Supreme Court of India
Modi Industries Limited, ... vs Commissioner Of Income Tax, Delhi ... on 15 September, 1995
Equivalent citations: 1995 SCC (6) 396, JT 1995 (6) 549
Author: B Jeevan Reddy
Bench: Jeevan Reddy, B.P. (J)

PETITIONER:
MODI INDUSTRIES LIMITED, MODINAGAR ETC. ETC.

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, DELHI AND ANR. ETC. ETC.

DATE OF JUDGMENT15/09/1995

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
SEN, S.C. (J)
MAJMUDAR S.B. (J)

CITATION:
1995 SCC (6) 396 JT 1995 (6) 549
1995 SCALE (5)362

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

A seemingly simple expression, "regular assessment", occurring in Section 214 of the Income Tax Act has given rise to an endless conflict as to its meaning among the several High Courts in the country. The first decision interpreting the expression was rendered as far back as 1957 by the Bombay High Court with reference to sub-section (5) of Section 18A of the 1922 Act. Thereafter almost every High Court has pronounced upon the question expressing varying shades of opinion.

LEGISLATIVE BACKGROUND:

Prior to 1944, income tax was payable by the assessee only on an assessment being made by the Assessing Officer. Though the levy/charge was created by the Indian Income Tax Act, 1922, the tax became payable only when it was ascertained in accordance with the provisions of the Act. In 1944, however, Section 18A was introduced providing for the payment of tax in advance, i.e., even prior to the making of the assessment. Section 18A incorporated the principle "pay as you earn". The advance tax was payable on prescribed dates during the financial year preceding the relevant assessment year. Sub-section (5), as originally introduced, provided for payment of simple interest at two percent per annum on the entire amount paid by way of advance tax. (The rate of tax was raised to four percent with effect from April 1, 1995.) The interest was payable "from the date of payment (to the date of the provisional assessment made under Section 23-B* or if no such assessment has been made) to the date of the

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* Section 23-B providing for provisional assessment was inserted in 1950.

assessment (hereinafter called the "regular assessment") made under Section 23 of the Income, Profits and Gains of the previous year...".

By Indian Income Tax (Amendment) Act, 1953, second proviso to sub-section (5) was inserted in Section 18-A with effect from April 1, 1952. By virtue of this proviso, interest became 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....". Interest thus became payable only on the amount paid in excess of the tax determined on regular assessment and not upon the entire amount. The expression "regular assessment" was not defined in the 1922 Act.

Clause (40) of Section 2 of the Income Tax Act, 1961 defines the expression "regular assessment" to mean the assessment made under Section 143 or Section 144. The 1961 Act contains a whole lot of sections dealing with advance tax, commencing from Section 207 to Section 219, under the sub-heading "C--Advance Payment of Tax" in Chapter-XVII which chapter deals with "collection and recovery of tax". These sections have been undergoing amendments from time to time which it is not necessary to trace for the purposes of this case. It would suffice to indicate broadly the scheme of the said sections. Section 207 provides that advance tax shall be payable during the financial year in respect of the total income derived by the assessee during the accounting year relevant to the assessment year. Section 208 prescribes that every assessee deriving income above a particular limit shall be liable to pay advance tax. Section 209, which has undergone a good number of amendments over the years, provides the manner in which the advance tax payable shall be computed. The advance tax may be paid by an assessee of his own accord or it may be paid pursuant to the orders of the assessing officer. Section 211 provides the dates on which instalments of advance tax are payable. Sections 214 and 215, which may broadly be characterized as complimentary to each other, provide for payment of interest in certain situations. Section 214(1) provides that:

> "the Central Government shall pay simple interest at 9% p.a. 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 first 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....".

(The rate of tax has been changing from time to time. It is now 15%. Further, with effect from April 1, 1985, the words "tax determined or regular assessment" have been substituted by the words "assessed tax".) The date from which interest is payable has been changed under the 1961 Act. Instead of date of payment under the 1922 Act, it is the first day of the relevant assessment year. Sub-section (2) of Section 214, as originally enacted, corresponded to the first proviso to Section 18A(5) of the 1922 Act. Section 215, in turn, provides for payment of interest by the assessee in case the advance tax paid by him falls short of the prescribed percentage of the tax assessed.

With effect from April 1, 1968, Section 214 underwent certain changes. A proviso was appended to sub-section (1) saying 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". Sub-section (1A) was inserted which read: "(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". With effect from April 1, 1985, sub-section (1A) was substituted. It reads:

> "(1A) 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, 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 in a case where the interest is reduced, the Income Tax Office - shall serve on the assessee, a notice of demand in the prescribed form specifying the amount of the excess interest payable and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly."

With effect from April 1, 1985, Explanations (1) and (2) were also added which run as follows:

> "Explanation 1.-- In this section, "assessed tax" shall have the same meaning as in sub-section (5) of section
>
> 215. 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."

Further amendments have been effected in Section 214 with effect from April 1, 1989 but which it may not be necessary to refer for the purpose of this case.

HOW DOES THE QUESTION ARISE?

We shall now indicate how the controversy relating to the meaning of the expression "regular assessment" arises: an assessee pays advance tax according to his estimate of his income during the financial year relevant to the particular assessment year. He then files a return and an assessment is made under Section 143. It is found that he has paid more amount by way of advance tax than the amount of tax assessed. He will be refunded the extra amount with interest calculated from the first day of April of that assessment year to the date of assessment. No difficulty arises in such a case. The difficulty arises in the following situation: indeed it is one of the many situations

- not satisfied with the order of assessment, the assessee files an appeal. The appeal is allowed as a consequence of which, the assessment order is revised. As a result of such revised assessment made pursuant to the appellate order, the tax refundable to the assessee becomes larger - say whereas, according to the original assessment he was entitled to refund of Rs.10,000/-, he becomes entitled to a total refund of Rs.15,000/- as a result of revised assessment made pursuant to the appellate order. The question is - on what amount and upto which date is the interest payable? On being elaborated, the question yields the following sub-questions:

(a) is the interest payable only on Rs. 10,000/- and if so, whether the interest is payable till the date of first/original assessment or till the date of the revised assessment? (b) is the interest payable on Rs.15,000/- and if payable, is it payable only till the date of first/original assessment or till the date of the revised assessment?

A large number of High Courts including Bombay, Kerala, Allahabad, Punjab and Haryana, Andhra Pradesh and Gauhati have taken the view that the interest is payable only upto the date of the first/original assessment and not upto the date of the revised assessment made pursuant to the appellate/revisional order which may perhaps mean, on the amount of Rs.10,000/- only in the illustration given in the preceding para. It also means that if according to the first/original assessment, it is found that advance tax paid is not in excess of the tax assessed but as a result of the revised assessment it is found that there is an excess payment, no interest would be payable under this provision to the assessee at all. They interpreted the words "regular assessment" in the section as meaning and as referring to the first/original assessment. On the other hand, several other High Courts including Calcutta, Gujarat, Rajasthan, Karnataka and Madras have taken the view that the words "regular assessment" mean and refer to the revised assessment made pursuant to the appellate order. The Delhi High Court has adopted an approach which partly agrees with one view and partly with the other. We may clarify that in the immediately preceding discussion, the words "appellate order" are used compendiously to denote appellate, revisional and reference orders.

Now, both Section 143 and Section 144 use the expression "assessment". They do not use the expression "regular assessment". Clause (40) of Section 2, no doubt, defines "regular assessment" as an assessment made under Section 143 and Section 144 but the fact remains that whether it is the original/first assessment or the revised assessment made pursuant to the appellate order, they are relatable to Section 143 alone - and where it is a best- judgment assessment, to Section 144. Of course, where Section 147 is resorted to, the order of assessment/re- assessment will be made under that section but here again the procedural provisions contained in Section 143 and Section 144 do apply. If so, one may ask why was the expression "regular assessment" used? Is it merely in contra-distinction to provisional assessment or has it got any specific connotation? Before we proceed to answer the question, it would be appropriate to refer to a few more relevant provisions.

Against the orders of the assessing authority made under the sections specified, appeal is provided by Section

246. Section 251 specifies the powers of the first appellate authority. He is empowered to confirm, reduce, enhance or annul the assessment. He is also empowered to set aside the assessment and refer the case back to the assessing officer for making a fresh assessment in accordance with the directions given by him and after making such further enquiries, as may be directed or as may be found necessary. Section 252 provides a further appeal/second appeal to the Appellate Tribunal. Section 254(1) says that the Appellate Tribunal may, after giving both the parties to the appeal opportunity of being heard, pass such orders thereon as it thinks fit. Section 256 provides for reference to the High Court on questions of law whereas Section 257 provides for statement of a case to Supreme Court directly in certain situations. After the receipt of the opinion of the High Court of Supreme Court, as the case may be, the Appellate Tribunal shall have to pass orders as are necessary to dispose of the case in conformity with the judgment of the High Court/Supreme Court. Section 263 vests suo motu power of revision in the Commissioner to be exercised in certain situations. The Commissioner is empowered to "pass such order thereon as circumstances of the case justify, including an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment". Section 264 vests the power of revision in the Commissioner which can be exercised either suo motu or on the application of the assessee in certain situations. Under this section, the Commissioner is entitled to pass such order as he thinks fit. He can direct such further enquiry as he thinks appropriate or may himself cause such enquiry to be made.

Chapter-XIX contains provisions relating to refund. Until October 1, 1975 when sub-section (1A) was introduced in Section 244 by the Taxation Laws (Amendment) Act, 1975, the provisions in this chapter (Section 237 onwards) provided only for post-assessment interest. Section 240 provides that where as a result of any order passed in appeal or other proceeding under the Act, refund of any amount becomes due to the assessee, the assessing officer shall refund that amount to the assessee without his having to make a claim therefor. Section 244(1) provides that where refund is due to the assessee in pursuance of an order referred to in Section 240, and such refund is not granted within three months from the end of the month in which such order is passed, the Central Government shall pay interest thereon at the rate of fifteen percent per annum with effect from the date of the expiry of the three months aforesaid to the date on which the refund is granted. By virtue of sub-section (1A), however, interest is now payable on the amount found to have been paid in excess as a

result of the appellate/revisional order from the date of payment made in pursuance of any order of assessment or penalty upto the date on which refund is granted provided such payment is subsequent to March 31, 1975. It would be appropriate to set out sub-section (1A) of Section 244 in full:

"244. (1A) Where the whole or any part of the refund referred to in sub-

section (1) is due to the assessee, as a result of any amount having been paid by him after the 31st day of March, 1975, in pursuance of any order of assessment or penalty and such amount or any part thereof having been found in appeal or other proceeding under this Act to be in excess of the amount which such assessee is liable to pay as tax or penalty, as the case may be, under this Act, the Central Government shall pay to such assessee simple interest at the rate specified in sub-section (1) on the amount so found to be in excess from the date on which such amount was paid to the date on which the refund is granted.

Provided that where the amount so found to be in excess was paid in instalments, such interest shall be payable on the amount of each such instalment or any part of such instalment, which was in excess, from the date on which such instalment was paid to the date on which the refund is granted:

Provided further that no interest under this sub-section shall be payable for a period of one month from the date of the passing of the order in appeal or other proceeding:

Provided also that where any interest is payable to an assessee under this sub-section, no interest under sub-

section (1) shall be payable to him in respect of the amount so found to be in excess."

