income assessed by an Assessing Officer under the provision of the Income Tax Act, 1961 (hereinafter after to be referred to as "the Act"); while the issue in the present case is with respect to Section 234B only but the Mr. Lamba in the present submissions has also covered Section 234A.

(i) In order to address the aforesaid issue, it is important to analyze the legislative history and judicial history of Section 234A and Section 234B of the Income Tax Act, 1961.

(ii) Both Sections 234A and 234B were inserted in the Income Tax Act, 1961 pursuant to the Direct Tax Laws (Amendment) Act, 1987 with effect from 01.04.1989.

(iii) The vires of Section 234A & 234B of the Act was under challenge and decided by the Patna High Court in its judgment rendered in the matter of Ranchi Club Ltd v. Commissioner of Income Tax and Ors. reported in *1995 SCC Online Pat 508*. The Hon'ble Court in its said judgment

did not find any substance in the challenge to the vires of the said provisions and accordingly did not allow the said challenge. In addition to the issue of vires, the Hon'ble Court in the said judgment also adjudicated the issue whether the interest under Sections 234A and 234B can be levied on the tax payable on the returned income or on the tax payable on the assessed income.

The Hon'ble Patna High Court in the said judgment made the following finding:

> *"From Explanation 4 appended to section 234A, quoted above, it is clear that interest is leviable on the tax on the total income "as declared in the return" and not on the total income as determined."*

The Hon'ble High Court in the said judgment inter alia held that the levy on interest on the assessed income under Section 234A is not justified.

(iv) The said judgment of the Hon'ble Patna High Court, passed in the case of *Ranchi Club Ltd v. Commissioner of Income Tax*, was challenged by the Income Tax Department before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide its judgment, dated 01.08.2000, passed in the case of *Commissioner of Income Tax & Ors. v. Ranchi Club Ltd* reported in *(2013) 15 SCC 545* dismissed the said appeal preferred by the Income Tax Department vide the following order:

> *"1. We have heard the learned counsel for the appellant. We find no merit in the appeals.*
> *2. The civil appeals are dismissed. No order as to costs."*

(v) Subsequently, the Full Bench of the Hon'ble Patna High Court vide its judgment, dated 22.09.2000, passed in the matter of *Smt. Tej Kumari v. Commissioner of Income Tax* reported in *2000 SCC Online Pat 860* adjudicated the issue whether interest under Section 234A and Section 234B read with Explanation 4 is liable to be charged on the

returned income or assessed income. The Hon'ble Full Bench in the said judgment made the following finding:

> ***"18.*** *Explanation 4 to Section 234A of the Act fully clarifies the position by explaining the tax on. the total income as determined under sub-section (1) of Section 143 or on regular assessment shall be deemed to be the tax on total income as declared in the return for the purpose of computing the interest payable under Section 140A of the Act."*

The Hon'ble Full Bench, then relying on the aforementioned judgment of the Hon'ble Patna High Court passed in the case of *Ranchi Club Ltd v. Commissioner of Income Tax* which was subsequently affirmed by the Hon'ble Apex Court in the aforementioned judgment passed in the case of *Commissioner of Income tax and Ors. v. Ranchi Club Ltd.*, held the following:

> ***"20.*** *Having regard to the entire facts and circumstances of the case, the principle of law discussed hereinabove and after giving anxious consideration of the matter, I answer the reference as under:*
>
> *(i) The decision rendered by Division Bench in Ranchi Club Case [217 ITR 72 (Pat)] and having been affirmed by the Supreme Court in Civil Appeal No. 10360 of 1996, has correctly decided the issues which are the subject matter of this reference.*
>
> *(ii) Interest under Section 234A & 234B is leviable on the tax on the total income as declared in the return on the income as assessed and determined by the Assessing Authority.*
>
> *(iii) In absence of any specific order of the assessing authority interest could not be charged and recovered from the assessee."*

(vi) Thus, it is clear from the aforementioned judgment that the interest under Section 234A was to be charged on the returned income and not on the assessed income as provided in Explanation 4 to Section 234A of the Income Tax Act, 1961 as applicable at the relevant time.

