

COMMISSIONER OF INCOME TAX

v.

M/S. HINDUSTAN BULK CARRIERS

DECEMBER 17, 2002

[M.B. SHAH, ARIJIT PASAYAT AND D.M. DHARMADHIKARI, JJ.]

Income Tax Act, 1961:

Sections 2(4), 142-144, 147, 208, 220, 234A, 234B, 234C, 245 C, 245D(4) and 245D(6):

Application disclosing undisclosed income—Default in payment of advance tax—Levy of interest—Period of levying of interest—Held, since assessee defaulted in payment of correct advance tax, interest could be levied under the provisions of the Act—Harmonizing various provision of the Act, vis-à-vis legislative intent in introduction of Chapter XIX-A, the period for which such interest could be levied starts from 1st day of April following relevant financial year up to the date of Order by Settlement Commission—Interpretation of Statutes.

Settlement Commissions' power of settlement—Exercise of—Held: Commission assumes jurisdiction of Income-tax Authority after it allows assessee's application till it makes order under Section 245D—Though Commission possess sufficient power in assessing the income of assessee but it can not make any order in conflict with the mandatory provisions on quantum, payment of tax and interest under the Act.

Interest charged under Section 234A, B & C and under Section 245 D—Distinction between—Discussed.

Introduction of Chapter XIX-A by the Taxation Law (Amendment) Act, 1975 in the Income Tax Act—Implication— Discussed.

Legal Maxims: Maxim 'utres magis valeat quam pereat'—Applicability of—Discussed.

Settlement Commission gave certain direction in one of the matters *In re. Gulraj Engg. Construction Co. and Ors.*, (1995) (215) ITR ATS 1). Appellant-assessee challenged the same before this Court in the present appeals.

A The question which arose in these appeals related to the period for which interest in terms of Section 234B of the Income Tax Act could be levied by the Settlement Commission under the provisions of Section 245D of the Act.

B It was contended for the Revenue that as per provision of law under Chapter XIX-A, when assessee filed application disclosing undisclosed income, the Commission gets exclusive jurisdiction and its order is conclusive; that the expression 'regular assessment' or 're-assessment', as per provisions under Sections 234 A, B & C, relate to income which was earlier disclosed before the Income Tax Authorities; that the order passed by the Commission under Section 245D (4) and subsequently under sub-section (6) are in the nature of original orders determining liability of tax, penalty and interest as also its quantification; and that the liability to pay interest under Sections 234A, B & C are of mandatory nature.

C It was submitted for the assessee that sub-section (4) of Section 245D deals with the quantum of interest chargeable with reference to the fix terminus points and it cannot be beyond the date of regular assessment or re-assessment for the purpose of Section 234B of the Act.

Partly allowing the appeals, the Court

E HELD: *Per Pasayat, J.* :

F 1. Interest chargeable under Sections 234A, 234B and 234C of the Income Tax Act relate to three different types of infractions. In the instant case, the dispute relates to the period for which interest is chargeable under Section 234B of the Act. The levy is attracted where subject to other provisions in the Section in any financial year an assessee, who is liable to pay the advance tax under Section 208, has failed to pay such tax or where advance tax paid by such assessee under the provisions of Section 210 is less than ninety per cent of the assessed tax. The beginning point is first day of April next following the relevant financial year. Different end points are prescribed. They are (i) up to the date of determination of total income under sub-section (1) of Section 143; (ii) the date of regular assessment when a regular assessment is made and (iii) where there is an order of re-assessment or re-computation under Section 147, or the difference of assessed income on re-assessment or re-computation and originally assessed income till date of re-assessment or re-computation.

