

Brij Lal & Ors vs Commnr. Of Income Tax, Jalandhar on 21 October, 2010

Author: S.H. Kapadia

Bench: Swatanter Kumar, Surinder Singh Nijjar, K.S. Radhakrishnan, B. Sudershan Reddy, S. H. Kapadia

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/ORIGINAL JURISDICTION
CIVIL APPEAL Nos. 516-527 OF 2004

Brij Lal & Ors.

... Appellants

versus

Commissioner of Income Tax, Jalandhar
Respondents

...

with

Civil Appeal Nos. 280-286/2005, Civil Appeal
No. 8324/2004, Civil Appeal Nos.8325-
8328/2004, Civil Appeal No. 603/2005, Civil
Appeal No. 990/2005, Civil Appeal No.
925/2005, Civil Appeal No.
924/2005, Writ Petition (C) No. 556/2004,
Writ Petition(C)No. 555/2004, Civil Appeal
Nos. 2247-2250/2005, Civil Appeal No.
923/2005, Civil Appeal No. 995/2005,
Civil Appeal No. 994/2005, Writ Petition (C)
No. 63/2005, Writ Petition (C) No.
61/2005, Writ Petition (C) No. 62/2005,
Writ Petition (C) No. 60/2005, Civil Appeal
No. 2246/2005, Civil Appeal Nos. 3231-
3232/2005, Civil Appeal No. 3091/2004, Civil
Appeal No. 3087/2004, Civil Appeal No.
3092/2004, Civil Appeal Nos.4599-
4601/2004, Civil Appeal Nos. 528-531/2004, Writ
Petition (C) No. 325/2004, Writ Petition (C)
No. 324/2004, Writ Petition (C) No.
326/2004, Civil Appeal No. 992/2007,
Civil Appeal No.9174/2010 @ SLP (C) No.
20373/2009, Civil Appeal No.
532/2004, and Civil Appeal No. 604/2005.

JUDGMENT

S.H. KAPADIA, CJI

1. Leave granted.

2. Vide referral orders dated 14.12.2004 and 20.1.2005 the following questions have been referred to the Constitution Bench of this Court:

(i) Whether sections 234A, 234B and 234C of the Income Tax Act, 1961 (for short "the Act") are at all applicable to proceedings of the Settlement Commission under Chapter XIX-A of the Act?

(ii) Whether the Settlement Commission can reopen its concluded proceedings by

having recourse to section 154 of the Act so as to levy interest under sections 234A, 234B and 234C of the Act, though it was not so done in the original proceedings?

(iii) Whether in the absence of period of limitation prescribed for making the order of the Settlement, the relevant date for determining the quantum of interest could be the date of the said order?

3. For the sake of convenience, after hearing learned counsel on both sides, we reframe the above questions.

(I) Whether section 234B applies to proceedings of the Settlement Commission under Chapter XIX-A of the said Act?

(II) If answer to the above question is in the affirmative, what is the terminal point for levy of such interest - Whether such interest should be computed up to the date of the Order under section 245D(1) or up to the date of the Order of the Commission under section 245D(4)?

(III) Whether the Settlement Commission could reopen its concluded proceedings by invoking section 154 of the said Act so as to levy interest under section 234B, though it was not so done in the original proceedings?

Relevant provisions of the Income Tax Act, 1961:

4. In order to answer the reframed questions, quoted above, it would be necessary for us to cite the relevant provisions of the Act and the Income Tax Rules, as they stood at the material time, which are as under:

Definitions 2(40) "regular assessment" means the assessment made under sub-section (3) of section 143 or section 144 ;

2(45) "total income" means the total amount of income referred to in section 5, computed in the manner laid down in this Act;

Chapter XIV - Procedure for Assessment Self-assessment 140A. (1) Where any tax is payable on the basis of any return required to be furnished under section 139 or section 142 or as the case may be, section 148, after taking into account the amount of tax, if any, already paid under any provision of this Act, the assessee shall be liable to pay such tax together with interest payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return and the return shall be accompanied by proof of payment of such tax and interest.

Explanation.--Where the amount paid by the assessee under this sub-section falls short of the aggregate of the tax and interest as aforesaid, the amount so paid shall first be adjusted towards the interest payable as aforesaid and the balance, if any, shall be adjusted towards the tax payable.

(2) After a regular assessment under section 143 or section 144 has been made, any amount paid under sub-section (1) shall be deemed to have been paid towards such regular assessment.

Assessment

143. (1)(a) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, -

(i) if any tax or interest is found due on the basis of such return, after adjustment of any tax deducted at source, any advance tax paid and any amount paid otherwise by way of tax or interest, then, without prejudice to the provisions of sub-section (2), an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under section 156 and all the provisions of this Act shall apply accordingly;

*** ** Provided also that an intimation for any tax or interest due under this clause shall not be sent after the expiry of two years from the end of the assessment year in which the income was first assessable.

(b)Where as a result of an order made under sub-section (3) of this section or section 144 or section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264, or any order of settlement made under sub-

section (4) of section 245D relating to any earlier assessment year and passed subsequent to the filing of the return referred to in clause (a), there is any variation in the carry forward loss, deduction, allowance or relief claimed in the return, and as a result of which, -

(i) if any tax or interest is found due, an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under section 156 and all the provisions of this Act shall apply accordingly, and

(ii) if any refund is due, it shall be granted to the assessee:

Provided that an intimation for any tax or interest due under this clause shall not be sent after the expiry of four years from the end of the financial year in which any such order was passed.

(4) Where a regular assessment under sub-

section (3) of this section or section 144 is made,

--

(a) any tax or interest paid by the assessee under sub-section (1) shall be deemed to have been paid towards such regular assessment ;

Rectification of mistake.

154. (1) With a view to rectifying any mistake apparent from the record an income-tax authority referred to in section 116 may,--

(a) amend any order passed by it under the provisions of this Act ;

(b) amend any intimation sent by it under sub-section (1) of section 143. or enhance or reduce the amount of refund granted by it under that sub-section.