(vii) At this stage, it is also relevant to indicate that prior to the Finance Act, 2001, the Explanation 4 to Section 234A (1) and Explanation l(a) to Section 234B (1) which provided that the interest under the said provision have to be

charged on the returned income remained as it was earlier when the aforementioned judgments were passed. The relevant portion of Section 234A applicable prior to the Finance Act, 2001 is reproduced herein below for ready reference:

> ***"234A.*** *(1) Where the return of income for any assessment year under sub-section (1) or sub-section (4) of section 139, or in response to a notice under sub-section (1) of section 142, is furnished after the due date, or is not furnished, the assessee shall be liable to pay simple interest at the rate of and one-half per cent for every month or part of a month comprised in the period commencing on the date immediately following the due date, and,-*
> *(a) where the return is furnished after the due date, ending on the date of furnishing of the return; or*
> *(b) where no return has been furnished, ending on the date of completion of the assessment under section 144, on the amount of the tax on the total income as determined under sub-section (1) of section 143 or on regular assessment as reduced by the advance tax, if any, paid and any tax deducted or collected at source.*
>
> *Explanation 1.—In this section, "due date" means the date specified in sub-section (1) of section 139 as applicable in the case of the assessee.*
> *Explanation 2.—In this sub-section, "tax on the total income as determined under sub-section (1) of section 143" shall not include the additional income-tax, if any, payable under section 143.*
> *Explanation 3.—Where, in relation to an assessment year, an assessment is made for the first time under section 147, the assessment so made shall be regarded as a regular assessment for the purposes of this section. Explanation 4In 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 140A, be deemed to be tax on total income as declared in the return."*

The relevant portion of Section 234 B which was applicable prior to the Finance Act, 2001 is reproduced herein below for ready reference:

> ***"234B.*** *(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 and one-half per cent for every month or part of a month comprised in the period from the Ist 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-

(a) for the purposes 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 ts taken into account in computing such total income.]

Explanation 2.—Where, in relation to an assessment year, an assessment is made for the first time under section 147, 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."

(viii) Thereafter, a major amendment took place in the history of direct tax legislation, inasmuch as, the legislature, vide the Finance Act, 2001, amended Section 234A of the Income Tax Act, 1961 by deleting the aforementioned Explanation 4 to section 234A (1) with retrospective effect from 1.4.1989.

Similarly, the Finance Act, 2001 also amended Section 234B of the Income Tax Act, 1961 by deleting earlier Explanation 1 to Section 234B (1) and by substituting a new Explanation with effect from 1.4.1989.

(ix) Since the aforesaid amendments brought in Section 234A and 234B, subsequent to the Finance Act, 2001, the interest, both under Sections 234A & 234B, were required

to be charged on the income as determined by the assessment done by an Assessing Officer and not on the income disclosed in the return filed by an Assessee. Fundamentally, the interest now under the said provision was to be charged on the assessed income and not on returned income.

(x) The extract of the relevant portion of Section 234A of the Income Tax Act subsequent to the amendment brought by the Finance Act, 2001 is reproduced herein below or ready reference:

> *"Section 234A. (1) Where the return of income for any assessment year under sub-section (1) or sub-section (4) of section 139, or in response to a notice under sub-section (1} of section 142, is furnished after the due date, or is not furnished, the assessee shall be liable to pay simple interest at the rate of one and one fourth per cent for every month or part of a month comprised in the period commencing on the date immediately following the due date, and-*
> *(a) where the return is furnished after the due date, ending on the date of furnishing of the return; or*
> *(b) where no return has been furnished, ending on the date of completion of the assessment under section 144,*
> *on the amount of the tax on the total income as determined under sub-section (1) of section 143 or on regular assessment as reduced by the advance tax, if any, paid and any tax deducted or collected at source.*
>
> *Explanation 1 — In this section, "due date" means the date specified in sub-section (1) of section 139 as applicable in the case of the assessee.*
> *Explanation 2 —In this sub-section, "tax on the total income as determined under sub-section (1) of section 143" shall not include the additional income-tax, if any, payable under section 143.*
> *Explanation 3.—Where, in relation to an assessment year, an assessment is made for the first time under section 147, the assessment so made shall be regarded as a regular assessment for the purposes of this section.*

(xi) The extract of the provision of Section 234B of the Income Tax Act, 1961 as it stood subsequent to the amendment made by the Finance Act, 2001 is reproduced herein below for ready reference:

> *"234B. (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 and one-fourth 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 determine 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.]*
>
> *Explanation 2.—Where, in relation to an assessment year, an assessment is made for the first time under section 147, 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."*

(xii) From bare perusal of the above provision of Sections 234A & 234B, which were adjudicated upon by the Full Bench of the Hon'ble Patna High Court in the matter of *Smt. Tej Kumari v. Commissioner of Income Tax*, were materially changed by way of the Finance Act, 2001 and now the said amended provision of Sections 234A & 234B categorically provided that the interest has to be charged under the said provisions on the assessed income and not on the returned income.

