

# **Naveen Glass Products, Firozabad vs Assessee on 27 August, 2012**

IN THE INCOME TAX APPELLATE TRIBUNAL  
AGRA BENCH, AGRA

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER AND  
SHRI A.L. GEHLOT, ACCOUNTANT MEMBER

ITA Nos. 471, 472 & 473/Agra/2010  
Asstt. Years : 2005-06, 2006-07 & 2007-08

M/s. Naveen Glass Products, vs. D.C.I.T., Central Circle,  
Agra Road, Firozabad. Agra.  
(PAN: AAAFN 8487 C)

ITA No. 468/Agra/2010  
Asstt. Year : 2007-08

Late Satish Prakash Mittal, vs. D.C.I.T., Central Circle,  
Through L.H & Spouse Agra.  
Smt. Sheila Rani Mittal,  
R/o.29-30, Ganesh Nagar,  
Firozabad.  
(PAN: ABWPM 1075 G)

ITA No. 469/Agra/2010  
Asstt. Year : 2007-08

M/s. Nannumal Glass Works, vs. D.C.I.T., Central Circle,  
Village Dholpura, Agra.  
Agra Road, Firozabad. Agra.  
(PAN: AACFN 9921 B)

ITA No. 470/Agra/2010  
Asstt. Year : 2007-08

M/s. Paras Glassware (P) Ltd., vs. D.C.I.T., Central Circle,  
68, Industrial Estate, Agra.  
Nunhai, Agra. Agra.  
(PAN: AACCP 8075 H)

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ITA No.471/Agr/2010 & Others  
M/s Naveen Glass Products & Others

ITA Nos. 465 & 466/Agra/2010  
Asstt. Years : 2004-05 & 2007-08

M/s. Farukhi Glass Industries, vs. D.C.I.T., Central Circle,  
Village Dholpura, Agra Road, Agra.  
Firozabad.  
(PAN: AAAFF 2306 G)

ITA Nos. 29, 30, 31/Agra/2011, 474 & 475/Agra/2010

Asstt. Years : 2003-04, 2005-06, 2006-07, 2004-05 & 2007-08

M/s. Meera Glass Industries,  
Village Lalau, Agra Road,  
Firozabad.  
(PAN: AABFM 6228 P)

vs.

D.C.I.T., Central Circle,  
Agra.

ITA Nos. 19, 20, 21, 22, & 23/Agra/2011

Asstt. Years : 2002-03, 2004-05, 2005-06, 2006-07 & 2007-08

Shri Ved Prakash Mittal,  
S/o. Late Sia Rm Mittal,  
33-39, Ganesh Nagar,  
Firozabad.  
(PAN: ABVPM 1061 E)

vs.

D.C.I.T., Central Circle,  
Agra.

ITA Nos. 24, 25, 26, 27 & 28/Agra/2011

Asstt. Years : 2002-03, 2004-05, 2005-06, 2006-07 & 2007-08

Shri Narendra Prakash Mittal,  
S/o. Late Sia Rm Mittal,  
33-39, Ganesh Nagar,  
Firozabad.  
(PAN: ABIPM 2774 Q)

vs.

D.C.I.T., Central Circle,  
Agra.

ITA Nos. 16 & 17/Agra/2011

Asstt. Years : 2003-04 & 2007-08

Shri Sanjay Prakash Mittal,  
29-30, Ganesh Nagar,  
Firozabad.  
(PAN: ADDPM 9611 R)

vs.

D.C.I.T., Central Circle,  
Agra.

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ITA No.471/Agr/2010 & Others  
M/s Naveen Glass Products & Others

ITA No. 18/Agra/2011

Asstt. Year : 2007-08

Shri Sanjeev Prakash Mittal,  
29-30, Ganesh Nagar,  
Firozabad.  
(PAN: AHHPM 6020 C)

vs.

D.C.I.T., Central Circle,  
Agra.

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ITA Nos. 32, 33 & 34/Agra/2011

Asstt. Years : 2005-06, 2006-07 & 2007-08

Smt. Radha Mittal,  
33-39, Ganesh Nagar,  
Firozabad.  
(PAN: ABVPM 0331 N)

vs.

D.C.I.T., Central Circle,  
Agra.

ITA No. 14/Agra/2011

Asstt. Year : 2003-04

Smt. Veena Devi Mittal, vs. D.C.I.T., Central Circle,  
33-39, Ganesh Nagar, Agra.  
Firozabad.  
(PAN: ABVPM 0330 P)

ITA Nos. 15/Agra/2011 & 467/Agra/2010

Asstt. Years : 2004-05 & 2007-08

Smt. Shiela Rani Mittal, vs. D.C.I.T., Central Circle,  
W/o. Late Satish Prakash Mittal, Agra.  
29-30, Ganesh Nagar,  
Firozabad.  
(PAN: AJUPM 1130 G)  
(Appellants) (Respondent)

Appellants by : Shri S.K. Garg, Advocate  
Shri Sahib P. Satsangee, C.A.  
Shri Ashish Bansal, Advocate  
Shri Sandeep Agarwal, C.A.  
Respondent by : Shri Waseem Arshad, Sr. D.R.  
4 ITA No.471/Agr/2010 & Others  
M/s Naveen Glass Products & Others

Date of Hearing : 27.08.2012  
Date of Pronouncement of order : 07.09.2012

# ORDER

## PER BENCH:

These are appeals filed by different assesseees against different orders passed by the  
ld. Commissioners of Income Tax (Appeals)-II, Agra as under :-

ITA No/Party	A.Y.	CIT(A) order dated
471, 472 & 473/Agra/2010 M/s Naveen Glass Products	2005-06, 2006-07 & 2007-08	All 13.10.2010
468/Agra/2010 Late Sataish Prakash Mittal	2007-08	13.10.2010
469/Agra/2010 M/s Nannumal Glass Works	2007-08	13.10.2010
470/Agra/2010 M/s Paras Glassware (P) Ltd.	2007-08	13.10.2010
465 & 466/Agra/2010 M/s Farukhi Glass Industries	2004-05 & 2007-08	13.10.2010
29, 30, 31/Agra/2011, 474 &	2003-04, 2005-06, 2006-	18.11.2010

475/Agra/2010	07, 2004-05 & 2007-08	18.11.2010
M/s Meera Glass Industries		18.11.2010
		13.10.2010
		13.10.2010
19, 20, 21, 22, & 23/Agra/2011	2002-03, 2004-05, 2005-	15.12.2010
Shri Ved Prakash Mittal	06, 2006-07 & 2007-08	15.12.2010
		18.11.2010
		18.11.2010
		15.12.2010
24, 25, 26, 27 & 28/Agra/2011	2002-03, 2004-05, 2005-	18.11.2010
Shri Narendra Prakash Mittal	06, 2006-07 & 2007-08	18.11.2010
		15.12.2010

M/s Naveen Glass Products & Others

		15.12.2010
		15.12.2010
16 & 17/Agra/2011	2003-04 & 2007-08	Both 18.11.2010
Shri Sanjay Prakash Mittal		
18/Agra/2011	2007-08	18.11.2010
Shri Sanjeev Prakash Mittal		
32, 33 & 34/Agra/2011	2005-06, 2006-07 &	All 18.11.2010
Smt. Radha Mittal	2007-08	
14/Agra/2011	2003-04	18.11.2010
Smt. Vena Devi Mittal		
15/Agra/2011 & 467/Agra/2010	2004-05 & 2007-08	18.11.2010 &
Smt. Shiela Rani Mittal		13.10.2010

2. Ld. Authorised Representatives submitted that the grounds raised in all these appeals are based on identical set of facts. It was further submitted that the facts lead to the case of M/s Naveen Glass Products in ITA No.471/Agr/2010. For knowing the exact grounds of appeal and for the sake of convenience, the grounds raised in M/s Naveen Glass Products , ITA No.471/Agr/2010 is reproduced as under:-

"1. That the learned CIT(Appeals)-II, Agra was wholly unjustified, in the facts and circumstances of the case, in sustaining the levy of interest u/s 234A of the Act, ignoring the submissions made by the appellant, on the ground that the interest u/s 234A could only be waived or reduced by the Chief Commissioner or Director General in view of the circular issued by the CBDT by exercising its powers conferred on it by section 119(2) of the Act.