(1A) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided. (2) Subject to the other provisions of this section, the authority concerned--

(a) may make an amendment under sub-section (1) of its own motion, and

(b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee, and where the authority concerned is the Deputy Commissioner (Appeals), or the Commissioner (Appeals) by the Assessing Officer also. (3) An amendment, which has the effect of

enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee a reasonable opportunity of being heard.

Chapter XVII - Collection and Recovery of Tax Liability for payment of advance tax.

207. Tax shall be payable in advance during any financial year, in accordance with the provisions of sections 208 to 219 (both inclusive), in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following the financial year, such income being hereafter in this Chapter referred to as "current income". Computation of advance tax.

209. (1) The amount of advance tax payable by an assessee in the financial year shall, subject to the provisions of sub-sections (2) and (3), be computed as follows, namely:--

(a) where the calculation is made by the assessee for the purposes of payment of advance tax under sub-section (1) or sub-

section (2) or sub-section (5) or sub-section (6) of section 210, he shall first estimate his current income and income-tax thereon shall be calculated at the rates in force in the financial year;

Payment of advance tax by the assessee of his own accord or in pursuance of order of Assessing Officer.

210. (1) Every person who is liable to pay advance tax under section 208 (whether or not he has been previously assessed by way of regular assessment) shall, of his own accord, pay, on or before each of the due dates specified in section 211, the appropriate percentage, specified in that section, of the advance tax on his current income, calculated in the manner laid down in section 209.

(2) A person who pays any instalment or instalments of advance tax under sub-section (1), may increase or reduce the amount of advance tax payable in the remaining instalment or instalments to accord with his estimate of his current income and the advance tax payable thereon, and make payment of the said amount in the remaining instalment or instalments accordingly. Interest payable by assessee.

215. (1) Where, in any financial year, an assessee has paid advance tax under section 209A or section 212 on the basis of his own estimate (including revised estimate), and the advance tax so paid is less than seventy-five per cent of the assessed tax, simple interest at the rate of fifteen 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:

Provided that in the case of an assessee, being a company, the provisions of this sub-section shall have effect as if for the words "seventy- five per cent", the words "eighty-three and one- third per cent" had been substituted. (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 provision up to the date on which the tax is 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 147 or 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) 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 provisions of this Act shall apply accordingly;

(ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.] (4) In such cases and under such circumstances as may be prescribed, the Assessing Officer may reduce or waive the interest payable by the assessee under this section.

(5) In this section and sections 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 provisions of sections 192 to 194, section 194A, section 194C, section 194D, section 195 and section 196A 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.

(6) Where, in relation to an assessment year, an assessment is made for the first time under section 147, the assessment so made shall be regarded as a regular assessment for the purposes of this section and sections 216, 217 and 273.

Interest for defaults in furnishing return of income.

234A. (1) Where the return of income for any assessment year under sub-section (1) or sub-section (4) of section 139, or in response to a notice under sub-section (1) of section 142, is furnished after the due date, or is not furnished, the assessee shall be liable to pay simple interest at the rate of 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;

Explanation 1.--In this section, "due date"

means the date specified in sub-section (1) of section 139 as applicable in the case of the assessee.

Explanation 2.--In this sub-section, "tax on the total income as determined under sub-section (1) of section 143" shall not include the additional income-tax, if any, payable under section 143.

Explanation 3.--Where, in relation to an assessment year, an assessment is made for the first time under section 147, the assessment so made shall be regarded as a regular assessment for the purposes of this section.

Explanation 4. - In this sub-section, "tax on the total income as determined under sub-section (1) of section 143 or on regular assessment" shall, for the purposes of computing the interest payable under section 140A, be deemed to be tax on total income as declared in the return.

(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.

*** ** (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 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 provisions 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.

Interest for defaults in payment of advance tax.

234B. (1) Subject to the other provisions of this section, where, in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of section 210 is less than ninety per cent of the assessed tax, the assessee shall be liable to pay simple interest at the rate of 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.

Explanation 1.--In this section, "assessed tax"

means

(a) for the purposes of computing the interest payable under section 140A the tax on the total income as declared in the return referred to in that section;

(b) in any other case, the tax on the total income determined under sub-section (1) of section 143 or on regular assessment, as reduced by the amount of tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income.

Explanation 2.--Where, in relation to an assessment year, an assessment is made for the first time under section 147, the assessment so made shall be regarded as a regular assessment for the purposes of this section. Explanation 3.--In Explanation 1 and in sub-section (3) "tax on the total income determined under sub-section (1) of section 143" shall not include the additional income-tax, if any, payable under section 143.

(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 provisions 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.

Interest for deferment of advance tax.

234C. (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 shortfall from the tax due on the returned income:

Explanation.--In this section, "tax due on the returned income" means the tax chargeable on the total income declared in the return of income furnished by the assessee for the assessment year commencing on the 1st day of April immediately following the financial year in which the advance tax is paid or payable, as reduced by the amount of tax deductible or collectible at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income;

(2) 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.

Chapter XIX-A - Settlement of Cases Definitions 245A. In this Chapter, unless the context otherwise requires,--

(b) "case" means any proceeding under this Act for the assessment or re-

assessment of any person in respect of any year or years , or by way of appeal or revision in connection with such assessment or re- assessment, which may be pending before an Income Tax Authority on the date on which an application under sub-section (1) of section 245C is made:

Provided that where any appeal or application for revision has been preferred after the expiry of the period specified for the filing of such appeal or application for revision under this Act and which has not been admitted, such appeal or revision shall not be deemed to be a proceeding pending within the meaning of this clause;

Application for settlement of cases. 245C. (1) An assessee may, at any stage of a case relating to him, make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived, the additional amount of income-tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided:

Provided that no such application shall be made unless,--

(a) the assessee has furnished the return of income which he is or was required to furnish under any of the provisions of this Act; and

(b) the additional amount of income tax payable on the income disclosed in the application exceeds one hundred thousand rupees.