(xiii) The vires of the amendment brought by way of the Finance Act, 2001 in Section 234B of the Income Tax Act,

1961 was under challenge before the Hon'ble Punjab and Haryana High Court in the case of *Raj Kumar Singal v. Union of India & Ors.* The Hon'ble Court vide its judgment dated 20.03.2002 passed in the matter of ***Raj Kumar Singal v. Union of India & Ors*** reported in ***2002 SCC online P&H 1552*** held the said amendment as intra vires. The Hon'ble Punjab & Haryana High Court also held the following in the said judgment:

> ***"6.*** *Irrespective of the above, we have considered the matter. A comparison of the two provisions shows that under the original provision interest was leviable on the income as declared in the return filed by the assessee. By the amended provision, the interest is leviable on the income as determined by the assessing authority minus the income on which the tax has been paid or deducted. The amendment is only calculated to clarify the ambiguity that was felt in the original provision. It is not arbitrary or unreasonable."*

(xiv) The issue of chargeability of interest under the provision of Section 234B came up before the Hon'ble Punjab & Haryana High Court in the case of *Parkash Agro Industries v. Deputy Commissioner of Income Tax*. The Punjab & Haryana High Court after a detailed analysis of the concerned provision of the Income Tax Act held the following in its judgment, dated 30.10.2007, passed in the cane of *Parkash Agro Industries v. Deputy Commissioner of Income Tax* reported in *2007 SCC online P&H 1578*:

> *"8. It is no doubt true that prior to the amendment brought by the Finance Act, 2001, which has been made effective retrospectively from April 1, 1989, the interest under section 234B of the Act was chargeable with reference to the total income as had been declared by the assessee in its return and not on the assessed income. Explanation l1to section 234B of the Act was amended by the Finance Act, 2001. It reads thus:*
> *"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.

9. The said Explanation was the subject-matter of challenge before this court in Raj Kumar Singul's cuse, [2002] 255 ITR 561 where the vision ench while upholding the validity of the said provision, interpreted it as under (page 562):

"A comparison of the two provisions shows that under the original provision interest was leviable on the income as declared in the return filed by the assessee. By the amended provision, the interest is leviable on the income as determined by the assessing authority minus the income on which the tax has been paid or deducted. The amendment is only calculated to clarify the ambiguity that was felt in the original provision. It is not arbitrary or unreasonable.

10. Now, referring to the case law cited by the learned counsel for the assessee, it would be sufficient to notice that the apex court in J.K. Synthetics Ltd.'s case, [1994] 94 STC 422 : (1994) 4 SCC 276 : AIR 1994 SC 2393, was interpreting the provisions of the sales tax law and, therefore, the same does not advance the case of the assessee. Equally, the judgments of the apex court in Ranchi Club Ltd.'s case, [2001] 247 ITR 209 and that of the Patna High Court in Ranchi Club Ltd.'s case, [1996] 217 ITR 72 relied upon by the assessee relate to the case prior to the aforesaid amendment and, thus, do not help the assessee's case any longer.

11. In view of the above, the questions of law as claimed by the assessee are answered against it. Finding no merit in this appeal, the same is hereby dismissed. No costs".

(xv) Further, vide Section 48 and Section 49 of the Finance Act, 2006, Section 234A and Section 234B of the Income Tax Act, 1961 were again amended w.e.f. 01.04.2007. These amendments also maintained the same position in law that interest under Section 234A and Section 234B have to be charged on assessed income. These amendments provided in the respective provisions for certain deductions to be made from the calculation of interest on the assessed income.

11. Now coming to the facts which has laid to the present controversy with regard to chargeability of interest; in one tax appeal, being ***T.A. No. 38 of 2010; Ajay Prakash Verma v. Income Tax Officer,*** the coordinate Division Bench of this Court by its judgment, dated 25.07.2012, decided the appeal on merits of the addition of income under the assessment order in favour of the Income Tax Department. However, on the issue of chargeability of interest under Sections 234A & 234B of the Income Tax; the coordinate Division Bench relied on the aforementioned judgment of the Full Bench of the Hon'ble Patna Court passed in the case of *Smt. Tej Kumari v. Commissioner of Income Tax* and held against the Income Tax Department to the effect that interest cannot be levied over the assessed income and it can be levied only on the income declared in the returns.