M/s Naveen Glass Products & Others

2. That the learned CIT(Appeals)-II, Agra was wholly unjustified, in the facts and circumstances of the case, in sustaining the levy of interest u/s 234B of the Act, ignoring the submissions made and judicial pronouncements cited by the appellant on the ground that provisions of section 132B do not permit application of adjustment of seized assets towards the advance tax liability and it is only the Chief Commissioner or Director General who can reduce or waive the interest.

3.(i) That the learned CIT(Appeals)-II, Agra was wholly unjustified in not adjudicating upon the additional Ground of Appeal No.5 raised before him which reads as under :-

"That the learned AO has grossly erred in law in charging the interest u/s 234A, 234B & 234C of the Act without giving any specific direction in this regard in the assessment order while framing/completing the assessment and thus the levy of interests u/s 234A, 234B and 234C deserves to be quashed."

(ii) That the learned CIT(Appeals)-II, Agra ought to have considered the fact that the additional ground raised by the appellant was related to the issue which goes to the root of the case and therefore, the same was required to be adjudicated upon to meet the end of justice.

4. That the appellant craves leave to add, amend, alter, modify or delete any or all the grounds of appeal before or at the time of hearing."

3. The brief facts of the case are that the assessee derives income from manufacturing and selling of Glass Bangles, Glass Tumblers and other items made of Glass. A search and survey under section 132(1) and 133A of the Income Tax Act, 1961 ('the Act' hereinafter) was carried out on 14/15th September, 2006. During the course of search/survey, cash was found and the same was seized. The M/s Naveen Glass Products & Others assessee Shri Narendra Prakash Mittal vide his statement dated 14th September, 2006 admitted undisclosed income and stated in reply to question no.4 that the cash seized at the time of search/survey be adjusted against the tax due/ demand created. The A.O. did not accept the assessee request and levied interest under section 234A, 234B & 234C of the Act.

3.1 The assessee challenged the orders of the A.O. against charging of interest before the CIT(A). The CIT(A) followed the judgement of CIT vs. Anjum M H Ghaswala reported in 252 ITR 1 (SC) wherein the Hon'ble Supreme Court held that charging of interest under section 234A, 234B & 234C of the Act is mandatory in nature and confirmed action of the AO. The CIT(A) held that levy of interest under these sections is automatic and there is no scope of applying the principle of equity or rules of natural justice. There is no discretion available with the A.O. for waiver of interest. The CIT(A) rejected the first effective ground of appeal of the assessee against the action of the A.O. in levying the interest under section 234A of the Act for a period of 14 months w.e.f. 1st November 2007 to December 2008 on account of delay in filing return of income for the A.Y. in was not attributable to

the assessee firm.

M/s Naveen Glass Products & Others 3.2 The second effective ground raised before the CIT (A) was against the action of the A.O. in levy of interest under section 234B/ 234C of the Act on account of short payment of advance tax for the A.Y. in question ignoring the fact that the cash found and seized by the Department on 14th September, 2006 during the course of search and seizure and the same was not adjusted towards the advance tax despite requests made. The CIT(A) dismissed the assessee's ground of appeal as under :- (page nos. 6 & 7 in the case of Naveen Glass Products) "It is admitted that there are divergent decisions with regard to the applicability of seized cash towards the advance tax liability. But these decisions available are generally in respect of the years when sub section (5) of section 132 was there on the statute book which is not there now and which has been omitted from the statute book w.e.f. 1.6.2002. The provisions of section 132B as stated above are very clear, and do not permit application of adjustment of seized asset like cash, bullion, jewellery etc. towards the advance tax liability. Also, it will not be out of place to mention here that it is only the Chief Commissioner or Director General who can reduce or waive the interest as discussed while dealing with the issue of charging of interest u/s 234A. Therefore, I hold that the seized cash etc. cannot be adjusted or appropriated against any liability other than the outstanding demand as on the date of seizure or against the liability which would get created on finalization of assessment after the search. Therefore, I hold that the Assessing officer has rightly charged the interest under section 234-B of the Act. Hence, these grounds of appeal are dismissed."

4. Before starting argument, the ld. Departmental Representative submitted that there are no provisions under the Act for filing appeal against charging of interest under section 234A, 234B & 234C of the Act. The ld. Authorised M/s Naveen Glass Products & Others Representatives were directed to make their submissions also on the issue/objection raised by the Ld. Departmental Representative

5. The ld. Authorised Representative, after narrating the brief facts of the case, submitted that the return was filed late as the Revenue did not provide the copies of seized document in time. Late filing of return was not on account of the assessee but it was due to revenue, therefore, interest under section 234A is not chargeable. Ld. Authorised Representative has also drew our attention on the statement of Shri Narendra Prakash Mittal recorded at the time of search wherein it is stated that tax due on account of undisclosed income may be adjusted against the amount, seized during the course of search. Ld. Authorised Representative submitted that cash found and seized at the time of search was sufficient to cover the demand raised by the A.O. The ld. Authorised Representative drew our attention on pages nos.29 & 38 of the Paper Book filed by the assessee in ITA No.472/Agra/2001 where summary of cash seized of entire group has been placed and the same is reproduced as below:-

Summary of Cash Seizure (page 29) N.P. Mittal & Family & Group Concerns S.No.  
Name/Premises Cash Found Cash Seized

1. Room belonging to -- 62,44,590.00 61,03,550.00 Shri Narendra Prakash Mittal &  
Smt. Veena Devi Mittal M/s Naveen Glass Products & Others

2. Room belonging to -- 22,40,715.00 21,97,500.00 Shri Yogesh Mittal & Smt. Shweta Mittal

3. Room belonging to -- 2,60,500.00 1,98,000.00 Shri Ved Prakash Mittal & Smt. Radha Mittal

4. Room belonging to -- 39,930.00 -

Shri Reetesh Mittal & Smt. Rashi Mittal

5. Meera Glass Industries 40,020.00 -

Total 88,25,755.00 84,99,050.00 Details of demand raised on the completion of assessments u/s 143(3) read with section 153A of the Act for A.Y. 2001-02 to 2007-08 N.P. Mittal & Family (page 38)  
S.No. Name of the Assessee Assessment Tax Year

1. M/s Meera Glass Industries 2001-02 -

2002-03	-
2003-04	217028.00
2004-05	166277.00
2005-06	393018.00
2006-07	712959.00
2007-08	921040.00