(1A) For the purposes of sub-section (1) of this section and sub-section (2A) to (2D) of Section 245D, the additional amount of income-tax payable in respect of the income disclosed in an application made under sub-section (1) of this section shall be the amount calculated in accordance with the provisions of sub-sections (1B) to (1D).

(1B) Where the income disclosed in the application relates to only one previous year,--

(i) if the applicant has not furnished a return in respect of the total income of that year (whether or not an assessment has been made in respect of the total income of that year), then, except in a case covered by clause (iii), tax shall be calculated on the income disclosed in the application as if such income were the total income;

(ii) if the applicant has furnished a return in respect of the total income of that year (whether or not an assessment has been made in pursuance of such return), tax shall be calculated on the aggregate of the total income returned and the income disclosed in the application as if such aggregate were the total income;

(iii) if the proceeding pending before the income-tax authority is in the nature of a proceeding for reassessment of the applicant under section 147 or by way of appeal or revision in connection with such reassessment, and the applicant has not furnished a return in respect of the total income of that year in the course of such proceeding for reassessment, tax shall be calculated on the aggregate of the total income as assessed in the earlier proceeding for assessment under section 143 or section 144 or section 147 and the income disclosed in the application as if such aggregate were the total income.

FORM NO. 34B [See rules 44C and 44CA] Form of application for settlement of case under section 245C(1) of the Income-tax Act, 1961 IN THE SETTLEMENT COMMISSION..... Settlement application No.19.....-19.....

1. Full name and address of the applicant

2. Permanent Account Number

3. Status [See Note 4]

4. The Commissioner having jurisdiction over the applicant

5. Assessment year(s) in connection with which the application for settlement is made

6. Date of filing the return of income for assessment year(s) referred to in column 5

7. Proceedings to which application for settlement relates, the date from which the proceedings are pending and the income-tax authority before whom the proceedings are pending [See Note 6]
.....

8. Where any appeal or application for revision has been preferred after the expiry of the period specified for the filing of such appeal or application for revision, as the case may be, whether such appeal or revision has been admitted.

9. Date of seizure, if any, under section 132 of the Income-tax Act

10. Particulars of the issues to be settled, nature and circumstances of the case and complexities of the investigation involved [See Note 7]

11. Full and true disclosure of income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived and the additional amount of income-tax payable on such income [See Notes 9 and 10]

Signed (Applicant) Verification I,, son/daughter/wife of do hereby solemnly declare that to the best of my knowledge and belief, what is stated above and in the Annexure [including the statement(s) and documents accompanying such Annexure] is correct and complete. I further declare that I am making this application in my capacity as (designation) and that I am competent to make this application and to verify it.

Verified today the day of19 Place

Signed (Applicant) Procedure on receipt of an application under section 245C.

245D. (1) On receipt of an application under section 245C, the Settlement Commission shall call for a report from the Commissioner and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission may, by order, allow the application to be proceeded with or reject the application:

Provided that an application shall not be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

Provided further that the Commissioner shall furnish the report within a period of forty-five days of the receipt of communication from the Settlement Commission in case of all applications made under Section 245C on or after the 1st day of July, 1995 and if the Commissioner fails to furnish the report within the said period, the Settlement Commission may make the order without such report. (2B) If the Settlement Commission is satisfied, on an application made in this behalf by the assessee, that he is unable for good and sufficient reasons to pay the additional amount of income tax referred to in sub-

section (2A) within the time specified in that sub-section, it may extend the time for payment of the amount which remains unpaid or allow payment thereof by instalments if the assessee furnishes adequate security for the payment thereof.

(2C) Where the additional amount of income- tax is not paid within the time specified under sub-section (2A), then, whether or not the Settlement Commission has extended the time for payment of the amount which remains unpaid or has allowed payment thereof by instalments under sub-section (2B), the assessee shall be liable to pay simple interest at fifteen per cent per annum on the amount remaining unpaid from the date of expiry of the period of thirty-five days referred to in sub- section (2A).

(4) After examination of the records and the report of the Commissioner, received under sub-section (1), and the report, if any, of the Commissioner received under sub-section (3), and after giving an opportunity to the applicant and to the Commissioner to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner under sub-section (1) or sub-section (3). (6) Every order passed under sub-section (4) shall provide for the terms of settlement including any demand by way of tax, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

(6A) Where any tax payable in pursuance of an order under sub-section (4) is not paid by the assessee within thirty-five days of the receipt of a copy of the order by him, then, whether or not the Settlement Commission has extended the time for payment of such tax or has allowed payment thereof by instalments, the assessee shall be liable to pay simple interest at fifteen per cent per annum on the amount remaining unpaid from the date of expiry of the period of thirty-five days aforesaid.

(7) Where a settlement becomes void as provided under sub-section (6), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the income-tax authority concerned, may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the end of the financial year in which the settlement became void.

Power of Settlement Commission to reopen completed proceedings.

245E. If the Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under

this Act by any income-tax authority before the application under section 245C was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also :

Powers and procedure of Settlement Commission.

245F. (1) In addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which are vested in an income-tax authority under this Act.

(2) Where an application made under section 245C has been allowed to be proceeded with under section 245D, the Settlement Commission shall, until an order is passed under sub-

section (4) of section 245D, have, subject to the provisions of sub-section (3) of that section, exclusive jurisdiction to exercise the powers and perform the functions of an income-tax authority under this Act in relation to the case :

(3) Notwithstanding anything contained in sub-section (2) and in the absence of any express direction to the contrary by the Settlement Commission, nothing contained in this section shall affect the operation of any other provision of this Act requiring the applicant to pay tax on the basis of self-

assessment in relation to the matters before the Settlement Commission.

(4) For the removal of doubt, it is hereby declared that, in the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Act in so far as they relate to any matters other than those before the Settlement Commission. Order of settlement to be conclusive.

245-I. Every order of settlement passed under sub-section (4) of section 245D shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.

