

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

SUBJECT : INCOME TAX MATTER

ITR No. 228 of 1985

Orders reserved: 18th September, 2007.

Date of decision: 24th September, 2007.

COMMISSIONER OF INCOME TAX
ThroughPetitioner
Ms. P.L.Bansal, Advocate.

versus

M/S. TELEVISTA ELECTRONICS P. LTD.
ThroughRespondent
Mr. Satyen Sethi, Advocate.

CORAM:

HON'BLE MR. JUSTICE MADAN B.LOKUR

HON'BLE DR. JUSTICE S. MURALIDHAR

Dr. S. Muralidhar, J.

1. In this reference under Section 256(1) of the Income Tax Act, 1961 ('Act'), relevant to the Assessment Year 1979-80, the following question has been referred for our opinion by the Income Tax Appellate Tribunal ('Tribunal'): Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal ('Tribunal') was correct in law in holding that no interest u/s 217 was chargeable in this case despite the fact that the assessee company did not file statement of income/estimate of income as required u/s. 209-A of the Income Tax Act for the assessment year 1979-80

2. The Assessee, which is engaged in the manufacturing of electronic goods such as television sets, video cassette recorders and the like, was assessed to a loss of Rs.5,91,110 for the assessment year 1976-77. For the next two assessment years 1977-78 and 1978-79 the Assessee filed returns showing loss of Rs.2,28,100 and Rs.9,828 respectively. For the assessment year 1979-80 the Assessee filed a return declaring an income of Rs.3,82,484. By the assessment order dated 27.3.1982 the Assessing Officer assessed the total income at Rs.6,58,140 and charged interest under Section 139(8) and Section 217 of the Act since the Assessee had not filed the statement of income or estimate of income for the said assessment year i.e. 1979-80 under Section 209A of the Act.

3. The Assessee's appeal was disposed of by the Commissioner of Income Tax (Appeals) ['CIT(A)'] by an order dated 31.12.1982 in which the CIT(A) held that no estimate was called for under Section 209A. The CIT(A) noted that despite this objection having been raised before the



Assessing Officer, no findings had been given. Therefore, the said issue was restored to the file of the Assessing Officer for a fresh decision.

4. The Assessee filed an application under Section 154 of the Act before the Assessing Officer pointing out, inter alia, that interest in the sum of Rs. 85,110 had been charged under Section 217 although it was not so chargeable. By an order dated 9.6.1983, the Assessing Officer rejected this application.

5. The Assessee again approached the CIT(A). By an order dated 24.4.1984 the appeal was dismissed holding that the Assessee was required to pay interest on the advance tax in terms of Section 217 of the Act.

6. The appeal filed by the Assessee before the Tribunal came to be allowed by it by an order dated 25.10.1984. The Tribunal held that there was no case for charging of interest under Section 217. That is how the above question has been referred to us for our opinion.

7. Ms. Prem Lata Bansal learned Senior Standing Counsel for the Revenue sought to contend that there are two distinct aspects to the requirement under Section 209A of the Act which was inserted by the Finance Act 1978 with effect from 1st June, 1978. The first was the liability to file a statement of advance tax which was to be computed in terms of Section 209(1)(a). She submits that the requirement to file a statement whenever the current income was a positive one would get attracted in terms of Section 209A(4). She contends that notwithstanding the fact that the regular assessment for the year 1976-77 was a loss and the next two returns filed by the Assessee for the years 1977-78 and 1978-79 were also a loss, the first instalment of advance tax in terms of Section 211 had to be paid before the 15th of June of the assessment year in question. The Assessee was first required to determine its current income which it could reasonably estimate by that time. If that current income was greater the income assessed or declared for the previous year, then the advance tax would have to be computed in the manner laid down under Section 209 on the current income. She laid particular emphasis on Section 209 (1)(c) which requires the estimated current income to be substituted in Section 209(1)(a) for the total income for the purposes of computation of advance tax. She accordingly submits that the Assessee cannot escape the payment of interest under Section 217 for failure to file the statement and pay the advance tax as required by Section 209A read with Section 217.