2.	M/s Naveen Glass Products	2001-02	373.00
		2002-03	7203.00
		2003-04	-
		2004-05	2731.00
		2005-06	1077073.00
		2006-07	1660375.00
		2007-08	1037854.00

3.	Shri Narendra Prakash Mital	2001-02	1373.00
		2002-03	50007.00
		2003-04	-
		2004-05	43440.00

M/s Naveen Glass Products & Others

2005-06	24480.00
2006-07	268056.00
2007-08	164984.00

4.	Smt. Veena Devi Mittal	2001-02	-
		2002-03	-
		2003-04	12600.00
		2004-05	978.00
		2005-06	4140.00

	2006-07	1417.00
	2007-08	-
5. Shri Ved Prakash Mittal	2001-02	-
	2002-03	51564.00
	2003-04	-
	2004-05	14800.00
	2005-06	24480.00
	2006-07	268007.00
	2007-08	77481.00
6. Smt. Radha Mittal	2001-02	-
	2002-03	-
	2003-04	-
	2004-05	-
	2005-06	24480.00
	2006-07	321722.00
	2007-08	432588.00
	Total	7982528.00

#### Summary of Cash Seizure

(Reproduced from page No.25 & 32 of the paper book filed by the assessee in the case of ITA NO 468/Agra/2010) S.P. Mittal & Family & Group Concerns (page 25) S.No. Name/Premises Cash Found Cash Seized

1. 33, Circular Road, Firozabad 4,42,000.00 3,70,000.00
2. Room belonging to -- 2,80,500.00 2,60,500.00 M/s Naveen Glass Products & Others Shri Satish P. Mittal & Smt. Sheila Rabni Mittal, 29-30, Ganesh Nagar, Firozabad.
3. Room belonging to -- 4,14,750.00 3,85,000.00 Shri Sanjay Prakash Mittal, 29-30, Ganesh Nagar, Firozabad.
4. Room belonging to -- 1,67,050.00 1,54,500.00 Shri Sanjeev Prakash Mittal & Smt. Ragini Mittal
5. C-8, Awagarh House, Agra. 87,29,800.00 87,27,800.00
6. M/s Paras Glassware (P) Ltd., 68, 1,20,645.00 1,20,000.00 Industrial Estate, Nunhai, Agra Total 1,01,54,745.00 1,00,17,800.00 Details of demand raised on the completion of assessments u/s 143(3) read with section 153A of the Act for A.Y. 2001-02 to 2007-08 S.P. Mittal & Family (Page 32) S.No. Name of the Assessee Assessment Tax Year

1. M/s Farukhi Glass Industries 2001-02 -

2002-03	-
2003-04	-



		2004-05	159955.00
		2005-06	-
		2006-07	-
		2007-08	1234562.00
2.	M/s Nannumal Glass Works	2001-02	21060.00
		2002-03	2565.00
		2003-04	-
		2004-05	-
		2005-06	-
		2006-07	-
		2007-08	1108706.00
3.	M/s Paras Glassware	2001-02	-
		2002-03	-
M/s Naveen Glass Products & Others			
		2003-04	-
		2004-05	-
		2005-06	-
		2006-07	-
		2007-08	559551.00
4.	Shri Satish Praksh Mittal	2001-02	1447.00
		2002-03	-
		2003-04	-
		2004-05	-
		2005-06	-
		2006-07	-
		2007-08	4455270.00
5.	Shri Sanjeev Prakash Mittal	2001-02	-
		2002-03	-
		2003-04	-
		2004-05	-
		2005-06	-
		2006-07	-
		2007-08	192938.00
6.	Shri Sanjay Prakash Mittal	2001-02	-
		2002-03	-
		2003-04	235365.00
		2004-05	-
		2005-06	-
		2006-07	-
		2007-08	99500.00
7.	Smt. Sheila Rani Mittal	2001-02	543.00
		2002-03	-
		2003-04	15876.00
		2004-05	67320.00

2005-06	-
2006-07	7291.00
2007-08	485320.00
Total	8647269.00

M/s Naveen Glass Products & Others

5.1 Ld. Authorised Representative further submitted that since the tax has been deposited, therefore, there is no question of levy of interest under section 234A, 234B and 234C of the Act. Ld. Authorised Representative in support of his contention relied upon the judgement of Hon'ble Supreme Court in the case of CIT vs. Pranoy Roy & Another and CIT vs. India Meters Limited, 309 ITR 231 (SC) Ld. Authorised Representative has also relied upon the following judgments/ decisions :-

- i) ITAT, Delhi Bench in the case of Gopal Chand Khandelwal vs. ACIT reported in 52 ITD (Del) 661
- ii) ITAT, Chandigarh Bench in the case of ACIT vs. Raghu Nandan Lal & Others reported in 76 TTJ 186 (Chd.)
- iii) Hon'ble Delhi High Court in the case of CIT vs. K.K. Marketing reported in 278 ITR 596 (Del.)
- iv) ITAT, Mumbai Bench in the case of Sudhakar M. Shetty vs. ACIT reported in 10 DTR (Mumbai)(Trib) 173
- v) ITAT, Delhi Bench in the case of Satya Prakash Sharma vs. ACIT reported in 20 DTR (Del) (Trib) 561
- vi) ITAT, Jaipur Bench in the case of Anand Shankar Mittal vs. DCIT reported in 34 DTR (Jp)(Trib) 589
- vii) Hon'ble Punjab & Haryana High Court in the case of CIT vs. Arun Kapoor reported in 334 ITR 351 (P&H)
- viii) Hon'ble Punjab & Haryana High Court in the case of CIT vs. Ashok Kumar reported in 334 ITR 355 (P&H)
- ix) Hon'ble Delhi High Court in the case of Vishwanath Khanna vs. UOI reported in 335 ITR 548 (Del.)
- x) ITAT, Chandigarh Bench in the case of Nikka Mal Babu Ram vs. ACIT reported in 41 SOT 407 (Chd.)

xi) ITAT, Hyderabad Bench in the case of Sri M. Rajasekhar Reddy vs. ACIT in ITA Nos.1722 & 1733/Hyd/2011 reported in 2012(7) TMI

457.

xii) ITAT, Mumbai Bench in the case of DCIT vs. Bombay Beads Center in ITA No. 3458/Mum/2011.

M/s Naveen Glass Products & Others

xiii) ITAT, Mumbai Bench in the case of Jefferali K. Rattonseay vs. DCIT in ITA No.5854/Mum/2009

xiv) ITAT, Kolkata Bench in the case of Siddharth Jain vs. ACIT in ITA

xv) ITAT, Cochin Bench in the case of Dr. Pushpa A.P. Bhatt vs. ACIT & Others in ITA No.82 to 93/Coch/2010 xvi) ITAT, Delhi Bench in the case of ACIT vs. Shri Arun Kumar Gupta in ITA No.4108/Del/2010

xvii) ITAT, Delhi Bench in the case of ACIT vs. Shri Sunil Kumar in ITA

xviii) ` Hon'ble Delhi High Court in the case of Rohtak & Hissar Electricity Supply Co. vs. CIT reported in 128 ITR 52 (Del.) 5.2 Ld. Authorised Representative drew our attention on page 6 of A.O.'s order and submitted that the A.O. did not state in the Assessment Order that interest is chargeable under section 243A, 234B & 234C of the Act. However, the Ld. Authorised Representative submitted that the interest has been charged in ITNS-1 prepared in consequence to the Assessment Order. Ld. Authorised Representative submitted. There is no direction mentioned in the assessment orders therefore interest is not chargeable. Ld. Authorised Representative in support of his contention relied upon the judgment of Hon'ble Allahabad High Court in the case of CIT-II, Kanpur vs. Deep Awadh Hotels (P) Ltd. in ITA Nos.81 & 82 of 2002, judgment dated 03.08.2011, another judgement of Allahabad High Court in the case of CIT-II, Kanpur vs. Sarin Chemical Laboratory in ITA No.43 of 2003, judgement dated 18.05.2012 and in the case of CIT vs. S.K. Fabricators in ITA No.7 of 2003, judgement dated 03.08.2011. Similar view is taken by Hon'ble M/s Naveen Glass Products & Others Uttarakhand High Court in the case of CIT vs. Dehradun Club Limited in ITA No.15 of 2006 judgement date 14.10.2011.