5. At this stage, it may be noted that section 245C stood substituted by Finance Act, 2007, w.e.f. 1.6.2007. Prior to its substitution, the proviso to section 245C(1), as substituted by the Finance Act, 1987, w.e.f. 1.6.1987 and later on amended by Finance Act, 1995, w.e.f. 1.7.1995, read as under:

"Provided that no such application shall be made unless,--

(a) the assessee has furnished the return of income which he is or was required to furnish under any of the provisions of this Act; and

(b) the additional amount of income tax payable on the income disclosed in the application exceeds one hundred thousand rupees."

6. Section 245C(1) read with the proviso thereto, as substituted by Finance Act, 2007 w.e.f. 1.6.2007, reads as under:

245C. (1) An assessee may, at any stage of a case relating to him, make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived, the additional amount of income-tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided:

Provided that no such application shall be made unless,--

(i) the additional amount of income tax payable on the income disclosed in the application exceeds three lakh rupees; and

(ii) such tax and the interest thereon, which would have been paid under the provisions of this Act had the income disclosed in the application been declared in the return of income before the Assessing Officer on the date of application, has been paid on or before the date of making the application and the proof of such payment is attached with the application.

Analysis of the Act

7. Liability to pay advance tax arises under section 207. The said section is based on the principle "pay as you earn". It requires tax to be paid during the financial year. It has to be in respect of the total income of the assessee which would be chargeable to tax under the Act. The said total income is not as understood in section 2(45) but it is equated to "current income" for the purposes of Chapter XVII. After the Amending Act of 1987, advance tax is to be paid on the current income which would be chargeable to tax for the assessment year immediately following the financial year. Section 210 casts the responsibility of payment of advance tax on the assessee without requiring the assessee to submit his estimate of advance tax payable. Provision for payment of advance tax is mode of quick collection of tax. Thus, section 207 defines liability to pay advance tax in respect of incomes referred to in section 208. However, advance tax paid is adjustable towards the tax due. Advance tax is collected even before the income tax becomes due and payable. By its very nature, advance tax is pre-assessment collection of taxes either by deduction of tax at source or by payment of advance tax which has to be adjusted towards income tax levied on the total income. The above two methods of realization even before any assessment is authorized by section 4(2) are incorporated in Chapter XVII which deals with "collection and recovery". In fact, section 190(1) clarifies that this method of payment of tax will not prejudice the charge of tax under section 4(1) nor will it modify the liability of the assessee to pay income tax pursuant to an assessment order. [See Modi Industries Limited,

Modinagar and Others v. Commissioner of Income Tax, Delhi and Another, 216 ITR 759 at 780] At one point of time, section 209(1)(a)(iii) (relating to computation of advance tax) provided that the income tax calculated on the total income with reference to which the demand for advance tax was made should be reduced by the amount of income tax deductible in accordance with sections 192 to 194, 194A and 195 on any income included in the total income. The levy of interest under section 215 is part of the process of assessment. If the income tax liability on the first day of the assessment year is larger than the amount of advance tax standing to the credit of the assessee then interest will have to be paid under section 215 on 75% of the deficit amount of tax from the first day of the assessment year to the date of computation of total income vide assessment order. Interest under section 215 is chargeable from the first day of April next following the financial year wherein the advance tax was paid up to the date of regular assessment, if no tax has been paid under section 140A or otherwise. However, section 215(2) provides that where advance tax paid is less than 75% of the "assessed tax", but the assessee has paid tax under section 140A or otherwise before the date of completion of regular assessment then the interest shall be limited to the interest on the shortfall between the "assessed tax" and the advance tax paid for the period from the first April next following the financial year up to date of payment under section 140A plus interest on the shortfall between "assessed tax" and "total tax paid" for the period from the day following the date of such payment under section 140A up to the date of regular assessment. Coming to section 140A, as a result of the amendment of section 140A(1) by Direct Tax Laws Amendment Act, 1987 w.e.f. 1.4.1989 and vide Finance Act of 1999, the assessee is required to calculate the tax payable on the basis of the return to be furnished under section 139 or under section 142 or under section 148 after taking into account the amount of tax paid under the Act; to calculate also interest payable under section 234A or under section 234B/234C for any default or delay in payment of advance tax; to pay such tax with interest before the assessee furnishes his return. The Explanation to section 140A(1) inter alia provides that where the amount paid by the assessee under section 140A(1) falls short of the aggregate of the tax and interest thereon the amount so paid is first adjusted towards interest payable and the balance, if any, is adjusted towards the tax payable. Thus, amount(s) paid under section 140A is deemed to have been paid towards regular assessment.

8. The liability to pay income tax is founded on sections 4 and 5 which are the charging sections. Sections 143, 144 and 147 are machinery sections to determine the amount of tax payable. Thus, whereas section 143(3) signifies computation of income, section 147 signifies computation of escaped income. As held in the case of C.A. Abraham v. Income-Tax Officer, Kottayam and Another [(1961) 41 ITR 425 (SC)], the expression "assessment" in a given provision must be determined on an examination of the relevant provisions in question and the fact that it is used in the narrower sense elsewhere will not mean that it is so used in the provision under examination. The word can be used to cover the whole procedure to ascertain the liability and the machinery for enforcement. Prior to 1.6.1999, section 143(1A)(a) inter alia provided that where the total income as a result of any adjustments made exceeded the total income declared in the return by any amount then it was open to the A.O. to increase the amount of tax payable under section 143(1) by additional income tax calculated at the specified rate. In brief, section 143(1A) provided for the levy of additional income tax of an amount equal to 20% of the tax payable on the amount of difference between the total income determined under section 143(1) and total income declared in the return. Where the additional income tax was increased, the A.O. had to serve a notice under section 156. Even under

section 143(1B), as it stood before 1.6.1999, where an assessee furnished a revised return under section 139(5) after service of intimation, the assessee was liable to pay additional income tax in relation to adjustments made under section 143(1)(a) read with the proviso.

