Karnataka High Court Dr. S. Reddappa & Ors. vs Union Of India & Ors. on 31 January, 1997 Equivalent citations: (1998) 149 CTR Kar 521 Author: R Sethi JUDGMENT R.P. Sethi, C.J. Constitutional validity of sections 234A, 234B and 234C of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), inserted by the Direct Tax Laws (Amendment) Act, 1987, was challenged by the appellants-assessees in various writ petitions filed by them, which were dismissed by the learned single judge, vide the judgment impugned in these appeals. 2. It was submitted on behalf of the appellants that the offending sections were penal in nature, without providing for any safeguards or even an opportunity of being heard, which violated the constitutional guarantees of the assessees. It was submitted that as the offending provisions were penal in character, it required that the assessees were entitled to be heard before they could be punished under the said provisions and as the opportunity of being heard has been denied, the offending sections were liable to be struck down as ultra vires. It was argued in the alternative that in case the sections are not declared unconstitutional, the court may give such an interpretation, which may require the authorities under the Act to afford an opportunity of being heard, before any order is passed under the aforesaid provisions. 2. It was submitted on behalf of the appellants that the offending sections were penal in nature, without providing for any safeguards or even an opportunity of being heard, which violated the constitutional guarantees of the assessees. It was submitted that as the offending provisions were penal in character, it required that the assessees were entitled to be heard before they could be punished under the said provisions and as the opportunity of being heard has been denied, the offending sections were liable to be struck down as ultra vires. It was argued in the alternative that in case the sections are not declared unconstitutional, the court may give such an interpretation, which may require the authorities under the Act to afford an opportunity of being heard, before any order is passed under the aforesaid provisions. 3. The case of the respondents was that the impugned provisions were only compensatory in nature and not penal, as urged by the appellants. The applicability of the principles of natural justice in favour of the appellants was vehemently denied. It was submitted that the provisions were constitutionally valid and did not suffer from any vice of unconstitutionality, requiring interference by this court. 3. The case of the respondents was that the impugned provisions were only compensatory in nature and not penal, as urged by the appellants. The applicability of the principles of natural justice in favour of the appellants was vehemently denied. It was submitted that the provisions were constitutionally valid and did not suffer from any vice of unconstitutionality, requiring interference by this court. 4. In order to appreciate the rival contentions of the parties, it is necessary to have a glimpse of the offending provisions of the Act, section 234A provides : 4. In order to appreciate the rival contentions of the parties, it is necessary to have a glimpse of the offending provisions of the Act, section 234A provides : "Interest for defaults in furnishing return of income.(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 two 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... (2) The interest payable under sub-section (1) shall be reduced by the interest, if any, paid under section 140A towards the interest chargeable under this section. (3) Where the return of income for any assessment year, required by a notice under section 148 issued after the determination of income under sub-section (1) of section 143 or after the completion of an assessment under sub-section (3) of section 143 or section 144 or section 147, is furnished after the expiry of the time allowed under such notice, or is not furnished, the assessee shall be liable to pay simple interest at the rate of two per cent. for every month or part of a month comprised in the period commencing on the day immediately following the expiry of the time allowed as aforesaid, and, (a) where the return is furnished after the expiry of the time aforesaid, ending on the date of furnishing the return; or (b) where no return has been furnished, ending on the date of completion of the reassessment or recomputation under section 147, on the amount by which the tax on the total income determined on the basis of such reassessment or recomputation exceeds the tax on the total income determined under sub-section (1) of section 143 or on the basis of the earlier assessment aforesaid. (4) Where, as a result of an order under section 154 or section 155 or section 150 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 145D, the amount of tax on which interest was payable under sub-section (1) or sub-section (3) of this section has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and (i) in a case where the interest is increased, the assessing officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be a notice under section 156 and the provision of this Act shall apply accordingly; (ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded. (5) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years." 