8. Mr. Satyen Sethi, learned counsel for the Assessee on the other hand submitted that the Central Board of Direct Taxes (CBDT) in a Circular [reported in 117 ITR (Statutes) 17] clarified that the statement of advance tax would be required to be filed by an assessee only when there was a positive income. He points out that where the regular assessment was at a loss for the year 1976-77 and in the immediate following years also the Assessee filed a loss return, the question of computation of advance tax in terms of Section 209(1) of the Act did not arise. If there was no liability to pay advance tax, the Assessee was not required to file a statement as required by Section 209A. He further pointed out that Section 209A(4) would get attracted only if the Assessee is in the first place liable to pay advance tax under sub-section (1) or sub-section (2) of Section 209A as the case may be. He sought to place reliance on the decision of the Bombay High Court in *Patel Aluminium Pvt. Ltd v. Miss K.M.Tawadia*, Income Tax Officer (1987) 165 ITR 99 of the Calcutta High Court in *Commissioner of Income-Tax v. Indian Molasses Co. (P.) Ltd.* (1993) 200 ITR 149 and of the Gujarat High Court in *Commissioner of Income-Tax v. Gujarat Alkalies And Chemicals Ltd.* (2005) 276 ITR 535.



9. The relevant provisions of the Act applicable for the period read as under: [Condition of liability to pay advance tax. 208. (1) Advance tax shall be payable during the financial year- (a) where the total income, exclusive of capital gains [and income referred to in sub-clause (ix) of clause (24) of section 2], of the assessee, referred to in sub-clause (i) of clause (a) [of sub-section (1)] of section 209, exceeds the amount specified in sub-section (2), or (b) where it is payable by virtue of the provisions of [section 209A]. (2) xxxxxxxxxxxx Computation of advance tax. 209. [(1)] [The amount of advance tax payable by an assessee in the financial year shall, subject to the provisions of sub-sections (2) and (3), be computed as follows:- (a) (i) his total income of the latest previous year in respect of which he has been assessed by way of regular assessment shall first be ascertained; (ii) the amount of capital gains [and income referred to in sub-clause (ix) of clause (24) of section 2], if any, included in such total income shall be deducted therefrom, and on the balance income-tax [] shall be calculated at the rates in force in the financial year: (iii) the income-tax [] so calculated shall be reduced by the amount of income-tax [] which would be deductible during the said financial year in accordance with the provisions of [sections 192 to 194, section 194A [section 194C] [section 194D] and section 195] [on any income (as computed before allowing any deductions admissible under this Act) on which tax is required to be deducted under the said sections and which has been taken into account in computing the said total income]; (iv) the net amount of income-tax[] calculated in accordance with sub-clause (iii) shall, subject to the provisions of [clause (c) and (d)], be the advance tax payable; (b) [] [(c)] in cases where an estimate (including a revised estimate) is sent by the assessee under section 209A or section 212, the total income so estimated shall, for the purposes of calculation of tax under this section, be substituted for the total income referred to in clause (a);] [(d) in cases where- (i) the total income of the latest previous year [being a year later than the previous year referred to in clause (a)] on the basis of which tax has been paid by the assessee under section 140A exceeds the total income referred to in clause (a), or (ii) the Income-tax Officer makes an amended order referred to in sub-section (3) of section 210 on the basis of the total income on which tax has been paid by the assessee under section 140A, the total income referred to in clause (a) shall be substituted,- (1) in a case falling under sub-clause(i), by the total income on the basis of which tax has been paid under section 140A, and (2) in a case falling under sub-clause (ii), by the total income on the basis of which the amended order under sub-section (3) of section 210 is made.] Explanation: If the assessee is a partner of a registered firm and an assessment of the firm has been completed for a previous year later than the latest previous year for which the assessee's assessment has been completed; his share in the income of the firm shall, for the purposes of [clause(a)], be included in his total income on the basis of the said assessment of the firm. [(2) xxxxxx (3) xxxxxx [Computation and payment of advance tax by assessee. 209A. (1) Every person shall, in each financial year, [on or] before the date on which the first instalment, or where he has not previously been assessed by way of regular assessment under this Act, [on or] before the date on which the last instalment, of advance tax is due in his case under sub-section (1) of section 211, if his current income is likely to exceed the amount specified in sub-section (2) of section 208, send to the Income-tax Officer___ (a) where he has been previously assessed by way of regular assessment under this Act, a statement of advance tax payable by him computed in the manner laid down in clause (a) or, as the case may be, sub-clause (i) of clause (d) of sub-section (1) of section 209, or (b) where he has not previously been assessed by way of regular assessment under this Act, an estimate of___ (i) the current income, and (ii) the advance tax payable by him on the current income calculated in the manner laid down in section 209, [and shall pay such amount of advance tax,___ (I) in a case falling under clause (a), as accords with the statement in equal instalments on the dates applicable in his case under section 211; and (II) in a case falling under clause (b), as accords with the estimate in equal instalments on such of the dates applicable in his case as have not expired, or in one sum if only the last of such dates has not expired.] (2) Where an assessee who is required to send a statement under