6. In respect of maintenance of appeal against charging of interest under section 234A, 234B & 234C of the Act, Ld. Authorised Representative submitted that levy, assessment & collection are of widest significance. The words assessments and reassessments acquired definite and distinct connotations and charging of interest is part and parcel of assessment. Therefore, the appeal is maintainable. Ld. Authorised Representative in support of his contention relied upon the judgement of Apex Court in the case of A.N. Lakshman Shenoy vs. ITO, 34 ITR 275 (SC). Ld. Authorised Representative submitted that the Hon'ble High Court of Delhi in the case of Delhi Development Authority vs. ITO, 230 ITR 9 (Delhi) wherein the Delhi High Court followed the judgement of A.N. Lakshman Shenoy vs. ITO (supra) and held that order under which the petitioner's liability was determined and recovery made treating petitioner as assessee in default was an order of assessment. Ld. Authorised

Representative relied upon another judgment of Hon'ble Supreme Court in the case of Central Provinces Manganese Ore Co. Ltd. vs. CIT, 160 ITR 961 (SC) and submitted that the Hon'ble Supreme Court has clearly held that in the said judgement the levy of interest under section 139 and 215 of the Act is part of the assessment. Ld. Authorised Representative submitted M/s Naveen Glass Products & Others that the Apex Court has also held that if the assessee denies his liability to be assessed under the Act, he has a right of appeal. He submitted that the denial of liability may be wholly or partially. He has also relied on 194/SC/ITR/645. 6.1 It is also submission by the Ld. Authorised Representative that when the CIT(A) has adjudicated the appeal on merit and Revenue did not file any appeal, therefore, the question regarding whether appeal is maintainable or not before the I.T.A.T. does not arise.

6.2 Ld. Authorised Representative submitted that when the copies of seized documents were not provided to the assessee, interest under section 234A is not attracted at all. In respect of other interest under section 234B, Ld. Authorised Representative submitted that the amount has already been deposited as the assessee requested that the amount seized may be adjusted against the demand. Ld. Authorised Representative relied upon the following decisions and submitted that the appeal against charging of interest under section 234A, 234B & 23C of the Act is leviable:-

- i) CIT vs. Prakash Cotton Mills (P) Ltd., 188 ITR 713 (Bom.)
- ii) Order dated 21.11.2011 passed ITAT, Rajkot Bench in the case of Shri Ram S Sarda vs. DCIT in ITA No.1172/Rjt/2010 reported in 13 ITR (Trib.) 457 (Rajkot)
- iii) Order of ITAT Lucknow Bench in the case of ITO vs. Dr. Sameer Kant Agarwal reported in 17 DTR 185.

M/s Naveen Glass Products & Others

iv) Order dated 10.08.2012 passed by ITAT, Mumbai Bench in the case of ACIT vs. Zest Holdings Pvt. Ltd. in ITA No.8354/Mum/2010

v) CIT vs. Veppalodai Salt Corporation, 171 ITR 366 (Mad.) 6.3 The Ld. Authorised Representative fairly conceded that the jurisdictional High Court of Allahabad in the case of CIT vs. Geeta Ram Kali Ram, Sushil Kumar vs. CIT, 121/ITR/FB/708 has decided the issue against the assessee. Ld. Authorised Representative further submitted that similar view against the assessee has been taken by the Hon'ble Allahabad High Court in the case of CIT vs. Swadeshi Cotton Mills Co. Ltd., 121 ITR 747 (All.) but an appeal was filed against that judgment before the Apex Court in the case of Swadeshi Cotton Mills Co. Ltd. vs. CIT, 233 ITR 199 (SC) wherein this ground was considered by submitting that the issue is covered against the assessee by the judgement of Allahabad High Court in the case of CIT vs. Geeta Ram Kali Ram (supra) and Hon'ble Supreme Court confirmed decision of High Court in above case of Swadeshi Cotton Mills Co. (supra).

6.4 Ld. Authorised Representative submitted that merely considering any ground before the Hon'ble Supreme Court does not mean that the issue is decided against the assessee. Ld. Authorised

Representative submitted that in view of the judgements of the Apex Court in the case of CIT vs. Kanpur Coal Syndicate, 53 ITR 225 (SC), A.N. Lakshman Shenoy vs. ITO (supra) and in the case of Central M/s Naveen Glass Products & Others Provinces Manganese Ore Co. Ltd. vs. CIT (Supra), the appeal charging interest under section 234A, 234B & 234C of the Act is maintainable. 6.5 As regards the additional ground raising the ground that the authorities below have erred both on facts and in law in charging interest under section 234A, 234B & 234C completely ignoring that the tax already paid, being cash seized, was not less than the tax payable on the returned income which was accepted. Ld. Authorised Representative submitted that in fact this ground is one of the supporting argument, therefore, same may be treated accordingly.

7. The ld. Departmental Representative, on other hand, relied upon the orders of the Revenue Authorities and submitted that merely cash found at the time of search is not conclusive that the same is adjustable against the demand created. Ld. Departmental Representative submitted that charging of interest is mandatory since the assessee did not make the payment and the assessee has filed return late. Therefore, the assessee is liable for interest under section 234A, 234B & 234C of the Act. It is also submission of the Ld. Authorised Representative that all the judgments of the Hon'ble High Courts cited by the Ld. Authorised Representative are the judgements pertaining to writ filed by the parties. Therefore, on that basis, it cannot be held that the appeal against charging of interest under section 234A, M/s Naveen Glass Products & Others 234B & 234C of the Act is maintainable. Ld. Authorised Representative relied upon the judgement of Hon'ble High Court in the case of CIT vs. Geeta Ram Kali Ram, Sushil Kumar vs. CIT, 121 ITR 708 (All.) (F.B.) and submitted that the judgement relied upon the by the Ld. Authorised Representative in the case of Central Provinces Manganese Ore Co. Ltd. vs. CIT, 160 ITR 961 (SC) has been considered by the jurisdictional High Court while deciding the issue regarding maintainability of appeal against charging of interest. Ld. Departmental Representative submitted that the Apex Court in the case of Swadeshi Cotton Mills Co. Ltd. vs. CIT (supra) confirmed the order of Hon'ble Allahabad High Court in the case of CIT vs. Geeta Ram Kali Ram. Ld. Departmental Representative submitted that appeal against charging of interest under section 234A, 234B & 234C of the Act is maintainable only in case of denial of liability, as such, which is not the case of the assessee under consideration. It is also submission of the Departmental Representative that Hon'ble Gujarat High Court in the case of Roshanlal S. Jain vs. DCIT, 309 ITR 174 (Guj) wherein they have dissented from the judgement of Hon'ble Delhi High Court in the case of Dr. Prannoy Roy and Another vs. CIT and Another, 254 ITR 755. Ld. Departmental Representative submitted that charging of interest under section 234A, 234B & 234C is mandatory; therefore, the appeal is not maintainable. Ld. Departmental M/s Naveen Glass Products & Others Representative in support of his contention relied upon the judgement of Apex Court in the case of CIT vs. Anjum M.H. Ghaswala & Ors. (SC)

8. Ld. Authorised Representative in rejoinder submitted that the I.T.A.T., Mumbai Bench in ACIT vs. Hindalco Industries Limited, 4 SOT 757 (Mumbai) after considering the judgment of Allahabad High Court held that the appeal is maintainable against charging of interest.