5. Section 234B provides : 5. Section 234B provides : "Interest for defaults in payment of advance tax.(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 two 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... (2) Where, before the date of determination of total income under sub-section (1) of section 143 or completion of a regular assessment, tax is paid by the assessee under section 140A or otherwise, (i) interest shall be calculated in accordance with the foregoing provisions of this section up to the date on which the tax is so paid, and reduced by the interest, if any, paid under section 140A towards the interest chargeable under this section. (ii) thereafter, interest shall be calculated at the rate aforesaid on the amount by which the tax so paid together with the advance tax paid falls short of the assessed tax. (3) Where, as a result of an order of reassessment or recomputation under section 147, the amount on which interest was payable under sub-section (1) is increased, the assessee shall be liable to pay simple interest at the rate of two per cent. for every month or part of a month comprised in the period commencing on the day following the date of determination of total income under sub-section (1) of section 143 and where a regular assessment is made as is referred to in sub-section (1) following the date of such regular assessment and ending on the date of the reassessment or recomputation under section 147, on the amount by which the tax on the total income determined on the basis of the reassessment or recomputation exceeds the tax on the total income determined under sub-section (1) of section 143 or on the basis of the regular assessment aforesaid. (4) Where, as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) or sub-section (3) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and (i) in a case where the interest is increased, the assessing officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable and such notice of demand shall be deemed to be a notice under section 156 and the provision of this Act shall apply accordingly ; (ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded. (5) The provisions of this section shall apply in respect of assessment for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years." 6. Section 234C provides : 6. Section 234C provides : "Interest for deferment of advance tax.(1) Where in any financial year, (a) the company which is liable to pay advance tax under section 208 has failed to pay such tax or (i) the advance tax paid by the company on its current income on or before the 15th day of June is less than fifteen per cent. of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of September is less than forty-five per cent. of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of December is less than seventy-five per cent. of the tax due on the returned income, then, the company shall be liable to pay simple interest at the rate of one and one-half per cent. per month for a period of three months on the amount of the shortfall from fifteen per cent. or forty-five per cent. or seventy-five per cent., as the case may be, of the tax

due on the returned income ; (ii) the advance tax paid by the company on its current income on or before the 15th day of March is less than the tax due on the returned income, then, the company shall be liable to pay simple interest at the rate of one and one-half per cent. on the amount of the short-fall from the tax due on the returned income: Provided that if the advance tax paid by the company on its current income on or before the 15th day of June or the 15th day of September, is not less than twelve per cent. or, as the case may be, thirty-six per cent. of the tax due on the returned income, then, it shall not be liable to pay any interest on the amount of the shortfall on those dates : Provided that if the advance tax paid by the company on its current income on or before the 15th day of June or the 15th day of September, is not less than twelve per cent. or, as the case may be, thirty-six per cent. of the tax due on the returned income, then, it shall not be liable to pay any interest on the amount of the shortfall on those dates : (b) the assessee, other than a company, who is liable to pay advance tax under section 208 has failed to pay such tax or, (i) the advance tax paid by the assessee on his current income on or before the 15th day of September is less than thirty per cent. of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of December is less than sixty per cent. of the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of one and one-half per cent. per month for a period of three months on the amount of the shortfall from thirty per cent. or, as the case may be, sixty per cent. of the tax due on the returned income ; (ii) the advance tax paid by the assessee on his current income on or before the 15th day of March is less than the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of one and one-half per cent. on the amount of the shortfall from the tax due on the returned income : Provided that nothing contained in this sub-section shall apply to any shortfall in the payment of the tax due on the returned income where such shortfall in on account of underestimate or failure to estimate, Provided that nothing contained in this sub-section shall apply to any shortfall in the