DECISIONS OF HIGH COURTS:

Coming to the decided cases, the first one which considered the meaning of the expression "regular assessment" is of the Bombay High Court in Sarangpur Cotton Manufacturing Company Limited v. Commissioner of Income Tax (31 I.T.R.698). It related to the assessment year 1947-48, which means that the matter was governed by Section 18A before its amendment in 1952. According to the said provision, interest was payable on the whole of the amount paid by way of advance tax from the date of payment "till the date of assessment (hereinafter called the "regular assessment" under Section 23...")". During the financial year relevant to the said Assessment Year, the assessee paid advance tax in a sum of Rs.12,95,508/- in three equal instalments. An assessment was made (hereinafter referred to as the "Original Assessment Order") on March 30, 1948, according to which the assessee became liable to pay a further tax of Rs.6,00,000/- in addition to the advance tax amount already paid. He paid it and preferred an appeal to the Appellate Assistant Commissioner against the order of assessment. The Appellate Assistant Commissioner set aside the assessment and directed the Income Tax Officer to make a fresh assessment. Accordingly, the Income Tax Officer

made a fresh assessment on January 25, 1954 (hereinafter referred to as the "Revised Assessment Order") according to which the total assessable income was substantially reduced. The tax now payable was less than the amount of tax paid as advance tax. The Income Tax Officer refunded the excess amount of tax paid. The assessee laid a claim for interest on the excess amount of advance tax paid as well as on the amount of Rs.6,00,000/- paid pursuant to the original assessment order from the respective dates of payment till the date of refund. (Before the High Court, the assessee gave up his claim for interest on the sum of Rupees six lakhs.) So far as the claim for interest on excess advance tax paid is concerned, his case was that once the original order of assessment was set aside by the appellate authority and a revised assessment order was made pursuant to the appellate order, it is that assessment which is the regular assessment for the purposes of Section 18A(5) and, therefore, he is entitled to interest till that date, viz., January 25, 1954. This contention was rejected by Chagla, C.J., speaking for the Division Bench. The learned Chief Justice gave two reasons for rejecting the assessee's contention. The first reason reads thus:

> "When one looks at the matter a little more closely, it becomes clear that, when the Income-tax Officer made the order on the 30th of March, 1948, under provisions of this section, interest ceased to run. At that date the order made by the Income-tax Officer was the only effective and valid assessment. Can it be said that, if interest had ceased to run, the running of interest was revived when that order of assessment was set aside and a different terminus was fixed for the calculation of interest? It seems to us that what the Legislature contemplated in using the expression "the date of the assessment" was the factual date of the assessment and it was not considering the legality or the validity of the assessment made. It wanted to fix two terminii for the calculation of interest. With regard to one terminus there was no difficulty; that was the date of payment of advance tax by the assessee. The other terminus had to be fixed and the other terminus was the date when the regular assessment was made. That terminus having been fixed, it could not be altered by any subsequent event or by the vicissitudes through which the assessment order might pass.
>
> If there had been no appeal and if the assessment order had not been set aside, obviously this would have been the only terminus. The Legislature did not contemplate that the terminus should be altered because the assessee chose to appeal and because the Appellate Assistant Commissioner set aside the order."
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> (Emphasis added) The second reason, probably a more substantial one, reads:
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> "Let us look at this order from another point of view. When the order of assessment was made, it was competent to the Taxing Authorities to recover the tax, and the liability to refund would only arise when the assessment order was set aside. But the Taxing Department would have the use of the assessee's money from the date when the amount was paid till the Taxing Authorities chose to refund the money. Could it be suggested that the position would be different with regard to advance payment of tax? 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. In this very case, the assessee paid an additional amount of Rs.6 lakhs. Although it put forward a claim for interest on this amount also, that claim was ultimately abandoned. Therefore, if we were to give the construction to section 18A as suggested by Mr. Palkhivala, then the advance tax would stand on a different footing from the payment of Rs.6 lakhs, which was paid by the assessee under the order of assessment. The scheme of the section seems to be that interest is payable for the period during which there is no liability to pay upon the assessee. But once the order of assessment is made, the liability to pay arises, and even though the order may be subsequently set aside, there is no obligation upon the Department to pay any interest in respect of the amounts which they recovered as tax under the original assessment order."
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> Prior to 1944, it may be recalled, tax was payable only after and in pursuance of an order of assessment. It was only by virtue of Section 18A(5) (introduced in 1944) that tax became payable in advance of the assessment. But once an assessment is made - according to this reasoning - the advance nature of the tax ceases. It becomes relatable and referable to the assessment order just as the amount paid under and in pursuance of the assessment order. Actually, in the above case, besides the advance tax paid during the relevant financial year, the assessee had also paid a sum of Rupees six lakhs pursuant to the original assessment order.

If the assessee says that he is entitled to interest on the excess amount paid by way of advance tax upto the date of the revised assessment order, points out Chagla, C.J., there is no reason why he should not be entitled to claim interest on Rupees six lakhs paid pursuant to original assessment order from the date of its payment till the date of the revised assessment order. At that time, it must be remembered, there was no provision under which interest could be claimed on the said amount of Rupees six lakhs. Chagla, C.J. points out the inequity or illogicality in paying interest on the excess amount of advance tax from the date of payment till the date of revised assessment order and in denying any interest on the amount of Rupees six lakhs paid pursuant to the original assessment order. The learned Chief Justice accordingly held that when Section 18A(5) spoke of "the date of the assessment (hereinafter called the "regular assessment") made under Section 23", it referred to the original order of assessment.

The above decision was followed by a Division Bench of the Allahabad High Court in Sir Shadilal Sugar and General Mills Ltd. v. Union of India (85 I.T.R.363), which is the subject-matter of Civil Appeal No. 1395 of 1974 before us. The assessment year concerned in this case is 1960-61 and, therefore, governed by the Indian Income Tax Act, 1922. R.S. Pathak, J., (as he then was) speaking for the Bench gave an additional reason in support of the view taken in Sarangpur Cotton. The learned Judge referred to sub-section (6) of Section 18A (corresponding to Section 215 of the present Act) and pointed out that by virtue of the third proviso to the said sub-section, where the amount on which interest is payable by the assessee is reduced as a result of appeal (or revision or reference, as the case may be) the interest will be reduced accordingly and the excess interest will be refunded together with the amount of income tax refundable but that a similar provision was not found in Section 214. The learned Judge pointed out, "the express enactment of this provision points

it to the conclusion that in its absence, the computation of the interest would ordinarily have to be made by reference to the date of the original assessment order".

The third judgment in the sequence - taking a contrary view - is of the Calcutta High Court rendered by a learned Single Judge, Sabyasachi Mukharji, J., in Chloride India Limited v. Commissioner of Income Tax, West Bengal (106 I.T.R.38). The assessment year concerned was 1964-65 and thus governed by the 1961 Act. The assessee paid certain amount by way of advance tax. The appeal preferred against the order of assessment was allowed in part, pursuant to which the Income Tax Officer revised the original assessment. According to the revised assessment order, a sum of Rs. 4,28,260.40p. was found refundable to the assessee. The amount was refunded but interest was refused by the Income Tax Officer as well as by the Commissioner under Section 264. The assessee questioned the said refusal by way of a writ petition. The learned Judge held that the "regular assessment" referred to in Section 214 means the revised assessment order and not the original order of assessment. The learned Judge relied upon the earlier Bench decision of that Court in Kooka Sidhwa & Co. v. Commissioner of Income Tax (54 I.T.R.54) wherein it was held that an order of assessment made by the Income Tax Officer pursuant to an appellate order is yet an order of assessment within the meaning of Section 23 and appealable as such. The learned Judge pointed out that for all purposes, the revised assessment order is the order of regular assessment and not the original assessment order which has indeed ceased to exist. Mukharji, J. distinguished the decisions of the Bombay and Allahabad High Courts in Sarangpur Cotton and Sir Shadilal Sugar Mills respectively as having been rendered under the provisions of the 1922 Act which, said the learned Judge, were different from those in the present Act. The Revenue urged before the learned Judge that when the Parliament enacted the 1961 Act and used the expression "regular assessment" in Section 214, it must be presumed to be aware and approved of the interpretation placed thereon by the two High Courts, Bombay and Allahabad. The learned Judge declined to accede to the said contention holding that the expression construed by the said High Courts was not the expression "regular assessment" but the words "assessment (hereinafter called the "regular assessment")".

We may next refer to the decision of the Madras High Court in Commissioner of Income Tax, Tamil Nadu v. Rajalakshmi Mills (125 I.T.R.141). The assessment year concerned was 1968-69. It was a case where the original assessment order was rectified by the Income Tax Officer under Section 154. The Division Bench held that the original assessment order as rectified is the regular assessment order or the correct assessment order, as it may be called. On that basis, it held that the assessee was entitled to grant of interest on the advance tax refunded upto the date of the rectified assessment order. The same view was re- affirmed in Triplicane Urban Society v. Commissioner of Income Tax, Madras (126 I.T.R.125). This was, however, a case where the assessment order was modified, i.e., revised pursuant to the appellate order.

Reference may now be made to the decision of the Delhi High Court in National Agricultural Cooperative Marketing Federation of India Ltd. v. Union of India (130 I.T.R.928). The assessment year concerned therein was 1973-74. The assessee paid advance tax during the relevant financial year but contended during the course of assessment proceeding that by virtue of Section 80P of the Act, its income was not liable to tax. The Income Tax officer rejected the contention. On Appeal, the Appellate Assistant Commissioner upheld the assessee's contention, in pursuance of which, a

revised assessment order was made by the Income Tax Officer substantially reducing the amount of tax. The assessee claimed interest on the excess amount of tax paid upto the date of refund both under Section 214 as well as Section

244. Meanwhile, sub-section (1A) of Section 244 had also come into force with effect from October 1, 1975. S. Ranganathan, J., speaking for the Bench, held: (a) the payment of advance tax has material significance only till the initial regular assessment is made. Thereafter, it has no separate existence by itself but gets merged in the tax demand payable by the assessee pursuant to the assessment order; (b) the expression "regular assessment" in Section 214 should be construed as referring only to the original assessment and not to subsequent modifications thereof, pursuant to appeal or revision. There is no change in the meaning of the expression "regular assessment" from the 1922 Act to the present Act; (c) the fact that earlier no interest was provided on the amount refunded as a result of appeal/revision and the further fact that Section 244, even when enacted, did not provide for interest from the date of payment or date of original assessment, but only after expiry of a reasonable period after the passing of order (which entitles the assessee to refund) should induce the court to hold that interest is payable under Section 214 only upto the original assessment order; (d) by interpreting the expression "regular assessment" as referring to original assessment, no anamoly will result; it is consistent with the scheme of the provisions relating to advance tax; (e) the words "regular assessment" in sub-section (1A) of Section 214 carry a different meaning than the meaning the said words carry in sub-section (1); (f) the expression "regular assessment" should carry the same meaning in both Sections 214 and 215; it cannot be different; (g) inasmuch as the advance tax as well as the tax, if any, paid pursuant to the assessment order - or otherwise - get merged into one tax, payable under and referable to the assessment order, the assessee is entitled to interest on the amount refunded as a result of the revised assessment order (made pursuant to the appellate, revisional or reference order) from the date of payment till the date of refund. It would thus be seen that this decision while affirming the basic premise of Sarangpur Cotton and Sir Shadilal Sugar, seeks to place the amount paid by way of advance tax also within the purview of sub-section (1A) of Section 244. The learned Judge held that the introduction of sub-section (1A) in Section 244 has altered the previous position and that it entitles the assessee to get interest on the tax paid by him in pursuance of the original assessment provided the said payment was after March 31, 1975. The learned Judge held that the tax paid by the assessee pursuant to original assessment includes, by fiction, advance tax as well. Once a fiction is so created, the learned Judge held, it must be given its full effect. Support was sought for this proposition from the language of Section 219.

In Trustees of H.E. Nizam Religious Endowment Trust v. Income Tax Officer (131 I.T.R.239), a Bench of the Andhra Pradesh High Court followed the decision of the Bombay and Allahabad High Courts and dissented from the view taken by the Calcutta High Court.

