Karnataka High Court Commissioner Of Income-Tax vs Deepchand Kishanlal on 5 January, 1990 Equivalent citations: 1990 183 ITR 299 KAR, 1990 183 ITR 299 Karn Author: K S Bhat Bench: K S Bhat, S R Babu JUDGMENT K. Shivashankar Bhat, J. 1. The question of law referred to us under the provisions of section 256(1) of the Income-tax Act, 1961 (hereinafter referred as "the Act"), is as under: "Whether, on the facts and in the circumstances of the case, the Tribunal is justified in upholding the decision of the Commissioner of Income-tax (Appeals), (i) that no interest under section 139(8) is leviable on the registered firm as the advance tax paid as registered firm exceeded the tax payable by it as registered firm; and (ii) that interest is payable to the assessee under section 214 by revision on account of reduction in total income in appeal?" 2. While allowing the appeal filed by the assessee, the Commissioner of Income-tax (Appeals) directed the payment of interest on the excess advance tax under section 214 of the Act by computing the excess with reference to the revised order. The Appellate Tribunal, Bangalore Bench, affirmed this order, following the decision of the Calcutta High Court in Chloride India Ltd. (1977) 106 ITR 38 and other similar decisions. In this background, at the instance of the Revenue, the question was referred to us for an answer. 3. At the outset, it is necessary to note that the first part of the question was not pressed before us and learned counsel for the Revenue and the assessee argued only the question as to whether interest is payable to the assessee under section 214 of the Act on account of reduction of tax in appeal. 4. The question is not free from difficulty. Decisions of various High Courts do not agree upon a single answer. Even in some of the High Courts, different Benches have taken differing views. The provisions governing the statutory law have undergone changes in the matter of levy of interest on the refund out of the advance tax, from the days of section 18A of the Indian Income-tax Act, 1922, till the Taxation of Laws (Amendment) Act, 1984 [(with effect from 1-4-1985) - for short this Amendment Act is referred to hereinafter as the Taxation Laws (Amendment) Act, 1984]. 5. Earliest of the decisions, relevant to the question before us, is of the Bombay High Court in Sarangpur Cotton Manufacturing Co. Ltd. v. CIT [1957] 31 ITR 698 (referred to as Sarangpur case hereinafter). It was rendered in the year 1957 and arose out of section 18A of the Indian Income-tax Act, 1922 (referred as the 1922 Act, for short). Section 18A of the said Act provided for payment of interest up to "the date of assessment (hereinafter called the regular assessment) made under section 23... The dispute centred round the meaning of"regular assessment". Chagla C. J., speaking for the Bench, observed (at page 702):"When one looks at the matter a little more closely, it becomes clear that, when the Income-tax Officer made the order on the 30th of March, 1948, under the provisions of this section, interest ceased to run. At that date the order made by the Income-tax Officer was the only effective and valid assessment. Can it be said that, if interest had ceased to run, the runing of interest was revived when that order of assessment was set aside and a different terminus was fixed for the calculation of interest? It seems to us that what the Legislature contemplated in using the expression the date of the assessment' was the factual date of the assessment and it was not considering the legality or the validity of the assessment made.