The relevant assessment year involved in the case of *Ajay Parkash Verma* (supra) was 2003-04; however, in its judgment the coordinate Division Bench did not consider the amendment, brought in Section 234A and 234B of the Income Tax Act,1961, by way of Finance Act, 2001 which was subsequent to the said judgment of the Full Bench of Hon'ble Patna High Court passed in the case of *Smt. Tej Kumani v. Commissioner of Income Tax*. The relevant extract of the judgment passed by the coordinate Division Bench of this Court in the matter of *Ajay Parkash Verma* (supra) is reproduced herein below for ready reference:

> ***"23.*** *Learned counsel for the appellant submitted that it has been ordered by the A.O. that interest be charged as per rule. Interest can be levied under Sections 234 A and 234 B of the Act. It is submitted that in view of the Judgment of Full Bench of Ranchi Bench of Patna High Court delivered in the case of Smt. Tej Kumari Vrs. Commissioner of Income-tax reported in [2001] 114 Taxman 404 (PAT.) (FB), the interest cannot be levied over the assessed income and it can be levied only on the income declared in the return. The revenue preferred S.L.P. before*

> *Hon'ble Supreme Court against the said judgment of the Full Bench of Patna High Court, which was dismissed by the Hon'ble Supreme Court on merits vide order dated 01.08.2000 by saying that there is no merit in the appeal.*
> *24. Learned counsel for the revenue could not dispute this legal position. Therefore, so far as question of law involved in this appeal that whether the interest could have been levied against the assessed income of the assessee under Sections 234 A and 234 B is concerned, in view of the Full Bench judgment of Ranchi Bench of Patna High Court delivered in the case of Smt. Tej Kumari, the revenue can levy the interest only on the total income declared in the returns and not on the income assessed and determined by the A.O. to that extent. The orders passed by the authorities below are accordingly modified and interest shall be chargeable in the light of the Full Bench judgment, referred above."*

12. Pursuant thereto; the Income Tax Department filed a review petition. However, the said Review Petition being Civil Review No. 66 of 2013 was dismissed with the following finding:

> *"10. Thus, no clerical error or statistical error has been pointed out by this appellant, but an error on the merits of this case has been pointed out by the appellant. This is an appeal in the form of civil review."*

13. The Hon'ble Patna High Court while deciding a similar issue whether interest under Section 234 B has to be charged on assessed income or returned income, held the following in its judgment dated 07.09.2015 passed in the case of CIT, *Patna v. M/s Natraj Engineers reported in 2015 SCC OnLine Pat 7494*:

> ***"10.*** *We may here also point out that the provisions of Section 234B which were inserted by the Direct Tax Law (Amendment) Act, 1987 with effect from 1.4.89 underwent further amendments after the decision of the Supreme Court in Ranchi Club Limited case (supra) by further adding an Explanation in the said provisions with retrospective effect from 1.4.1989 by the Finance Act, 2001 which reads as under:*
> *"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 in accordance with the provisions of Chapter XVIII on any income which is subject to such deduction or collection and which is taken into account in computing such total income."*
>
> ***11.*** *The said provision has further been amended by the Finance Act, 2006 with effect from 1.4.2007 which however, is not relevant for ever purpose. It is evident from the aforesaid Explanation introduced by the Finance Act, 2001 that the decision of this Court as confirmed by the Apex Court in Ranchi Club Limited, will in no way be applicable to the present matter and the assessed tax on the total income determined under Section 143(1) or on regular assessment and not as computed by the assessee while paying the advance tax shall be treated as the basis for the purpose of payment of interest on advance tax paid short. In fact, there is a clear distinction made by the Income Tax Act in the provisions of Section 234B and 234C: with regard to interest under Section 234B, the calculation is to be made not on the returned income but on the tax as may be finally assessed and determined by the assessment whereas under Section 234C, what is to be determined is tax due on the returned income for the purpose of calculation of the shortfall in the advance tax paid."*

14. Now the law is no more *res integra* regarding applicability of any provision of law. Recently the Hon'ble Apex Court in its judgment passed in the case of ***Shree Choudhary Transport Co. v. Income Tax Officer*** reported in ***2020 SCC Online SC 610*** has held that in Income Tax matters the law to be applied is that which is enforce in the assessment year in question unless stated otherwise by express intendment or by necessary implication. The relevant part of the said judgment is reproduced herein below for ready reference:

> ***"71.*** *It needs hardly any detailed discussion that in income tax matters, the law to be applied is that in force in the assessment year in question, unless stated otherwise by express intendment or by necessary implication....."*

15. Admittedly, in the instant case the assessment year involved is 2015-16. Accordingly, it is important to analyze

the provision of Section 234A & 234B as applicable during the A.Y.2015-16.