9. We have heard the ld. Representatives of the parties. The first legal issue whether an appeal lie against charging of interest under 234A, 234B & 234C of the Act under section 246 of the Act. The ld. Representatives of both the sides pointed out that on the issue there is a direct judgement of

jurisdictional High Court in the case of CIT vs. Geeta Ram Kali Ram, Sushil Kumar vs. CIT, 121 ITR 708 (All.) (F.B.). Subsequently, the judgement has been followed by the juridical High Court in various above cases. Ld Authorised Representative tried to distinguish the said judgement by referring the judgement of Apex Court in the case of Central Provinces Manganese Ore Co. Ltd. vs. CIT, 160 ITR 961 (SC) and other judgements as cited in his argument that charging of interest is part and parcel of assessment proceedings. Therefore, charging of interest comes under the word assessed. Once the assessee challenges the assessed includes interest, therefore, M/s Naveen Glass Products & Others the appeal is maintainable under section 246 of the Act. It has also been submitted that denial of liability may be full or partial. The contention of the Id. Authorised Representative cannot be accepted as there is a direct judgement of jurisdictional High Court in the case of CIT vs. Geeta Ram Kali Ram (supra) and M.P. High Court in the case of Vineet Talkies vs. CIT, 148 ITR 66 (MP) the Id. Authorised Representative tried to interpret the judgements of the Apex Court which are not direct on the issue.

9.1 To appreciate this legal issue, appeal against charging of interest under section 234A, 234B, and 234C of the Act, we would like to refer the facts of the case of Allahabad High Court (Full Bench) in the case of CIT vs. Geeta Ram Kali Ram, 121 ITR 708 (All) (FB). These were a set of appeals before the Court. In one of the case, the I.T.O. charged penal interest under sections 139 & 217 of the Act. The A.A.C. held that while it was a fit case in which levy of interest under section 139 should be waived under Rule 117A, no appeal lay against levy of interest under section 217. The Tribunal held that charge of interest neither of the sections was appealable. In one more appeal The I.T.O. charged penal interest under sections 139 & 215 of the Act. The A.A.C. upheld the I.T.O.'s order in respect of interest charged under section 139 of the Act but reduced the amount charged under section 215 of the Act. The I.T.O. levied penal interest under M/s Naveen Glass Products & Others sections 217 & 139(1), but the same was challenged in appeal on the ground that the provisions of these two sections were not attracted. The Tribunal held that no appeal lay against the ITO's order charging the said interest under sections 139 &

217. 9.2 Before coming to the judgment of the Allahabad High Court in the case of CIT vs. Geeta Ram Kali Ram, 121 ITR 708 (All) (FB) we would like to state that during discussion of said judgement the reference to clauses number and section in discussions are the clauses and sections in the statute at the relevant time of the judgment.

9.3 The issue is related to Section 246 of the Act which is reproduced from the Act (2011) as under :-

"Appealable orders.

246. (1) Subject to the provisions of sub-section (2), any assessee aggrieved by any of the following orders of an Assessing Officer (other than the Deputy Commissioner) may appeal to the Deputy Commissioner (Appeals) [before the 1st day of June, 2000] against such order--

(a) an order against the assessee, where the assessee denies his liability to be assessed under this Act (underlined by us for giving emphasis on these words) [, or an

intimation under sub-section (1) or sub-section (1B) of section 143, where the assessee objects to the making of adjustments,] or any order of assessment under sub-section (3) of section 143 or section 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;

(b) an order of assessment, reassessment or recomputation under section 147 or section 150;

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(c) an order under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections;

(d) an order made under section 163 treating the assessee as the agent of a non-resident;

(e) an order under sub-section (2) or sub-section (3) of section 170;

(f) an order under section 171;

(g) any order under clause (b) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185 [\*\*\*] [in respect of any assessment for the assessment year commencing on or before the 1st day of April, 1992];

(h) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186 [\*\*\*] [in respect of any assessment for the assessment year commencing on or before the 1st day of April, 1992];

(i) an order under section 201;

(j) an order under section 216 in respect of any assessment for the assessment year commencing on the 1st day of April, 1988 or any earlier assessment year;

(k) an order under section 237;

(l) an order imposing a penalty under--

(i) section 221, or

(ii) section 271, section 271A, section 271B, [\*\*\*] [section 272A, section 272AA or section 272BB];

(iii) [\*\*\*] section 272, section 272B or section 273, as they stood immediately before the 1st day of April, 1989, in respect of any assessment for the assessment year commencing on the 1st day of April, 1988 or any earlier assessment years. [(1A) Notwithstanding anything contained in

sub-section (1), every appeal filed, on or after the 1st day of October, 1998 but before the 1st day of June, 2000, before the Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending shall stand transferred to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day.] (2) Notwithstanding anything contained in sub-section (1), any assessee aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) [before the 1st day of June, 2000] against such order--

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(a) [an intimation or order specified in sub-section (1) where such intimation is sent or such order] is made by the Deputy Commissioner in exercise of the powers or functions conferred on or assigned to him under section 120 or section 124;

(b) an order specified in clauses (a) to (e) (both inclusive) and clauses (i) to (l) (both inclusive) of sub-section (1) [or an order under section 104, as it stood immediately before the 1st day of April, 1988 in respect of any assessment for the assessment year commencing on the 1st day of April, 1987 or any earlier assessment year] made against the assessee, being a company;

(c) an order of assessment made after the 30th day of September, 1984, on the basis of the directions issued by the Deputy Commissioner under section 144A;

(d) an order made by the Deputy Commissioner under section 154; [(da) an order of assessment made by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or after the 1st day of January, 1997;

(db) an order imposing a penalty under sub-section (2) of section 158BFA;]

(e) an order imposing a penalty under section 271B [or section 271BB]; [(ee) an order made by a Deputy Commissioner imposing a penalty under section 271C, section 271D or section 271E;]

(f) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;

[(ff) an order made by a Deputy Commissioner imposing a penalty under section 272AA;] [(g) an order imposing a penalty under Chapter XXI by the Income-tax Officer or the Assistant Commissioner where such penalty has been imposed with the previous approval of the Deputy Commissioner under sub-section (2) of section 274;]

(h) an order made by an Assessing Officer (other than Deputy Commissioner) under the provisions of this Act in the case of such person or classes of persons as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct.