It wanted to fix two termini for the calculation of interest. With regard to one terminus there was no difficulty; that was the date of payment of advance tax by the assessee. The other terminus had to be fixed and the other terminus was the date when the regular assessment was made. That terminus having been fixed, it could not be altered by any subsequent event or by the vicissitudes through which the assessment order might pass. It there had been no appeal and if the assessment order had not been set aside, obviously this would have been the only terminus. The Legislature did not contemplate that the terminus should be altered because the assessee chose to appeal and because the Appellate Assistant Commissioner set aside the order". 6. Again, it was observed (at page 703):"The scheme of the section seems to be that interest is payable for the period during which there is no liability to pay upon the assessee. But once the order of assessment is made, the liability to pay arises, and even though the order may be subsequently set aside, there is no obligation upon the Department to pay any interest in respect of the amounts which they recovered as tax under the original assessment order". 7. The next one is that of the Allahabad High Court in Sir Shadilal Sugar and General Mills Ltd. v. Union of India [1972] 85 ITR 363, decided in the year 1971. This again is a decision under the 1922 Act. The Bench held that the"regular assessment" meant the first or the earliest of the assessments made under section 23; when an order of assessment is made and a notice of demand is issued, the assessee is under an obligation to pay the tax demanded and, therefore, an obligation to compensate the assessee for the excess tax paid by the assessee ceases to exist. The theory of advance tax being merged into the tax assessed and, therefore, ceasing to be an advance tax, is implicit in the reasoning of the Bench. The Allahabad High Court, here, assumed that, if the assessee pays the amount as tax (as per the initial/original assessment), he is not entitled to be compensated for the excess amount paid by him as tax, even in case the order of assessment is modified or reversed and the tax levied is reduced. The Bench agreed with the views expressed by the Bombay High Court in Sarangpur's case (1957) 31 ITR 698. 8. A different approach is found in the decision of Sabyasachi Mukharji J. (as he then was in the Calcutta High Court) in Chloride India Ltd. v. CIT [1977] 106 ITR 38 - (Chloride India's case, for short). The decision was rendered in the year 1976. The assessment year was 1964-65 and was under the provisions of the Income-tax Act, 1961. Section 214 as it then stood came up for consideration and it was held that the "regular assessment" was the effective order of assessment; an initial order of assessment which stood modified or reversed cannot be called a "regular assessment" and the concept of "regular assessment" cannot be confined to the said initial order of assessment. At page 41, the learned judge observed: ".... it appears that an order which is passed by the Income-tax Officer to give effect to the order of the Appellate Assistant Commissioner is an order of assessment under section 143 of the Income-tax Act, 1961. If that is the position then, in view of section 2(40) of the Act, the regular assessment as contemplated by sub-section (1) of section 214 should be assessment made by the Income-tax Officer initially or the first assessment made by the Income-tax Officer if there is no appeal therefrom, but in case there is an appeal, the order

passed by the Income-tax Officer finally to give effect to the direction, if any, of the appellate authority. That order by the Income-tax Officer would be an order of assessment and passed in the regular course of business". 9. After referring to various provisions of the Act, wherein the words "regular assessment" are found, the court held (at pp. 41,42): "Therefore, the effect of the sections is that the Income-tax Officer should serve a notice of demand based on total income as computed on the basis of the regular assessment of the latest previous year. If by regular assessment was meant the first assessment only, then the effect would be that in case where after the first assessment here was an appeal and in the appeal, the assessment has been modified or reduced and the Income-tax Officer has passed an order giving effect to such modification or b reduction, still the Income-tax Officer would be obliged to make the demand for advance tax not on the basis of the amount reduced by the direction of the appellate authority but on the basis of the first assessment order made by the Income-tax Officer. The assessee under section 208 would also be obliged to pay advance tax on that basis. The Income-tax Officer will then be free to modify the demand for the subsequent year but for the year in question he would have to proceed on the basis of demand raised in the first assessment. This would seem to be an anomalous situation and unless the language of the section compels one to make that construction, one should avoid making that construction. It has to be borne in mind that the expression 'regular assessment' has been used in several sections. In all the sections similar meaning should be given to that expression unless the context otherwise demands. Having regard to the scheme of the sections, I am of the opinion that the context does not require otherwise. Regular assessment is certainly different from the first assessment or provisional assessment. But regular assessment is not confined to first assessment. When an assessment is modified pursuant to the order of the appellate authority or direction, the subsequent order will be regular assessment and must supersede and replace the earlier assessment order. Having regard to the scheme of the Act and the context in which the expression has been used, in my opinion, regular assessment under section 214 would include in the particular facts and circumstances of the case an assessment made by the order of the Income-tax Officer pursuant to the direction of the Appellate Assistant Commissioner". 