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

\+ **ITA 457/2005**

Date of decision: 16th November, 2017

M/S TELEVISTA ELECTRONICS LTD. ..... Appellant
Through : Mr. Satyen Sethi, Mr.Arta Trana Panda, Ms.Gargi Sethee, Advocates.

versus

DY. COMMISSIONER OF INCOME TAX ..... Respondent
Through : Mr. Asheesh Jain, Senior Standing counsel for Income Tax Department with Mr.Shahrukh Ejaz, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE PRATHIBA M. SINGH

SANJIV KHANNA, J. (Oral)

This appeal by the assessee-M/s Televista Electronics Limited relates to assessment year 1989-90 and arises from the order dated 31st May, 2004 passed in ITA No. 3888/Del./1999.

2. The appeal was admitted for hearing vide order dated 11th July, 2005 which also frames a substantial question of law. For completeness, we would reproduce the relevant portion of the order dated 11th July, 2005, which reads as under:

> *"The Assessing Officer's order revised the assessment order for the year 1989-90 and directed that demand raised for the said year shall be deemed to have been raised at the time of the making of the original assessment order in regard to which a demand notice had also been served upon the assessee. The Assessing Officer had on that basis directed that interest under Section 220(2) was chargeable on the amount*

> *demanded under Section 156. The following substantial question of law is in that backdrop formulated for determination:*
> *"Whether the Tribunal was, in the facts and circumstances of the case, right in holding that no appeal lies against the said order under Section 246A (1)(c) of the Income Tax Act, 1961 ?"*

3. Initially, we wanted to reframe the question of law to decide the question of chargeability of interest under Section 220(2) of the Income Tax Act, 1961*('Act' for short*) on merits. However, in the factual matrix noticed below, we have refrained and have not reframed the question of law, as it is unclear whether interest under Sections 215 and 217 of the Act was chargeable and could be charged.

4. The Return declaring income of Rs.12,05,070/- for the Assessment Year 1989-90 was filed by the appellant-assessee on 29th December, 1989. The assessee had not claimed set off of the brought forward losses for earlier years in the Return of income, though it appears that the assessee had brought forward losses for the Assessment Years 1987-88 and 1988-89 as per assessments made.

5. These brought forward losses were duly accounted while passing the assessment order under Section 143 (3) of the Act on 14th February, 1992 as income for the assessment year 1988-89 under the normal provisions was assessed as nil. The assessing officer, thereupon, invoked provisions of Section 115J of the Act relating to book profits and income of the assessee under the said Section was assessed at Rs.11,26,990/-.

6. Issue of disallowance of Sales Tax amounting to Rs. 32,71,862/- u/s 43B of the Act, which had become subject matter of the assessment order

for the assessment year 1987-88, was remanded to Assessing Officer for reconsideration in the light of the judgement of the Supreme Court in ***Allied Motors (P) Ltd. v. CIT, (1997) 224 ITR 677(SC)***. The Assessing Officer applied the said judgement and as Sales tax amounting to Rs. 32,71,862/- was paid within the time, he allowed the said expenditure. Consequently, the Assessing Officer reworked the income for assessment year 1988-89 and an order u/s 154 of the Act was passed reducing the loss for assessment year 1988-89 to Rs. 2,47,077/-.

7. Assessment order for the assessment year 1989-90 was also made subject matter of order under section 154 of the Act as brought forward losses for assessment year 1988-89 had got reduced. Some relief had also been granted to the assessee by the Commissioner (Appeals). Consequently, the assessing officer passed the rectification order under section 154 of the Act dated 30th November, 1998 for the assessment year 1989-90, assessing income under the normal provisions at Rs. 19,27,199/-. Section 115J of the Act was therefore not attracted. The assessee has not disputed the computation of income made vide the order dated 30th November, 1998 under Section 154 of the Act passed by the Assessing Officer.

8. This order under Section 154 of the Act dated 30th November, 1998 on the question of interest u/s 220(2) had directed:

> *"Since the asstt. Order of A Y. 89-90 has been revised in consequence of the decision of the ITAT in A Y. 87-88, therefore, demand raised in A Y. 89-90 shall be deemed raised at the time of original assessment order for which demand notice was served at the time of regular assessment order. In view of above facts interest u/s 220(2) is chargeable on the demand of Rs.*

5,57,061/-created by this order".

9. Consequent to the aforesaid directions in the order under Section 154 of the Act, Computation Sheet in ITNS - 150 was prepared. The tax payable on the income of Rs.19,27,199/-, including the surcharge, was Rs.11,12,958/-. The assessee had paid advance tax of Rs.6,50,877/-. There was a short fall of Rs.4,62,081/-. The order records that the assessee would be liable to pay interest under Section 220(2) from 4th March, 1992 to 30th November, 1998 for a period of 81 months amounting to Rs.6,26,755/-. Accordingly, the total demand payable pursuant to the order u/s 154 was computed.

10. We may, for clarity, record that the computation sheet states that the interest earlier allowed under Section 244 (1A) of the Act of Rs.94,980/- shall stand withdrawn. On this, however, there is no controversy or issue before us.

11. The assessee thereafter preferred an appeal specifically challenging the direction to charge interest u/s 220(2) in the order under Section 154 of the Act. It was submitted that interest was not leviable and reliance was placed on some legal pronouncements.

12. The Commissioner of Income Tax (Appeals) allowed the appeal recording that interest under Section 220 (2) of the Act was chargeable only when there was non-payment pursuant to notice u/s 156 of the Act. Interest u/s 220(2) would not be chargeable from the date of the original assessment order.