clause (a) of sub-section (1) estimates [on or] before the date on which the first instalment of advance tax is due in his case under sub-section (1) of section 211 that, by reason of his current income being likely to be less than the income on which advance tax is payable by him under sub-section (1) or for any other reason, the amount of advance tax computed in the manner laid down in section 209 on the current income would be less than the amount of advance tax payable by him under sub-section (1), he may send to the Income-tax Officer, in lieu of such statement, an estimate of __ (i) the current income, and (ii) the advance tax payable by him on the current income calculated in the manner laid down in section 209, and shall pay such amount of advance tax as accords with his estimate in equal instalments on the dates applicable in his case under section 211. (3) xxxxxx (4) In the case of any assessee who is liable to pay advance tax under sub-section (1) or sub-section (2) or, as the case may be, sub-section (3), if, by reason of the current income being likely to be greater than the income on which the advance tax so payable by him has been computed or for any other reason, the amount of advance tax computed in the manner laid down in section 209 on the current income (which shall be estimated) by the assessee) exceeds the amount of advance tax so payable by him by more than 33 per cent of the latter amount, he shall [on or] before the date on which the last instalment of advance tax is payable by him, send to the Income-tax Officer an estimate of __ (i) the current income, and (ii) the advance tax payable by him on the current income calculated in the manner laid down in section 209, and shall pay such amount of advance tax as accords with his estimate on such of the dates applicable in his case under section 211 as have not expired, by instalments which may be revised according to sub-section (5): Provided that in a case where the Commissioner is satisfied that, having regard to the nature of the business carried on by the assessee and the date of expiry of the previous year in respect of such business, it will be difficult for the assessee to furnish the estimate required to be furnished by him in accordance with the provisions of this sub-section [on or] before the date on which the last instalment of advance tax is due in his case, he may, if the assessee pays the advance tax which he is liable to pay under sub-section (1) or sub-section (2) or, as the case may be, sub-section (3) [on or] before such date, extend the date for furnishing such estimate up to a period of thirty days immediately following the last date of the previous year in respect of that business and, where the date is so extended, the assessee shall pay, on or before the date as so extended, the amount by which the advance tax already paid by him falls short of the advance tax payable in accordance with his estimate : [Provided further that in the case of an assessee, being a company, the provisions of this sub-section shall have effect as if for the figures and words 33 per cent, the figures and words 20 per cent had been substituted.] (5) The assessee may send a revised estimate of the advance tax payable by him [on or] before any of the dates specified in section 211 and adjust any excess or deficiency in respect of any instalment already paid in a subsequent instalment or in subsequent instalments. (6) Every statement or estimate under this section shall be sent in the prescribed form and verified in the prescribed manner. Instalments of advance tax. 211. [(1) Subject to the provisions of this section and of [sections 209A and 212], advance tax shall be payable in three equal instalments on the following dates during the financial year, namely:- (i) the 15th day of June, the 15th day of September and the 15th day of December, in the case of an assessee whose total income to the extent of per cent thereof or more is derived from a source or sources for which the previous year (relevant to the assessment year next following the financial year aforesaid) ends on or before the 31st day of December; (ii) the 15th day of September, the 15th day of December and the 15th day of March, in any other case: 217. Interest payable by assessee when no estimate made. (1) Where, on making the regular assessment, the Assessing Officer finds- (a) that any such person as is referred to in clause (a) of sub-section (1) of section 209A has not sent the statement referred to in that clause or the estimate in lieu of such statement referred to in sub-section (2) of that section ; or (b) that any such person as is referred to in clause (b) of sub-section (1) of section 209A has not sent the estimate referred to in that clause, simple interest at the rate of