H [397-F, 398-A, B, 400-A-C]

1.2. In addition to the powers conferred on the Settlement Commission under Chapter XIX-A of the Act, the Settlement Commission has all the powers which are vested in the income-tax authority under the Act. Sub-section (2) of Section 245F is of vital importance and provides that where an application made under Section 245C has been allowed to be proceeded with under Section 245D, the Commission shall until an order is passed under sub-section (3) of that section has exclusive jurisdiction to exercise the powers and perform the functions of the income-tax authority under the Act. In essence, the Commission assumes jurisdiction to deal with the matter after it decides to proceed with the application and continues to have the jurisdiction till it makes an order under Section 245D. The language used in Section 245D is "order" and not "assessment". The order is not described as the original assessment or regular assessment or re-assessment. In that sense, the Commission exercises a plenary jurisdiction. [405-F-H; 406-A-B]

1.3. The plea that there is no charging Section for levy of interest; that there is no requirement to pay interest as no points of terminus have been fixed; and that the plea that terminus has to be provided in relation to disclosed income are untenable and without any substance in view of the decision of the Constitution Bench in *Anjum's case** holding that the levy is mandatory. It cannot be even countenanced that no interest is chargeable for that portion of the income forming part of the total income as determined by the Commission which was not earlier disclosed before the Assessing Officer. The Commission's power of settlement has to be exercised in accordance with the provisions of the Act. Though the Commission has sufficient elbow room in assessing the income of the applicant but it cannot make any order with a term of settlement which would be in conflict with the mandatory provisions of the Act like in the quantum and payment of tax and the interest. The object of the legislature in introducing Section 245C is to see that protracted proceedings before the authorities or in Courts are avoided by resorting to settlement of cases. In this process an assessee cannot expect any reduction in amounts statutorily payable under the Act. [406-B, D, E, F]

**Commissioner of Income Tax v. Anjum M.H. Ghaswala and Ors.*, (2001 (252) ITR 1), followed.

2.1. A construction which reduces the statute to a futility has to be avoided. A statute or any enacting provision therein must be so construed

A as to make it effective and operative on the principle expressed in maxim *ut res magis valeat quam pereat* i.e. a liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties. A statute is designed to be workable and the interpretation thereof by a Court should be to secure that object unless crucial omission or clear direction makes that end unattainable. The

B Courts will have to reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation a construction which would reduce the legislation to futility

C should be avoided and the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result should be accepted. The Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute. [407-D-H; 408-A-C]

D *R.S. Raghunath v. State of Karnataka and Anr.*, AIR (1992) SC 81; *Sultana Begum v. Prem Chand Jain*, AIR (1997) SC 1006; *Mohan Kumar Singhania v. Union of India*, AIR (1992) SC 1; *Gursahai Saigal v. Commissioner of Income Tax, Punjab*, AIR (1963) SC 1062; and *Commissioner of Income Tax v. S. Teja Singh*, AIR (1959) SC 352, referred to.

E *Pye v. Minister for Lands for NSW*, (1954) 3 All ER 514 (PC), referred to.

F *Broom's Legal Maxims (10th Edition)*, page 361; *Craies on Statutes (7th Edition)* page 95 and *Maxwell on Statutes (11th Edition)* page 221, referred to.

G 2.2. Harmonizing various provisions of the Act and the legislative intent in introducing Chapter XIX-A, the position is indisputable that the end point of the terminus has to be the date on which the Commission passes an order under Section 245D(4). Any other interpretation would lead to absurd result because the assessee who has concealed income is placed at a more advantageous position *vis-a-vis* one who has declared his income truly and fairly. It is for the default in not paying the correct advance tax that interest under Section 243B is levied and has to be till the date of order under Section 245D(4). [407-A-C]

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Per Shah, J. (*Supplementing*):

1. Under the provisions of the Act, the Commission has no power (a) to waive tax statutorily payable under the Act, or (b) to reduce the interest on the tax payable on the income disclosed. Assessee has to pay the tax amount on the disclosed income and also the interest payable on the said tax. Once the order under Section 245D is passed by the Settlement Commission to proceed with the application, assessee is required to pay the said amount i.e. the tax on the income subsequently disclosed and the interest payable thereon, within a period of 35 days. If that amount is not paid the Commission may extend the period of payment with a specific condition that he shall pay the same with interest thereon. It is true that to that extent he would be required to pay interest on interest but the scheme of Section 245D contemplates that he has to pay tax on the disclosed income and as the Commission has no power to waive interest on the said tax, he is also required to pay the tax with interest. That means under sub-section (2A) to Section 245D the assessee would be required to pay the income tax payable on the disclosed income plus the interest payable thereon as contemplated under Sections 234A, 234B or 234C.