payment of the tax due on the returned income where such shortfall in on account of underestimate or failure to estimate, (a) the amount of capital gains; or (b) income of the nature referred in sub-clause (ix) of clause (24) of section 2, and the assessee has paid the whole of the amount of tax payable in respect of income referred to in clause (a) or clause (b), as the case may be, had such income being a part of the total income, as part of the instalment of advance tax which is immediately due or where no such instalment is so due, by the 31st day of March of the financial year : Provided further that nothing contained in this sub-section shall apply to any shortfall in the payment of the tax due on the returned income where such shortfall is on account of Provided further that nothing contained in this sub-section shall apply to any shortfall in the payment of the tax due on the returned income where such shortfall is on account of (a) restricting the amount of deduction under the third proviso to clause (ii) of sub-section (1) of section 32; (b) increase in the rate of surcharge under section 2 of the Finance Act, 1990 (12 of 1990), as amended by the Taxation Laws (Amendment) Act, 1991 (2 of 1991), and the assessee

has paid the amount of shortfall, (i) where it is a domestic company and (1) the case falls under clause (a) as part of the instalment of advance tax which is immediately due ; (2) the case falls under clause (b), on or before the 15th day of November, in respect of the instalment of advance tax due on the 15th day of September ; (ii) where it is not a domestic company and (1) the case falls under clause (a), as part of the instalment of advance tax which is immediately due ; (2) the case falls under clause (b), as part of the instalment of advance tax due on or before the 15th day of March, (2) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, and subsequent assessment years." 7. Tax is collected by all forms of governments for providing protection, security and other amenities to the citizens. It is a compulsory acquisition of property by the State, ostensibly on behalf of the assessee for the purpose of providing amenities and looking after the vital interests of the society. It is unfortunate that the tax laws in our country are technically couched, making their interpretation difficult, with the result that the courts are burdened with litigation and unscrupulous litigants take advantage of the wrangles of procedure by trading in the phrases and words used in the taxing statute. The language used in the fiscal laws has been found to be such, the wriggling out of the which is left to the wisdom of a few. The time has come which may necessitate not only the restructuring of the taxation law system, but also to provide a plain, capable and smooth interpretation, reflecting and demonstrating the object sought to be achieved by the legislation. 7. Tax is collected by all forms of governments for providing protection, security and other amenities to the citizens. It is a compulsory acquisition of property by the State, ostensibly on behalf of the assessee for the purpose of providing amenities and looking after the vital interests of the society. It is unfortunate that the tax laws in our country are technically couched, making their interpretation difficult, with the result that the courts are burdened with litigation and unscrupulous litigants take advantage of the wrangles of procedure by trading in the phrases and words used in the taxing statute. The language used in the fiscal laws has been found to be such, the wriggling out of the which is left to the wisdom of a few. The time has come which may necessitate not only the restructuring of the taxation law system, but also to provide a plain, capable and smooth interpretation, reflecting and demonstrating the object sought to be achieved by the legislation. 8. The Statement of Objects and Reasons for the introduction of the Direct Tax Laws (Amendment) Act, 1987, shows that it was not an isolated act of introducing legislation in the place of an earlier existing one. The Bill appears to have proceeded by constitution of a committee, at the instance of Parliament. The recommendations of the committee are stated to have been examined and with a view to simplify and rationalise the direct taxes, the amended provisions were introduced, with a view to give directional changes to achieve the object of simplification of the law and procedure relating to direct taxes, in keeping with the policy of reposing trust in the taxpayer while encouraging voluntary compliance. 8. The Statement of Objects and Reasons for the introduction of the Direct Tax Laws (Amendment) Act, 1987, shows that it was not an isolated act of introducing legislation in the place of an earlier

