IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

ITR No.2/1997

Decided on.22.4.2008

The Commissioner of Income Tax, Patiala …Appellant.

Versus

H.P. State Small Industries and Export Corporation Limited.

…Respondent

Coram

The Hon'ble Mr. Justice Deepak Gupta, J.
The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]. No.

For the appellant : Ms Vandana Kuthiala, Advocate.

For the respondent : Mr. Dushyant Dadwal, Advocate.

Deepak Gupta, J. (oral):

The following question of law has been referred for the opinion of this Court under section 256 of the Income Tax Act, 1961:

> **"Whether on the facts and in the circumstances of the case, the ITAT was right in law in holding that there is no specific provision for charging interest u/ss 139 (8) and 217 on carrying out rectification?"**

Sub section (2) of section 217 of the Income Tax Act, 1961 provides that the provisions of sub- sections (2) (3) and (4) of section 215 in relation to interest shall be applicable to proceedings under

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? Yes.

section 217 also. To form a proper opinion on the question referred to us it would be necessary to quote the provisions of sections 139 (8) (b) and 215 (3), as they stood prior to the amendment made w.e.f. 1.4.1985 and thereafter. The provisions read thus:

Sections 139 (8) and 215 (3) as they stood prior to the amendment on 1.4.1985.	The provisions as they stood on amendment made with effect from 1.4.1985.
"139 (8) (b). 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 of tax on which interest was payable under this sub-section has been reduced, the interest shall be reduced accordingly, and the excess interest paid, if any, shall be refunded.	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 of tax on which interest was payable under this sub-section has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and (i) in a case where the interest is increased, the Income tax Officer shall serve on the assessee, a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly; (ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.

215 (3)-Where as a result of an order under section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264, the amount on which interest was payable under this section has been reduced accordingly and the excess interest paid, if any, shall be refunded.	215 (3)-Where as a result of an order under section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264, the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and- (i) in a case where the interest is increased, the Income Tax Officer shall serve on the assessee, a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly; (ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.

From a plain reading of the provisions of sections 139 (8) and 215 (3), as they stood prior to the amendment made on April 1, 1985, it is clear that as a result of an order under section 155 of the Act and other sections mentioned in those provisions, if the amount of tax is reduced and interest had been charged earlier, the same shall be reduced accordingly and the excess amount is to be

refunded. At that time, there was no provision that in case tax liability of the assessee is enhanced, the interest would be enhanced accordingly. This provision was brought in by an amendment made with effect from April 1, 1985, and the liability of interest was to be increased in the event of increase or reduction in the tax liability. We have seen the Amendment Act and its objects and reasons. It does not show that it was made retrospective so as to be made applicable even for the assessment year 1974-75 with which we are concerned in this case.

In the present case the assessment year is 1982-83 i.e. prior to the amendment which came into effect on 1.4.1985. It is, therefore, obvious that the income Tax Officer had no authority to impose interest on the amount of income increased of rectification. This view has also been taken by the Punjab and Haryana High Court in ***Panna Lal versus Commissioner of Income Tax***, (1989) 179 ITR 16 and the Gujarat high Court in ***Commissioner of Income Tax versus Vishwajit M. Mehta***, (2002) 254 ITR 66.

The question is, therefore, answered in favour of the assessee and against the revenue. A copy of this judgment under the signature of the Registrar General of this Court be forwarded to the Tribunal.

The reference thus stands disposed of with no order as to costs.

(Deepak Gupta), Judge

(Rajiv Sharma), Judge

April 22, 2008
Awasthi