10. There was contention that Parliament repeated the phraseology of "regular assessment" in section 214 which had been interpreted earlier in Sarangpur case [1957] 31 ITR 698 (Bom) and, therefore, should bear the same earlier meaning; this was repelled at p. 44: "I am unable to accept this contention. Firstly, there was no judicial interpretation of the expression 'regular assessment' as such. What was interpreted was the date of the assessment referred to as the 'regular assessment' for the purpose of section 18A(5) of the Indian Income-tax Act, 1922. Knowing the said interpretation when in the new Act Parliament has deliberately chosen to define regular assessment by meaning assessment made under sections 143 and 144 and not to confine to the initial assessment, in my opinion, it cannot be said that the legislative intent was to confine the meaning of regular assessment to initial or first assessment as indicated in the judgment referred to hereinbefore." 11. A few decisions which accepted the answer given

by the Chagla C. J. are: (1) N. Devaki Amma v. ITO ; (2) National Agricultural Co- operative Marketing Federation of India Ltd. v. Union of India ; (3) Trustees of H. E. H. Nizam's Religious Endowment Trust v. ITO ; (4) CIT v. Carona Sahu Co. Ltd. [1984] 146 ITR 452 (Bom) [FB]; and (5) CIT v. G. B. Transports [1985] 155 ITR 548 (Ker) [FB]. 12. In these decisions, the courts have given additional reasons also for their conclusions. 13. The Full Bench decisions of the Bombay and Kerala High Courts points out the divergence of views expressed earlier by the respective Benches of the same courts. 14. A few of the decisions which accepted the view expressed by the Calcutta High Court in Chloride India Ltd.'s case, are: (1) Triplicane Urban Co-operative Society Ltd. v. CIT ; (2) Bardolia Textile Mills v. ITO [FB]; and (3) S. A. Kadre, Excess Profits Tax Officer v. Binod Mills Co. Ltd. [1986] 157 ITR 177 (Bom). Here, though the question arose under the provisions of the Excess Profits Tax Act, 1940, the reasoning would equally apply to the question before us. (4) CIT v. M. L. Sanghi . 15. We have considered the several decisions and the reasoning therein in great depth and are of the view that the reasoning of the Full Bench of the Gujarat High Court is preferable to that in other decisions in answering the question referred to us. 16. As we are in full agreement with the Full Bench of the Gujarat High Court , some of its observations are reproduced here, instead of repeating the same reasoning in our own words: (i) At page 394: "The scheme of the Income-tax Act envisages payment of tax by such assessees during the vary year in which they earn though what they have to finally pay is determined when assessment is made under the provisions of the Act. Tax paid in advance is then credited towards the dues of the relevant assessment year. If at the time of such assessment, it is found that the obligation of the assessee to pay advance tax has not been fully discharged by reason of the assessee having paid less than what is determined as due, he should not only pay the balance tax amount due, but also the interest on that amount except where the variation is not substantial, as specified. This is envisaged in section 215 of the Income-tax Act. The same scheme naturally envisages payment of interest to the assessee on the amount which has to be refunded as excess when it is found that on the determination of the tax due, advance tax is found to have been paid in excess. The payment of interest by the assessee under section 215 is evidently on the principle that the assessee had been holding money due to the Central Government in his hands. When he pays such money later, he must pay it with interest. Where the Government holds the money of the assessee in its hands in excess of what is due, the Government is to pay interest on the money so held. If the matter were to be decided on simple logic or commonsense in the light of such a scheme for payment of interest on money due from one to the other, the answer to the case before as would be quite simple. Advance tax has been paid in excess. Though it might not have been found to be in excess when the Income-tax Officer originally passed the order of assessment, if, on the final liability of the party being determined pursuant to an order passed by the Appellate Assistant Commissioner, the amount determined as tax is seen to be less, it would be that amount alone which would be due from the assessee and any amount held by the Department in excess would be the amount due to the

assessee. It may not be quite logical to decline to pay interest on the excess amount till the date of the revised assessment by which order alone such amount is determined as excess. Any contention that interest is payable only till the date of the first assessment which assessment did not in fact justify any refund at all may not be quite rational. There will be no logic at all to say that no interest will be payable for any period whatsoever since in the first assessment no excess was found paid by the assessee and such excess is seen paid only on the basis of the revised assessment. But we are not concerned merely with logic here. We are concerned with the provisions of a taxing statute. These have to be read and understood according to the language of the statute and if the plain language compels us to adopt an approach different from that dictated by any rule of logic, we may have to adopt it." (ii) At page 397: "Section 244(1A) is quite relevant for our purpose. It was inserted in the section by the Taxation Laws (Amendment) Act, 1975, with effect from October 1, 1975. For the first time, specific provision is seen made for payment of interest on so much of the amount paid by the assessee