[411-E-H; 412-A]

Commissioner of Income Tax, Mumbai v. Anjum Ghaswala, [2002] 1 SCC 633, followed.

2. The scheme of sub-section (2C) of Section 245D specifically provides that where the additional amount of income tax is not paid within the time specified under sub-section (2A) then on the amount which remains unpaid "the assessee shall be liable to pay simple interest on the amount remaining unpaid from the date of expiry of the period of 35 days referred to in sub-section (2A)". Under sub-section (2D) where the additional amount of income tax referred to in sub-section (2A) is not paid by the assessee within the time specified under that sub-section or the time to pay is extended under sub-section (2B) the Settlement Commission is empowered to direct recovery of the said amount with interest payable thereon under sub-section (2C) and penalty for default in making payment of such additional amount in accordance with the provisions of Chapter XVII. The scheme of Section 245D leaves no doubt that the assessee would be required to pay the amount with interest thereon. The amount at that stage would be the tax plus interest. In such cases, there is no question of paying interest on interest because the interest which the assessee is

A required to pay under Sections 234A, 234B or 234C merges with the amount as provided under sub-section (2A). [412-C-F]

Per Dharmadhikari, J. (Supplementing):

1. Two main issues require consideration and answer by this Court.

B The first is the efficacy of the regular assessment proceedings which took place before and after the admission of the case for consideration by the Settlement Commission. The *second* is the extent of liability towards payment of interest on the tax due as determined in a 'case' by the Settlement Commission in the light of various situations of no payment of tax or delayed payment of tax in the course of regular assessment.

C [422-C-F]

2. The object of introduction of Chapter XIX-A in the Income Tax Act was to unearth black-money and prevent its proliferation; to fight and curb tax evasion; to check avoidance of tax through various legal devices, including the formation of trusts and diversion of income or wealth to members of family to reduce tax arrears and to ensure that in future, tax arrears do not accumulate; to rationalise the exemptions and deductions available under the relevant enactments, and to streamline the administrative set-up and make it functionally efficient. [413-C-D]

E 3.1. The Settlement Commission is empowered to the limited extent to reopen the assessment proceedings already undertaken, for settlement of 'case' before it on the basis of income disclosed subsequently and pass a composite order determining the liability of assessee towards tax, penalty and interest. Sub-section (6) of Section 245D requires the Settlement Commission to make an order providing for terms of settlement, indicating the demand towards tax, penalty and interest and the manner in which it shall be paid. Once a case is admitted by the Settlement Commission for consideration, it shall have exclusive jurisdiction to exercise all powers or regular authorities under the IT Act for the purpose of effecting a settlement and for recovery of tax penalty and interest. [415-E-G]

G 3.2. The exclusive jurisdiction which the Settlement Commission derives for exercise of powers and functions of regular income-tax authority in accordance with Sub-section (1) & (2) of Section 245F can be exercised only when the Commission makes a formal order to admit or allow the application to be proceeded with for the purpose of effecting a settlement. [416-B-C]

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3.3. It is only when the Settlement Commission formally allows the application for being considered for "settlement" the regular assessment proceedings and recoveries initiated for tax penalty or interest pursuant thereto, shall become subject to the powers of Commission and not prior to the same. [416-F] A

3.4. The Settlement Commission has no power to waive tax or interest, as laid down in sub-section (4) of Section 245D. It has to pass orders on the matter of determining the quantum of income and tax in accordance with the other relevant provisions of the Act applicable to the relevant assessment year or years. There is no power to settle the 'case' *de hors* the provisions of the Act applicable to regular assessment. [416-H; 417-A] B C