existing one. The Bill appears to have proceeded by constitution of a committee, at the instance of Parliament. The recommendations of the committee are stated to have been examined and with a view to simplify and rationalise the direct taxes, the amended provisions were introduced, with a view to give directional changes to achieve the object of simplification of the law and procedure relating to direct taxes, in keeping with the policy of reposing trust in the taxpayer while encouraging voluntary compliance. 9. The learned single judge dealt with the scope of deriving assistance and help from the Statement of Objects and Reasons for the purposes of interpreting the statute and rightly held : 9. The learned single judge dealt with the scope of deriving assistance and help from the Statement of Objects and Reasons for the purposes of interpreting the statute and rightly held : "... it is one of the well recognised principles governing interpretation of statutes that the Statement of Objects and Reasons is not admissible for construing the provisions contained in an enactment much less can it control the actual words used in the legislation. It is equally well settled that the Statement of Objects and Reasons accompanying a Bill cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation. All that the Statement of Objects and Reasons can possibly show is to explain what reasons induced the mover to introduce the Bill in the House and what objects it sought to achieve. Those objects and reasons may or may not correspond to the objective which the majority of members had in view when they passed it into law. The bill may have undergone radical changes during its passage through the Houses, as there is no guarantee that the reasons which led to its introduction and the objects thereby sought to be achieved have remained the same throughout till the Bill emerges from the House as an Act of the Legislature. It is, therefore, very rarely and rather sparingly that the Statement of Objects and Reasons behind the introduction of the Bill is called in aid for arriving at the true legislative intent behind a particular statutory provision. Reference in this connection may be made to Aswini Kumar Ghose v. Arabinda Bose AIR 1952 SC 369, Central Bank of India v. Their Workmen AIR 1960 SC 12 and State of West Bengal v. Union of India AIR 1963 SC 1241." 10. Learned counsel appearing for the appellants have submitted that the effect of the non-compliance of the offending provisions is penal in substance and not compensatory, as argued on behalf of the revenue. 10. Learned counsel appearing for the appellants have submitted that the effect of the non-compliance of the offending provisions is penal in substance and not compensatory, as argued on behalf of the revenue. The dictionary meaning of the word "compensate" is to make good the financial loss or injury sustained; the neutralisation of opposing forces ; payment ; process of compensating for sense of failure or inadequacy by concentrating on achievement or superiority, real or fancied, in some other sphere ; and dictionary meaning of the word "penal" is imposing, constituting a punishment, a penalty ; to put under a disadvantage. In the fiscal statute, the word "compensatory" would mean to make good the loss suffered by the revenue on account of acts of commission and omission attributable to the assessee. If, under the tax laws, the assessee is obliged to pay to the state, for the purposes of providing amenities

to society, his failure to do the needful can be enforced by making provisions, compelling such assessee to perform the statutory and social obligation and not to avoid the payment of tax, compulsorily resorted to by illegal means. In the case of failure to perform the statutory and social obligation, an assessee can be directed to compensate society for his acts of commission and omission, as appears to have been done by incorporating the impugned sections in the Act. Creating circumstances for compelling the assessee to discharge his statutory obligation cannot be termed to be a penalty. The collection of tax being an act of the state for providing protection, security and other amenities to the society, cannot, in all circumstances, be termed to be either a penalty or a punishment. The failure on the part of the assessee to abide by the provisions of the Income Tax Act has been made a basis for forcing him to compensate society by paying interest in terms of the offending sections. A Division Bench of the Patna High Court in Ranchi Club Ltd. v. CIT (1996) 217 ITR 72 (Pat), dealt with sections 234A and 234B of the Act and held that they were not penal in nature and that: "They merely provide for payment of interest by an assessee who commits default in furnishing the return either under section 139(1) or section 139(4), or in response to a notice under section 142(1) of the Act has either failed to pay the advance tax or the advance tax already paid is less than 90 per cent. of the tax assessed against him. No person can make a grievance as to any provision which enjoins upon him the obligation to submit the return in respect of his taxable income or to pay advance tax at the appropriate time and within the prescribed period. It is clear, therefore, that any default committed in that regard even though likely to visit him with evil consequences is of his own making. The consequence thus cannot be said to be penal. The amount on which the interest is levied is the amount which can legitimately be said to be public revenue which although payable by the assessee, has actually not been paid by him. Levy of interest on such amount which the assessee withholds and makes use of cannot be said to be anything but a compensatory measure meant to offset the loss which the revenue suffers on account of non-payment of the said amount. This becomes evident also from the fact that the sections contain specific provisions in regard to the period for which this additional liability is imposed on the defaulting assessees." It was further held: "The object underlying section 234A is to create additional liability to pay interest for the default in furnishing the return of income, the object is not to penalise an assessee, who has already filed the return under section 139 for not producing accounts or documents and so on under clause (ii) or (iii) of section 142(1). In my considered opinion, therefore, the necessary conditions as required under section 234A are not made out in the instant case and, therefore, the levy of interest is not justified." 