At the cost of repetition, the relevant portion of Section 234A as applicable in the assessment year 2015-16, is reproduced herein below for ready reference:

> *234A. (1) Where the return of income for any assessment year under sub-section (1) or sub-section (4) of section 139, or in response to a notice under sub-section (1) of section 142, is furnished after the due date, or is not furnished, 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 date immediately following the due date, and,*
> *(a) where the return is furnished after the due date, ending on the date of furnishing of the return; or*
> *(b) where no return has been furnished, ending on the date of completion of the assessment under section 144, on the amount of the tax on the total income as determined under sub-section (1) of section_143, and where a regular assessment is made, on the amount of the tax on the total income determined under regular assessment, as reduced by the amount of,-*
> *(i) advance tax, if any, paid;*
> *(ii) any tax deducted or collected at source;*
> *(iii) any relief of tax allowed under section 90 on account of tax paid in a country outside India;*
> *(iv) any relief of tax allowed under section 90A on account of tax aid in a specified territory outside India referred to in that section;*
> *(v) any deduction, from the Indian income tax payable, allowed under section 91, on account of tax paid in a country outside India; and*
> *(vi) any tax credit allowed to be set off in accordance with the provisions of section 115JAA or section 115JD.*
> *Explanation 1.—In this section, "due date" means the date specified in sub-section (1) of section 139 as applicable in the case of the assessee.*
> *Explanation 2.—In this sub-section, "tax on the total income as determined under sub-section (1) of section 143" shall not include the additional income-tax, if any, payable under section 143.*
> *Explanation 3.—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.*

A bare perusal of Section 234A shows that the interest has to be charged on the amount of the tax on the total income as determined under sub-section (1) of section 143, and where a regular assessment is made, on the amount of the tax on the total income determined under regular assessment, as reduced by the amount provided in section 234A(1) of the Act. Therefore, it is crystal clear that interest has to be charged on the assessed income and not on the returned income.

The provision of Section 234B as applicable for the A.Y. 2015-16 is also reproduced herein below for ready reference:

> *"234B. (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 Ist 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 o' 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 115JAA or section 115JD.*
> *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.*

16. Thus, from bare perusal of Section 234B of the Act it is crystal clear that the interest has to be charged 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. The term “assessed tax” has been defined in Explanation-1 of Section 234B (1). As per said Explanation-1 “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 provided in Explanation-I to section 234B. Therefore, the interest under Section 234B has to be charged on the assessed income and not on the returned income of an Assessee.

17. At this stage, it is also pertinent to mention here that the judgment of the coordinate Division Bench of this Court rendered in the case of *Ajay Parkash Verma* (supra) is not binding in other cases in relation to the issue of chargeability of interest under Section 234A & 234B for the reason that in the said judgment the amendment brought by way of the Finance Act, 2001 in Sections 234A & 234B were not considered when the period involved in the case of Ajay Prakash Verma was AY 2003-04.

18. The Hon'ble Apex Court dealt with the doctrine of ***per incuriuam*** in the matter of ***State of M.P. v. Narmada Bachao Andolen*** reported in ***(2011) 7 SCC 639*** and held as under :