3.5. The Act does not make distinction or differentiation in treatment between the assessee who honestly disclose income and are willing to pay the tax and the other assessee who do not fully or partly disclose the income to avoid payment of tax in due time and approach the Commission for disclosure of their earlier concealed income. Such distinction or differentiation between the above mentioned two classes of assessee is not permitted by the provisions contained in Chapter XIXA, it being neither legally valid nor just. Chapter XIXA is not intended to benefit the assessee who had not earlier honestly disclosed their income and paid the tax in due time. The settlement procedure aims to bring such assessee at par with the assessee who had honestly disclosed their income and paid the tax. The provisions of the Chapter have to be read harmoniously with other provisions of the Act and thus applied to give full effect to other relevant provisions of the Act which confer all powers of income-tax authority under the Act on the Settlement Commission for assessing the income and determining the tax. [417-C-F] D E F

4.1. With the introduction of Chapter XIXA for Settlement of Cases, corresponding legislative changes have been effected by insertion of Sections 234 A and 234 C in Income Tax Act to redetermine quantum of interest payable in various contemplated contingencies under the Act. All the changes incorporated by amendments in Section 234 A to Section 234 B clearly indicate that interest payable on the tax due, has to be determined by the Commission after settlement of case and *the starting point* for charging interest would be the *due date* under the regular assessment proceedings and *end point* the date of order of the Settlement Commission. [417-C; 419-A] G H

A 4.2. The forum of Commission for 'Settlement of Cases' is not created to put a premium on fraud or misrepresentation of tax evaders. The provisions contained in Chapter XIX A merely aim at encouraging tax payers to approach the Settlement Commission with full disclosure of their income which they had not earlier disclosed in the course of regular assessment. Such assessee who co-operate with the assessing authorities **B** in making proper assessment of tax can be granted immunity from prosecution and penalty. There is no provision that they can be granted immunity from payment of interest on the tax assessed. [419-D-F]

C *Commissioner of Income Tax, Mumbai v. Anjum Ghaswala*, [2002] 1 SCC 633, followed.

Commissioner of Income Tax v. Express Newspapers Limited, [1994] 2 SCC 374, distinguished.

D 4.3. If on quantum of income and tax earlier disclosed in regular assessment proceedings, interest had been charged on tax due, till payment no further interest will be payable for the said period on the total quantum of tax determined by the Settlement Commission and necessary adjustments would be granted. In no case, there would be charge of interest on interest. The interest chargeable in different circumstances in **E** regular assessment proceedings will be calculated on the basis of the quantum of income and tax determined by Settlement Commission and necessary recovery and adjustments will be granted so as to avoid demand of any interest on interest. [421-H; 422-A, B]

F 5. It is only after a formal order of allowing or admitting the application for consideration of settlement is recorded by the Settlement Commission that all earlier assessment proceedings and recovery proceedings, if any, issued pursuant thereto, would become subject to the order of the Settlement Commission which will exercise all powers conferred on the income-tax authority under the IT Act. The Settlement **G** Commission has no power to waive interest on the tax determined and found due while considering the case under Chapter XIX A in various statutory eventualities as delineated in the impugned orders of the Special Bench of the Settlement Commission. The interest on the "aggregate income" based on earlier disclosed and subsequently disclosed income, is to be determined by it and on the tax found due on such income, interest **H** will be charged in accordance with the provisions applicable in the regular

assessment proceedings. The *starting point* of charging interest would be the due date of payment of advance tax or tax assessed and demanded as applicable to regular assessment proceedings and the *end point* the date of the order of the Settlement Commission. The tax and interest already paid, if any, on the basis of regular assessment would be adjusted from the quantum of interest and tax found due and as determined by the Settlement Commission. The provisions do not allow charging of any interest on interest found due. [422-D-H; 423-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7966-67 of 1996.