11. As noticed earlier, section 234A makes a provision for payment of simple interest calculated at the rates specified by an assessee, who commits default in furnishing a return of income, as mandated under section 139(1) or section 139(4) or in response to a notice sent to him under section 142(1) of the Act. Section 234B provides for payment of interest by an assessee who, even though liable to pay advance tax under section 208 of the Act, fails to pay such tax or the advance tax paid under section 210 was less than 90 per cent. of

the tax assessed against him. Section 234C regulates the payment of simple interest at the rate of 18 per cent. per annum in case an assessee who is liable to pay advance tax under section 208 of the Act, either fails to pay the tax or pays the same so as to be less than 30 per cent. by September 15, or 60 per cent. by December 15, of the tax due on the returned income. The argument is that failure of an assessee to file the return or pay the tax is not a default which can be restricted to a particular or specified date. The dates of filing the return or paying the advance tax are specifically notified by the Act itself, which are spread over various months. If, despite full knowledge of the date and time when the return is to be filed or tax is to be paid, an assessee commits a default, he has rightly been made liable to compensate the revenue. It is not his failure to make the payment only for a day or two, as has been argued on behalf of the appellants, but his continuous conduct, spread over months which reflects his intention to avoid the tax or create circumstances to avoid the same. If, under such circumstances, the Legislature has though it prudent to compel such assessee for compliance with the provisions and upon his failure, to compensate the revenue, it cannot be termed to be imposing penalty or punishing him. The learned single judge has rightly held that the amount at which the interest is levied by the impugned sections, is an amount, which can legitimately be said to be public revenue though payable by the assessee, but not paid by him, despite his knowledge of the position of law. Levy of interest on such amount which is utilised by the assessee for his own purposes has rightly been directed to be compensated by means of directing him to pay the interest at the rates specified under the sections. 11. As noticed earlier, section 234A makes a provision for payment of simple interest calculated at the rates specified by an assessee, who commits default in furnishing a return of income, as mandated under section 139(1) or section 139(4) or in response to a notice sent to him under section 142(1) of the Act. Section 234B provides for payment of interest by an assessee who, even though liable to pay advance tax under section 208 of the Act, fails to pay such tax or the advance tax paid under section 210 was less than 90 per cent. of the tax assessed against him. Section 234C regulates the payment of simple interest at the rate of 18 per cent. per annum in case an assessee who is liable to pay advance tax under section 208 of the Act, either fails to pay the tax or pays the same so as to be less than 30 per cent. by September 15, or 60 per cent. by December 15, of the tax due on the returned income. The argument is that failure of an assessee to file the return or pay the tax is not a default which can be restricted to a particular or specified date. The dates of filing the return or paying the advance tax are specifically notified by the Act itself, which are spread over various months. If, despite full knowledge of the date and time when the return is to be filed or tax is to be paid, an assessee commits a default, he has rightly been made liable to compensate the revenue. It is not his failure to make the payment only for a day or two, as has been argued on behalf of the appellants, but his continuous conduct, spread over months which reflects his intention to avoid the tax or create circumstances to avoid the same. If, under such circumstances, the Legislature has though it prudent to compel such assessee for compliance with the provisions and upon his failure, to com-

