Commissioner Of Income-Tax, Bombay ... vs Carona Sahu Co. Ltd. on 21 October, 1983

Equivalent citations: (1984)38CTR(BOM)219, [1984]146ITR452(BOM), [1984]16TAXMAN32(BOM)

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Bench: S.P. Bharucha

JUDGMENT

Bharucha, J.

1. A question much debated in the High Courts is posed in this reference under s. 256(1) of the I.T. Act, 1961. What, principally, is to be determined is whether the whether the words "regular assessment" is s. 214(1) of the I.T. Act, 1961, mean the order of regular assessment passed by the ITO or the last operative order of regular assessment at any given point of time passed as a result of appellate or revisional proceedings. If the answer is that "regular assessment" means only the first order of regular assessment passed by the ITO, the Central Government would be liable to pay to the assessee interest on the amount by which the advance tax paid by him during any financial year exceeds the amount of tax determined upon such first order of regular assessment from 1st April, next following the said financial year to the date of such first order of regular assessment. If the answer is that "regular assessment" means the last operative order of regular assessment, the Central Government would be liable to pay to the assessee interest on the amount by which the advance tax paid by him during any financial year exceeds the amount of tax determined upon such last operative order of regular assessment from 1st April next following the said financial year to the date of such last operative order of regular assessment.

2. For the assessment year 1970-71, the assessee herein paid advance tax in the sum of Rs. 12,37,500. The ITO passed the first order of regular assessment on 21st March, 1972, and assessed tax liability at Rs. 12, 17,600. He granted interest under s. 214 upon the refund amount of Rs. 19,900. The AAC in appeal reduced the tax liability to Rs. 11,61,402. In giving effect to the appellate order, the ITO granted refund of Rs. 56,198 but did not grant interest thereon. In appeal therefrom, the AAC confirmed the finding of the ITO relating to non-allowance of interest.

3. For the assessment year 1971-72 the full particulars of which are not available, the ITO passed the first order of regular assessment on 30th March, 1973. Before the AAC it was contended by the assessee that interest under s. 214 only with reference to the amount of tax determined on a regular assessment under s. 143 and not with reference to the tax determined on subsequent revision of

assessment in consequence of a reduction granted in appeal. He also held that interest was allowable only up to the date of the first or original assessment order and not up to the date of order passed by the ITO consequent upon the appellate order.

4. The assessee filed two separate appeals before the Income-tax Appellate Tribunal held that interest under s. 214 can be allowed with reference to the tax determined on a subsequent revision of assessment in consequence of a reduction granted in appeal but the assessee was entitled to such interest only up to the date of the order of first regular assessment.

5. At the instance of the Revenue the Tribunal has referred to the High Court for its opinion the following question :

> "Whether, on the facts and circumstances of the case, the assessee-company is entitled to interest under section 214 of the Act with reference to the tax which was determined as a result of the Appellate Assistant Commissioner's order in the first appeal ?"

6. At the instance of the assessee the Tribunal has referred the following question :

> "Whether the interest under section 214 of the Act is allowable beyond the date of the regular assessment and up to the date of ITO's order giving effect to the AAC's order ?"

7. We are precluded from answering the second question by reason of the judgement of the Supreme Court in CIT v. V. Damodaran , inasmuch as no separate application in this behalf was made by the assessee. We may, however, state that we shall have to consider the question during the course of the discussion that follows.

8. The reference originally came up for hearing before a Division Bench consisting of two of us (Desai and Bharucha JJ.) In the course of the argument it was found that a Division Bench of this court had in Associated Cement Companies Ltd. v. CIT , followed judgments of the Madras and Delhi High Courts in regard to the interpretation of s. 214(2). Being of opinion that the principles enunciated in Associated Cement Companies' case required reconsideration, the Division Bench directed that the papers be placed before the learned Chief Justice so that the reference could be placed before a Full Bench. Upon directions of the learned Chief Justice, the Full Bench was constituted.

9. There are, as we have said, numerous decisions upon the principal point that we have to consider. Some take one view and some take the other. We think it best, in the circumstances, first to discuss our interpretation of the relevant provisions of the Act and to refer to the decisions thereafter.

10. Section 214 reads thus :

"Interest payable by Government. -(1) The Central Government shall pay simple interest at twelve per cent. per annum on the amount by which the aggregate sum of any instalments of advance tax paid during any financial year in which they are payable under sections 207 to 213 exceeds the amount of the tax determined on regular assessment, from the 1st day of April next following the said financial year to the date of the regular assessment for the assessment year immediately following the said financial year, and where any such instalment is paid after the expiry of the financial year during which it is payable by reason of the provision of section 213, interest as aforesaid shall also be payable on that instalment from the date of its payment to the date of regular assessment :

Provided that in respect of any amount refunded on a provisional assessment under section 141A, no interest shall be paid for any period after the date of such provisional assessment.

(1A) Where on completion of the regular assessment the amount on which interest was paid under sub-section (1) has been reduced, the interest shall be reduced accordingly and the excess, if any, paid shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly.

(2) On any portion of such amount which is refunded under this Chapter, interest shall be payable only up to the date on which the refund was made."

11. "Regular assessment" is defined by s. 2(40) of the Act to mean, "unless the context otherwise requires, the assessment made under s. 143 or s. 144 of the Act". Section 143 states that when a return has been made the ITO may make an assessment of the total income or loss of the assessee and determine the sum payable by the assessee or refundable to him on the basis of such assessment. Section 144 deals with best judgement assessments and empowers the ITO, in a case where no return has been filed or where a return having been filed, a notice requiring the assessee to attend and produce evidence has not been complied with, to make an assessment of the total income or loss to the best of his judgement and determine the sum payable by the assessee or refundable to him on such basis.

12. It was contended by Mr. Dastur on behalf of the assessee that the order of the ITO giving effect to directions contained in an appellate order is an order passed under s. 143. He relied in this connection upon judgements of the Calcutta, Punjab, Andhra Pradesh and Madras High Courts. In Kooka Sidhwa and Co. v. CIT , Laik J. of the Calcutta High Court observed that the forms of orders passed under s. 23(3) of the Indian I.T. Act, 1922 (equivalent to s. 143 of the present Act), are not exhaustive. The effect or substance of the order should be looked into to decide whether an appeal lies. The order passed by the ITO revising an assessment under the directions of the Appellate Tribunal would partake of the character of a fresh assessment order and would be no less an order made under s. 23(3) within the ordinary acceptation of the term, from which an appeal would lie to the AAC. P. B. Mukharji J., in the same matter, observed that the ITO's duty to assess the total income of the assessee and to determine the sum payable by him on the basis of the return under s.