From the Judgment and Order dated 28.3.1995 of the Settlement Commission (Special Bench), Bombay in 1/45 Tech. 94 SC/3865.

Soli J. Sorabjee, Attorney General, S. Ganesh, Ranbir Chandra, Ms. A Subhashini, K.C. Kaushik, Rajiv Tyagi, Ms. Vibha Dutta Makhija, Sanjiv Sen, Rajiv Nanda, Ms. Meera Gupta and B.V. Balram Das and Sushm Suri for the Appellants.

P. Chidambaram, Bhaskar V. Desai, Mrs. Sobha Jagtiani, Ms. Vanta Metha, Vijay Kakwani, Vishwajit Singh (N.P.), Arun Sathe, Bhaskar Y. Kulkarni, for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. A question of seminal importance relating to the period for which interest in terms of Section 234B of the Income Tax Act, 1961 (in short 'the Act') can be levied when the Settlement Commission (in short 'the Commission') passes an order under Section 245D of the Act, is the subject matter of adjudication in these appeals. These appeals are directed against the common judgment of the Special Bench of the Commission (in *Gulraj Engineering Construction Co. In re and Ors.* (1995 (215) ITR ATS 1) which dealt with five situations where such questions may arise. The situations according to the Special Bench are as follows:

(i) The income is determined under Section 143(1) but no regular assessment under Section 143(3) or 144 is made with or without there being a notice under section 143(2) and /or section 142(1).

(ii) A regular assessment is made under Section 143(3) or section 144 in addition to the determination of the income under section 143(1)

- A** and an appeal is pending before the first appellate authority.
- (iii) Only a return of income is furnished without or in pursuance of a notice under section 142(1) or section 148 and the income is neither determined under section 143(1) nor under section 143(3) or section 144.
- B** (iv) The assessment made under section 143(3) or section 144 is reopened under section 147 and neither any return of income is furnished in response to the notice under section 148 nor is the order of re-assessment made by the Assessing Officer.
- C** (v) A reassessment is made under section 147 read with section 143(3) or section 144 and an appeal is pending before the first appellate authority.”

Per majority the Special Bench decided as follows:

- D** “Interest under Section 234B will be chargeable:
- In cases I and III up to the date of the order passed by the Settlement Commission under section 245D(4).
- E** In case II up to the date of regular assessment made under section 143(3) or section 144 of the Act by the Assessing Officer.
- In case IV from the date of regular assessment made by the Assessing Officer under section 143(3) or section 144, to the date of the order made by the Settlement Commission under section 245D(4).
- F** In case V to the date of the re-assessment made by the Assessing Officer from the date of regular assessment under section 143(3)/144”.

- G** In support of the appeals, learned counsel for the revenue submitted that the view expressed by the Special Bench is clearly unsustainable. Chapter XIX-A which was introduced in the Act makes a distinction between income disclosed by the assessee before the Assessing Officer and undisclosed income disclosed in an application filed before the Commission. In the latter situation, the Commission gets jurisdiction if prescribed conditions are fulfilled. When an assessee files a petition under Section 245C, there is a liability to pay the additional tax in respect of the undisclosed income. An exclusive jurisdiction
- H** is conferred on the Commission and its order is conclusive. The expressions

‘regular assessment’ or ‘re-assessment’ as appearing in Sections 234A, 234B and 234C relate to income which was earlier disclosed before the income-tax authorities. For all practical purposes, the Commission exercises original jurisdiction and the orders passed under Section 245D(4) and consequentially under sub-section (6) are in the nature of original orders determining liability of tax, penalty and interest and quantification thereof. It has to be borne in mind that provisions relating to settlement as appearing in Chapter XIX-A constitute a complete code. Therefore, the view of the Special Bench with reference to regular assessment as defined under Section 2(40), or re-assessment under Section 147 has no relevance. The liability to pay interest under Sections 234A, 234B and 234C, as the case may be, is of mandatory nature as was observed by a Constitution Bench of this Court in *Commissioner of Income Tax v. Anjum M. H. Ghaswala and Ors.*, (2001 (252) ITR 1). The starting point of the terminus for payment of interest is not in dispute. It is only the end point. The same has to be the date on which the order is passed by the Commission under Section 245D and not an earlier point of time.