in pursuance of any order of assessment or penalty as is found to be in excess by reason of a decision in appeal or other proceeding, provided such amount is paid after March 31, 1975. The section does not apply to any payment made in excess on or before March 31, 1975. It applies only to payments made pursuant to an order of assessment. Therefore, amounts paid by way of advance tax will not fall within the section." (iii) At page 400: "If 'regular assessment' in section 214(1) is understood as revised assessment, where there is one, the obligation on the State will be to pay interest on the amount paid as advance tax found to be in excess of what is due from the assessee on the basis of the revised or final assessment. Why should such a result be considered unreasonable? Why should any attempt be made to reach another result? We do not think that this goes against the scheme of the Act. On the other hand, it promotes the shame." (iv) At page 401: "What happens to an assessment by the Income-tax Officer when such assessment is subjected to an appeal and pursuant to the appellate decision, the matter is reopened obliging the Income-tax Officer to pass a fresh order? When he makes a fresh order of assessment, the determines fresh the tax payable by the assessee. It is no as if two assessment orders survive against the assessee then. The first order is substituted by the second order. The first order, when it did operate, was legal and recovery and enforcement could legally have been made pursuant to that order. But after the passing of the second order, the obligation of the assessee arises from that order and where it is a fresh assessment determining tax payable for the year consequent upon the appellate decision setting aside the order of the Income-tax Officer, the order of the Income-tax Officer would no longer survive. It is true that it lived earlier. But by the passing of the fresh order, it is fresh order that would operate. By the decision in appeal, the earlier order ceases to be valid and it is replaced by the fresh order. At that point of time, any reference to an assessment order could only be to the order of assessment passed fresh. It could not be to an order which was once passed and which had become dead, having been set aside." (v) At page 402: "Advance tax paid is not amount paid in pursuance of any order of assessment or penalty. That will have to be taken

care of independent of section 244(1A). Therefore, the situation is not only not anomalous, but in a way indicates that the interest payable under section 214(1) is not up to the date of the first assessment, but up to the date of the revised assessment. Otherwise, in respect of the advance tax, even if there be excess, no interest will be due for the period from the date of the first assessment whereas such interest will be due on amount paid pursuant to an assessment. That would really be anomalous." (vi) At page 413: "Now let us assume that section 214(1) does not envisages the assessee earning interest on excess payment of advance tax after the first assessment, even though due to later developments he gets a refund of such excess. What happens to the amount paid by the assessee subsequent to March 31, 1975, pursuant to an order of assessment? Section 244(1A) entitles him to interest on such amount for the period from the date of the payment up to the date when, on account of the amount being found in excess in appeal or other proceedings, he gets a refund. He will not, in that event, get interest for excess payment made earlier as advance tax from the date of first assessment though he will be entitled to get interest on an amount paid pursuant to an assessment. This situation could not have been envisaged by Chagla C. J." 17. We venture to state our reasons some of which, no doubt, are not new: (A) The divergence of views of several High Courts including the differing opinions expressed by different Benches of the same High Court, clearly show the ambiguity of the law as it then stood and the doubt that pervaded its interpretation, till Parliament stepped in to enact the Taxation Laws (Amendment), Act 1984, whereby new clauses were introduced into the relevant provisions of the Act. The principle of interpretation of an earlier ambiguous laws by injecting into it, the law as amended subsequently, has been accepted by the Supreme Court in a few cases. 18. In ITO v. Mani Ram , the Supreme Court observed: "Generally speaking, a subsequent Act of Parliament affords no useful guide to the meaning of another Act which came into existence before the later one was ever framed. Under special circumstances, the law does, however, admit of a subsequent Act to be resorted to for this purpose but the conditions under which the later Act may be resorted to for the interpretation of the earlier Act are strict; both must be laws on the same subject and the part of the earlier Act which it is sought to construe must be anbiguous and capable of different meanings." 19. In State of Bihar v. S. K. Roy, , the word "coal mine", used in an earlier law, was understood by reference to a subsequent law on the subject. The court held at page 1998 (at page 112 of 31 FJR): "It is a well-recognised principle in dealing with matters of construction that subsequent legislation may be looked at in order to see what is the proper interpretation to be put upon the earlier Act where the earlier Act is obscure or ambiguous or readily capable of more than one interpretation (see Ormound Investment Co. Ltd. v. Belts [1928] AC 143 at page 156)." 20. Bearing in mind the above principle, if we look at section 214 in its entirety, as it now stands after the introduction of sub-section (1A) to it by the Taxation Laws (Amendment) Act, 1984, it is clear that, even if the said excess is the result of an appellate order, or an order made consequent upon the answer given on a reference to the High Court, or consequent upon a revisional order, (i.e., any one of the several