A Full Bench of the Bombay High Court considered the question once again in Commissioner of Income Tax v. Carona Sahu Company Ltd. (146 I.T.R.452). Bharucha, J., speaking for the Full Bench, reviewed all the decisions of the High Courts rendered till then and affirmed the following propositions: (a) interest is compensatory in character but there is no right to receive interest except under a statute. The right to receive interest, therefore, depends upon the construction of the relevant statute. (b) Section 215 is a counter-part of Section 214 and, therefore, its interpretation is

of cardinal significance in the matter of interpreting Section 214. The absence of a provision in Section 214 corresponding to the provision contained in sub- section (3) of Section 215 indicates that the words "regular assessment" in both Section 214 and Section 215 mean only the original assessment and not the last operative order or the assessment made pursuant to an appellate/revisional order. The Full Bench affirmed the view taken by that court in Sarangpur Cotton. It dissented from the contrary view taken by the Calcutta and other High Courts.

A Full Bench of the Gujarat High Court considered the very issue in Bardolia Textile Mills v. Income Tax Officer (151 I.T.R.389). P.S. Poti, C.J., speaking for the Full Bench, opined that in such cases the final assessment made pursuant to appellate/revisional order is the only "regular assessment" for the purposes of Section 214 and not the original assessment. There cannot be two assessments for the same assessment year, the learned Chief Justice observed. The first order of assessment, he said, is substituted by the second order. Position is the same, the learned Chief Justice observed, whether the appellate/revisional authority sets aside the assessment and directs a fresh assessment to be made or merely directs the reduction of tax liability or effects other modification. The learned Chief Justice further held that in view of its clear language, sub-section (1A) of Section 244 cannot apply to or take in the amount paid by way of advance tax. Section 214(1) and Section 244 operate in different fields and, therefore, Section 244 cannot be dovetailed into Section 244(1A), he said. When the decision in Sarangpur Cotton and its reasoning was commended to the Full Bench for its acceptance, Poti, C.J., declined to accede to the same in the following words:

> "No doubt there is logic in this approach, though logic alone will not be determinative of the controversy arising from a taxing statute. The approach of the learned Judges in that case is evidently that if money paid to satisfy the demand pursuant to an assessment does not earn interest from the date of payment on refund, why should advance tax credited as amount towards tax due earn such interest from that date. Now let us assume that s.214(1) does not envisage the assessee earning interest on the excess payment of advance tax after the first assessment, even though due to later developments he gets a refund of such excess. What happens to the amount paid by an assessee subsequent to March 31, 1975, pursuant to the order of assessment? Section 244(1A) entitles him to interest on such amount for the period from the date of the payment up to the date when, on account of the amount being found in excess in appeal or other proceedings, he gets a refund. He will not, in that event, get interest for excess payment made earlier as advance tax from the date of first assessment though he will be entitled to get interest on an amount paid pursuant to an assessment. This situation could not have been envisaged by Chagla, C.J. We are only indicating the danger of interpreting the section on the basis of the logic in the passage above quoted."

The view taken by the Gujarat Full Bench is thus opposed to the view taken by Bombay, Allahabad and Andhra Pradesh and approves the contrary view taken inter alia by Calcutta and Madras High Courts. This decision too refers to almost all the decisions on the subject rendered till then.

Reference may next be made to the decision of the Karnataka High Court in Commissioner of Income Tax v. Deep Chand (183 I.T.R.299). The Division Bench referred to the difference of opinion among the High Courts and chose to follow the reasoning and conclusion of the Full Bench of the Gujarat High Court in Bardolia Textile Mills. In addition to the reasons given by the Gujarat Full Bench, the learned Judges pointed out a few more reasons, which in their view, support the said view, viz., (a) by virtue of sub-section (1A) of Section 214, as substituted by the Taxation Laws (Amendment) Act, 1984 with effect from April 1, 1985, the assessee is entitled to interest on the excess amount paid as advance tax, even if the said excess is the result of an appellate/revisional order. This subsequent amendment "sheds light on the earlier law and gives a go-by to all the controversies". The court is entitled to take note of the subsequent law, in certain situations, for ascertaining the intention of the legislature; (b) since payment of interest is compensatory in nature, there is no logic behind limiting it to a particular artificial date; (c) the interpretation favoured by them acts as an assurance to the assessee that in case the amount paid by him is found to be excess, he will get interest thereon till realisation just as he is put on notice by Section 215 that if he fails to pay the prescribed percentage of assessed tax by way of advance tax, he shall be liable to pay interest thereon. This interpretation really advances the object of the enactment;

(d) the complimentary nature of Sections 215 and 214 is also a pointer in favour of this interpretation.

Reference may also be made to the decision of the Bombay High Court in Cyanamid India Ltd. v. K.N. Anantharama Ayyar and Ors. (203 I.T.R.561). The Division Bench, while following the Full Bench decision in Carona Sahu, held that a plain reading of sub-section (1A) of Section 244 leaves no manner of doubt that the liability to pay interest under the said sub-section covers also the advance tax paid prior to March 31, 1975 but credited towards tax liability determined under an order of assessment passed after March 31, 1975.

We do not think it necessary to refer to the other decisions of the High Courts cited before us for the reason that they follow either the Bombay/Allahabad view or the Calcutta/Gujarat view, as the case may be.

P A R T = I I Having noticed the various shades of opinion, we may now proceed to state what according to us should be the interpretation to be placed on the expression "regular assessment" in Section 214(1). We may forewarn that this is one of those questions which does not admit of one clear-cut answer. The very difference of opinion among the several High Courts in the country and the several shades of opinion expressed by them bear eloquent testimony to it. Whichever view one adopts, it may still leave some ground for criticism. Even so, the question has to be answered keeping in mind the legislative intent, language used in the relevant provision and the scheme of the enactment. Let us first notice a few features of Section 18A(5)/Section 214(1).

The first feature to be noted is that under Section 18A(5) the date from which interest was payable (whether upon the whole amount or on the excess amount, as the case may be) was the date of payment of the advance tax whereas under Section 214, the date from which interest is payable is not the date of payment but the first day of the relevant assessment year. This is clear from the

words "from the first day of April next following the said financial year" in Section 214(1). This feature of Section 214(1) indicates that the Parliament has now prescribed an artificial date from which interest is payable though logically speaking, one can say that it should have provided for payment of interest from the date of payment as was provided by Section 18A(5) of the 1922 Act. This is an aspect elucidated at a later stage in this judgment.

The second feature is that under Section 18A(5) the interest was payable upto the date of assessment - described as "regular assessment" - which meant the assessment made under Section 23. Similarly, under Section 214(1), the interest is payable upto the date of "regular assessment" which expression is defined by the Act to mean the assessment made under Section 143 or Section 144. The payment of interest is not upto the date on which refund is granted as in the case of refund under Section 244(1). In other words, Section 214(1), fixes two artificial terminii, viz., the date from which interest is payable and the date upto which interest is payable. These terminii are fixed and constant though the differing meanings attached to the expression "regular assessment" lead to different consequences.

We may give an illustration to explain what we mean. Take a case where as a result of the original assessment made on March 31, 1976 for the assessment year 1975-76, a sum of Rs. 10,000/- is found to have been paid by way of advance tax in excess of the tax assessed. The assessee will be entitled to refund of the said amount of Rs.10,000/- with interest thereon calculated at the prescribed rate from the first day of April, 1975 upto March 31, 1976. On this score, there is no controversy. But, say, in this very illustration, the assessee files an appeal and as a result of the appellate authority's order, the assessment is revised on March 31, 1977 as a result of which it is found that the assessee has paid in all a sum of Rs.15,000/- by way of advance tax in excess of the assessed tax. In such a situation, the assessee would be entitled to the total refund of Rs. 15,000/- but so far as interest is concerned, he would be entitled to it only on the sum of Rs. 10,000/- with effect from April 1, 1975 upto March 31, 1976, according to the Bombay/Allahabad view, whereas according to the Calcutta/Gujarat view, the assessee would be entitled to interest under Section 214 on the whole sum of Rs. 15,000/- with effect from April 1, 1975 upto March 31, 1977. This is the natural and logical consequence flowing from their respective view points. We may clarify that in the above illustration, we have not taken into consideration the effect of sub-section (1) of Section 244 or sub-section (1A) of Section 244 (introduced with effect from October 1, 1975) or sub-section (1A) of Section 214 (which is effective from April 1, 1968) or the substituted sub-section (1A) of Section 214 (effective from April 1, 1985) to which provisions we shall advert to a little later.

Coming to the core question, viz., the meaning and purport of the expression "regular assessment" in Section 214(1), we are of the opinion that the said expression means and refers to the original assessment made under Sections 143/144. This conclusion we arrive at on the basis of more than one reasoning. As we shall demonstrate presently, whichever way one approaches the issue, he comes to the same conclusion as we have arrived at. The first approach - which we may call the long haul approach - involves a broad survey of the nature of advance tax and the scheme of the enactment insofar as it is relevant to the question herein while the second approach - which may be called the `short haul approach' - emphasizes the intrinsic indicators in Section 214 itself which lead unmistakably to the same conclusion, viz., that "regular assessment" in Section 214 means the first

or original assessment, as it may be called and not any other. First, the long haul:

TRUE NATURE OF ADVANCE TAX

The charge on a person's total income of a given year is imposed by Section 4. It has to be quantified by the assessment order under Section 143 or 144. If it is found as a result of the assessment order that any tax is payable, the Income Tax Officer has to issue a notice of demand under Section 156 for the amount of tax determined as payable by him in the assessment order. It was held by the Privy Council in Doorga Prosad v. The Secretary of State [(1945) I.T.R.285 (P.C.)] that though the tax was popularly described as due for a certain year, it was not in law so due. It was calculated and assessed with reference to the income of the assessee for a given year, but it became due when demand was made under Section 29 and Section 45 (Sections 156 and 220(1) of the 1961 Act).

The position under the Act of 1961 is the same. The assessee has to pay tax pursuant to an assessment order. It becomes due and payable under Section 156 of the new Act when a notice of demand under Section 156 is served upon him. It must be paid within the time and at the place and to the person mentioned in the notice of demand under the provisions of Section 220.

If the tax liability is reduced in appeal or in any other proceeding, then the excess amount of tax realised will have to be refunded to the assessee under Section 240. If the refund is delayed beyond the period mentioned in Section 244, interest will have to be paid for the period commencing from the date on which the three months' period mentioned in Section 244(1) expires and till the date on which the refund is granted. But, no interest is payable for the excess amount of tax realised pursuant to the notice of demand under Section 156 from the date of payment to the date of the appellate order. Interest is also not payable for the period which is granted to the Income Tax Officer to make the refund under Section 244. The amount of advance tax which was utilised to set off the tax demand raised in the assessment order is nothing but payment of tax pursuant to the assessment order and will have to be similarly treated.

Sub-section (1A), inserted by Taxation Laws (Amendment) Act, 1975 provides for payment of interest on tax or penalty paid after March 31, 1975 pursuant to an order of assessment or penalty. If as a result of an appeal or other proceeding refund becomes due, interest shall be payable on the refund amount from the date of payment of tax or penalty to the date of refund. No interest, however, will be payable for a period of one month from the date of passing of the order in appeal or other proceeding as a result of which refund becomes due. In this sub-section, payment of tax or penalty after March 31, 1975 will include adjustment of any advance tax towards the tax liability of an assessee pursuant to an assessment order after March 31, 1975. It was rightly pointed out by the Punjab and Haryana High Court in the case of Commissioner of Income Tax v. Leader Engineering Works [(1989) 178 I.T.R.529] that the advance tax paid lost its identity the moment it was adjusted towards the tax liability created under the regular assessment and took the shape of payment of tax in pursuance of the order of assessment.

Section 214 provides for payment of interest to an assessee on the excess amount of advance tax paid. After adjustment of advance tax at the time of regular assessment, if some balance remain to the credit of the assessee, that balance is treated as excess amount of advance tax which has to be refunded with interest under Section 214.