(3) Notwithstanding anything contained in sub-section (1), the Board or the Director General, or the Chief Commissioner or Commissioner if so authorised by the Board, may, by order in writing, transfer any appeal which is pending before a Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending, to the Commissioner (Appeals) if the Board or, as the case may be, the Director General or Chief M/s Naveen Glass Products & Others Commissioner or Commissioner (at the request of the appellant or otherwise) is satisfied that it is necessary or expedient so to do having regard to the nature of the case, the complexities involved and other relevant considerations and the Commissioner (Appeals) may proceed with such appeal or matter, from the stage at which it was before it was so transferred:

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be re-opened or that he be reheard.

Explanation.--For the purposes of this section,--

(a) "appointed day" means the 10th day of July, 1978, being the day appointed under section 39 of the Finance (No. 2) Act, 1977 (29 of 1977);

(b) "status" means the category under which the assessee is assessed as "individual", "Hindu undivided family" and so on.]"

9.4 Now coming to the judgment of the Allahabad High Court, we noticed that the court considered the history of charging of interest and right to file appeal. It was noticed that the levy of interest was automatic. The ITO had no discretion. He had merely to calculate the amount. The Court has also referred The Select Committee, the Direct Taxes Administration Enquiry Committee (popularly known as Tyagi Committee) and noted that the committee recommended that an order made under section 216 [equivalent to old section 18A(1)] should be made appealable, and accordingly, under clause (n) of section 246 of the 1961 Act an appeal was so provided. No appeal was, however, provided against orders levying penal interest under other provisions, like section 18 A(6), equivalent to section 215, and section 217, equivalent to old section 18A(8). The position is that the recommendation made by the Tyagi Committee was not accepted by Parliament, nor was the phrase "where the assessee denies his liability to be assessed under M/s Naveen Glass Products & Others this Act" changed or modified so as to include orders of levy of interest. The court observed that Parliament's intention is evident. Such orders were not found fit for appeal.

9.5 The court has examined the phrases "denies his liability to be assessed"

and "under this Act". It was observed that in this part of clause (c), no particular section or provision of the Act has been mentioned. Under the latter part of clause

(c) an order of assessment under sub-section (3) of section 143 or section 144 is appealable. Similarly, the various other clauses of section 246 specifically refer to the particular section, orders passed where under were appealable. In this setting, the

use of the phrase "under this Act" should not mean under any individual section or provision of this Act.

9.6 The court has also examined the term "assessed" and observed that the term "assessed" occurring in this phrase also needs to be properly construed. Ever since the decision of the Privy Council in CIT v. Khemchand Ramdas [1938] 6 ITR 414, it is settled that the word "assessment" as used in the Income-tax Act is used as meaning sometimes the computation of income, sometimes determination of the amount of tax payable, and sometimes the whole procedure laid down in the Act for imposing liability upon the taxpayer - C.A. Abraham v. ITO [1961] 41 ITR M/s Naveen Glass Products & Others 425 (SC), Kalawati Devi Harlalka v. CIT [1967] 66 ITR 680 (SC) and S. Sankappa v. ITO [1968] 68 ITR 760 (SC). The court further observed that in the context of clause (c), the word "assessed" cannot mean computation of income or determination of tax, because such things are already provided for in the latter part of the same clause. Obviously, it is used in the comprehensive sense to mean subjected to the whole procedure for ascertaining and imposing liability on the taxpayer and the liability are under the Act and not under any particular provision or individual section of the Act.

9.7 The court has also examined the phrase "denying his liability to be assessed under this Act" and observed that the said phrase came up for consideration before the Gujarat High Court in Mandal Ginning & Pressing Co. Ltd. v. CIT [1973] 90 ITR 332. The relevant abstract of the said judgment noted by the court are as under:-

(121 ITR Page No. 712) "Bhagwati, CJ.. (as his Lordship then was), spoke for the Bench. After referring to Khemchand's case (supra), it was observed:

"... The question would, therefore, be what is the sense in which the word 'assessed' is used in this context. Obviously, it is used in a comprehensive sense to mean 'subjected to the whole procedure for ascertaining and imposing liability on the taxpayer'."

He held : "... On the contrary, the words 'under this Act' clearly go to show that the reference here is to the whole procedure laid down in M/s Naveen Glass Products & Others the Act for imposing liability upon the taxpayer. The Legislature has deliberately and advisedly used the words 'under this Act' and not 'under', 'a' or 'any' provision of this Act. What is meant by the expression 'any assessee... denies his liability to be assessed under this Act' is that the assessee contends that he is not liable to be assessed under any provision of the Act, or, in other words, he is not 'liable to be subjected to any part of the procedure laid down in the Act for imposing liability to tax'"

In that case the question was whether an order of rectification under section 35(1) was appealable. His Lordship observed:

"... When an assessee claims that he is not liable to be proceeded against under section 35, sub-section (1), which, paraphrasing it in the language of S. Sankappa's case, means that he is not liable to be assessed by a proceeding for rectification under

section 35, sub-section (1), he is not 'denying his liability to be assessed under this Act'. His objection then is only against a proceeding for assessment under a particular provision of the Act. He does not say: 'I am not liable to be assessed at all under any provision of the Act' which is what is connoted by the expression 'denies his liability to be assessed under this Act'."

His Lordship went on to make a note of caution. Said he:

"... Of course, we must make it clear that denial of liability to be assessed may be in respect of the whole income or any part of the income. It may be based on any ground, whether of fact or of law, and it may be total denial of liability or denial of liability under particular circumstances.....".(121 ITR Page 713)....." But the 'denial must be of the liability to be assessed under this Act' and not merely under any particular provision of the Act."

9.8 The court has also examined the aspect of denial of liability. The court observed as under:-

(121 ITR page 713) M/s Naveen Glass Products & Others ".....The denial of liability contemplated by section 30, sub- section (1), is, therefore, denial of liability to be charged with tax under the Act, which is the same thing as saying that the assessee is not liable to be assessed at all under any provision of the Act or to be subjected to any part of the procedure laid down in the Act for imposing liability to tax.

The Supreme Court's decision in CIT v. Kanpur Coal Syndicate [1964] 53 ITR 225 is in point. In that case, the Supreme Court affirmed the decision of this Court. In that case the assessee which was an association of persons contended that it, as an assessable entity, was not liable to be taxed, but its individual members, as separate assessable entities, alone were liable. The Supreme Court held that the assessee denies his liability to be assessed under the Act in the circumstances of the case. It was held:

"The expression 'denial of liability' is comprehensive enough to take in not only the total denial of liability but also the liability to tax under particular circumstances. In either case, the denial is a denial of liability to be assessed under the provisions of the Act. In one case, the assessee says that he is not liable to be assessed to tax under the Act, and in the other case the assessee denies his liability to tax under the provisions of the Act if the option given to the appropriate officer under the provisions of the Act is judicially exercised."

The option given to the officer was either to tax the association of persons as a collective entity or the members individually. If he exercised the option one way, the association of persons could not be subjected to the process of assessment at all. This decision suggests that the denial of liability was not denial under any particular provision. In other words, the denial should be against being subjected to the whole procedure for ascertaining and imposing liability on the taxpayer. A denial

against being subjected to a part of the process of ascertaining and imposing liability is not within its ambit."