orders made under the provisions stated in sub-section (1A) of section 214. 21. Similarly, Explanation 2 to sub-section (2) of section 214 gives the benefit of this provision under section 214, even to an order made under section 147 (even though, for other purpose under the Act, an order falling within section 147 is not included in the definition of "regular assessment" - vide section 2(40) of the Act). Section 214(1A) introduced by the Taxation Laws (Amendment) Act, 1984, with other corresponding sections, in our opinion, sheds light on the earlier law and gives a go-by to all the controversies. The court, while interpreting the earlier provision, may take note of this legislative intention and understand the law accordingly. 22. (B) Payment of interest, essentially, is compensatory in nature. Logically, the compensation should cover the entire period during which the person to whom the money belongs lawfully was made to part with it to another. To reduce the period for which compensation is payable, when, in fact, the person was deprived of his money for a longer period, is to truncate the very concept of compensation. 23. (C) The object of the Legislature is to levy and collect tax. Though an implied intendment as a measure of interpretation of a taxing statute is not called for, it will not be an irrelevant factor to consider its impact on the effect of construing the law in one way or the other. An assurance of being compensated by interest, in case ultimately the assessed tax falls short of the advance tax, may serve as an incentive to the assessee to pay advance tax; similarly, the possibility of his having to pay interest in the case the assessed tax exceeds the advance tax would deter an assessee from under-estimating his income for purposes of advance tax. 24. (D) The scheme of Part-C of Chapter XVII pertains to "Advance payment of tax." While section 214 provides for payment of interest by the Central Government whenever advance tax paid by the assessee is found to be in excess of the tax assessed, section 215 provides for levy and collection of interest from the assessee, whenever the tax assessed is found to be in excess of the advance tax paid by the assessee. These two provisions are comparable and we find substantial reciprocity between the class of the tax-payers and the Revenue in these provisions. 25. Some of the learned judges, opined that, by construing "regular assessment" as inclusive of an order made consequent on the appellate order, the liability of an assessee under section 215 would stand enlarged and, therefore, such a construction of the provision in a taxing statute should be avoided. With respect, we do not consider this as a correct approach. The fluctuation in the fortunes of an assessee or of the Revenue, depending upon the facts and circumstances of a particular case, is inevitable. The law has to be understood in a reasonable manner and the scheme of legislation should be deemed to have a logical base for it. As we found that these two provisions - section 214 and section 215 - cover two aspects of the same situation, logically, both of them should bear the same meaning substantially. If equity has no relevance in the matter of constructing a tax legislation, the approach adopted to construe these provisions in such a way as to reduce the burden on an assessee under section 215 will be entirely irrelevant. 26. The appellate and revisional powers are created to correct the original authority's orders. These superior powers, when exercised, result in an order, either confirming, modifying or reversing the original order; the resultant

order, in law, affects the original order; the only effective enforceable order is the one which stands as affirmed or modified or replaced by the superior order of the appellate or revisional authority. Jurisprudentially, it will be anomalous to treat an original order as having life, when it has undergone a modification or is replaced by an order of reversal. 27. The appeal or revision is only a stage in the proceedings involved for a proper resolution of a lis or dispute. The appellate or revisional jurisdiction is only an aspect of the original jurisdiction being extended. It is said that the essential criterion of appellate jurisdiction is that it revises and corrects the proceedings in a cause already instituted and does not create that cause [vide Immigration and Naturalization Service v. Veljko Stanisic, AIR 1970 USSC (V 57 C1)]. 28. What the Supreme Court expressed in the context of a civil suit in Garikapati Veeraya v. N. Subbiah Chaudhry, , equally governs the situation here: ".... the legal pursuit of a remedy, suit appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are be regarded as one legal proceeding." 29. Therefore, we are of the view that an initial order of assessment (i.e., the original order of assessment) gets effaced by the appellate or revisional order and the only effective order is the ultimate order of the superior authority. The original order of assessment becomes part of the entire proceedings culminating in the ultimate order, which here, for all practical purposes, should be treated as the order on "regular assessment". 30. Chorales D'Souza v. CIT [1984] 147 ITR 694 is a decision of this court rendered in a different context altogether. The said decision has no bearing on the issue before us. There the question was whether "regular assessment" included an order or assessment made under section 147 and the answer was in the negative. However, in the year 1985, by virtue of the Taxation Laws (Amendment) Act, 1984, an Explanation (Explanation 2) is now added to section 214(2) to include an order made under section 147 as an order on regular assessment for the purpose of section 214. 31. Consequently, we are of the view that the answer to the second part of the question referred to us has to be in the affirmative and against the Revenue. 32. Reference is answered accordingly.