23 of the Act was the whole process of assessment which may end with his order or may be revised by the AAC and/or the Tribunal. If such higher appellate authorities directed the ITO to do something again with regard to the assessment he had already made and that by way of revision or amendment, the ITO must be held to be still under s. 23 of the Act on the process of assessing the total income of the assessee and determining the sum payable on the basis of the return already filed by him. He was under the Act revisable by the AAC and the Tribunal and both these authorities could directed him to revise and amend his assessment and that he did and could only do as part of his duty and obligation under s. 23 of the ACT. The court concluded that the order of the ITO giving effect to the directions of an appellate authority was appealable. In Gopi Lal v. CIT , the Punjab High Court considered the Calcutta judgement and followed it. In CIT v. Warner Hindustan Ltd. (No. 1) , the Andhra Pradesh High Court held that when the AAC directed the ITO to revise the assessment in accordance with the directions given by him, an order passed in consequence of such directions would be an appealable order, and this position was well settled. The Madras High Court in Triplicane Urban Co-operative Society Ltd. v. CIT , considered the Calcutta and Punjab judgements adverted to above and agreed therewith. Therefore, the court observed that the order passed by the ITO pursuant to the directions of the higher appellate authorities would have to be taken as one passed under s. 143. The ITO had not been given any power under any other provision of the Act to give effect to the decision of the appellate authority. Having regard to the fact that the order passed by the ITO had its origin in s. 143, the order was held to be appealable.

13. It seems to us that what the aforesaid judgement decide, to put it correctly, is that, for the purposes of appealability, an order giving effect to the directions of an appellate authority under the Act must be treated as an order passed under the provisions of s. 143. They do not hold that such an order is an order passed under s. 143 for all purposes, nor can we subscribe to so wide a proposition. However, we shall assume for the purposes of this discussion that there can, in the case of one assessee for one assessment year, be more than one order of regular assessment.

14. The question is, for the purposes of s. 214, does "regular assessment" mean the first order of regular assessment passed by the ITO as contended on behalf of the Revenue, or does it mean the last operative order of regular assessment at a given point of time, as contended by the assessee ?

15. Section 214 appears in Chap. XVII, which deals with collection and recovery of tax, under Pact C, which deals with advance payment of tax. Section 214 provides for interest payable by Government. Section 215 provides for interest payable by Government. Section 215 is, thus, a counterpart of s. 214 and its interpretation cannot but of cardinal importance in interpreting s. 214.

16. Section 215 reads thus :

> "Interest payable by assessee. - (1) Where, in any financial year, an assessee has paid advance tax under section 212 on the basis of his own estimate, and the advance tax so paid is less than seventy-five per cent. of the assessed tax, simple interest at the rate of twelve per cent. per annum from the 1st day of April, next following the said financial year up to the date of the regular assessment shall be payable by the assessee upon the amount by which the advance tax so paid falls short of the assessed

tax.

(2) Where before the date of 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 up to the date on which the tax as so paid; and

(ii) thereafter, interest shall be calculated at the rate aforesaid on the amount by which the tax as so paid (in so far as it relates to income subject to advance tax) falls short of the assessed tax.

(3) 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 264, the amount on which interest was payable under this section has been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded.

(4) In such cases and under such circumstances as may be prescribed, the Income-tax Officer may reduce or waive the interest payable by the assessee under this section.

(5) In this section and section 217 and 273, 'assessed tax' means the tax determined on the basis of the regular assessment (reduced by the amount of tax deductible in accordance with the provision of sections 192 to 194, section 194A, section 194C, section 194D and section 195) so far as such tax relates to income subject to advance tax and so far as it is not due to variations in the rates of tax made by the Finance Act, enacted for the year for which the regular assessment is made."

17. It is patent that the words "regular assessment" in sub-ss. (1) and (2) of s. 215 must mean the first order of regular assessment. There is no dispute on this score. Sub-section (3) of s. 215 makes provisions for the contingency of the amount upon which interest is payable under sub-s. (1) of s. 215 being reduced consequent upon an order in appeal or revision. It would thus appear that where the Legislature intended to provide for a contingency arising out of an order in appeal or revision, a specific provision was made.

18. Mr. Dastur laid emphasis on sub-s. (5) of s. 215 which defines "assessed tax" for the purposes of the section to mean the tax determined on the basis of regular assessment. Sub-section (1) of s. 215 he argued requires the assessee to pay interest upon the amount by which the advance tax paid falls short of the assessed tax. Sub-section (3) contemplates reduction of the amount upon which interest has been paid. The amount of the advance tax paid being constant, the assessed tax must be the changing figure. Assessed tax being determined on regular assessment, regular assessment from time to time contemplated. Hence, under sub-s. (1) itself, the interest chargeable would be reduced consequent upon reduction of the amount upon which interest has been paid. Sub-section (3), therefore, confers no additional right and creates no additional liability. It is more than clarificatory and inserted out of abundant caution. The conclusion of Mr. Dastur's argument upon s. 215 is that

the words "regular assessment" therein mean the last operative order of regular assessment and that it should not be held to the contrary by placing emphasis on sub-s. (3).

19. Under sub-s. (1) of s. 215 interest is payable by the assessee upon the amount by which the advance tax paid falls short of the assessed tax. Under sub-s. (3), if, pursuant to an order in appeal or revision, the amount paid under sub-s. (1) is reduced, interest shall be reduced accordingly and the excess interest paid shall be refunded. Sub-section (1) provides the basis of computation of the interest payable by the assessee. Sub-section (3) comes into operation if the amount so paid is reduced pursuant to an order in appeal or revision. Sub-section (3) creates the obligation to refund the excess interest paid if the amount computed under sub-s. (1) is reduced consequent upon an order in appeal or revision. There is no such obligation, express or implied, under sub-s. (1) or anywhere else. Sub-section (3) is, hence, not clarificatory nor has it been inserted out of abundant caution. That it was necessary by sub-s. (3) to provide for the contingency that might arise if the amount computed under sub-s. (1) was reduced consequent upon an order in appeal or revisions is clear indication that the words "regular assessment" in s. 215 mean only the first order of regular assessment and not the last operative order of regular assessment at any given point of time passed in appellate or revisional proceedings.