9.9 The court considered the decision of the Bombay High Court in CIT v. Jagdish Prasad Ramnath [1955] 27 ITR 192(Bomb) as under:-

M/s Naveen Glass Products & Others ".....there the assessee was a new assessee. He did not make any estimate of income under sub-section (3) of section 18A, nor did he deposit advance tax. The ITO discovered such failure and imposed interest under section 18A(8). The question was whether this levy of penal interest was appealable. On behalf of the assessee, it was stressed that he was not liable to pay advance tax at all, and the assumption of the ITO in the assessment order that he was so liable was wrong. Chagla, C.J., speaking for the Bench, observed:

"Therefore, the scheme of the Act is that penal interest must follow upon the regular assessment; the appeal should be against the regular assessment and in the regular assessment it should be open to the assessee to take all points which may legitimately not only reduce the taxable income or the tax to be paid or with regard to the proper head under which the income should fall but also reduce the quantum of penal interest and the legislature having provided for this in the regular appeal itself did not think it necessary that a separate right of appeal should be given to the assessee to appeal against the quantum of penal interest."

Dealing with the denial of the liability to be assessed under the Act mentioned in clause (c), the learned judge held:

"Therefore, it is difficult to take the view that in the case of a new assessee who had never been assessed to advance tax and upon whom there never was a liability to pay advance tax that he could legitimately say that he is denying his liability to be assessed under the Act. In fact, he has never been assessed. In fact, no liability to pay advance tax has ever been imposed upon him. In fact, he has never been called upon to pay advance tax. It is only on his being assessed under the regular assessment that it has been found that he should have made an estimate under sub-section (3) of section 18A and paid advance tax, and, therefore, he is liable to pay the penalty."

It was held that there was no right of appeal against imposition of penal interest under the denial clause.

This decision makes a distinction between appealability on the grounds which legitimately are covered by the clause "assessment of income or computation of tax". An appeal would lie under that clause M/s Naveen Glass Products & Others against on the ground that the income was assessed under a wrong head or source; but on these grounds an appeal is not permissible under the denial clause".

9.10 The Court has also considered their earlier judgment in the case of Vidyapat Singhania vs. CIT [1977] 107 ITR 533, and noted the finding of the court which is reproduced as under:

"The denial, of course, may be either absolute or conditional but the denial must be total. A person who objects to a part of the assessment order cannot be said to deny his liability to be assessed. For instance, when a person objects to the levy of tax on agricultural income, his denial is absolute. Agricultural income is not taxable under any circumstance. But when a person objects to the levy of tax on him on the ground that the income sought to be assessed belongs to him in the capacity of a Hindu undivided family and not in his capacity as an individual, he denies his liability to be assessed under certain circumstances. The denial is complete even though not absolute."

Referring to the argument that interest was part of tax, the Bench observed:

"Even if penal interest is a part of tax, it cannot be said that the assessee denies his liability to be assessed under the Act, because he objects to the levy of penal interest only and not to the amount of tax determined under section 23. So it is not possible to spell out a right of appeal even by virtue of the clause 'denying his liability to be assessed under the Act' occurring in section 30 of the Act."

9.11 After the detailed discussions on the issue considering all aspects of the matter the court held as under:-

(121 ITR page No 715) M/s Naveen Glass Products & Others "In our opinion, the denial clause does not encompass denial which is to some part of the process of assessment or under a particular provision of the Act. In our opinion, the denial clause applies to a situation where the denial is as to the applicability of the Act as such. For instance, in the case of a non resident, the Act is not applicable to him. Similarly, agricultural income is not assessable under the Income-tax Act at all. On these points, the denial is that the Act is not applicable. In the Supreme Court's case of Kanpur Coal Syndicate (supra) , the denial was that in his capacity as an association of person the assessee was not liable to be assessed at all. Similarly, a person may say that the income belongs to his HUF and he is not liable to be assessed in his individual capacity. These are the instances of denial in particular circumstances.

14. The ground of objection that the conditions mentioned in section 217 or 139 do not exist and so these provisions are not attracted, does not relate to denial of assessment liability. Such denial is partial, not to the income assessed, but to charge of interest. Then, the ITO does not assess any liability to tax. He finds a default and charges interest. Such a decision is not covered by the denial clause.

We are, with respect, unable to agree with this view taken by the Gujarat High Court in Bhikhoobhai N. Shah v. CIT [1978] 114 ITR 197 and the Karnataka High Court in National Products v. CIT [1977] 108 ITR 935(Kar) . (121 ITR Page 716) This view has prevailed in this Court consistently in Pt. Deo Sharma v. CIT [1943] 23 ITR 226, Ramchand & Sons Sugar Mills (P.) Ltd. v CIT [1977] 107 ITR 539, Seth Banarsi Das Gupta v. CIT [1977] 107 ITR 368, Addl. CIT v. Allahabad Milling Co. [1978] 111 ITR 111 and Mewa Lal v. CIT [1979] 117 ITR 598. The same view has been taken by the Andhra Pradesh High Court in Boddu Seetharamaswamy v. CIT [1955] 28 ITR 156 , the Madras High Court in South India Flour Mills (P.) Ltd. v CIT [1968] 70 ITR 863 and Rajyam Pictures v. Addl. CIT [1978] 114 ITR 847 , the Gujarat High Court in CIT v. Sharma Construction Co. [1975] 100 ITR 603 , and the Gauhati High Court in K.B. Stores v. CIT [1976] 103 ITR 505.

In Daimlar Benz's case (supra ), the Full Bench of the Bombay High Court mentioned five instances which would be covered under the denial clause, namely:

(a)an assessee contending that he is not within the ambit of the Act at all; for instance, a non-resident;

(b)an assessee, though falling within the ambit of the Act, contending that his income sought to be assessed is not charge able at all; for instance, agricultural income;

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(c)an assessee having chargeable income, but contending that the same falls to be assessed under one and not the other head; for instance, when he receives an income from the house property but contends that the same is not liable to be taxed under the head "Income from house property" but is liable to be taxed under the head "Profits and gains of business or profession" or vice versa;

(d)an assessee may accept a particular head of income but denies the source of that income; for instance, when he contends that he has income from business but contends that such income is from 'A' business and not from 'B' business; and

(e)an assessee contending that part of the income from a particular business is not assessable.

In our view, cases mentioned in (a) and (b) alone are appealable under the denial clause. Cases mentioned in categories (c) , (d) and (e) are also appealable, but against the regular assessment under the clause relating to assessment of income or computation of tax.

16. The upshot of all the discussion is that on all the aforesaid grounds of objection, an appeal lies though some grounds only are open under the denial clause while other grounds are available in appeal against the regular assessment. It is well settled that mention of a wrong provisions in a memorandum of appeal is not fatal to the maintainability of an appeal. The substance of the matter counts. All the aforesaid grounds of objection can be taken in an appeal. But none of these categories cover the ground relating to the quantum of penal interest whether it be for the....."

(121 ITR page 717) "..... reason that the ITO ought to have waived or reduced the penal interest or that the provisions like section 139 or 217, etc., are not attracted. Such grounds cannot be entertained by the appellate authority merely because they have been taken in the appeal filed against the regular assessment order. On these grounds, the remedy is by way of applying for rectification under section 154 or revision to the Commissioner under section 264. Since 1-10-1975, the assessee has a more specific remedy under section 273A in case his grievance is in respect of waiving or reducing the amount of interest vide clause (iii) of sub-section (1) of section 273A. Last, but not least, the assessee has a remedy of filing a writ petition under article 226 of the Constitution in the High Court".