9. Now, Chapter XVII deals with "collection and recovery". It covers Tax Deduction at Source and Advance Payment of taxes (see section 190). Section C deals with advance payment of taxes. Section 207 refers to liability to pay advance tax whereas section 209 deals with computation of advance tax. Section 215 refers to interest payable by the assessee. Section 210(1) inter alia provides that every person who is liable to pay interest under Section 208, shall of his own accord pay, on each of the due dates specified in section 211, the appropriate percentage of advance tax on his current income calculated in the manner under section 209. Under section 209(1)(a), the amount of advance tax payable by the assessee in any financial year is as follows:

(a) where calculation is made by the assessee for the purposes of payment of advance tax under section 209(1), he shall first estimate his current income and the tax shall be computed at the rates in force in the financial year. Thus, liability and computation of advance tax is done under section C of Chapter XVII. On the other hand, interest for defaults in payment of advance tax falls under section 234B, apart from sections 234A and 234C, in section F of Chapter XVII. Thus, levy of interest is incidental to the liability and computation of advance tax. It is interesting to note that section 234A(4) in turn refers to the increase or reduction of interest subsequent to the Order of the Commission under section 245D(4) increasing or reducing the amount of tax payable and so also section 234B(4). Under section 234B, where in any financial year an assessee who is liable to pay advance tax under section 208 fails to pay such tax or where the advance tax paid under section 210 is less than 90% of the assessed tax the assessee shall pay interest from the first day of April next following such financial year to the date of determination of total income under section 143(1) or to the date of regular assessment on the amount equal to the assessed tax which has been defined in Explanation 1 to mean tax on the total income as determined under section 143(1) as reduced by the amount of tax deducted at source in accordance with Chapter XVII on income which is subject to deduction and which is taken into account in computing total income. By Explanation 3, it is clarified that for default of short payment interest will be charged on the difference between "assessed tax" (as defined) and the advance tax paid by the assessee and that for the above purpose "additional income tax" if any payable under section 143 is not to be taken into account. However, section 234B(2) covers a situation where, before the date of determination of total income under section 143(1) or completion of regular assessment, tax is paid by the assessee under section 140A or otherwise, interest shall be calculated under section 234B(1) up to the date on which tax was so paid and reduced by the interest, if any, paid under section 140A towards interest chargeable under section 234B.

10. Coming to Chapter XIX-A which deals with Settlement of Cases, it may be stated that the word "case" is defined under section 245A(b). It is an exhaustive definition. The definition makes it clear

that an application for Settlement shall lie only when any proceedings for assessment or re-assessment is pending or an appeal or revision in connection with such assessment or re-assessment is pending before the Income Tax Authority. Under section 245C(1), such application for settlement will not be maintainable without full and true disclosure of the income by the applicant, the manner in which such undisclosed income was derived and that the applicant had furnished his return of income and that the additional tax payable on such income exceeds the specified amount. This was the position prior to Finance Act of 2007. However, section 245C(1A) inter alia provides that additional amount of income tax payable in respect of the income disclosed shall be calculated in accordance with the provisions of section 245C(1B). Under sub-section (1B) if the applicant has furnished his return in respect of his total income and no assessment is made, the tax shall be calculated on the aggregate of the total income returned and the income disclosed in the application as if such aggregate was the total income. The words "regular assessment" are not there in section 245C(1B)(ii). However, under section 245C(1C)(b), it is provided that the additional tax calculated under section 245C(1B)(ii) shall be reduced by the aggregate of the tax deducted at source or tax paid in advance and the amount of tax paid under section 140A. The resultant amount is the additional tax payable by the assessee. Thus, section 245C incorporates within it the provisions of Chapters XVIIB, XVIIC and section 140A of the Act. It may be noted that section 245C(1B)(iii), as it stood before 1.6.1987, required income tax to be calculated on the aggregate of the total income as assessed plus the income disclosed in the application as if such aggregate was the total income. But after 1.6.1987, the tax is required to be worked out on the returned total income plus the income disclosed in the application as if the aggregate is the total income. Under section 245D(2A) the applicant is required to pay the additional amount of income tax payable on the income disclosed in the application within 35 days of the receipt of the copy of the order passed by the Settlement Commission under section 245D(1) allowing such application to be proceeded with. Under section 245D(2A) the applicant shall, within 35 days of the receipt of the order under section 245D(1) allowing the application to be proceeded with, pay the additional amount of income tax payable on the income disclosed. Under section 245D(4) on compliance of sections 245D(2A) and (2C) and on examination of relevant records and reports, the Settlement Commission may pass such orders as it thinks fit on the matters covered by the application and any other matter relating to the "case" referred to in the report of the Commissioner of Income Tax. If one carefully analyses the provisions of sections 245D(1) and 245D(4), one finds two distinct stages - one allowing the application to be proceeded with (or rejected) and the other of disposal of the application by appropriate orders being passed by the Settlement Commission. In between the two stages, we have provisions which require the applicant to pay the additional income tax and interest. Even under section 245D(7) it is provided that where the settlement becomes void under section 245D(6) the proceedings with respect to the matters covered by the settlement shall be deemed to have revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the income tax authority may complete the proceedings within the period mentioned therein. Thus, section 245D(7) brings out the difference between section 245D(1) stage and section 245D(4) stage. Under section 245D(6), it is laid down that every order under section 245D(4) shall provide for the Terms of Settlement including any demand by way of tax, penalty or interest. In the case of C.I.T. v. Damani Brothers reported in 259 ITR 475, a 3- Judge Bench of this Court, while analyzing the scheme of Chapter XIX-A, has held that section 234B, section 245D(2C) and section 245D(6A) operate in different fields. Section 234B comes into operation when there is default in payment of