pensate the revenue, it cannot be termed to be imposing penalty or punishing him. The learned single judge has rightly held that the amount at which the interest is levied by the impugned sections, is an amount, which can legitimately be said to be public revenue though payable by the assessee, but not paid by him, despite his knowledge of the position of law. Levy of interest on such amount which is utilised by the assessee for his own purposes has rightly been directed to be compensated by means of directing him to pay the interest at the rates specified under the sections. 12. Dealing minutely with the offending sections, the learned single judge was right in holding that the provisions of the aforesaid three sections were meant to cater to different situations, and that : 12. Dealing minutely with the offending sections, the learned single judge was right in holding that the provisions of the aforesaid three sections were meant to cater to different situations, and that : "Each situation is distinctly different from the other and attracts a liability by way of interest. The question whether the provision making interest payable on the happening of any event is a provision which is compensatory in character will have to be answered in the context of the language and the purpose behind the provision and not by reference to other provisions of similar or analogous nature. Viewed thus, it is not possible to hold that the provisions of section 234A, 234B and 234C are provisions of a penal nature simply because in actual application of these provisions there may be situations where an assessee may render himself liable to payment of interest under each one of these provisions simultaneously for the same period nor can the compensatory nature of the provisions be deemed to have been lost simply because in a given situation the provisions may on account of their simultaneous application to an assessee raise the liability to pay interest for the overlapping period to a rate higher than 2 per cent. per month. So long as the basic character of the levy remains compensatory, the rate of interest which is levied either by the provision itself or on account of its dual effect in a given situation will be wholly immaterial. I have, therefore, no hesitation in repelling the argument advanced by learned counsel for the petitioners that the levy envisaged by sections 234A, 234B and 234C is penal in character by reason only of said provisions in certain situations applying for periods which are overlapping." 13. It has been argued on behalf of the appellants that as the offending sections have replaced the provisions which impose penalty, the said sections, in fact, amounted to be a penal provision in disguise. We are not impressed by this argument, in view of the Legislatures intention, as noticed in the Statement of Objects and Reasons. The Legislature, in its wisdom, thought it appropriate to replace the penal provisions by incorporating compensatory provisions, with the object of compelling the defaulting assessee to compensate the revenue in the case of defaults. The offending sections appear to have been enacted for the convenience of the common assessee and with the object of achieving the objects of making the procedure for payment of tax easy, reasonable and keeping in view the policy of reposing trust in the taxpayers while encouraging voluntary compliance. 13. It has been argued on behalf of the appellants that as the offending sections have replaced the provisions which impose penalty, the said sections, in fact, amounted to be a penal provision in disguise. We are not impressed by

this argument, in view of the Legislatures intention, as noticed in the Statement of Objects and Reasons. The Legislature, in its wisdom, thought it appropriate to replace the penal provisions by incorporating compensatory provisions, with the object of compelling the defaulting assessee to compensate the revenue in the case of defaults. The offending sections appear to have been enacted for the convenience of the common assessee and with the object of achieving the objects of making the procedure for payment of tax easy, reasonable and keeping in view the policy of reposing trust in the taxpayers while encouraging voluntary compliance. 14. We also do not find force in the submission of learned counsel for the appellants that since the rate of interest chargeable under the impugned provision was higher than the rate which was admissible to the assessee in the event of refund of tax paid in excess, the charge under the offending sections must be termed to be penal in nature. Such an argument was considered and rejected by the Supreme Court in Khazan Chand v. State of Jammu and Kashmir (1984) 56 STC 214 (SC), wherein it was held : 14. We also do not find force in the submission of learned counsel for the appellants that since the rate of interest chargeable under the impugned provision was higher than the rate which was admissible to the assessee in the event of refund of tax paid in excess, the charge under the offending sections must be termed to be penal in nature. Such an argument was considered and rejected by the Supreme Court in Khazan Chand v. State of Jammu and Kashmir (1984) 56 STC 214 (SC), wherein it was held : "The second part of the challenge under article 14 was with respect to the rates at which interest is payable under sub-section (2) of section 8 on the amount of tax paid after the expiry of the prescribed date for payment. It is true that the rate of two per cent per month and particularly the rate of three per cent. per month can be said to be on the high side, but we fail to see how this would render the provisions of that sub-section void or unconstitutional. Providing for payment of interest in case of delayed payment of tax is a method usually adopted in fiscal legislation to ensure that the amount of tax which is due is paid by the prescribed time and provisions in that behalf from part of the