The scheme of advance payment of tax will have to be seen in the background of the aforesaid provisions of the Income Tax Act. Under the repealed Act of 1922 as well as under the new Act of 1961, income tax has to be collected by a direct levy by a notice of demand pursuant to an assessment order. Advance tax is collected even before income tax becomes due and payable. Pre-assessment collection of taxes can be made indirectly by deduction at source and directly by way of advance payment of tax. The two methods of realisation of tax even before any assessment is made are authorised by sub-section (2) of Section 4 and are incorporated in Chapter XVII of the Income Tax Act which deals with `Collection and Recovery of Tax'. Sub-section (1) of Section 190 makes it clear that this method of payment of tax will not prejudice the charge of tax under the provisions of sub-section (1) of Section 4, nor will it modify the assessee's liability to pay income tax directly pursuant to an assessment order. The provisions of Sections 190 and 191 are as under:-

> "190(1). Notwithstanding that the regular assessment in respect of any income is to be made in a later assessment year, the tax on such income shall be payable by deduction at source or by advance payment, as the case may be, in accordance with the provisions of this Chapter.
>
> (2) Nothing in this section shall prejudice the charge of tax on such income under the provisions of sub- section (1) of Section 4.
>
> 191. In the case of Income in respect of which provision is not made under this Chapter for deducting income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of this Chapter, income-tax shall be payable by the assessee direct."

Chapter XVII lays down three methods of collection and recovery of tax:

> "(1) Deduction at source (Sections 192-
>
> 206).
>
> (2) Advance payment of tax (Sections 207-219).
>
> (3) Collection and recovery pursuant to a notice of demand (Sections 220-234)."

The third method - Collection and Recovery pursuant to a notice of demand - is really the method of realising Income Tax levied on the total income of a person for a given year under the provisions of Section 4(1) which is the charging section of the Income Tax Act. This process of collection and recovery begins when tax has become due and payable by an assessee pursuant to an assessment

order (Section 220).

But deduction of tax at source or advance payment of tax is made not because of the charge imposed by Section 4(1) of the Act but even before income tax has become due and payable. Sub-section (2) of Section 190 lays down that the liability to pay tax by deduction at source or by advance payment shall not prejudice the charge of tax under sub-section (1) of Section 4. Credit for tax deducted at source will have to be given under Section 199 to the assessee from whose income tax has been deducted in the regular assessment (including a provisional assessment). The amount of tax deducted at source is adjusted and set off against the amount of tax determined as payable in the assessment order under Sections 143 or 144. There is, however, no provision like Section 214 for granting of interest if the total amount of tax deducted at source turns out to be more than the amount of tax assessed as payable on the basis of total amount of the corresponding assessment period. In such a case, refund of the excess amount of tax realised has to be made under the provisions of Chapter XIX.

Advance tax is calculated on the basis of the assessed amount of income of the latest year of which regular assessment has been made and not on the basis of total income of the relevant previous year. Sub-section (2) of Section 4 has specifically authorised recovery of advance tax and deduction of tax at source.

There are provisions for payment of interest, by the Central Government, in case of excess payment of advance tax, and by the assessee, if there is a shortfall. Section 219 lays down that the amount of advance tax collected in respect of any previous year shall be `treated as payment of tax in respect of the income of the period which would be the previous year following the financial year in which it was payable and credit therefore shall be given to the assessee in the regular assessment'.

> "Credit for advance tax.
>
> 219. Any sum other than a penalty or interest, paid by or recovered from an assessee as advance tax in pursuance of this Chapter shall be treated as a payment of tax in respect of the income of the period which would be the previous year for an assessment for the assessment year next following the financial year in which it was payable, and credit therefor shall be given to the assessee in the regular assessment: Provided that where, before the completion of the regular assessment, a provisional assessment is made under section 141A, the credit shall be given also in such provisional assessment."

(The proviso was added by Finance Act, 1968 from April 1, 1968.) This section introduces a legal fiction that amount of advance tax paid shall be treated as payment of tax in respect of income of the relevant previous year. It also provides that credit for this advance tax has to be given to the assessee in the regular assessment. These provisions were necessary because the liability to pay advance tax has been imposed by Sections 207 and 208 and is calculated on the basis of the income computed in the latest previous assessment and adjusted in the manner laid down in Section

209. This is not the same thing as the charge of income tax imposed by Section 4 on the total income of the previous year which has to be computed in the manner laid down in Chapter XIV of the Act. The purpose of collection of advance tax is stated in Section 199 which declares that the amount of advance tax paid by the assessee is to be treated as payment of income tax which is levied by Section 4 on the total income of the previous year. The Income Tax Officer will have to determine the amount of income tax payable by the assessee in the assessment order. At that stage, he has to treat the amount of advance tax paid by the assessee as payment of income tax in respect of the income of the relevant assessment period. In other words by legal fiction the amount of advance tax paid by or recovered from the assessee is treated as payment of income tax in respect of income of the period "which would be the previous year for an assessment for the assessment year next following the financial year in which it was payable". Once the amount of advance tax is treated as payment of tax in respect of income of the relevant previous year and credit as such for the amount has been given to the assessee in the assessment order, the amount loses its character of advance tax and becomes income tax paid in respect of the income of the relevant previous year. The interest payable under Section 214 on any excess amount standing to the credit of the assessee is limited to the date of order of assessment and not to the date of the refund. The amount retained by the Income Tax Officer towards satisfaction of the demand raised in the assessment order must be treated as payment of income tax by the assessee. If the liability is reduced in appeal, refund will be ordered of the amount of income tax which was paid in excess of the reduced demand. Interest under Section 214 is payable only upto the date when the amount of advance tax is treated as payment of income tax and is set off against the income tax demand raised in the assessment order. The excess amount, if any, after adjustment of the amount of income tax payable by the assessee will have to be refunded under the provisions of Chapter XIX of the Income Tax Act. Interest on delayed refund, if any, has to be paid under Section 243. If in the assessment order the Income Tax Officer determines that any sum is refundable to the assessee, that sum will have to be refunded under Section

237. If the refund is not paid within due time, interest will have to be paid under Section 243 on the refundable amount till the date of the order of the refund. The underlying idea behind this section has been taken to the logical conclusion by Section 244(1A) which applies where the assessee pays tax or penalty after March 31, 1975 pursuant to an order of assessment or penalty. If as a result of appeal or other proceeding the payment of tax is determined to be in excess of the amount which the assessee was liable to pay, the Central Government has to pay interest to the assessee on the excess amount from the date on which the tax was paid to the date on which the refund was granted (excluding the month in which the order was passed). Payment of tax after March 31, 1975 will include the amount of advance tax which was retained by the Income Tax Officer after March 31, 1975 and was adjusted towards the tax liability of an assessee pursuant to an order of assessment.

THE SIGNIFICANCE OF MAKING THE INTEREST PAYABLE ONLY FROM THE FIRST DAY OF THE ASSESSMENT YEAR.

---------- In fact, the answer to the question raised in this case becomes obvious, if it is borne in mind that interest payable on advance tax by the Central Government under Section 214 is only `from the 1st day of April next following the said financial year to the date of the regular assessment'.

Why is the interest payable from 1st day of April of the relevant year? Because on the 1st day of April of any assessment year, liability to refund the amount of tax realised in excess of tax payable in respect of the income of the previous accounting period comes into existence. On that date, i.e., Ist April of the assessment year, the assessee acquires a right to get refund of any amount of tax realised from him which is in excess of the tax payable by him in respect of the income of the previous year. The liability to pay tax arises by virtue of the charging section and it arises not later than the close of the previous year, though quantification of the amount and its payability is postponed till the date of assessment. [Wallace Brothers & Co. Ltd. v. Commissioner of Tax (16 I.T.R.240, 244 (P.C.)]. This decision was cited with approval by this Court in the case of Kesoram Industries & Cotton Mills Ltd. v. Commissioner of Wealth Tax (Central), Calcutta (59 I.T.R.767), where it was held that a liability to pay income tax was a present liability and becomes a perfected debt, at any rate on the last day of the accounting year, even though the tax became payable only after it was quantified in the assessment order.

Therefore, on the Ist April of a given year, the assessee becomes entitled to refund of the advance tax which was in excess of the amount of tax payable for that year, because on that date the tax liability and consequently the amount of refund become ascertainable. The right to get refund comes into existence on the very first day of April of the assessment year concerned and, therefore, interest has to be paid on the amount refundable on and from that date. The assessment of income of the previous year may be made on a later date, but assessment only particularizes the amount which becomes refundable on the first day of the assessment year. The assessment does not create the right to get refund.

This Court in the case of Neptune Assurance Co. Ltd. v. Life Insurance Corporation of India (48 I.T.R. 144) dealing with a case of refund of tax deducted at source explained the principle in the following manner:

> "Now the Finance Acts for the years 1955 and 1956, like all other such Acts, provided the rates at which income-tax was payable for the assessment years commencing from 1st April of the year in which the Acts were respectively passed. It would follow that on the Ist of April in 1955 and in 1956 the amount of the tax payable by the appellant became determinable for the income was then capable of computation and the rate was also known. So on these dates the appellant became entitled to a refund of the amount of tax deducted at the source or treated as paid on its behalf under the provisions of the Income-tax Act earlier mentioned which was in excess of the tax payable by it for each of these years. The assessment only particularized the amounts; it did not create the right, for the right came into existence as soon as according to the relative Finance Act it became ascertainable that the tax deducted at source or treated as paid on its behalf had exceeded the tax payable. That right, therefore, was an asset contemplated in Section 7 of the Act in 1956."

It will be seen from the aforesaid that right to get refund arises because of the advance payment of tax is in excess of tax liability of a particular year. Since this right becomes known and ascertainable because of the provisions of the Income Tax Act and the annual Finance Act on the Ist of April of an

assessment year, interest is payable to the assessee on the excess amount under Section 214 from that date. In other words, interest becomes payable as soon as the liability to refund the excess amount arises. It should also be noted that 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 on seventy five percent of the deficient amount of tax by the assessee from first day of the assessment year to the date of the assessment order. Interest is payable from first day of April of the relevant year, because on that date a perfected debt had come into existence which was in excess of the amount of advance tax paid by the assessee. Once the tax paid by the assessee is adjusted against the income tax demand in the assessment order, the assessee ceases to be liable to pay interest on the outstanding amount. By virtue of the provisions of Section 215, interest is payable only upto the date of assessment order. In other words, no interest is payable by the Central Government under Section 214 and by the assessee under Section 215 beyond the date of assessment order.

THE SCHEME OF THE ACT

(A) One may ask, why does the refund payable by the Central Government not carry interest beyond the date of assessment order upto the date of the refund? The answer to this question is provided by Section 219 of the Income Tax Act. Under this section, the amount of advance tax paid or recovered from an assessee has to be `treated as a payment of tax in respect of the income of the period which would be the previous year for an assessment for the assessment year next following the financial year in which it was payable'. The credit for this amount will have to be given to the assessee in the regular assessment. In the assessment order, the Income Tax Officer has to assess the total income and determine the sum payable by an assessee or refundable to him on the basis of such an assessment. This means that in the assessment order, the Income Tax Officer will have to give credit for the advance tax paid by the assessee by treating the entire amount as income tax paid by the assessee. Thereafter, if there is any excess sum it will be refunded or if there is any shortfall in the payment of advance tax, that will be recovered by the Income Tax Officer. The amount standing to the credit of the assessee, upon assessment and after adjustment of the tax liability as quantified in the assessment order, loses its character as advance tax. It becomes an amount refundable as determined in the order of assessment. If after adjustment of the tax liability any excess amount is standing to the credit of the assessee, interest will be paid on that excess amount upto the date of the assessment order and, thereafter, the assessment order will contain a direction to refund the excess amount. The amount will be refunded with interest, if any, under Section 243.