20. Having regard to the interpretation of s. 215 and the similar objectives of ss. 214 and 215, a strong case is made out of for reading "regular assessment" in s. 214 as the first order of regular assessment and not as the last operative order of regular assessment.

21. Let us now turn to s. 214. Under sub-s. (1) thereof, the Government is made liable to pay interest : (a) on the amount by which the advance tax paid during any financial year exceeds the amount of the tax determined on regular assessment, (b) from 1st April next following the said financial year to the date of the regular assessment.

22. Under sub-s. (2) of s. 214 "on any portion of such amount as is refunded under this Chapter (Chap. XVII), interest shall be payable only up to the date on which the refund was made." The words "on any portion", "under this Chapter" and "only" negative the interpretation that has found favour in some courts and which Mr. Dastur advanced in the alternative to his submission that the words "regular assessment" in s. 214 mean the last operative order of regular assessment. This interpretation is that the period under sub-s. (1) of s. 214 is extended by sub-s. (2) and interest is payable by Government till the date on which the refund is made. The words "under this Chapter" are of relevance. As Chap. XVII now reads, there is no provision in it for refund, but, as was pointed out on behalf of the Revenue, the proviso to sub-s. (3) of s. 210 as it stood prior to 1st April, 1963, made provision for refund of advance tax. It read thus :

> "(3) If, after the making of an order by the Income-tax Officer under this section and before the 15th day of February of the financial year, an assessment of the assessee (or of the registered firm of which he is a partner), is completed in respect of a previous year later than that referred to in the order of the Income-tax Officer, the Income-tax Officer may make an amended order requiring the assessee to pay in one instalment on the specified date, or in equal instalments on the specified dates if

> more than one, falling after the date of the amended order, the advance tax computed on the revised basis as reduced by the amount, if any, paid in accordance with the original order :

23. Provided that in every case where an assessment of the assessee (or of the registered firm of which he is a partner) is completed in respect of a previous year later than that referred to in the order of the Income-tax Officer and the advance tax payable on the basis of such assessment is less than the advance tax determined as payable in accordance with the original order under sub-section (1), the Income-tax Officer shall make an amended order determining the advance tax on the revised basis and refund the amount already paid, if any, in excess of the advance tax so determined."

> "Where a refund had been made of advance tax in the contingency provided for by the proviso to sub-s. (3) of s. 210 as it stood and it had been found on regular assessment that the amount of advance tax originally paid was in excess of the tax assessed by the amount refunded or more, interest was payable upon the amount refunded but buy reason of sub-s. (2) of s. 214, it was payable only uptil the date of the refund. This interpretation of sub-s. (2) is most satisfactory in that it gives the meaning to the words "on any portion","under this chapter" and "only".

24. The point to be emphasised is that sub-s. (2) of s. 214 has no bearing on the interest on refunds provided for by sub-s. (1) of s, 214, for, those refunds are under Chap. XIX, not under Chap. XVII, and does not extend the period of its payment.

25. The proviso to sub-s. (1) and sub-s. (1A) of s. 214 were introduced at the same time as s. 141A dealing with provisional assessment for refund. They were introduced by cl. 16 of the Finance Bill, 1968. The note on cl. 16 stated that these provisions were "consequential to the insertion of new s. 141A in the Income-tax Act under cl. 11 of the Bill". They must be read in that light.

26. Under the terms of the proviso to sub-s. (1) "in respect of any amount refunded on a provisional assessment under s. 141A no interest shall be paid for any period after the date of such provisional assessment." Sub-s. (1A) provides that :

> "Where on completion of the regular assessment the amount on which interest was paid under sub-s. (1) has been reduced, the interest shall be reduced accordingly and the excess, if any, paid shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly."

27. The phrase "completion of the regular assessment" used in sub-s. (1A) is also used in sub-s. (2) of s. 215 (except that in the latter the article used is "a" and not "the"). In sub-s. (1) of s. 215 the phrase has to be interpreted to mean the completion of the first order of regular assessment. If that interpretation is given to the phrase in sub-s. (1A), sub-s. (1A) would, at first blush, appear to be rendered meaningless for there is no provision in the Act which empowers the payment of interest prior to the date of regular assessment. To give meaning to sub-s. (1A), Mr. Joshi learned counsel for the Revenue, submitted, that the negative language of the proviso to sub-s. (1) has to be read

positively and the proviso has to be read as a substantive provision. There is no dispute that though ordinarily a proviso carves out an exception to the principal provision, it may, in a rare case, if the context so justifies, be treated as a substantive provisions. So treated, the proviso to sub-s. (1) would read thus : In respect of any amount refunded on provisional assessment under s. 141A, interest shall be paid for the period up to the date of such provisional assessment. Reading s. 141A together with the proviso to sub-s. (1) and sub-s. (1A) of s. 214, there can be little doubt that the proviso to sub-s. (1) was intended by the Legislature to create an obligation to pay interest at the time of making a refund of advance tax on a provisional assessment. Reading the proviso thus does not render otiose any word or words and enables every piece of the section to fall into place.

28. Upon this construction of the proviso, "regular assessment" in sub-ss. (1) and (1A) of s. 214 must be read to mean the first order of regular assessment and not the last operative order of regular assessment.

29. The scheme of ss. 214 and 215 now appears to us to be eminently reasonable and consistent. If the amount of advance tax paid by an assessee for an assessment year is equal to the tax assessed by the order of first regular assessment, no interest is payable. If the amount of advance tax paid is greater than the tax assessed by the order of first regular assessment the Government pays, under s. 214, interest to the assessee on the excess amount up to the date of the first order of regular assessment. If the amount of advance tax paid is less than the tax assessed by the first order of regular assessment, the assessee pays, under s. 215, interest on the amount of the shortfall up to the date of first order of regular assessment. If on appeal or otherwise the amount of the shortfall is reduced interest is reduced accordingly and, under sub-s. (3) of s. 215, Government refunds to the assessee for no counterpart to it exists.