fifteen per cent per annum from the 1st day of April next following the financial year in which the advance tax was payable in accordance with the said [sub-section (1) or sub-section (2)] up to the date of the regular assessment shall be payable by the assessee upon the amount equal to the assessed tax as defined in sub-section (5) of section 215.] (1A) xxxxxx (2) xxxxxx 10. A reading of the provision in 209A (1) no doubt casts an obligation on an assessee who is in the relevant previous year assessed to a positive income to file a statement of advance tax and also to pay the advance tax. Section 209A(1)(a) requires that the advance tax payable should be computed in the manner laid down in S. 209(1) or as the case may be Section 209(1)(d). In terms of Section 209(1)(a) the total income of the latest previous year in respect of which the Assessee has been assessed by way of regular assessment shall first be ascertained, is the starting point for the computation. This in the present case is clearly a loss. A second option exists under Section 209(1)(d)(i) where the total income of the latest previous year being an year later than the previous year in clause (a) forms the basis on which the advance tax has to be computed. In the present case this would be 1977-78 for which year again the Assessee filed a loss return. Therefore the question of the applicability of 209(1)(d)(i) also does not arise. No other method of computation is indicated as far as Section 209A is concerned. 11. Since no advance tax was in fact payable in terms of computation under Section 209(1)(a) or 209(1)(d)(i) of the Act, the second limb of the requirement under Section 209A namely, payment of advance tax, was not capable of being fulfilled and could not in fact be fulfilled. Since advance tax was not payable in terms of this computation, the Assessee was not required to file the statement of advance tax in terms of Section 209A(1)(a). 12. The above position has been made explicit in the judgment of the Bombay High Court in Patel Aluminium Pvt. Ltd where in similar circumstances it was held as under: Under section 209A(1)(a), the obligation of an assessee who has been previously regularly assessed to tax is to compute the advance tax payable by him in the manner provided by section 209(1)(a), to send a statement of such computation to the Income-tax Officer and to pay the amount so computed. The statement that the assessee is obliged to send is a statement of the computation of the advance tax payable by him, such computation to be made as provided by section 209(1)(a). If upon such computation being made, no advance tax is found to be payable, there is no advance tax payable. There being no advance tax payable, there is no obligation to send to the Income-tax Officer a statement of such computation. It would appear that the object of sending the statement is to make known to the Income-tax Officer, the computation upon which the figure of advance tax has been arrived at. Where no advance tax payment is to be made, there is no purpose in sending to the Income-tax Officer the statement of tis computation.

13. This has been reiterated in Indian Molasses Co. (P.) Ltd as well as in Gujarat Alkalies And Chemicals Ltd.

14. It was urged by Ms. Bansal that the above decisions do not account for Section 209(1)(c) under which the current income computed in terms of Section 209A(4) can be substituted for the total income under Section 209(1)(a) of the Act and the advance tax worked out on that basis would have to be deposited by the Assessee along with the statement under Section 209A(1)(a) of the Act. As pointed out by Mr. Sethi, a similar contention raised before the Calcutta High Court was rejected by it in the decision in Indian Molasses Co. (P.) Ltd. The relevant portion in that regard reads as under (ITR, p.152): Mr. Bagchi has raised another contention. According to him, the provisions of sub-section (4) of section 209A will be attracted to the facts of this case. Sub-section (4) applies in the case of an assessee who is liable to pay advance tax under sub-section (1) or sub-section (2) or, as the case may be, sub-section (3). It is obligatory on a taxpayer to pay a higher amount of advance tax if the advance tax computed on his estimated current income is likely to exceed the amount of advance tax payable according to the statement or estimate by more than thirty three and one by three per cent of the latter by making such



higher estimate of advance tax before the date on which the last instalment of advance tax payable in his case. The Finance Act, 1979, has amended section 209A to provide that such revised estimates of advance tax can be furnished on or before the date on which the last instalment of advance tax is payable by the taxpayer. Thus, sub-section (4) will only be attracted if an assessee is liable to pay advance tax under section (1), but as we have already indicated in the instant case, on the basis of the facts prevailing in the financial year relevant to the assessment year of the assessee, the assessee had no obligation to furnish a statement of advance tax under section 209A(1)(a) and as such sub-section (4) of section 209A cannot be pressed into service.

15. The above decision is a complete answer to the contention of the Revenue. It is plain that section 209A(4) would be attracted only in a case where the Assessee is liable to pay advance tax in terms of sub-section (1) or sub-section (2) of Section 209A. As already held by us, the Assessee here is not liable to pay advance tax for the assessment year in question.

16. For the aforementioned reasons, we answer the question referred to us in the affirmative, that is, in favour of the Assessee and against the Revenue. The reference stands disposed of.

Sd./-
S. MURALIDHAR, J

Sd./-
MADAN B.LOKUR, J

SEPTEMBER 24, 2007