13. Revenue preferred an appeal before the Tribunal which, as noticed above, has been allowed, *inter alia*, observing that the first appeal by the

appellant-assessee under Section 246(1)(c) of the Act challenging levy of interest under Section 220(2) of the Act was not maintainable before the Commissioner of Income Tax (Appeals). The decisions relied upon by the assessee were distinguished on the ground that they relate to levy of interest under Sections 215 and 217 of the Act.

14. In our opinion, in the present case, the appeal would be maintainable under clause (c) to Section 246(1) of the Act. The said provision, as applicable to the case of the assessee in the relevant year when the appeal was preferred, reads as under:

> ***Appealable orders.***
> ***246.*** *(1) Subject to the provisions of sub-section (2), any assessee aggrieved by any of the following orders of an Assessing Officer (other than the Deputy Commissioner) may appeal to the Deputy Commissioner (Appeals) [before the 1st day of June, 2000] against such order-*
>
> ***XXXXXX***
>
> *(c) an order under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections.*
>
> *(emphasis supplied)*

15. The order under Section 154 of the Act had the effect of enhancing the assessment. Such orders are appealable on all aspects decided and adjudicated. The order under Section 154 of the Act had also specifically dealt with and examined the question of interest u/s 220(2) of the Act and the date from which the interest was chargeable. The direction to charge interest was specifically given in the order under Section 154 of the Act. The

claim and contention of the appellant assessee to the contrary was rejected and disallowed. The assessing officer had refused to accept the contention made by the assessee that interest would not be chargeable under Section 220(2) of the Act, until and unless there was non-payment pursuant to the order passed. This is a peculiar case wherein the question of levy of interest under Section 220(2) of the Act, which is payable on non payment, was decided, levied and imposed in the order under Section 154 of the Act. In the present case, there was a specific direction and finding in the order passed under Section 154 in respect of charging interest under Section 220(2) of the Act. Consequently, the direction for payment of interest which was contested by the appellant-assessee would be appealable under clause (c) of Section 246 (1) of the Act.

16. We are aware of the decisions in ***Associated Stone Industries (Kotah) Ltd. Vs. CIT*** [1971] 224 ITR 560 (SC), ***Central Provinces Manganese Ore. Co. Ltd. Vs. CIT*** [1986] 160 ITR 961 (SC), ***Commissioner of Income-Tax Vs. M/s. Mahabir Prashad & Sons*** (1980) 125 ITR 165 (Del), which draw a distinction between cases where the assessee denies his liability to pay interest; and where quantum of interest is in dispute or where waiver and reduction is prayed. In the latter cases appeal is not maintainable, whereas in the former set of cases where the assessee claims that he is not liable to pay interest at all, appeal would be maintainable and the plea as to non liability to pay interest may be raised while disputing the assessment in appeal. However, more appropriate and direct on the point is the decision of the Bombay High Court in ***British Bank of India Vs. Commissioner Income-Tax*** [2004] 266 ITR 269 (Bom.), wherein reference was made to

Section 246 (1) (f) which was *pari materia* to the clause applicable and it was held as under:

> ***"7.*** *However, we find merit in the argument advanced on behalf of the assessee that appeal was maintainable under section 246(1)(f). For the sake of convenience, we reproduce hereinbelow section 246(1)(f) which reads as follows:—*
>
> *"Subject to the provisions of sub-section (2), any assessee aggrieved by any of the orders of ITO may appeal against such order under section 144 (sic. 154) or section 155 having the effect of enhancing the assessment or reducing the refund or refusing to allow the claim made by the assessee under either section 154 or section 155."*
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> ***8.*** *In the case of Empire Industries Ltd. v. Commissioner of Income-Tax reported in 193 ITR page 295, the assessee had paid advance tax of Rs. 24.47 lacs on regular assessment being completed under section 143(3). The AO raised the demand under section 156 of the Act of Rs. 7.27 lacs including interest of Rs. 56,000/-. By Order dated 27-6-1974, the Appellate Authority allowed the appeal partly. While giving effect to the Appellate Order, the ITO determined the amount refundable to the assessee at Rs. 9.46 lacs. The amount was refunded but interest thereon under section 214 of the Act was not paid. Being aggrieved, the assessee filed an appeal before the Appellate Authority and claimed that the ITO ought to have granted interest under section 214. The Appellate Authority and the Tribunal held that the appeal was not competent. On reference, it was held by the Bombay High Court that Income Tax Officer's Order had been passed under section 154 and appeal therefrom was competent under section 246(1)(f). This Judgment, to the above extent, applies to the facts of*

> *our case. In the present case also, the AO was concerned with giving effect to the Order dated 31-12-1986 passed by the Commissioner of Income-Tax (Appeals) when he failed to grant interest under section 214 and under section 244(1A). This is very clear also from page 5 of the paper-book which refers to Order of Assessing Officer dated 18-2-1987 giving effect to the Order passed by the Appellate Authority dated 31-12-1986. Hence, the second part of the above issue is answered in favour of the assessee and against the Department. We accordingly hold that the appeal filed by the assessee with CJT (Appeals) being Appeal No.CIT(A)/XXII/ARIII/D/227/87-88 was maintainable under section 246(1)(f).”*

17. The question of law is accordingly, answered in favour of appellant-assessee and against the Revenue. We, however, clarify that we have not examined the question of chargeability of interest under Section 220(2) of the Act, or the date from which it would be payable as the said question would be examined by the Tribunal.

18. We have not expressed any opinion on the contention raised by the counsel for the Revenue that they would be entitled to raise the issue of levy of interest under Sections 215 and 217 of the Act. If any such contention is raised, the same would be examined by the Tribunal including the question whether the Revenue can raise such a contention or not.

19. The appeal is disposed of in above terms with no order as to costs.

SANJIV KHANNA, J.

PRATHIBA M. SINGH, J.

NOVEMBER 16, 2017
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