30. Mr. Dastur, placing great stress upon sub-s. (1A) of s. 214, submitted that it covered a case where the assessment was enhanced as a result of an appellate or revisional order and that, therefore, the expression "regular assessment" in sub-s. (1A) had to mean the last operative order of regular assessment. He urged that the expression "regular assessment" should be given the same meaning in all the sub-section of s. 214 and that having regard to his interpretation of that expression in sub-s. (1A), it should be given the meaning viz., the last operative order of regular assessment, throughout s. 214. As we have pointed out, sub-s. (1A) was introduced consequential upon the insertion into the Act of s. 141A, relating to provisional assessment for refund, and it must be read in that light. So read, the expression "on completion of regular assessment" in sub-s. (1A) must mean the completion of the first order of regular assessment subsequent to a provisional assessment, and this meaning can be given to the expression "regular assessment" in all the sub-sections of s. 214.

31. It was argued by Mr. Dastur that if the words "regular assessment" in sub-s. (1) of s. 214 were interpreted to mean only the first order of regular assessment, then the expression "the amount on which interest was paid under sub-section (1)" used in sub-s. (1A) would not bear a meaning and sub-s. (1A) would be rendered unworkable. If the proviso to sub-s. (1) is read as we have read it, sub-s. (1A) provides thus : Where on provisional assessment interest was paid on the amount of refund then found due and on completion of the first order of regular assessment the account on which interest was paid has been reduced, interest shall be reduced accordingly and the excess of

interest paid shall be deemed to be tax payable by the assessee.

32. Mr. Dastur then submitted that the expression "completion of regular assessment" in sub-s. (1A) of s. 214 meant no more than "regular assessment". Accepting this submission would render the words "completion of" otiose which a court should be most reluctant to do. As we have said, the words "completion of regular assessment" are used in relation to a provisional assessment and mean the completion of the first order of regular assessment following upon a provisional assessment.

33. Mr. Dastur's alternative was that the excess of interest paid to an assessee became tax payable by him under sub-s. (1A) only when the regular assessment became final, i.e., when the matters therein were finally concluded by reason of appeals, etc. The words "completion of regular assessment" do not lend themselves to such a construction.

34. Referring to the contention that sub-s. (2) of s. 214 is linked only to s. 210(3), Mr. Dastur pointed out that all assessments under s. 210(3), which was deleted with effect from 1st April, 1963, would have been completed on or before 31st March, 1967, and that sub-s. (2) of s. 214 by now have been deleted. That it had not been deleted, in Mr. Dastur's submission, indicated that it was not linked to s. 210(3). That it has not been deleted is not, in our view, good reason to read sub-s. (2) of s. 214 in a manner other than that which appears to us to be most apposite.

35. It is true, as Mr. Dastur pointed out, that interest is compensatory in character but there is no right to receive interest other than by the right created by statute. The right to receive interest, therefore, depends upon the construction of the statute. As we read it, the phrase "regular assessment" in s. 214 plainly means only the first order of regular assessment and not the last operative order. No question arises, then of so reading the section as to further the equity of compensation or the interest of the assessee as opposed to that of the Revenue.

36. Mr. Dastur drew our attention to ss. 209 and 210 of the Act. They are contained in Part C of Chap. XVII. Section 209 deals with the computation of advance tax; it provides that the amount of advance tax payable by an assessee in a financial year shall be computed having regard to, inter alia, his total income of the latest previous year in respect of which he has been assessed by way of regular assessment. Section 210 deals with the order to be passed by the ITO requiring an asssessee to pay advance tax; the ITO is obliged to pass such an order where a person has been previously assessed by way of regular assessment. Mr. Dastur urged that the words "regular assessment" in ss. 209 and 210 had to be read to mean the last operative order of regular assessment. We agree that the words "regular assessment" in the scheme of these two sections cannot be so read as to mean that advance tax has to be paid and the demand for it to be made only upon the basis of the first order of regular assessment though it may have been subsequently set aside or varied. We also agree that it is no answer to say that the assessee can always file his own estimate for the purposes of advance tax. We cannot, however, extend the same meaning to the words "regular assessment" used in s. 214 for the reasons that we have already set out. The definition section in the Act provides that, unless the context otherwise requires, the words defined shall be read as having the meaning therein given. In our view, the context in which the words "regular assessment" are used in ss. 209 and 210 requires that they be given a meaning other than the meaning that is given to them elsewhere.

37. Mr. Joshi drew our attention to ss. 240 and 244, occurring in Chap. XIX. dealing with refunds. Under s. 240, where, as a result of any order passed in appeal or other proceedings, refund of any amount becomes due to the assessee, the ITO shall refund the amount to the assessee without his having to make a claim in that behalf. Sub-section (1) of s. 244 provides that where a refund is due to the assessee in pursuance of an order referred to in s. 240 and the ITO does not grant the refund within a period of three months from the end of the month in which such order is passed, the Central Government shall pay to the assessee interest on the amount of refund due from the date immediately following the expiry of the said period of three months to the date on which the refund is granted. It was submitted by Mr. Joshi that it was s. 244 which provided for the payment of interest on an amount required to be refunded consequent upon an appeal or revision and that, therefore, s. 214 could not, and was not intended to operate in respect of interest due upon amounts ordered to be refunded consequent upon an appeal. We do not consider s. 244 to be determinative of the construction to be placed upon s. 214. Having regard to the conclusion to which we have already come in regard to the construction of s. 214, we deem it unnecessary to dilate upon this argument.

38. We now turn to the judgments.

39. This court, in Sarangpur Cotton Manufacturing Co. Ltd. v. CIT , dealt with the provision corresponding to s. 214 of the present Act in the Indian I.T. Act, 1922. Under that provision, viz., s. 18A(5), Government was obliged to pay interest on the entire amount paid by way of advance tax from the date of payment "to the date of assessment (hereinafter called the regular assessment) made under section 23". Section 23 corresponds to s. 143 of the present Act. Sarangpur Cotton Mfg. Co. Ltd. paid advance tax in respect of the assessment year 1947-48. The ITO made an assessment on 30th March, 1948. Giving to the company credit for the advance tax paid and interest thereon, he made a demand. The Company appealed. The AAC directed the ITO to make a fresh assessment. When this was done on 25th January, 1954, income was assessed at a lower figure. The company contended that the assessment made on 25th January, 1954, was the regular assessment made by the ITO under s. 23(3) and it was, therefore, entitled to claim interest up to that date. Chagla C.J., speaking for the court, noted that the arguments had revolved around the proper meaning to be given to the expression "the date of the assessment". It seemed to the court that what the Legislature had contemplated in using that expression was the factual date of assessment, not its legality or validity. It wanted to fix two termini for the calculation of interest. With regard to one terminus there was no difficulty, for that was the date of payment of advance tax. The other terminus had to be fixed, and it 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. If there had been no appeal and if the assessment order had not been set aside, 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 the AAC set aside the order. Looked at from another point of view, the liability to pay the tax arose as soon as the assessment order was made and that liability would cover not only the advance tax already paid but also any additional amount that might have to be paid by the assessee. The scheme seemed to be that interest was payable for the period during which there was no liability to pay upon the assessee. But, once the order of assessment was made, the liability to pay arose and, even though the order might be

subsequently set aside, there was no obligation upon the Revenue to pay any interest in respect of the amount which they had recovered as tax under the original assessment order. In the result, the court come to the conclusion that the company was entitled to claim interest under s. 18A in respect of the advance tax paid from the date of payment only uptil 30th March, 1948, when the order of assessment had been originally made by the ITO.