Likewise, if after adjustment it is found that the liability to pay tax is more than the amount standing to the credit of the assessee, the Income Tax Officer will issue a notice of demand to recover the outstanding balance. Interest on the amount of shortfall will not be payable under Section 215 beyond the date of the assessment order, because on that date after adjustment of the amount standing to the credit of the assessee against his liability to pay tax has been made, the deficient amount becomes tax due and payable by the assessee pursuant to the assessment order. The Income Tax Officer may issue a notice of demand under Section 156 and recover the amount in accordance

with the procedure laid down in Chapter XVII-D of the Income Tax Act, 1961.

(B) The next question is: is any interest payable under Section 214, if the amount of tax determined as payable by the Income Tax Officer is reduced in appeal? Here again, the answer will depend upon the scheme of the Act. The advance tax is quantified on the basis of the assessed income of the latest previous year in respect of which an assessment has been made. Income tax is payable on the total income of the relevant previous year. The amount of advance tax which is not income tax levied by Section 4(1) and computed under Section 143 is treated by Section 219 as `payment of tax in respect of the income of the period which would be the previous year for the assessment year next following the financial year in which it was paid'. After computation of the total income under Section 143, the Income Tax Officer will have to determine the tax payable by an assessee. This he can do only after giving credit to the assessee for the amount of income tax standing to his credit. Once the amount of advance tax has been treated as income tax payable by the assessee and dealt with as such in the assessment order, there is no scope for treating it as advance tax once again. The excess realisation of advance tax, upon assessment and adjustment, becomes refundable under Section 237. No further interest is payable on it under Section 214. Interest, if any, on delayed refund is payable under Section 243. If a further sum of money becomes refundable as a result of any appellate order, that amount has to be refunded under Section 240 and with interest, if any, under Section 244. The refund amount is not treated any more in the Act as a portion of the advance tax paid by the assessee. What is refunded pursuant to an appellate order is a portion of what was treated and death with as payment of income tax by the assessee. Its character is in no way different from the tax paid pursuant to notice of demand under Section 156 by an assessee. Any tax refundable pursuant to the appellate order has to be dealt with in accordance with the provisions of Sections 240 and 244. There is no scope for invoking the provisions of Section 214 in such a situation.

If the assessment order is set aside by a higher authority in its entirety and a direction is given to pass a fresh assessment order, the position will remain the same. The amount of advance tax paid by the assessee loses its character by virtue of Section 199 as soon as the first assessment order is made and the advance tax is set off against the demand raised in the assessment order. If the assessment order is set aside, the adjusted amount of tax or the amount of tax refunded or refundable does not regain its character of advance tax once again. The argument made on behalf of the Revenue that in such a case a fresh assessment may be treated as `regular assessment' is misconceived and is not in consonance with the scheme of the Act and the language of various sections dealing with regular assessment.

(C) Income tax is realised by deduction at source, payment of advance tax and also direct payment after assessment. If regular assessment is construed to mean the revised assessment, strange consequences may follow. For example, if Rs.90,000/- in all is collected from an assessee on account of his tax liability of a given year, consisting of Rs.30,000/- by deduction at source, Rs.30,000/- by advance payment of tax and Rs.30,000/- by direct collection of the assessed amount and if as a result of any revised assessment pursuant to appellate order Rs.50,000/- becomes refundable to the assessee, the entire amount cannot be treated as refund of advance tax only.

The refund that is paid pursuant to an appellate order is of income tax paid pursuant to assessment order. Tax collected at source and advance tax are treated and credited as payment of income tax consequent upon the assessment order. The statute by Section 199 has treated the amount of tax deducted at source as tax paid by the assessee and by Section 209 has treated the amount of advance tax as payment of income tax.

Once the amount of advance tax is treated as payment of income tax and death with as such in the assessment order, neither the amount which is retained and adjusted against the income tax liability of the assessee nor the balance amount which has to be refunded can be treated as advance tax any longer. If any further refund becomes due and payable as a result of any appellate order, that refund will be of income tax paid by the assessee or treated as to have been paid by the assessee pursuant to the assessment order. (D) The legislative intent is apparent from the provisions dealing with interest payable by the assessee (Sections 215, 216 and 217). Interest under Section 215 is payable by an assessee only when he pays advance tax under Section 212 on the basis of his own estimate. If an assessee pays advance tax pursuant to a demand made by the Income Tax Officer under Section 210, the assessee has no liability to pay interest even if the payment of advance tax falls short of the tax ultimately computed to be paid. The liability to pay interest on the short-fall in payment of advance tax arises only when the amount of advance tax paid turns out to be less than seventy five percent of the tax determined on the basis of assessment after some statutory adjustments. The interest on the deficient amount will have to be paid from the Ist April of the appropriate financial year to the date of the regular assessment. Here also, the interest will not run beyond the period of the assessment order. If upon making an assessment, the Income Tax Officer finds that advance tax paid is less than seventy five percent of the tax due from the assessee after making of the statutory adjustments, then he will serve a notice of demand on the assessee, calling upon him to pay the tax due, to be paid by him. Thereafter, the tax will be recovered in accordance with the provisions of Chapter XVIID - Collection and Recovery (Sections 220 to 231). If there is any delay in payment of tax, the assessee may be liable to pay interest under sub-section (2) of Section 220. These provisions go to show that once an assessment order is made, liability to pay interest on the amount of the short-fall in payment of advance tax ceases under Section 215.

(E) The provisions of sub-section (3) of Section 215 are also of great significance in this connection. If the amount of advance tax, which was found deficient and on which interest was payable under Section 215(1) by the assessee is reduced as a result of an order of rectification, appeal or revision etc., the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded to the assessee. This provision is significant in two ways:

> (1) It was necessary to introduce the provisions of sub-section (3), because `regular assessment' in sub-section (1) of Section 215 only meant the first assessment made in regular course by the Income Tax Officer. Prior to insertion of sub-section (3), the amount of interest charged under Section 215 could not have been reduced as a result of any further proceedings under the Act whereby the quantum of assessment and consequently the tax payable stood reduced.

(2) The other point of significance is that sub-section (3) only speaks of reduction of interest when the amount on which interest was payable has been reduced. It does not deal with the situation where the amount on which interest was payable has been enhanced as a result of an order of rectification, appeal or revision. This can only mean the interest payable under Section 215(1) has to be calculated only with reference to the original order of assessment. The amount of shortfall determined in the original order of assessment will be the basis for levying interest. If the tax liability is increased as a result of any subsequent order of a higher authority, further interest under Section 215 need not be paid by an assessee because the liability had crystalised on the date of assessment.

The provisions of sub-sections (2), (3) and (4) of Section 215 have been adopted in Section 217 which deals with interest payable by an assessee, who has not hitherto been assessed to tax and has not sent the estimate required by Section 212(3) of the Act. Here again, an assessee has to pay interest from the Ist of April of the relevant year to the date of the regular assessment. If the assessment is enhanced by any subsequent proceeding, the liability to pay interest is not increased, but by virtue of the provisions of sub-section (3) of Section 215 which has been incorporated in Section 217, if there is a reduction in the amount of tax payable by the assessee subsequent to the assessment order, the assessee will get benefit of that and interest will be reduced accordingly.

If `regular assessment' in Section 217 is construed to mean revised order of assessment passed pursuant to a direction of a higher authority, the consequences will be very harsh for the assessee under Section 215 and also under Section 217. Section 217 deals with a case where the assessee had not been hitherto assessed to tax and has not sent an estimate as required by sub-section (3) of Section

212. In such a case, the assessee has to pay interest on seventy five percent of the assessed tax, subject to adjustments made in accordance with provisions of sub- section (1) of Section 215. If `regular assessment' means the final revised assessment, then even in a case of insignificant enhancement, the assessee will have to pay interest right upto the date of the revised assessment order. If such a construction is made then even if the assessee gets a small relief in appeal, the liability to pay interest may increase and the overall liability of the assessee will be larger.

The argument, which was upheld in some of the cases now under appeal, is that it will be inequitable if the assessee does not get interest on the amount of advance tax paid, when the amount paid in advance is refunded pursuant to an appellate order. This is not a question of equity. There is no right to get interest on refund except as provided by the statute. The interest on excess amount of advance tax under Section 214 is not paid from the date of payment of the tax. Nor is it paid till the date of refund. It is paid only upto the date of the regular assessment. No interest is at all paid on excess amount of tax collected by deduction at source. Before introduction of Section 244(1A) the assessee was not entitled to get any interest from the date of payment of tax upto the date of the order as a result of which excess realisation of tax became refundable. Interest under Section 243 or Section 244 was payable only when the refund was not made within the stipulated period upto the date of refund. But, if the assessment order was reduced in appeal, no interest was payable from the

date of payment of tax pursuant to the assessment order to the date of the appellante order.

Therefore, interpretation of Section 214 or any other section of the Act should not be made on the assumption that interest has to be paid whenever an amount which has been retained by the tax authority in exercise of statutory power becomes refundable as a result of any subsequent proceeding. (F) The word `assessment' has been construed under the Indian Income Tax Act, 1922 in a very wide sense. In the celebrated case of Commissioner of Income Tax v. Khemchand Ramdas (6 I.T.R.414), the Judicial Committee of the Privy Council observed:

> "One of the peculiarities of most Income-tax Acts is that the word `assessment' is used as meaning sometimes the computation of income, sometimes the determination of the amount of tax payable and sometimes the whole procedure laid down in the Act for imposing liability upon the taxpayer. The Indian Income Tax Act is no exception in this respect....."

This observation was cited with approval and applied by this Court in the case of C.A. Abraham v. Income Tax Officer (41 I.T.R.425). It must be presumed that the Legislature was aware of the wide interpretation of the word `assessment' given under the Indian Income Tax Act. A restricted meaning to the phrase `Regular Assessment' was given in the case of Sarangpur Cotton Manufacturing Co. Ltd. v. Commissioner of Income Tax (31 I.T.R.698). `Assessment' has been given an inclusive meaning in sub-section (8) of Section 2. It includes re-assessment. `Regular Assessment' has been defined in Section 2(4) to mean the assessment made under Section 143 or Section 144.

The procedure for making an assessment under Section 143 or 144 has been laid down in chapter XIV of the Income Tax Act, 1961 (Sections 139 to 158). Section 139 deals with return of income. Section 140 lays down by whom and how a return has to be signed and verified. Section 141 provides for provisional assessment which may be made even before a regular assessment. Section 142 empowers the Income Tax Officer to make enquiry before assessment. Sections 143 and 144 lay down the manner in which the Income Tax Officer will make an assessment of income. Under sub-section (1) of Section 143, the Income Tax Officer will straightaway assess the total income or loss of the assessee and determine the sum payable by him or refundable to him on the basis of the return of income filed by the assessee, if he was satisfied that the return was correct and complete. No enquiry was necessary before passing an order under this sub-section. But, if the Income Tax Officer was not satisfied with a return, he had to serve upon the assessee a notice requiring him to attend his office and produce any evidence on which he may rely in support of the return. After considering the evidence produced by the assessee and after taking into account all relevant material which he had gathered, the Income Tax Officer had to pass an order assessing the total income or loss of the assessee and determine the sum payable by him or refundable to him on the basis of such assessment.

A best judgment assessment under Section 144 has to be passed, if the assessee had failed to make a return of income even when required by the Income Tax Officer to do so under sub-section (2) of Section 139 and had failed to make a return or a revised return under sub-section (4) or sub- section

(5) of Section 139. A best judgment assessment could also be made under Section 144, if the assessee failed to comply with all the terms of a notice under sub-section (2) of Section 143. The assessment under Section 143 or 144 had to be completed within the time limit prescribed by sub- section (1) of Section 153. After completion of the assessment, the Income Tax Officer had to issue a notice of demand, if any sum was payable in consequence of the assessment order or notify to the assessee the amount of loss computed in the assessment order under Section 157.