advance tax whereas liability to pay interest under section 245D(2C) arises when the additional amount of income tax is not paid within time specified under section 245D(2A). Section 245D(6A), on the other hand, imposes liability to pay interest only when the tax payable in pursuance of an order of Settlement Commission under section 245D(4) is not made within the specified time. Consequently, section 234B, section 245D(2C) and section 245D(6A) in Chapter XIX-A operate in different fields. To this extent, we agree with the view expressed in Damani Brothers case (supra). Descriptively, it can be stated that assessment in law is different from assessment by way of settlement. If one reads section 245D(6) with section 245I, it becomes clear that every order of settlement passed under section 245D(4) shall be final and conclusive as to the matters contained therein and that the same shall not be re-opened except in the case of fraud and misrepresentation. Under section 245F(1), in addition to the powers conferred on the Settlement Commission under Chapter XIX-A, it shall also have all the powers which are vested in the income tax authority under the Act. In this connection, however, we need to keep in mind the difference between "procedure for assessment" under Chapter XIV and "procedure for settlement" under Chapter XIX-A (see section 245D). Under section 245F(4), it is clarified that nothing in Chapter XIX-A shall affect the operation of any other provision of the Act requiring the applicant to pay tax on the basis of self-assessment in relation to matters before the Settlement Commission. The point to be noted on the basis of the above analysis is that several provisions of the Act like section 140A; furnishing of the return of income by the applicant as indicated in the proviso (a) to section 245C(1); provisions of the Act governing liability and computation to pay additional income tax as indicated by proviso (b) to section 245C(1); aggregation of total income inter alia in terms of sections 143, 144 or 147 as indicated by section 245C(1B)(iii); aggregation of total income as returned plus income disclosed in the application for settlement as indicated in section 245C(1B)(ii); the deductions in section 245C(1C); increase of interest under section 215(3) pursuant to the orders of the Settlement Commission and the levy of interest under sections 234A(4) and 234B(4) all bring into Chapter XIX-A various provisions of the Act. Thus, when we read the provisions of Sections 245C and 245D one has to keep in mind various above provisions of the Act and the concepts of self-assessment, assessment, regular assessment and computation of total income which have been engrafted in Chapter XIX-A. (I) Whether Sections 234A, 234B and 234C are applicable to Chapter XIX-A proceedings?

11. Our detailed analysis shows that though Chapter XIX- A is a self-contained Code, the procedure to be followed by the Settlement Commission under sections 245C and 245D in the matter of computation of undisclosed income; in the matter of computation of additional income tax payable on such income with interest thereon; the filing of settlement application indicating the amount of income returned in the return of income and the additional income tax payable on the undisclosed income to be aggregated as total income shows that Chapter XIX-A indicates aggregation of incomes so as to constitute total income which indicates that the special procedure under Chapter XIX-A has inbuilt mechanism of computing total income which is nothing but assessment (computation of total income). To elaborate, under section 245C(1B), if the applicant has furnished a return in respect of his total income, tax shall be calculated on the aggregate of total income returned and the income disclosed in the settlement application as if such aggregate were total income. Under the Act, tax is payable on the total income as computed in accordance with the provisions of the Act. Thus, section 143(3) provision is sought to be incorporated in section 245C. When Parliament uses the words "as

if such aggregate would constitute total income", it presupposes that under the special procedure the aggregation of the returned income plus income disclosed would result in computation of total income which is the basis for the levy of tax on the undisclosed income which is nothing but "assessment". Similarly, section 245C(1C) provides for deductions from the total income computed in terms of section 245C(1B). Thus, the special procedure under sections 245C and 245D in Chapter XIX-A shows that a special type of computation of total income is engrafted in the said provisions which is nothing but assessment which takes place at section 245D(1) stage. However, in that computation, one finds that provisions dealing with a regular assessment, self-assessment and levy and computation of interest for default in payment of advance tax, etc. are engrafted. [See sections 245C(1B), 245C(1C), 245D(6), 245F(3) in addition to sections 215(3), 234A(4) and 234B(4)] (II) Terminal point for the levy of interest - Whether interest is payable under Chapter XIX-A up to the date of the order under section 245D(1) or up to the date of the order under section 245D(4)?

12. In our view the answer to the above question lies in the provisions of the proviso to Sections 245C(1), 245C(1B) and 245C(1C), 245D(4) and 245F(3) which bring in the concepts of returned income, self-assessment, aggregation of income returned and income disclosed as if it is total income; levy of interest under section 215(3) read with section 245D(4); increase of interest under sections 234A(4) and 234B(4) read with section 245D(4) as also sections 140A(1A) and (1B) read with sections 234A and 234B. For example, section 140A deals with self-assessment which is different from regular assessment. Under section 140A(1) where tax is payable on the basis of any return furnished by the assessee [see proviso

(a) to section 245C(1)], after taking into account tax paid, the assessee shall be liable to pay such tax with interest payable for default under section 234B in payment of advance tax before furnishing the return. This position is clarified by sections 140A(1A) and (1B) under which inter alia interest payable for default in payment of advance tax under section 234A shall be computed on the amount of tax on the total income as declared in the return minus the advance tax paid. Similarly, it is clarified vide sub-section (1B) to section 140A that interest payable under section 234B for default in payment of advance tax shall be computed on an amount equal to the assessed tax [same words are used in section 234B(1)] or on the amount by which the advance tax falls short of the assessed tax. However, what is "assessed tax" for the purposes of section 140A is explained by Explanation. It says that assessed tax will be tax on the total income as declared in the return minus the amount of tax deducted at source or collected at source in accordance with the provisions of Chapter XVII (which covers sections 207, 209 and 215 of the Act). Now, section 245C(1) is voluntary disclosure by the assessee of his undisclosed income. Under section 245C(1), the assessee has to mention in his settlement application the additional amount of tax payable by him on such undisclosed income. Under proviso (a), the application for settlement shall not be entertained till the assessee has furnished the return of income which he was required to file under the Act to the extent of his income. Under proviso (b), the assessee has to declare the additional amount of tax payable. Thus, the two provisos to section 245C(1) show that Chapter XIX-A, which prescribes a special procedure for assessment by settlement, contemplates a pre-assessment collection of tax. With the filing of the settlement application and after such application is allowed to be proceeded with under section 245D(1), intimation under section 143(1), regular assessment under sections 143(3)/144 and re-assessment under section 147 lose their existence as under sections 245C(1A) and (1B) it is only