40. By the time the issue came up for consideration again, s. 18A(5) of the 1922 Act had been amended by the addition of a proviso which reads thus :

> "Provided further that for any period beginning with the 1st day of April, 1952, interest shall be payable only on the amount by which the aggregate sum of any instalments paid during any financial year in which they are payable under this section exceeds the amount of the tax determined on regular assessment calculated as hereunder :
>
> "(i) in respect of such instalments paid in any financial year before the said date, from the said date to the date of the regular assessment;
>
> (ii) in respect of such instalments paid after the said date, from the beginning of the financial year next following to the date of the regular assessment."

41. In the case of Sir Shadilal Sugar and General Mills Ltd. v. Union of India , the Allahabad High Court considered the judgment in Sarangpur Cotton Manufacturing Co. Ltd.'s case [1957] 31 ITR 698 (Bom), and expatiated upon its reasoning. In the context of the amendment to s. 18A, R. S. Pathak J., delivering the court's judgment, noted the observations of the Supreme Court in Purshottamdas Thakurdas v. CIT , in relation to s. 18A, which reads thus :

> "It was introduced as a war measure probably to combat inflation... The section attempts to reconcile the principle of advance payment of tax with the scheme of the Act which is to tax the income of the previous year. The basis of the section is the principle of 'pay as you earn', that is, paying tax by instalments in respect of the income of the very year in which the tax is paid."

42. Pathak J. observed that although the liability to tax, it was well settled, was fixed by the charging provision, it was only after the liability had been quantified and a demand for payment made that an obligation upon the assessee to pay the amount arose. By the scheme introduced under s. 18A the assessee was required to pay an amount by way of tax in advance. As it was originally enacted, s. 18A(5) obliged the Government to pay to an assessee interest on the amount of advance tax paid by him. This was in recognition of the fact that the assessee had been deprived of moneys belonging to him and which he was entitled to retain and utilise so long as an assessment order was not made. From this it was clear that when s. 18A(5) spoke of the date of the assessment made under s. 23 and referred to it as the regular assessment, it was the first assessment order made by the ITO for the year which was meant. As soon as the original assessment order was made and a notice of demand issued, the assessee was under an obligation to pay the tax demanded and no question could then

arise of his being compensated by interest for any payment made by him in satisfaction of that demand. The compensation was intended only for the period during which there was no obligation to pay tax and the and the assessee did so only because of the scheme providing for recovering the tax in advance. The judgements in Kooka Sidhwa and Co. v. CIT and Gopi Lal v. CIT , which we have already referred to in the course of this judgment, were cited before the court. The court concluded that the observations therein were made while discussing the proposition whether an appeal lay against an assessment order which was made consequent upon an appellate order and had no validity in considering the interpretation s. 18A(5). An argument was advanced before the court based on the third proviso to sub-s. (6) of s. 18A. Sub-section (6) of s. 18A corresponds to s. 215 of the present Act and the third proviso thereto corresponds to sub-s. (3) of s. 215. The court noted that sub-s. (6) was a provision converse to s. 18A(5), and observed that, normally, it would have been expected that the same principle would be adopted, namely, that for the purpose of determining the quantum of interest payable, reference must be made to the first or original assessment order. The Legislature, however, departed from that principle for the purpose of giving relief to the assessee and it had done so by enacting the third proviso to sub-s. (6). The enactment of this provision pointed to the conclusion that, in its absence, the computation of interest would have had to be made by reference to the date of the first assessment order for the year and not the date of the order passed consequent to an appellate order.

43. Mr. Dastur submitted that this court's judgment in Sarangpur Cotton Manufacturing Co. Ltd.'s case [1957] 31 ITR 698, was no longer relevant because the scheme of payment of interest upon advance tax was radically different from the scheme under the 1922 Act as it stood when this decision was rendered. Under the scheme as it existed then, interest was payable upon the entire amount of advance tax. The court was, therefore, not concerned with the question as to the amount on which interest was payable, as we now are, but only with the other question, viz., up to what point of time interest was payable.

44. In Sarangpur Cotton Manufacturing Co. Ltd.'case [1957] 31 ITR 698 (Bom), this court was concerned with giving a proper meaning to the expression "the date of assessment" in s. 18A(5), and held it to mean the date of the first regular assessment. The content of s. 18A(5) was very similar to that of s. 214. The decision is, therefore, of relevance and assistance.

45. Mr. Dastur pointed out that under s. 4 of the present Act there is a liability to pay advance tax, so that it could not be said, as had been done in Sarangpur Cotton Manufacturing Co. Ltd.'s case, that there was no liability to pay tax until the order of assessment was made. Under the scheme of the 1922 Act, where there was no liability to pay tax until the order of assessment was made, Government was required to pay to the assessee interest on the entire amount of the advance tax paid by him until the date of the order of assessment. Under the present Act, where there is a liability to pay advance tax, Government is obliged to pay interest to the assessee up to the date of the order of assessment upon such amount of the advance tax paid by him as is found to be in excess of the assessed tax.

46. In regard to the Allahabad judgement in the case of Sir Shadilal Sugar and General Mills Ltd. [1972] 85 ITR 363, Mr. Dastur urged that it should be held to have been wrongly decided. He said

that by the time it was decided, the 1922 Act had been amended but that the court had overlooked the amendment and the difference it made. Perusal of the judgement shows that the court took the amendment into account and, in its light, considered the import of the words "the date of assessment" in s. 18A(5).

47. We are much fortified in the conclusion that we have reached by the judgment in Sarangpur Cotton Manufacturing Co. Ltd'.s case [1957] 31 ITR 698 (Bom), and in Sir Shadilal Sugar & General Mills Ltd.'s. case .