If an appeal was preferred against an order of assessment passed by the Income Tax Officer under Section 143 or 144 and the order had to be modified pursuant to the assessment order, that will clearly not be an order under Section 143 or 144 simpliciter. A regular assessment is complete as soon as the Income Tax Officer passes an order assessing the total income or loss of the assessee and determines the sum payable by him or refundable to him within the period prescribed by sub-section (1) of Section

153. There is no provision for making modification or variation pursuant to an order of the higher authority in Section 143 or 144 of the Act. In this connection, the language of Section 153 is of significance. In sub-section (1), it speaks of assessment made under Section 143 or 144 and a time limit for passing such an order was laid down in that sub-section. Sub-section (3), however, speaks of "the assessment, reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order under Section 250, 254, 260, 262, 263 or 264". In sub-section (3), the assessment made to give effect to any finding or direction given by a higher authority is not described as an assessment under Section 143 or 144. For this type of assessment, the time limit laid down in Section 153(1) will not apply. If every conceivable form of computation of income is to be treated as `regular assessment', then there was no need to define the phrase `regular assessment' to mean an assessment under Section 143 or 144. There is nothing in the Act to suggest that `regular assessment' has been used in any other sense than the first assessment made under Section 143 or 144. Any modified or revised assessment after completion of the order under Section 143 or 144 will be a fresh order passed to implement the direction of a higher authority. The order will be erroneous and liable to be set aside if the direction of the higher authority is not faithfully carried out. The jurisdiction to pass such an order is conferred by the order of the higher authority. If the first order of assessment is set aside and the Income Tax Officer is directed to pass a fresh order of assessment, the position will be the same. The fresh assessment order will not be an order passed under Section 143 or Section 144 simpliciter. The time limit laid down under Section 153(1) for passing an order under Section 143 or Section 144 will not apply. Although, on behalf of the revenue, it was not disputed that such fresh assessment orders may be treated as regular assessment, having regard to the scheme of the Act, we are of the view that this contention is misconceived. The language of the various sections of the statute and the underlying principle which we have explained in this judgment militate against such construction.

Section 140A which was inserted by the Finance Act, 1964 required an assessee to make a self-assessment and imposed a duty on the assessee to pay tax on the basis of his return within thirty days of filing of the return. The tax payable on self-assessment was deemed to have been paid towards the provisional or regular assessment. Excepting cases where a provisional or a regular assessment was made within thirty days of furnishing of the return, any default in payment of tax

within the prescribed time incurred penalty. Regular assessment in this section could only mean the original order of assessment under Section 143 or 144.

Under Section 141, the Income Tax Officer could make a provisional assessment of the tax on receipt of a return under Section 139 in a summary manner. The tax realised on the basis of the provisional assessment was deemed to have been paid towards regular assessment. The provisional assessment of a firm had to be done treating the firm as unregistered. But where the firm had been assessed as registered firm in the latest completed assessment and had applied for registration or had made a declaration under Section 148(B) (7) for the assessment year for which the provisional assessment was going to be made, then such a firm had to be treated as a registered firm. Where no regular assessment of the firm had been made in any previous year and the firm before expiry of the prescribed period had filed its application for registration and made a declaration under Section 148(B)(7) for the assessment year for which the provisional assessment had to be made could be assessed provisionally as a registered firm. In the context of these provisions, `regular assessment' could only mean the original assessment made under Section 143 or 144.

Section 141A which was introduced by Finance Act, 1968 laid down that in a case where the return was furnished under Section 139 and the assessee claimed that the tax paid or deemed to have been paid exceeded the tax payable on the basis of the return, the Income Tax Officer, if he was of the opinion that the regular assessment of the assessee was likely to be delayed, could proceed to make a provisional assessment on the basis of the return. Here again, "regular assessment" could have no other meaning than the original order of assessment passed under Section 143 or 144. (H) Chapter XVII deals with `Collection and Recovery of Tax'. It provides for deduction of tax at source, payment of advance tax and also collection and recovery of tax pursuant to a notice of demand under Section 156. Income tax becomes payable only after computation of the total income and quantification of the tax by an assessment order and service of a notice of demand on the basis of the assessment. Section 190 lays down that "(N)otwithstanding that the regular assessment in respect of any income is to be made in a later assessment year, the tax on such income shall be payable by deduction at source or by advance payment, as the case may be, in accordance with the provisions of this Chapter". `Regular Assessment' here can only mean the original order of assessment passed by the Income Tax Officer under Section 143 or 144.

The phrase `regular assessment' has not been used at all in Pard-D of Chapter XVII (Sections 220 to 232), which lays down the procedure for realisation of tax after an assessment order has been passed, nor in Part-B - Deduction at Source (Sections 192 to 206). The phrase `regular assessment' has been used extensively in a number of sections in Part-C - Advance Payment of Tax (Sections 207 to

219). The reason for this is obvious. A distinction has to be drawn between `regular assessment' and `computation of advance tax'. If the assessment is understood in the broad sense in which it has been understood in a number of cases including the case of C.A. Abraham, an order of computation of advance tax will also be treated as an assessment order. Section 207 declares that tax shall be payable in advance in accordance with the provisions of Sections 208 to 219. Section 210 lays down the condition of liability to pay advance tax and Section 209 contains the method of computation of

advance tax. The first step in computation of advance tax payable by an assessee will be the ascertainment of `total income of the latest previous year in respect of which he has been assessed by way of regular assessment'. This will have to be adjusted in accordance with other provisions of that section. After computation of advance tax payable by an assessee, the Income Tax Officer has to demand the payment of the tax and a notice of demand under Section 156 will be issued for this purpose (Section 210). An assessee has an option not to pay advance as demanded under Section 210, but to pay according to his own estimate of tax payable (Section 212).

It will be seen from the aforesaid provisions that advance tax is not the same thing as income tax payable, because of the charge imposed by Section 4 on the total income of the previous year of an assessee. Such income has to be computed under Section 143 or 144 in the manner laid down in Chapter XIV of the Act. Therefore, Section 190 lays down that notwithstanding that the regular assessment in respect of any income is to be made in a later assessment year, the tax on such income shall be payable by deduction at source or by advance payment, as the case may be, in accordance with the provisions of this Chapter. `Regular Assessment' in Section 190 can have no other meaning than the first order of assessment passed under Section 143 or

144. This section lays down that even though no order of assessment has been passed under Section 143 or 144 for a given year, the tax in respect of the income of that year can be collected by deduction at source or by advance payment. There is no reason to presume that `regular assessment' in the other sections of Part-D of Chapter XVII has been used in any other sense. `Regular Assessment' has been used in Section 209 once again in the sense of the first assessment. The amount of advance tax payable by an assessee in the financial year has to be computed on the basis of, inter alia, `total income of the latest previous year in respect of which he has been assessed by way of regular assessment'. Here, `regular assessment' cannot possibly mean a revised or a fresh order of assessment pursuant to an appellate order. For example, if for the assessment year 1971-72 (financial year 1970-71) advance tax is being computed and the Income Tax Officer finds that assessment for the assessment year 1970-71 has already been completed, he will take that assessment as the starting point for computation of advance tax payable by the assessee. Regular assessment in this section can only mean the first assessment and not `revised assessment' or fresh assessment pursuant to an appellate order.

If the assessee considers that the calculation of advance tax made by the Income Tax Officer is excessive, he has an option to pay advance tax on the basis of his own estimate under Section 210.

Section 210 speaks of a person who has been previously assessed by way of regular assessment under this Act or under the Indian Income Tax Act, 1922. Such a person can be called upon by the Income Tax Officer to pay advance tax determined in accordance with the provisions of Sections 207, 208 and 209. Any person who has not previously been assessed by way of regular assessment under this Act or under the Indian Income Tax Act may also be liable to pay advance tax under the provisions of sub-section (3) of Section 212. He has to make an estimate of his income in the manner laid down in that sub-section and pay advance tax accordingly. Here again, `regular assessment' can have no meaning other than the first order of assessment.

In the context of all these sections, the question legitimately arises, why should `regular assessment' in Section 214 be given any meaning other then the first order of assessment? This section imposes an obligation upon the Central Government to pay interest `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'. As soon as an order under Section 143 is passed and if it is found that the tax determined payable on regular assessment is more than total amount of advance tax paid, interest will have to be paid on the excess amount only upto the date of assessment and not upto the date of refund of the amount. This section has to be contrasted with Sections 214, 216 and 217, which deal with payment of interest by the assessee.

Unlike Section 214, interest is payable under Section 215 only in a case where the assessee had paid advance tax under Section 212 on the basis of his own estimate. If the assessee pays in accordance with the demand made by the Income Tax Officer under Section 210, there is no liability to pay any interest under Section 215. Under Section 214 interest will be payable if there is an excess payment of advance tax pursuant to a demand made by the Income Tax Officer or on the basis of the estimate furnished by the assessee.

Interest will have to be paid by an assessee, if the advance tax paid is less than seventy five percent of the tax determined on the basis of regular assessment, after giving credit to the assessee for the amount of tax deducted at source. The interest, however, will be paid only upto the date of the regular assessment. It clearly appears from the provisions of Section 214 and Section 215 that `regular assessment' cannot have any other meaning than the first order of assessment, that means the date of first order of assessment. Since tax had been collected in advance, interest will have to be paid till the date of computation of tax in regular course, pursuant to the charge on total income of an assessee imposed by Section 4. That computation is done under Section 143 or 144. The amount of tax lying to the credit of the assessee, thereafter, is treated as tax paid pursuant to the assessment. If any excess amount of tax has been realised at source, then such excess has to be refunded with interest upto the date of the assessment. Thereafter, the excess amount becomes refundable by virtue of the provisions of Section 143 or 144. Likewise, even though there is a shortfall in payment of tax according to the calculation made in the order of assessment, the assessee is obliged to pay interest on the seventy five percent of the amount of shortfall only upto the date of the assessment order, i.e., the date on which the amount of advance tax was adjusted against the assessment order. Thereafter, if after adjustment in the assessment order of the advance tax against the tax demand raised any amount is found payable by the assessee, that will be recovered by issuing a notice of demand in accordance with the provisions of Part-D of Chapter XVII.

(I) The position has been placed beyond doubt by provision of sub-section (3) of Section 215, which lays down:

> "215(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."

If `regular assessment' is to be understood as revised assessment, then it was not necessary to introduce sub- section (3) in Section 215. Sub-section (3) only deals with the situation where the assessed tax has been reduced because of further proceedings. The interest payable by the assessee will have to be reduced in such circumstances. But, if the assessment is enhanced, the assessee will not be required to pay a larger amount of interest, because the amount of shortfall has to be computed on the date of the assessment on the basis of the tax determined in the regular assessment. If regular assessment is understood in the wide sense of revised assessment, then in a case of enhancement of assessment the assessee will have to pay a higher amount of interest over a longer period of time. That is not the implication of the provisions of sub-section (1) of Section 215 and that has not been specifically provided by sub- section (3). The provisions of sub-section (3) of Section 215 have been adopted in Section 217. This section deals with liability to pay interest of a person who has not previously been assessed by regular assessment under this Act or under the Indian Income Tax Act, 1922 but has filed an etimate of income and paid tax accordingly under sub-section (3) of Section 212. As has been noted earlier in the judgment, `regular assessment' in this context cannot have any other meaning than the first assessment made under Section 143 or 144.

Lastly, Section 219 provides for credit to be given for advance tax in the regular assessment. This credit has to be given in course of the first assessment under Section 143 or

144. After completion of the assessment, the excess amount of advance tax realised, if any, will have to be refunded. There cannot be any question of giving credit for advance tax at the stage of any revised assessment passed in consequence of the order of any higher authority. Penal consequence of failure to pay or shortfall in payment of advance tax is dealt with by Section 273.