the income disclosed in the return of income before the A.O. alone which survives for consideration by the Settlement Commission for settling the amount of income which is not disclosed in the return. Under section 245C(1B)(ii), if the applicant has furnished a return in respect of the total income, whether or not assessment is made in pursuance of the return, the additional amount of income tax payable in respect of the total income disclosed shall be on the aggregate of the total income returned and the income disclosed in his application for settlement as if such aggregate was his total income. This is pre-assessment collection of tax. Such pre-assessment is based on the estimation of the current income and tax thereon by the applicant himself. Now, when the Settlement Commission accepts the Voluntary Disclosure vide the application for settlement, section 234B(2) steps in. It is important to remember that the assessee is liable to pay advance tax, he commits default in payment to the extent of the undisclosed income but he offers to pay additional income tax then interest has to be calculated in accordance with sections 207, 208 and 234B(2) up to the date on which such tax is paid. This is not the interest which assessee has to pay after assessment under section 245D(4). Under sections 245C(1B) and (1C) the additional amount of income tax payable on the undisclosed income shall be on the total income as calculated under section 245C(1B). On computation of total income under sections 245C(1B) and (1C), interest follows such computation. It is important to note that interest follows computation of total income. Once such computation takes place under section 245C(1B) then section 234B(2) applies. The said sub-section deals with the situation where before determination of total income under section 143(1) or 143(3) tax is paid under section 140A or otherwise interest shall be calculated in accordance with section 234B(1) up to the date on which tax is so paid. In that sense an application under section 245C(1) is a return. Section 245C(1) deals with computation of total income. There is one more way of looking at the Act. Chapter XIX-A refers to procedure of settlement (see section 245D(1)). As stated above, section 245D(1) provides for expeditious recovery of tax by way of pre-assessment collection. Interest on default in payment of advance tax comes under sections 234A, 234B, 234C, which fall in Chapter XVII which deals with collection and recovery of tax. It is important to note that interest follows computation of additional payment of income tax under sections 245C(1B) and (1C). This is how sections 234A, 234B and 234C get engrafted into Chapter XIX-A at the stage of section 245D(1). As stated, till the Settlement Commission decides to admit the case under section 245D(1) the proceedings under the normal provisions remain open. But, once the Commission admits the case after being satisfied that the disclosure is full and true then the proceedings commence with the Settlement Commission. In the meantime, applicant has to pay the additional amount of tax with interest without which the application for settlement would not be maintainable. Thus, interest under section 234B would be payable up to the stage of section 245D(1). Our view is supported by the amendment made by Finance Act of 2007 w.e.f. 1.6.2007 in which interest is required to be paid for maintainability of the Application for Settlement.

13. The question is - what happens in cases where 90% of the assessed tax is paid but on the basis of the Commission's order under section 245D(4) the advance tax paid turns out to be less than 90% of the assessed tax as defined in the Explanation to Section 234B(1)?

14. As held hereinabove, under section 245C(1) read with section 245C(1B)(ii) and section 245C(1C)(b), the additional amount of income tax payable is to be calculated on the aggregate of total income returned and the income disclosed in the settlement application as if such aggregate is

the total income. Thus, the scheme of the said sections is based on computation of total income and in that sense we have stated that such application for settlement is akin to a return of income. The said provision deals with "total income". Thus, as stated above, sections 234A, B and C are applicable up to the stage of section 245D(1) order passed by the Settlement Commission. However, Parliament has not extended the provisions and the liability to pay interest beyond the date of application for settlement. This is the position even after Finance Act of 2007. Once this position is taken, section 140A is attracted. When an assessee has paid interest under sections 234A, B and C in self-assessment under section 140A, which is similar to the scheme of section 245C(1), and once the Settlement Commission admits the application for settlement, one finds that even under section 140A(1B) interest payable under section 234B has to be computed on an amount equal to the assessed tax as defined in the Explanation to mean tax on the total income as declared in the return. Under sub-section (1B) to Section 140A interest payable under section 234B can also be computed on an amount by which the advance tax paid falls short of the assessed tax as defined in the Explanation thereto. Thus, there is no provision under Chapter XIX-A or even under section 140A (dealing with self-assessment) to charge interest beyond the date of application for settlement after the same is admitted by the Commission under Section 245D(1). Moreover, as stated above, under the Act, there is a difference between assessment in law [regular assessment or assessment under section 143(1)] and assessment by settlement under Chapter XIX-A. The order under section 245D(4) is not an order of regular assessment. It is neither an order under section 143(1) or 143(3) or 144. Under sections 139 to 158, the process of assessment involves the filing of the return under section 139 or under section 142; inquiry by the A.O. under sections 142 and 143 and making of the order of assessment by the A.O. under section 143(3) or under section 144 and issuing of notice of demand under section 156 on the basis of the assessment order. The making of the order of assessment is an integral part of the process of assessment. No such steps are required to be followed in the case of proceedings under Chapter XIX-A. The said Chapter contemplates the taxability determined with respect to undisclosed income only by the process of settlement/arbitration. Thus, the nature of the orders under sections 143(1), 143(3) and 144 is different from the orders of the Settlement Commission under section 245D(4). Even in *Commissioner of Income Tax v. Anjum M.H. Ghaswala and others* [252 ITR 1] there is no finding by this Court that the order of Settlement Commission under section 245D(4) is an order of assessment under section 143(3) or under section