48. The question arose again before the Allahabad High Court, but in the context of s. 214 of the present Act. In Lala Laxmipat Singhania v. CIT , the court held that as s. 214 was in pari materia with s. 18A(5) of the 1922 Act, the ruling in Sarangpur Cotton Manufacturing Co. Ltd.'s case [1975] 31 ITR 698 (Bom) and in Sir Shadilal Sugar & General Mills Ltd.'s case , were applicable. The case of Chloride India Ltd. v. CIT , decided by the Calcutta High Court, was brought to the court's notice (we shall discuss this case anon). It was unable to see any material distinction between the expression "regular assessment" occurring in s. 214 and the expression "the date of assessment hereinafter referred to as regular assessment" occurring in s. 18A(5) of the 1922 Act. It agreed with the learned single judge of the Calcutta High Court that if the expression "regular assessment" in ss. 209 and 210 was construed as the first assessment, anomalies would result. If the context of ss. 209 and 210 required, it was permissible to depart from the meaning given to the expression "regular assessment" in the definition thereof in s. 2(40) because s. 2 opened with the words, "Unless the context otherwise requires". Such departure would, however, only be for the purpose of ss. 209 and 210. There was nothing in the context of s. 214 which required the expression "regular assessment" to be understood as other than the first original assessment.

49. The judgment in Chloride India Ltd. v. CIT , referred to above, was delivered in a writ petition. Sabyasachi Mukharji J. noted that the question involved was what was the determined on regular assessment in s. 214. Placing reliance upon the judgement in Kooka Sidhwa & Co.'s case [1964] 54 ITR 54 (Cal), he concluded that regular assessment contemplated by s. 214(1) was the assessment made by the ITO initially if there was no appeal therefrom, but, if there was an appeal, it was the order passed by the ITO to give effect to the directions of the appellate authority. Unless the context otherwise required, "regular assessment" could not be given any other meaning. The context of s. 214 indicated that, far from requiring otherwise, only this meaning could be given to the expression. If the exrpession was given another meaning in ss. 208, 209 and 210, an anomalous position would result. Sub-section (1A) of s. 214 and sub-s. (3) of s. 215, upon which the Revenue had placed reliance, did not indicate that the expression should be confined only to the first order of regular assessment. Sub-section (1A) of s. 214 dealt with a situation where interest allowed under sub-s. (1) of s. 214 was subsequently reduced. If the subsequent order, made pursuant to the order of the revisional or appellate authority, could not be treated as "regular assessment", sub-s. (1A) would become nugatory. The observations in the case of Sarangpur Cotton Manufacturing Co. Ltd. [1957] 31 ITR 698 (Bom), had been made in a different context because the court was not there concerned with the question as to whether regular assessment was confined to the first assessment. Similarly, in Sir Shadilal Sugur & General Mills Ltd.'s case , the court was not concerned with the question as to the tax determined on regular assessment. The context in which the expression "the date of

assessment, hereinafter referred to as regular assessment" in s. 18A(5) of the 1922 Act had been used was different.

50. In General Fibre Dealers Ltd. v. ITO , also arising out of a writ petition, Sabyasachi Mukharji J. followed his earlier decision. Hit attention was drawn to the judgement of the Division Bench of the Allahabad High Court in the case of Lala Laxmipat Singhania ; he said he preferred to adhere to his earlier view.

51. We have already held the decisions in Sarangapur Cotton Manufacturing Co. Ltd.'s case [1957] 31 ITR 698 (Bom) and in Sir Shadilal Sugar & General Mills Ltd.'s case , to be of relevance and assistance in the determination of the point before us. With great respect, it does not appear to us that these dicisions were concerned with a question other than the meaning to be given to "regular assessment" or that the observations threrin were made in a different context. We have held that, inasmuch as s. 214 provides for interest payable by Government and s. 215 provides for interest payable by the assessee, s. 215 is the counterpart of s. 214 and its interpretation is of cardinal importance in construing s. 214. It does not appear to us that a predominant role can be given to ss. 209 and 210 for the purposes of construing s. 214.

52. The Kerala High Court had occassion to consider the identical question in two matters. The first of its decision was given in a writ petition in N. Devaki Amma v. ITO . The court observed that when s. 214(1) spoke of regular assessment without anything more, it was difficult to hold that the Legislature had in mind not only a plain meaning of regular assessment as understood in the normal or popular sense but also a restricted meaning in a qualified sense, that it could also be revised regular assessment where, on recomputation in pursuance of the direction of a superior authority of tax had been ordered. The court was unable to subscribe to the view taken by Sabyasachi Mukharji, in the case of Chloride India . The court observed that in the scheme of the Act the context demanded that the expression "regular assessment" occurring in sub-s. (1) of s. 214 should be construed differently from that expression occurring in sub-s. (1A). This was because it was fairly clear that the reference to "interest paid under sub-section (1)" made in sub-s. (1A) was to a past event. The expression "on completion of the regular assessment" occurring in sub-s. (1A) connoted a revised assessment order. The court marked the difference between ss. 214 and 215, laying emphasis on the fact that the assessee's liability to pay interest under sub-s. (1) of s. 215 was made subject to the provisions of sub-s. (3) which provided for the refund of excess interest paid if the amount upon which interest had been paid was reduced in the appellate or revisional proceedings. The court's conclusion was that the assessee was not entitled to claim interest under s. 214(1) on the amount which was ordered to be refunded to him on a recomputation of income and tax in pursuance of a direction given in appeal.

53. As will have been noted, while we are broadly in agreement with the Kerala High Court in regard to sub-s. (1) of s. 214, we take, with respect, a different view of sub-s. (1A). As we have pointed out, the as meaning the completion of the first order of regular assessment following upon a provisional assessment.

54. There are two judgements of the Madras High Court which have a bearing on the point under consideration. The first is in CIT v. Rajalakshmi Mills Ltd. . This was a case in which the ITO himself modified an order of assessment. The question was whether the assessee was entitled to interest up to the date of the rectified order. The court observed that the scheme of the Act was this : If the assessee had paid advance tax in excess of the tax due under regular assessment, then, on the excess so paid, he was entitled to interest. Similarly, where the payment of advance tax by the assessee was less than seventy-five per cent. of the assessed tax, he had to pay interest to the Government. The scheme was to see that neither the Government not the assessee lost interest on the amount underpaid or overpaid. The scales were thus held even. There was a specific provision made under s. 215(3) to cover cases of interest payable by the assessee where the payment of tax was less than seventy-five per cent. as a result of rectification or other orders. Though such an express provision was lacking with reference to the interest payable by the Government to the assessee, the assessee would, in the scheme an envisaged, be entitled to interest. The rectification of the assessment had the effect of making the rectified order, the regular or correct assessment order. In other words, the regular assessment was made regular in truth and in fact as a result of the rectification. The assessee was not to suffer by reason of the ITO not having made a proper regular assessment. The Revenue had relied on the judgement in Lala Laxmipat Singhania's case . This was a case where the assessee claimed interest up to the date of the assessment made as a result of appellate proceedings and did not bear on the problem before the court.