recovery machinery provided in a taxing statute. It is for the state to provide by what means payment of tax is to be enforced and a person who does not pay the amount of tax lawfully and admittedly due by him can hardly complain of the measures adopted by the state to compel him to pay such amount. It neither lies in the defaulters mouth to protest against the rate of interest charged to him nor is it open to him to dictate to the State the methods which it should adopt for recovering the amount of tax due by him." 15. The argument that the charge of interest for a period in excess of the period for which the assessee withheld the amount of tax payable by him amounted to penalty, is also without any substance. Such provision appears to have been made with a view to facilitate the computation of liability of the assessee, without imposing any penalty upon him. The learned single judge dealt with this aspect of the matter and after referring to the judgments in Central Provinces Manganese Ore Co. Ltd. v. CIT (1986) 160 ITR 961 (SC), Ganesh Dass Sreeram v. ITO (1988) 169 ITR 221 (SC), Satishchandra & Co. v. Dy. CIT (1995) 96 STC 417 , Haji Lal Mohammed Biri Works v. State of U.P. (1973) 32 STC 496 (SC) and Sha

Ghelabhai Devji and Co. v. Asstt. CCT (1986) 62 STC 418 (Appx. II) (Karn), he rightly concluded in the judgment impugned before us that : 15. The argument that the charge of interest for a period in excess of the period for which the assessee withheld the amount of tax payable by him amounted to penalty, is also without any substance. Such provision appears to have been made with a view to facilitate the computation of liability of the assessee, without imposing any penalty upon him. The learned single judge dealt with this aspect of the matter and after referring to the judgments in Central Provinces Manganese Ore Co. Ltd. v. CIT (1986) 160 ITR 961 (SC), Ganesh Dass Sreeram v. ITO (1988) 169 ITR 221 (SC), Satishchandra & Co. v. Dy. CIT (1995) 96 STC 417 , Haji Lal Mohammed Biri Works v. State of U.P. (1973) 32 STC 496 (SC) and Sha Ghelabhai Devji and Co. v. Asstt. CCT (1986) 62 STC 418 (Appx. II) (Karn), he rightly concluded in the judgment impugned before us that : "Seen in the light of this case law it is fairly obvious that the provisions of sections 234A, 234B and 234C, which replace the earlier provision postulating payment of interest and are in pari materia with the said provisions cannot be anything except compensatory in character. The only material difference in the two situations is that while the old provisions conferred power to waive or reduce the levy of interest, the impugned provisions make the same automatic." 16. Learned counsel for the respondents have drawn our attention to the notification issued under section 119 of the Act, by which sufficient provisions have been made for redressal of the grievances of bona fide assessees, despite their failure of the compliance with the provisions of sections 234A, 234B and 234C. The learned single judge has also referred to the safeguards provided under the statute itself which unambiguously show that the offending sections cannot be termed to be penal in character and thereby being unconstitutional on the ground of violating the principle of "audi alteram partem". Section 119 provides for the powers vested in the Board which can be exercised for the benefit of the assessees as and when felt necessary and in the interest of justice. 16. Learned counsel for the respondents have drawn our attention to the notification issued under section 119 of the Act, by which sufficient provisions have been made for redressal of the grievances of bona fide assessees, despite their failure of the compliance with the provisions of sections 234A, 234B and 234C. The learned single judge has also referred to the safeguards provided under the statute itself which unambiguously show that the offending sections cannot be termed to be penal in character and thereby being unconstitutional on the ground of violating the principle of "audi alteram partem". Section 119 provides for the powers vested in the Board which can be exercised for the benefit of the assessees as and when felt necessary and in the interest of justice. 17. We do not find any merit in these appeals which are accordingly dismissed. The order of the learned single judge is upheld and the appellants are given liberty to urge all such grounds as may be otherwise available to them before the authorities concerned against levy or recovery of the interest payable under the impugned sections. As and when such pleas are raised before the concerned authorities, the same shall be considered and disposed of in accordance with the provisions of law and the notifications or orders issued in pursuance of section 119 of the Income Tax Act.

17. We do not find any merit in these appeals which are accordingly dismissed. The order of the learned single judge is upheld and the appellants are given liberty to urge all such grounds as may be otherwise available to them before the authorities concerned against levy or recovery of the interest payable under the impugned sections. As and when such pleas are raised before the concerned authorities, the same shall be considered and disposed of in accordance with the provisions of law and the notifications or orders issued in pursuance of section 119 of the Income Tax Act.