144. In Ghaswala's case the only question decided by this Court is that the interest under section 234B is mandatory in nature and that Settlement Commission, therefore, had no authority to waive it. Further, as stated above, the jurisdiction of the A.O. is not fettered merely because the applicant has filed the Settlement Application. The Act does not contemplate stay of the proceedings during that period, i.e., when the Settlement Commission is deciding whether to proceed or reject the settlement application. The jurisdiction of the Settlement Commission to proceed commences only after an order is passed under section 245D(1). That, after making an application for settlement the applicant is not allowed to withdraw it [see section 245C(3)]. Once the case stands admitted, the Settlement Commission shall have exclusive jurisdiction to exercise the powers of the Income Tax Authority. The order of Settlement Commission under section 245D(4) shall be final and conclusive under section 245I subject to two qualifications under which it can be recalled, viz., fraud and misrepresentation but even here it is important to note that under section 245D(7) where the

settlement becomes void on account of fraud and misrepresentation the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission. This further supports our view that there are two distinct stages under Chapter XIX- A and that the Legislature has not contemplated the levy of interest between order under section 245D(1) stage and section 245D(4) stage. Thus, interest under section 234B will be chargeable till the order of the Settlement Commission under section 245D(1), i.e., admission of the case. Lastly, the expression "interest" in section 245(6A) fastens the liability to pay interest only when the tax payable in pursuance of an order under section 245D(4) is not paid within the specified time and which levy is different from liability to pay interest under section 234B or under section 245D(2C). [See Damani Brothers (supra) at page 485] III. Whether the Settlement Commission can re-open its concluded proceedings by having recourse to Section 154 of the Act so as to levy interest under section 234B, if it was not done in the original proceedings?

15. As stated, proceedings before Settlement Commission are similar to arbitration proceedings. It contemplates assessment by settlement and not by way of regular assessment or assessment under section 143(1) or under section 143(3) or under section 144 of the Act. In that sense, it is a Code by itself. It does not begin with the filing of the return but by filing the application for settlement. As stated above, under the Act, procedure for assessment falls in Chapter XIV (in which section 154 falls) which is different from procedure for settlement in Chapter XIX-A in which sections 245C and 245D fall. Provision for levy of interest for default in payment of advance tax under section 234B falls in Chapter XVII [Section F] which deals with collection and recovery of tax which as stated above is incidental to the liability to pay advance tax under section 207 (which is also in Chapter XVII) and to the computation of total income in the manner indicated under Chapter XIX-A vide sections 245C(1B) and 245C(1C) read with the provisos to section 245C(1) on the additional income tax payable on the undisclosed income. Further, if one examines the provisions of sections 245C(1B) and 245C(1C), one finds that various situations are taken into account while computing the additional amount of tax payable, viz., if the applicant has not filed his returns, if he has filed but orders of assessment are not passed or if the proceedings are pending for re-assessment under section 147 (again in Chapter XIV) or by way of appeal or revision in connection with such re-assessment and the applicant has not furnished his return of total income in which case tax has to be calculated on the aggregate of total income as assessed in the earlier proceedings for assessment under section 143 or under section 144 or under section 147 [see section 245C(1B)]. The point to be noted is that in computation of additional income tax payable by the assessee, there is no mention of section 154. On the contrary, under section 245I the order of the Settlement Commission is made final and conclusive on matters mentioned in the application for settlement except in the two cases of fraud and misrepresentation in which case the matter could be re- opened by way of review or recall. Like ITAT, the Settlement Commission is a quasi-judicial body. Under section 254(2), the ITAT is given the power to rectify but no such power is given to the Settlement Commission. Thus, we hold that Settlement Commission cannot reopen its concluded proceedings by invoking section 154 of the Act. Lastly, one must keep in mind the difference between review/ recall of the order and rectification under section 154. The Schedule of Chapter XIX-A does not contemplate invocation of section 154 otherwise there would be no finality to the assessment by settlement which is different from assessment under Chapter XIV where there is an appeal, revision, etc. Settlement of liability

and not determination of liability is the object of Chapter XIX-A. Even otherwise, invocation of section 154 on facts of this batch of cases is not justified. In this batch of cases, the situation which prevailed when the Settlement Commission waived or reduced interest chargeable under sections 234A and 234B was that a debate was on as to whether the Settlement Commission has the power to reduce or waive interest. It is only after Ghaswala's case that the law got settled that the nature and the character of the interest was compensatory and mandatory and that the Commission had no such power. But even in Ghaswala, the question as to whether such interest under section 234B should run up to the order under section 245D(1) or up to the date of the order under section 234D(4) was not decided. In fact, that was the reason for the Orders of Reference to the Constitution Bench of this Court vide orders dated 14.12.2004 and 20.1.2005. There is one more reason for this Reference. In the case of CIT v. Hindustan Bulk Carrier [(2003) 259 ITR 449], a 3- Judge Bench of this Court, by majority, held that where, upon the Order of the Settlement Commission under section 245D(4), there arises a deficit in the payment of advance tax under section 208, the end point or the terminus of the period for which interest has to be paid under section 234B on the deficit is the date on which the Settlement Commission passes the order under section 245D(4). This decision was delivered on 17.12.2002 after the judgment of this Court in Ghaswala (supra). On the same day, the same Bench in the case of Damani Brothers (supra) held that interest charged under section 234B becomes payable on the income disclosed in the return and the income disclosed before the Settlement Commission; that, such interest is chargeable till the Commission acts in terms of section 245D(1) and that after the Settlement Commission allows the application for settlement to be proceeded with there will be no further charge of interest under section 234B. Thus, even on the question of terminus there was lot of controversy and in the circumstances, we are of the view that invocation of section 154 (held to be inapplicable to Chapter XIX-A proceedings) cannot be justified.

Conclusions :

16. (1) Sections 234A, 234B and 234C are applicable to the proceedings of the Settlement Commission under Chapter XIX-A of the Act to the extent indicated hereinabove.

(2) Consequent upon conclusion (1), the terminal point for the levy of interest under section 234B would be up to the date of the order under section 245D(1) and not up to the date of the Order of Settlement under section 245D(4).

(3) The Settlement Commission cannot re-open its concluded proceedings by invoking section 154 of the Act so as to levy interest under section 234B, particularly, in view of section 245I.

17. Accordingly, Reference to the Constitution Bench vide orders dated 14.12.2004 and 20.1.2005 stands duly answered and the matters are accordingly disposed of.

.....CJI (S. H. Kapadia)J. (B. Sudershan Reddy)
J. (K.S. Radhakrishnan)J. (Surinder Singh Nijjar)
J. (Swatanter Kumar) New Delhi;

October 21, 2010.