55. The case of Rayon Traders Private Ltd. v. ITO , is more to the point; here the tax assessed was reduced pursuant to an appellate order. The court noted that if sub-s. (1) of s. 214 alone were to be taken into account, it would not have been necessary to discuss the matter further as the assessee would be entitled to interest only up to the date of the regular assessment. Its modification in appeal did not destroy its existence. However, sub-s. (2) of s. 214 introduced a new aspect. It was difficult to find the significance of the expression "only" occurring therein. It purported to import a limitation on paying interest only up to the date of refund. The implication was that if the word "only" were not there, it would extend to a further period. When once the date of actual refund was fixed as the terminal, it was not clear to what other date the period would have extend if the word was not there. The section would make sense even if the word was not there and its addition did not improve matters. It had to be concluded that the word was only a surplusage and need not be given any special significance. As the first part of s. 214 granted a right to interest to the assessee up to the date of the regular assessment, it might be asked why sub-s. (2) provided for payment of interest up to the date on which refund was made. Sub-s. (1) did not, however, provide for any refund to the assessee. It was only designed to grant a right to interest on the advance tax paid. Section 219 provided for adjustment of the advance tax paid against the tax demand and a refund in consequence of the credit would follow. In other words, while sub-s. (1) gave a right to the assessee to interest from the 1st day of April, next following the financial year in which the advance tax was paid, it did not provide for any refund as such. With reference to the amount that was refunded under the chapter, i.e., by virtue of the credit contemplated by s. 219, sub-s. (2) of s. 214 provided that interest had to be paid up to the date on which refund was made.

56. In National Agricultural Co-operative Marketing Federation of India Ltd. v. Union of India , the provisions of s. 214 were analysed in the light of the judgments of the various High Courts. The

Delhi High Court came to the conclusion that the view taken in Bombay, Allahabad and Kerala in regard to the meaning to be given to the expression "regular assessment" was to be preferred for a number of reasons. Firstly, the general scheme of the Act was to collect tax after it was quantified on the basis of the first assessment and this was the regular assessment contemplated by the Act. Secondly, a construction could not be favoured which would enable an assessee to get interest on tax paid by him for a period beyond the date of the original regular assessment merely because he had paid such tax in advance; to construe the section in that manner would result in discrimination between an assessee who has paid advance tax and an assessee ho had not, though in both the cases the assessees became entitled to refund of the tax collected from them in excess of what was lawfully found chargeable. Thirdly, the words "regular assessment" could be interpreted consistently in all the provision in Chap. XVII-C to mean only the first assessment; even in regard to s. 209 no anomalies would be produced because, when a demand was made by the ITO based on the initial assessment of the previous year and the assessee did not except the current year's income to be as much, it was open to him to file a revised estimate under s. 212. Fourthly, there was no reasons why an assessment made for the first time under s. 143 should be outside the purview of ss. 214 and 215. Fifthly, s. 214(1A) used the expression "regular assessment" in a slightly differet context and should not stand in the way of the interpretation placed upon the expression in the other sections. Sixthly, there were indications in ss. 215 and 216 that the expression could not mean anything but the first or original assessment; in particular, this was clear from s. 215 because if the expression was to be interpreted as being the last operative order of regular assessment, there would have been no necessity to introduce sub-s. (3) of s. 215. Seventhly, the expression should not be interpreted to meam the last operative order of regular assessment because it would impose a huge burden on the assessee under s. 215 and on the Government under s. 214. Eighthly, the case of Gopi Lal [1967] 65 ITR 447 (Punj) and Kooka Sidhwa and Co. [1964] 54 ITR (Cal) were only authorities for the proposition that an order revising an assessment consequent upon an appellate order was a regular assessment, but this could not mean that the first or initial assessment was not a regular assessment; once it was held that the first assessment was a regular assessment, then interest on advance tax, which ceased to run upon a regular assessment being completed, could not be revived merely because the assessment underwant some modification. For these reasons it appeared to the court that the expression "regular assessment" should be construed as referring only to the first regular assessment and not to subsequent modification thereof. If the claim to interest before the court had depended only on the interpretation of the expression, it would have had to reject it but sub-s. (2) of s. 214 threw a different light. The court referred to the judgement of the Madras High Court in the case of Rayon Traders Pvt. Ltd. [1980] 126 ITR 135. Despite some difficulties and with some hesitation, the court agreed that the interpretation of the Madras High Court was the only practical and plausible interpretation to be given to sub-s. (2) of s. 214. There was, accordingly, no escape from the conclusion that the assessee was entitled to refund along with interest up to the date of the refund.

57. In Associated Cement Companies Ltd. v. CIT , two questions were posed to a Division Bench of this court. The second question was whether the assessee was entitled to interest on the amount refunded up to the date of the first order of regular assessment under sub-s. (1) of s. 214, and thereafter up to the date of refund under sub-s. (2) of s. 214. The court noted that sub-s. (1) of s. 214 provided for interest being paid till the order of assessment. The assessee was, therefore, entitled to

interest up to the date of first order of regular assessment. To this, counsel for the Revenue had no serious objection. The objection was to the interest claimed subsequent to the date of the first order of regular assessment up to the date of refund under sub-s. (2) of s. 214. Counsel for the assessee relied upon the decision of the Madras High Court in Rayon Traders Private Ltd.'case [1980] 126 ITR 135 (Mad), and of the Delhi High Court in National Agricultural Co-operative Marketing Federation of India Ltd.'s case [1981] 130 ITR 928 (Delhi), in support of the submission that under the provisions of sub-s. (2) the assessee was entitled to claim interest from the date of assessment till refund was made. The Division Bench noted that sub-s. (2) was not happily worded as although it provided the point of termination of the period for payment of interest, it did not provide for the point from which the same was to start and the chapter in which s. 214 appeared contained no provision for refund. The Division Bench, however, followed the view taken in the Madras and Delhi judgments mentioned as it appeared reasonable; for, if the assessee was entitled to refund, Government could not be justified in keeping the money without interest till the actual refund was made though it was liable to pay interest under sub-s. (1) till the date of assessment. The second question was, accordingly, answered in favour of the assessee.