If an assessee furnishes a false estimate of the advance tax payable by him or fails to pay advance tax in accordance with the requisition made by the Income Tax Officer, then penalty may be imposed under Section 273 of the Act, as originally enacted, which provides:

> "273. False estimate of or failure to pay advance tax. If the Income-tax Officer, in the course of any proceedings in connection with the regular assessment, is satisfied that any assessee--
>
> (a) has furnished under section 212 an estimate of the advance tax payable by him which he knew or had reason to believe to be untrue, or
>
> (b) has without reasonable cause failed to furnish an estimate of the advance tax payable by him in accordance with the provisions of sub-section (3) of section 212, he may direct that such person shall, in addition to the amount of tax, if any, payable by him, pay by way of penalty a sum--
>
> (i) which, in the case referred to in clause (a), shall not be less than ten percent, but shall not exceed one and a half times the amount by which the tax actually paid during the financial year immediately preceding the assessment year under the provisions of Chapter XVII-C falls short of--

(1) seventy-five per cent, of the tax determined on regular assessment, as modified under the provisions of section 215, or (2) where a notice under section 210 was issued to the assessee, the amount payable thereunder.

whichever is less; and

(ii) which, in the case referred to in clause (b), shall not be less than ten per cent, but shall not exceed one and a half times the amount on which interest is payable under section 217."

In this section, proceedings in connection with the regular assessment shall, obviously, mean the initial order of assessment passed by the Income Tax Officer. Sub-section

(b) deals with cases under Section 212 under which a person, who has not been previously assessed by way of regular assessment, has to file an estimate. If such a person has failed to furnish an estimate, he may have to pay penalty as laid down in that section. It is difficult to see how regular assessment in this section can have any meaning other than the first order of assessment. Moreover, where an assessee, who has hitherto been assessed to tax, furnishes an estimate under Section 212, he will have to pay penalty in a case falling under clause (a). A further sum by way of penalty calculated on the basis of the amount of shortfall calculated `on the basis of the tax determined on regular assessment, as modified under the provisions of Section 215'. In other words, calculation of penalty will be made on the basis of tax determined on regular assessment. If after the regular assessment, there has been any reduction in the quantum of tax payable by the assessee by virtue of any other order, then the quantum of tax determined will have to be modified in accordance with the provisions of sub-section (3) of Section 215. In this section, modification under the provisions of Section 215 can only be of `tax determined on regular assessment'. We do not see any reason why the phrase `regular assessment' should be understood in any other sense than the first assessment made in accordance with the provisions of Chapter XIV and within the period of limitation laid down in sub-section (1) of Section 153. (J) Even under Section 153, a distinction has been drawn between assessments under Section 143 or 144 and any other types of assessments. Section 153 lays down:

"153. Time limit for completion of assessments and reassessments. - (1) No order of assessment shall be made under section 143 or section 144 at any time after -

(a) the expiry of four years from the end of the assessment year in which the income was first assessable; or

(b) the expiry of eight years from the end of the assessment year in which the income was assessable, in a case falling within clause (c) of sub-section (1) of section 271; or

(c) the expiry of one year from the date of the filing of a return or a revised return under sub-section (4) or sub- section (5) of section 139, whichever is latest.

(2) No order of assessment, reassessment or recomputation shall be made under section 147-

(a) where the assessment, reassessment or recomputation is to be made under clause (a) of that section, after the expiry of four years from the end of the assessment year in which the notice under section 148 was served;

(b) where the assessment, reassessment or recomputation is to be made under clause (b) of that section, after-

(i) the expiry of four years from the end of the assessment year in which the income was first assessable, or

(ii) the expiry of one year from the date of service of the notice under section 148, whichever is later.

(3) The provisions of sub-sections (1) and (2) shall not apply to the following classes of assessments, reassessments and recomputations which may be completed at any time -

(i) where a fresh assessment is made under section 146;

(ii) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, 254, 260, 262, 263 or 264;

(iii) where in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section

147....."

Time limit has been prescribed under sub-section (1) for an order of assessment.....under Section 143 or 144. Time limit under sub-section (2) is for `order of assessment, reassessment or recomputation.....under Section 147'. Sub-section (3) (ii) speaks of assessment, reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order under Section 250, 254, 260, 262, 263 or 264. This clearly goes to show that this type of assessment in consequence of direction of a higher authority has not been treated or described as regular assessment under Section 143 or 144 in the Act.

For all the above reasons - particulary having regard to the scheme of the Act and use of the phrase `regular assessment' in various sections of the Act - we are of the view that in Section 214, `regular assessment' has been used in no other sense than the first order of assessment passed under Section 143 or 144. If any consequential order has to be passed by the Income Tax Officer to give effect to an order passed by the higher authority, that consequential order cannot be treated as `regular

assessment' nor can the date of the consequential order be treated as the date of the regular assessment.

THE INTRINSIC EVIDENCE FURNISHED BY SECTION 214 ITSELF:

---------- We have so far mainly examined the scheme of the Act without taking into consideration the amendments made to Section 214 from time to time. We shall now turn to the provisions in Section 214 itself and in particular the amendments made in Section 214 - what we have called the "short-haul approach".

(A) Section 214 contains unmistakable and irrefutable indications that `regular assessment' therein means the original assessment alone. They are: (i) sub-section (1A) as substituted by Taxation Laws (Amendment) Act, 1984 with effect from April 1, 1985 says that "where as a result of an order under Section 250*.....the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be....." the interest shall also be increased or decreased correspondingly. Now, if regular assessment means the

---------- * In the interest of simplicity, we are omiting the several provisions mentioned in sub-section and are referring to only one among them, viz., Section 250.

final assessment made after and pursuant to the appellate order under Section 250, then the sub-section becomes meaningless. The sub-section speaks of the amount on which interest is payable under sub-section (1) being increased or decreased as a result of the appellate order, which necessarily means that the order of regular assessment referred to in sub-section (1) is not the order of assessment made pursuant to the appellate order but the original assessment order, (ii) Explanation (2) introduced by the very same Amendment Act says that "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". Note the words "made for the first time under Section 147". Even against an assessment made under Section 147, there can be an appeal and revision just as against an assessment made under Sections 143/144. If the assessment made for the first time under Section 147 is to be the `regular assessment' for the purposes of sub-section (1) of Section 214, it cannot be otherwise in respect of the assessment made in the ordinary course under Sections 143/144, spoken of in sub-section (1) of Section 214. Though these two provisions were introduced only in 1985, yet they furnish, in our opinion, unmistakable indication of the meaning attached by Parliament to the expression `regular assessment' in Section 214(1).

(B) The amendments made to Section 214 from time to time also go to indicate that regular assessment in Section 214 was used in the sense of the first assessment. The provisos to sub-section (1) and sub-section (1A) were added to Section 214 simultaneously with and in consequence of introduction of Section 141A by the Finance Act, 1968. Under Section 141A, the assessee after filing his return can claim refund of the amount of advance tax and tax deducted at source which was in excess of tax payable by him on the basis of his return, accounts and documents. Here again,

`regular assessment' can have no other sense than the first order of assessment. The Income Tax Officer had to make a provisional assessment in a summary manner within the said period of six months of the sum refundable to the assessee. Sub-section (4) of Section 141A dealt with the manner in which any amount refunded on provisional assessment had to be dealt with. Where the sum refundable on regular assessment was equal to or exceeded the amount refunded under provisional assessment, the amount so refunded was deemed to have been refunded towards the regular assessment. When no refund was found due on regular assessment or the amount refunded under provisional assessment exceeded the amount refundable on regular assessment, the whole or the excess amount so refunded was deemed to be tax payable by the assessee. It was made clear by sub-section (5) that nothing done or suffered by reason or in consequence of any provisional assessment shall prejudice the determination, on the merits, of any issue in course of the regular assessment. Finance Act, 1968 amended Sections 199 and 209 to enable the assessee to get refund pursuant to the summary assessment under Section 141A. Section 199 was amended to enable the assessee to get credit for the tax deducted at source in the provisional assessment by providing that `regular assessment' in that section will include provisional assessment. Section 209, likewise, was amended to provide that the amount of advance tax collected should be treated to have been collected towards the provisional assessment. The amendments made in Section 214 should be seen in the background of all these provisions introduced by Finance Act, 1968. A proviso was added 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'. That means interest under Section 214 will be paid on any refund made pursuant to a provisional assessment only upto the date of provisional assessment, even though the `amount so refunded shall be deemed to have been refunded towards the regular assessment' under Section 141A(4). The proviso does not do away with the requirement of paying interest under sub- section (1) of Section 214 but only limits the period for which interest will be paid upto the date of the provisional assessment. Sub-section (1A) [as introduced in 1968] has to be read bearing in mind the implications of the proviso. It contemplates a situation where a provisional assessment has been made and the surplus amount of tax realised from the assessee has been refunded with interest upto the date of the provisional assessment. If on completion of regular assessment, it is found that the amount refundable is less than what was refunded earlier on the basis of the provisional assessment, the amount of interest paid shall be reduced accordingly. The excess amount of interest paid, if any, shall be treated as tax payable by the assessee and recovered from the assessee in accordance with the provisions of this Act.

This provision is complementary to sub-sections (4) and (5) of Section 141A:

> "(4) After a regular assessment has been made, any amount refunded on provisional assessment made under sub-section (1) shall be dealt with in the manner specified hereunder, namely:-
>
> (a) where the sum refundable on regular assessment is equal to or exceeds the amount refunded under sub-section (1), the amount so refunded shall be deemed to have been refunded towards the regular assessment;

(b) where no refund is due on regular assessment or the amount refunded under sub-section (1) exceeds the amount refundable on regular assessment, the whole or the excess amount so refunded shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly.

(5) Nothing done or suffered by reason or in consequence of any provisional assessment made under this section prejudice the determination, on the merits, of any issue which may arise in the course of the regular assessment."

The summary assessment made under Section 141A is made inter alia for the purpose of refunding excess amount of tax realised from an assessee. This assessment under Section 141A cannot prejudice in any way the determination of the amount of refund payable to the assessee, if at all, ultimately in the regular assessment. If any excess amount of refund has been paid to an assessee with interest under Section 214 pursuant to the provisional assessment, the excess amount so refunded shall be recovered by deeming the excess amount as tax payable by the assessee as laid down by Section 141A(4). Consequently, if any excess amount of interest has been paid under Section 214(1) read with the proviso, that amount will be recovered under sub-section (1A) of Section 214, which was as under:

"(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."

This sub-section was necessary in view of the provisions of sub-section (4) of Section 141A and also the newly added proviso to Section 214. Any sum refunded on provisional assessment is deemed to have been refunded towards the regular assessment, but the interest under Section 214 is payable only upto the date of the provisional assessment.

Sub-section (1A) dealt with a case where refund has been made pursuant to a summary assessment made under Section 141A and interest has been paid on the refund amount upto the date of the provisional assessment. Sub-section (4)

(b) of Section 141A provides that where no refund on a summary assessment exceeded the amount refundable on regular assessment, the whole or the excess amount so refunded shall be deemed to be tax payable by the assessee. Sub-section (1A) of Section 214 provides that in such a situation if any interest has been paid on the amount refunded, such interest shall also be reduced accordingly and the excess, if any, shall be deemed to be tax payable by the assessee. The excess amount of refund made as well as the excess amount of interest paid will be recovered according to the provisions of this Act.

These amendments, made by the Finance Act, 1968 go to show that `regular assessment' was used in the sense of first assessment and these amendments in Section 214 can only be explained on that footing.