> ***"65.*** *"Incuria" literally means 'carelessness*. In practice per incuriam is taken to mean per ignoratium. The courts have developed this principle in relaxation of the rule of stare decisis. Thus, the "quotable in law" is avoided and ignored if it is rendered in ignorance of a statute or other binding authority.*
>
> *66. While dealing with the observations made by a seven-Judge Bench in India Cement Ltd. v. State of T.N. [(1990) 1 SCC 12: AIR 1990 SC 85] , the five-Judge Bench in State of W.B. v. Kesoram Industries Ltd. [(2004) 10 SCC 201] , observed as under: (Kesoram Industries Ltd. case [(2004) 10 SCC 201], SCC pp. 292 & 297, paras 57 & 71)*
>
> > *"57. ... A doubtful expression occurring in a judgment, apparently by mistake or inadvertence, ought to be read by assuming that the court had intended to say only that which ts correct according to the settled position of law, and the apparent error should be ignored, far from making any capital out of it, giving way to the correct expression which ought to be implied or necessarily read in the context, ...*
> >
> > *71...A statement caused by anapparent typographical or inadvertent errorin a judgment of the court should not be misunderstood as declaration of such law by the court." (emphasis added)*
> >
> > *(See also Mamleshwar Prasad v. Kanhaiya Lal [(1975) 2 SCC 232: AIR 1975 SC 907] , A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602 : 1988 SCC (Cn) 372 : AIR 1988 SC 1531] , State of U.P.v. Synthetics and Chemicals Ltd. {(1991) 4 SCC 139] and Siddharam Satlingappa Mhetre v. State of Maharashtra [(2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] .)*
>
> ***67.*** *Thus, "per incuriam" are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.*
>
> ***68.*** *Admittedly, the NWDT award did not provide for allotment of agricultural land to the major sons of such oustees. The States of Gujarat and Maharashtra had given concessions /relief over and above the said award. Thus, Narmada Bachao Andolan (1) [(2000) 10 SCC 664] has been decided with the presumption that such a right had been conferred upon major sons by the NWDT award and Narmada Bachao Andolan (2) [(2005) 4 SCC 32] has been*

decided following the said judgment and interpreting the definition of "family" contained in the R&R Policy. When the two earlier cases wer¢ being considered by the Court, it had not been brought to its notice that the NWDT award did not provide for such an entitlement. In such cases, the issue is further required to be considered as to whether, as we will consider the definition of the word "family" at a later stage, the mistake inadvertently committed by this Court earlier, should be perpetuated.

69. *The courts are not to perpetuate an illegality, rather it is the duty of the courts to rectify mistakes. While dealing with a similar issue, this Court in Hotel Balaji v. State of A.P. [1993 Supp (4) SCC 536 : AIR 1993 SC 1048] observed as under: (SCC p. 551, para 12)*

> *"12. ... '2. ... To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this we derive comfort and strength from the wise and inspiring words of Justice Bronson in Pierce v. Delameter [1 NY 3 (1847)] , AMY at p. 18:*
>
> *"a Judge ought to be wise enough to know that he is fallible and therefore ever ready to learn: great and honest enough to discard all mere pride of opwuon and follow truth wherever it may lead: and courageous enoug to acknowledge 1s errors." JEd.: As observed in Distributors (Baroda) (P) Ltd. v. Union of India, (1986) 1 SCC 43, p. 46, para 2.]"*
>
> *(See also Nirmal Jeet Kaur v., State of M.P. [(2004) 7 SCC 558 : 2004 SCC (Cri) 1989] and Mayuram Subramanian Srinivasan v. CBI [(2006) 5 SCC 752 : (2006) 3 SCC (Cri) 83: AIR 2006 SC 2449] .)*

70. *In Ministry of Information & Broadcasting, In re [(1995) 3 SCC 619] this Court observed: (SCC p. 629, para 10)*

"10. ... None is free from errors, and the judiciary does not claim infallibility. It is truly said that a judge who has not committed a mistake is yet to be born. Our legal system in fact acknowledges the fallibility of the courts and provides for both internal and external checks to correct the errors. The law, the jurisprudence and the precedents, the open public hearings, reasoned judgments, appeals, revisions, references and reviews constitute the internal checks while objective critiques, debates and discussions of judgments outside the courts, and legislative correctives provide the external checks. Together, they go a long way to ensure judicial accountability. The law thus provides procedure to correct judicial errors."

19. Relying upon the aforesaid judgment we hold that the judgment passed in the case of *Ajay Prakash Verma (supra)* is *per incuriuam* with respect to its direction with regard to chargeability of interest under section 234B of the Act.

20. In the present case, the Ld. ITAT in its impugned judgment, relying on the aforementioned judgment of this Court passed in the case of *Ajay Prakash Verma* (supra) has, erroneously held that the interest under Section 234B could be charged on the returned income and not on the assessed income. The Ld. ITAT has not even considered the provisions of Section 234B, as applicable during the period of AY 2015-16, which is relevant to the instant appeal.

The said finding of the Ld. ITAT is totally contrary to the provisions of Section 234A and 234B as amended by the Finance Act, 2001 and the Finance Act, 2006.

21. Having regard to the aforesaid discussions, question of law Nos.2, 3 and 4 are decided in favour of the revenue and against the Assessee.

22. Consequently, the instant appeal is partly allowed.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)

Fahim/