58. We have discussed the reasons which have impelled us to conclude that the expression "regular assessment" in s. 214 must be read to mean "the first order of regular assessment". We have dealt with the argument that the period for which the assessee was entitled to interest was extended by reason of sub-s. (2) of s. 214 up to the date on which the refund was made. With great respect to the learned judges who placed this construction upon sub-section (2), we are unable to agree. As we have stated, the words "on any portion", "under this chapter" and "only" in sub-s. (2) negative this construction. The words "under this chapter" are of particular import. The refunds mentioned in sub-s. (1) of s. 214 are not refunds "under this chapter", Chap. XVII. As Chap. XVII now reads, there is no provision in it for refund; but the proviso to sub-s. (3) of s. 210 as it stood prior to 1963 made provision for refund of advance tax. In our view, sub-section (2) must be read in the context of the proviso to sub-s. (3) of s. 210 as it stood. Where a refund had been made of advance tax in the contingencies provided for by the proviso to sub-s. (3) of s. 210 as it stood, and it had been found on regular assessment that the amount of advance tax originally paid was in excess of the tax assessed by the amount refunded or more, interest was payable upon the amount refunded, but, by reason of sub-s. (2) of s. 214, it was payable only up to the date of the refund. This interpretation of sub-s. (2) is, in our view, the most satisfactory in that it gives meaning to the words "on any portion", "under this chapter" and "only". Consequently, we overruled the judgement of the Division Bench of this court in Associated Cement Companies Ltd. v. CIT , in so far it interprets sub-s. (2) of s. 214.

59. In CIT v. Rohtak Delhi Transport P. Ltd. , the Punjab and Haryana High Court held that s. 214 did not deal with the question of grant of interest to an assessee if the quantum of tax was reduced in appeal. It was apparent that it dealt with the grant of interest for the period from 1st April next following the financial year during which the tax was paid up to the date of the regular assessment and for no other period. The Punjab and Haryana High Court considered the point again in CIT v. Ambala Electric Supply Co. Ltd. . Placing reliance, in the main, upon its judgement in Rohtak Delhi Transport Pvt. Ltd.'s case [1981] 130 ITR 777 (P & H), the court held that the date of regular assessment meant the date of the first order of regular assessment. The court found full support for this view from the judgments of the Allahabad, Delhi and Kerala High Courts where the point had

been dealt with in full detail.

60. The last judgment which is squarely on the point is that of the Andhra Pradesh High Court in Trustees of H. E. H. Nizam's Religious Endowment Trust v. ITO . The judgment was delivered by a Division Bench upon two writ petitions. What was the meaning to be given to the words "regular assessment" in s. 214 fell for consideration. From the scheme of the Act and the juxtaposition of its provisions, it seemed eminently reasonable to the court to conclude that the assessments made by the ITO under s. 143 or s. 144 alone were regular assessments. It was not permissible to extend the scope of the expression by including appellate orders and orders consequential thereon made by the ITO. The place and context in which ss. 143 and 144 occurred did not warrant such extension. Had Parliament intended to give an extended meaning it would have included in the definition of "regular assessment" consequential orders. Just because an appeal was a continuation of the original proceeding, the court could not consider an order passed in appeal and the consequential order passed by the original authority as orders of regular assessment. There was no substance in the argument on behalf of the assessee that it would be unreasonable and unjust if interest was not paid on the excess amount of advance tax till the consequential order was passed in pursuance of an appellate order, for the concept of equity could not be injected into taxation laws. Parliament had laid down the rights and liabilities of assessees and of assessing officers and one had to look into the statute to find cut up to what date interest had to be paid. There would be no anomalous situation if regular assessment was taken to mean only the first order of regular assessment even in ss. 209 and 210. The court was not inclined to adopt the view taken by Sabyasachi Mukharhji J. sitting singly in Chloride India Ltd.'s case and in General Fibre Dealers Ltd.'case . The court relied, inter alia, upon the judgment of this court in Sarangpur Cotton Mfg. Co. Ltd.'s case [1957] 31 ITR 698 (Bom) and of the Allahabad High Court in Sir Shadilal Sugar and General Mills' case .

61. Two decisions of this court may be briefly adverted to. In Binod Mills Co. Ltd. v. S. A. Kadre, EPTO , a learned single judge of this court took the view that the words "regular assessment" used in the Excess Profits Tax Act, 1940, referred not only to the initial order of assessment but also covered orders passed by the appellate authority and orders passed in consequence of directions contained therein.

62. A Division Bench of this Court in Deviprasad Kejriwal v. CIT , observed that ss. 18A(5) and 18A(6) of the 1922 Act dealt with the liability to pay interest either on the part of the Government or on the part of the assessee in respect of the amount of advance tax and the purpose of using the expression "regular assessment" in those provisions obviously was as had been clearly stated in the case of Sarangpur Cotton Manufacturing Co. Ltd. , to indicate the two termini of the period for which interest was payable. This was not the purpose for which the expression had been used in s. 18A(9) where the question was of levying penalty on the assessee for having furnished estimates of the tax payable by him which he knew or had reason to believe to be untrue. This aspect could only be brought home after the reassessment proceedings ascertained the actual tax liability. The nature of the subject-matter dealt with by s. 18A(9) and the purpose served thereby necessitated the adoption of a different meaning of the expression "regular assessment" occurring therein than the meaning attributed to it in ss. 18A(5) and 18A(6).

63. The end result is that, in our judgement, the words "regular assessment" in s. 214(1) of the I.T. Act, 1961, mean the first order of regular assessment passed by the ITO and not the last operative order of regular assessment at any given point of time passed as a result of appellate or revisional proceedings. Consequently, the Central Government is liable to pay to the assessee interest on the amount by which the advance tax paid by him during any financial year exceeds the amount of tax determined upon such first order of regular assessment from 1st April next following the said financial year to the date of such first order of regular assessment.

64. The question referred at the instance of the Revenue is, accordingly, answered in the negative, i.e., in favour of the Revenue.

65. The assessee shall pay to the Revenue the costs of the reference.