9.12 We may state when decision of Allahabad High Court in case of Swadeshi Cotton Mills Co. Ltd. (supra) has been confirmed by Hon'ble Supreme Court in M/s Naveen Glass Products & Others same issue in 233/ITR/199, other decisions cited by the ld. Authorised Representatives cannot be given preference.

9.13 The Hon'ble High Court of Madhya Pradesh which is also jurisdictional High Court so far our jurisdiction of I.T.A.T. Agra Bench on the issue under consideration decided in the case of Vineet Talkies vs. CIT, 148 ITR 66 (MP) as under:-

"There is divergence of opinion among different High Courts regarding interpretation of this expression "where the assessee denies his liability to be assessed under this Act". The majority view is that this clause does not provide for an appeal against any particular provision of this Act; it applies only where there is denial of the applicability of the Act as such because such things are already provided in the latter part of the same clause, obviously, it is used in the comprehensive sense to mean subject to the whole procedure for ascertaining and imposing liability on the tax payer; and the liability is under the Act and not under any particular provision or individual section of the Act. i.e., the assessee contends that he is not liable to be assessed under any provision of this Act, or, in other words, he is not liable to be subjected to any part of the procedure laid down in the Act for imposing liability to tax. The denial clause does not encompass denial which is to some part of the process of assessment or under a particular provision of the Act [See CIT vs. Geeta Ram Kali Ram (1980) 15 CTR (All) 67 (FB) : (1980) 121 ITR 708 (All) (FB) : TC6R.654. The same view has been taken in Boddu Seetharamaswamy vs. CIT (1955) 28 ITR 156 (AP) : TC6R.620 CIT vs. Sharma Construction Co. (1975) 100 ITR 603 (Guj) : TC6R.634, K.B. Stores vs. CIT 1976 CTR (Gau) 20 : (1976) 103 ITR 505 (Gau) :

TC6R.640, CIT vs. P.S. Jain Motors (P.) Ltd. (1981) 21 CTR (P&H) 132 : (1981) 130 ITR 842 (P & H) : TC6R.617 and CIT vs. Shantilal J. Mehta (1981) 24 CTR (Bom) 127 : (1981) 132 ITR 453 (Bom) :

TC6R.642. The Allahabad Full Bench case has relied on the M/s Naveen Glass Products & Others observations of the Supreme Court in CIT vs. Kanpur Coal Syndicate (1964) 53 ITR 225 (SC) : TC6R.197], that the expression "denial of liability"

is comprehensive enough to take in not only the total denial of liability but also the liability to tax under particular circumstances.

In either case the denial is a denial of liability to be assessed under the provisions of the Act. In one case the assessee says that he is not liable to be assessed to tax under the Act, and in another case the assessee denies his liability to tax under the provisions of the Act if the option given to the appropriate officer under the provisions of the Act is judicially exercised. The Full Bench distinguished the two cases to the contrary in *National Products vs. CIT* 1976 CTR (Bom) 179 : (1977) 108 ITR 935 (Kar) : TC6R.771 and *Bhikhoobhai N. Shah vs. CIT* 1978 CTR (Guj) 172 : (1978) 114 ITR 197 (Guj): TC6R.687. In the Karnataka case, it was held that the levy of penal interest under s. 139 or under s. 215 of the Act is made in the regular assessment order and under these two sections a discretion is vested in the ITO to waive or reduce penal interest. This is not the case so far as levy of penal interest under s. 217(1A) of the Act is concerned. Here no discretion is given for levying of interest which is given at a particular rate. There is no power given to waive or reduce the rate of interest. 9.14 Now question before us to see under the facts & circumstances when there are direct judgments of jurisdictional high court then what principles of judicial discipline are required. This aspect of the matter have been discussed by the Delhi High Court in the case of *Nokai Corporation V. Director of Income tax (International Taxation)* [2007] 162 Taxman 369 (Delhi) as under:-

" The Supreme Court stated, many years ago, in *Union of India v. Kamlakshi Finance Corpn. Ltd.* [1991] (55) ELT 433 as follows :

"...The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities...." (p. 436) *M/s Naveen Glass Products & Others* It was further observed by the Supreme Court that if the order of an appellate authority is the subject-matter of further appeal, that cannot furnish any ground for not following it, unless its operation has been suspended by a competent Court. The Supreme Court went on to say that if this healthy rule is not followed; the result will not only be undue harassment to assessee but chaos in the administration of tax laws.

In *CIT v. Ralson Industries Ltd.* [2007] 2 SCC 326, the Supreme Court held :--

"9. When an order is passed by a higher authority, the lower authority is bound thereby keeping in view the principles of judicial discipline...." (p. 330) The Supreme Court drew support from *Bhopal Sugar Industries Ltd. v. ITO* [1960] 40 ITR 618 wherein it was held :

"If a subordinate Tribunal refuses to carry out directions given to it by a Superior Tribunal in the exercise of its appellate powers the result will be chaos in the administration of justice...." (p. 622) It was further observed in *Bhopal Sugar Industries Ltd.*'s case (supra) :



"...The Judicial Commissioner was not sitting in appeal over the Tribunal and we do not think that, in the circumstances of this case, it was open to him to say that the order of the Tribunal was wrong and, therefore, there was no injustice in disregarding that order. As we have said earlier, such a view is destructive of one of the basic principles of the administration of justice." (p. 623) Similarly, in *Triveni Chemicals Ltd. v. Union of India* [2007] 2 SCC 503, the Supreme Court reiterated the principle that adjudicating authorities are bound by the doctrine of judicial discipline."

9.15 In the light of above discussion, we find that there is direct judgements of Hon'ble jurisdictional High Courts in the case of *CIT vs. Geeta Ram Kali Ram* (supra), *Swadeshi Cotton Mills Co. Ltd.* (supra) and judgement of Hon'ble Madhya Pradesh High Court in the case of *Vineet Talkies vs. CIT*, 148 ITR 66 M/s Naveen Glass Products & Others (M.P.) and we are under their jurisdiction. We are, therefore, legally as well as on principle of judicial discipline bound to follow the judgements of jurisdictional High Courts. We respectfully follow the above judgements of jurisdictional High Courts in the case of *CIT vs. Geeta Ram Kali Ram* (supra), *Swadeshi Cotton Mills Co. Ltd.* (supra) and judgement of Hon'ble Madhya Pradesh High Court in the case of *Vineet Talkies vs. CIT*, 148 ITR 66 (M.P.) and in the light of that we hold that appeal against charging of interest under sections 234A, 234B & 234C is not maintainable.

10. Since the appeals are not maintainable, under the facts and circumstances, all the appeals of the assesseees are dismissed in limine.

11. Since we dismissed the appeals of the assessee in limine, therefore, we do not express any opinion on the grounds raised on merit.

12. In the result, all the appeals filed by the assesseees are dismissed as discussed above.

(Order pronounced in the open Court)

Sd/-  
(BHAVNESH SAINI)  
Judicial Member

Sd/-  
(A.L. GEHLOT)  
Accountant Member

PBN/\*

M/s Naveen Glass Products & Others

Copy of the order forwarded to:

1. Appellant
2. Respondent
3. CIT (Appeals) concerned
4. CIT concerned
5. D.R., ITAT, Agra Bench, Agra

6. Guard File.

By Order

Sr. Private Secretary  
Income-tax Appellate Tribunal, Agra  
True Copy