Sub-section (1A) has been substituted altogether with effect from Ist April, 1985. The substituted sub-section (1A) is not premised upon nor does it refer to provisional assessment. It not only refers to appellate orders under Sections 250 and 254 but also to several other orders like the orders under Sections 147, 154, 155, 260, 262, 263, 264 and 245-D. The present sub-section (1A) says that where as a result of appellate order (used compendiously to denote all the orders referred to in the sub-section) the amount on which interest is payable under sub-section (1) [i.e., under the regular assessment] is increased or reduced, the interest shall also be increased or reduced accordingly and shall be recovered or refunded, as the case may be.

It should also be noted that new sub-section (1A) has taken note of not only increase, but also reduction of the amount on which interest was paid under Section 214. Simultaneously with this, Section 215 was amended and sub- section (3) was recast on the lines of newly introduced sub-section (1A) of Section 214 with effect from April 1, 1985. Under this provision, the amount of interest payable by an assessee had to be increased or reduced pari passu with the increase or reduction of the amount on which such interest was payable in consequence of an order of rectification or an order passed by a higher authority.

In other words, Section 214 and Section 215 with effect from April 1, 1985 have brought about important changes in the scheme of payment of interest by the Central Government or the assessee, as the case may be. The period, therefore, for which the interest has to be paid remains the same, i.e., the first day of the relevant assessment year to the date of the regular assessment (first assessment). But, the quantum of interest payable will depend upon the amount of refund payable after the quantum of tax has been payable is finally determined in appeal, revision or any other proceeding.

P A R T = III In this part, we shall examine the co-relation of the provisions relating to refund - in particular, the provisions in Section 244 - to the provisions in Section

214. Prior to the introduction of sub-section (1A) in Section 244, if any refund was payable pursuant to the order of the regular assessment, that had to be paid in accordance with the provisions of Section 243 of Chapter XIX of the Act. If the payment was delayed beyond the period mentioned in Section 243 of the Act, interest had to be paid from the date of expiry of the aforesaid period to the date of the refund order. If as a result of any of the appellate or other proceedings mentioned in Section 240, the refund amount was enhanced, then the enhanced amount had to be paid within the period prescribed by Section 244 failing which interest had to be paid from the first day after the expiry of the stipulated period till the date of the order of refund. This position was drastically altered by sub-section (1A) of Section 244, which was inserted by Taxation Laws (Amendment) Act, 1975 with effect from October 1, 1975. It provides:

> "244(1A). Where the whole or any part of the refund referred to in sub-section (1) is due to the assessee, as a result of any amount having been paid by him after the 31st day of March, 1975, in pursuance of any order of assessment or penalty and such amount or any part thereof having been found in appeal or other proceeding under this Act to be in excess of the amount which such assessee is liable to pay as tax or

> penalty, as the case may be, under this Act, the Central Government shall pay to such assessee simple interest at the rate specified in sub-section (1) on the amount so found to be in excess from the date on which such amount was paid to the date on which the refund is granted: Provided that where the amount so found to be in excess was paid in instalments, such interest shall be payable on the amount of each such instalment or any part of such instalment, which was in excess, from the date on which such instalment was paid to the date on which the refund is granted:
>
> Provided further that no interest under this sub-section shall be payable for a period of one month from the date of the passing of the order in appeal or other proceeding:
>
> Provided also that where any interest is payable to an assessee under this sub-section, no interest under sub- section (1) shall be payable to him in respect of the amount so found to be in excess."

This sub-section applies only to a case where an assessee has paid tax or penalty after March 31, 1975 in pursuance of any order of assessment or penalty. If as a result of appeal or other proceedings under this Act, it is found that the amount of tax or penalty paid by an assessee is in excess of what the assessee is liable to pay, then the Central Government has to pay interest on the excess amount paid by the assessee. Such interest has to be paid upto the date on which the refund was granted.

Sub-section (1A) of Section 244 does not affect the operation of Section 214 in any manner whatsoever. The period during which interest has to be paid under Section 214 is the first day of the relevant assessment year to the date of the assessment order. The period covered by Section 244(1A) is the period commencing from date of payment of tax or penalty. Under Chapter XVII of the Act, tax may be collected from an assessee by way of deduction at source, advance payment and by a notice of demand under Section 156. But, the amount of tax deducted at source is treated as income tax paid by the assessee upon completion of the assessment proceedings [Section 199(1)].

Similarly, the amount of advance tax paid has to be treated as payment of tax and credit for this amount has to be given to the assessee in the regular assessment (Section

219). Any excess amount remaining to the credit of the assessee thereafter will have to be refunded to the assessee. The amount which was retained by the Income Tax Officer and adjusted against the tax demand must be treated as payment of tax pursuant to the assessment order by the assessee. Advance tax or tax deducted at source loses its identity as soon as it is adjusted against the liability created by the assessment order and becomes tax paid pursuant to the assessment order.

Therefore, the phrase `any amount having been paid.....after March 31, 1975' occurring in sub-section (1A) of Section 244 must be construed to mean not only the amount which has been paid directly pursuant to the order of assessment but will also include the amount of tax deducted at source and advance tax, which were lying to the credit of the assessee and were ultimately adjusted and set off against the tax demands raised in the assessment order. The excess amount of tax paid under sub-section (1A) of Section 244 must be calculated by treating the amount of tax deducted at

source and the amount of advance tax which were adjusted against the assessee's liability to pay tax as well as the amount of tax paid directly upon the assessment under Chapter XVII of the Income Tax Act. In other words, so far as the amount of advance tax is concerned, it must be understood to have been paid "in pursuance of any order of assessment" only on the date of the original order of assessment - and not on the date of actual payment. The reason is obvious: on the day the advance tax amount is paid there is no assessment and, hence, it cannot be said to have been paid "in pursuance of any order of assessment". This view was also taken by the Punjab High Court in the case of Leader Engineering Works.

Interest under sub-section (1A) of Section 244 is payable when the tax or penalty paid by an assessee pursuant to an order of assessment has been reduced in appeal or any other proceeding. In such a case, an excess amount of tax or penalty paid by the assessee will have to be refunded and the Central Government has to pay interest on the excess amount from the date on which such amount was paid to the date on which the refund was granted. Of course, there can be no question of paying interest both under Section 214(1A) and Section 244(1A) simultaneously. The rate of interest being the same under both the provisions, there would be no difference in the actual amount of interest payable, whichever provision is applied.

This sub-section substantially alters the scheme of payment of interest on refund contained in Sections 243 and 244 of the Income Tax Act but does not affect the scope of Section 214 in any way. Section 214 deals with payment of interest on the amount of tax found to have been paid in excess of the tax determined as payable on the regular assessment. Interest will have to be paid from the first day of the relevant assessment year to the date of the regular assessment, i.e., the first assessment. If the amount on which the interest was payable was varied subsequent to the first assessment, then the quantum of interest had also to be increased or decreased accordingly. But the period for which the interest had to be paid was not altered by the newly substituted sub-section (1A) of Section 214.

S U M M A R Y

The position that emerges from the above analysis can be summarised finally as under:

(i) Upto March 31, 1975, interest under Section 214 is payable from the first day of April of the relevant assessment year to the date of the first assessment order. The amount on which the interest is to be paid is the amount of advance tax paid in excess of the tax payable by the assessee as calculated in the regular assessment (the first assessment order). The amount on which interest was payable did not vary due to reduction or enhancement of tax as a result of any subsequent proceeding. But with effect from April 1, 1985 while the period for which interest was payable remained constant, the amount on which the interest was payable, varied with the variation in the quantum of refund as a result of any subsequent orders.

(ii) If any tax is paid pursuant to an assessment order after March 31, 1975 (which will include tax deducted at source and advance tax to the extent the same has been retained and treated by the

Income Tax Officer as payment of tax in discharge of the assessee's tax liability in the assessment order) becomes refundable wholly or in part as a result of any appellate or other order passed, the Central Government will have to pay the assessee interest on the refundable amount under Section 244(1A). For the purpose of this section, the amount of advance payment of tax and the amount of tax deducted at source must be treated as payment of income tax pursuant to an order of assessment on and from the date when these amounts were set off against the tax demand raised in the assessment order, in other words the date of the assessment order.

(iii) With effect from April 1, 1985, interest payable under Section 214 will increase or decrease in accordance with the variation in the quantum of the excess payment of tax brought about by orders passed subsequent to the regular assessment as mentioned in sub-section (1A).

Accordingly, we approve the view taken by Bombay, Allahabad, Andhra Pradesh, Patna and Delhi High Courts to the extent their views accord with the view taken herein.

We may now deal with the facts of each appeal separately.

CIVIL APPEAL NO.928 OF 1980:

Civil Appeal No.928 of 1980 is preferred by Modi Industries Limited directly against the orders of the Commissioner of Income Tax, Delhi in a Revision Petition filed by the appellant under Section 264 of the Act. The assessment year concerned is 1971-72. The Commissioner held that the appellant is entitled to interest on excess amount of advance tax paid only upto the original date of assessment and further that the said interest shall be calculated only on the excess advance tax amount paid as per the original assessment order. Having regard to the principles enunciated by us hereinabove, the appeal is liable to be dismissed and is accordingly dismissed to the extent indicated above. No costs.

CIVIL APPEAL NO.1395 OF 1974:

This appeal is preferred against the judgment of the Allahabad High Court in Sir Shadilal Sugar and General Mills Ltd. (85 I.T.R.363). The assessment year concerned herein is 1960-61 and is governed by the Indian Income Tax Act, 1922. We have referred to the judgment under appeal in the body of the judgment and for the reasons recorded therein, the appeal is dismissed. There shall be no order as to costs.

CIVIL APPEAL NOS.5550-51 OF 1990:

The assessment years concerned in these appeals are 1976-77 and 1977-78. Since the facts relating to both the assessment years are similar (except the amounts concerned) it would be enough if we state the facts relating to the assessment year 1976-77. The appellant paid an amount of Rs.9,62,500/- by way of advance tax during the financial year relevant to the said assessment year. The Income Tax Officer made an assessment according to which the tax payable was determined at Rs.29,56,303/-. In the appeals preferred by the appellant, the Appellate Assistant Commissioner and the Tribunal granted reliefs to the appellant as a result of which the entire amount of Rs.9,62,500/- (along with a sum of Rs.94,787/- being the tax deducted at source) was refunded to the appellant. The controversy, however, arose with respect to the period for which interest is payable under Section 214. In the light of the principles set out hereinabove, the appellant shall be entitled to interest under Section 214(1) for the period commencing from April 1, 1976 upto the date of the "regular assessment" as interpreted by us hereinbefore on the amount of excess advance tax found to have been paid as per the "regular assessment". A similar direction will issue with respect to the assessment year 1977-78, with the difference that the date of commencement of interest will be the first day of that assessment year. The Commissioner of Income Tax, Bombay, City-VI, the respondent No.1, shall pass appropriate orders accordingly. The appeals are allowed in the above terms. No costs.

It should, however, be noted that the Respondent No. 1 disallowed the assessee's claim for interest under Section 214 and also under Section 244(1A). In the writ petition, challenging the aforesaid decision of the Commissioner, rule nisi was issued only in respect of non-payment of interest under Section 244(1A). The question relating to payment of interest under Section 214 was not entertained by the High Court. The assessee came up on appeal to this Court only on the question of non-payment of interest under Section 214. If the writ petition before the High Court is pending on the question of Section 244(1A), it should be disposed of on the basis of the principles laid down in this case.

CIVIL APPEAL NO.4581 OF 1990:

In this appeal, three assessment years are involved, viz., 1973-74, 1974-75 and 1975-76. The appeal is preferred against the judgment of a learned Single Judge of the Bombay High Court rejecting the writ petition (Writ Petition No. 1085 of 1985). The appeal is allowed and the matter remitted to the Income tax Appellate Tribunal (Bombay Bench) Bombay for passing appropriate orders in accordance with the principles indicated hereinabove after varifying the facts relating to each assessment year. The appeal is accordingly allowed. No costs.