Per contra, learned counsel for the assessee has submitted that both points of time terminus have been fixed in the provisions, that is, sub-section (4) of each of the aforesaid three provisions. With reference to the expression ‘an order of Settlement Commission under sub-section (4) of Section 245D’ in these provisions, it is submitted that sub-section (4) deals with the quantum of interest chargeable with reference to the fixed terminus points and it cannot be beyond the date of regular assessment or re-assessment, as the case may be, for the purpose of Section 234B. Alternatively, it is submitted that since no terminus has been provided specifically, there is no liability to pay interest, more so when there is no charging section. Reference was also made to *Commissioner of Income Tax v. Express Newspapers Ltd.*, (1994) (206) ITR 443) to substantiate the stand.

In the present case, the dispute relates to the period for which interest is chargeable under Section 234B. Sections 234A, 234B and 234C relate to three different types of infractions. Under Section 234A, interest is chargeable for default in furnishing a return of income. Levy is attracted when return of income for any assessment year under sub-section (1) or sub-section (4) of Section 139 or in response a notice under sub-section (1) of Section 142 is furnished after the due date or is not furnished. Levy in terms of Section 234B to which the present cases relate, is attracted for defaults in payment of advance tax. The provision reads as follows:

A *"Section 234B: Interest for defaults in payment of advance tax.*

(1) Subject to the other provisions of this section, where, in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of section 210 is less than ninety per cent of the assessed tax, the assessee shall be liable to pay simple interest at the rate of one and one-half per cent for every month or part of a month comprised in the period from the 1st day of April next following such financial year to the date of determination of total income under sub-section (1) of section 143 and where a regular assessment is made, to the date of such regular assessment, on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax.

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

- D**
- (a) for the purposes of computing the interest payable under section 140A, the tax on the total income as declared in the return referred to in that section;
- (b) in any other case, the tax on the total income determined under sub-section (1) of section 143 or on regular assessment,

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as reduced by the amount of tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income.

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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.

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Explanation 3. In Explanation 1 and in sub-section (3) "tax on the total income determined under sub-section (1) of section 143" shall not include the additional income-tax, if any, payable under section 143.

(2) Where, before the date of determination of total income under sub-section (1) of section 143 or completion of a regular assessment, tax is paid by the assessee under section 140A or otherwise,

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- (i) interest shall be calculated in accordance with the foregoing provisions of this section up to the date on which the tax is so paid, and reduced by the interest, if any, paid under section 140A towards the interest chargeable under this section; A
- (ii) thereafter, interest shall be calculated at the rate aforesaid on the amount by which the tax so paid together with the advance tax paid falls short of the assessed tax. B

(3) Where, as a result of an order of re-assessment or re-computation under section 147, the amount on which interest was payable under sub-section (1) is increased, the assessee shall be liable to pay simple interest at the rate of one and one-half per cent for every month or part of a month comprised in the period commencing on the day following the date of determination of total income under sub-section (1) of section 143 and where a regular assessment is made as is referred to in sub-section (1) following the date of such regular assessment and ending on the date of the re-assessment or re-computation under section 147, on the amount by which the tax on the total income determined on the basis of the re-assessment or re-computation exceeds the tax on the total income determined under sub-section (1) of section 143 or on the basis of the regular assessment aforesaid. C D E

(4) Where, as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) or sub-section (3) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and F

- (i) in a case where the interest is increased, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly; G
- (ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.

(5) The provisions of this section shall apply in respect of assessments H

- A for the assessment year commencing on the 1st day of April, 1989 and subsequent assessment years.”

B The levy is attracted where subject to other provisions in the section in any financial year an assessee who is liable to pay the advance tax under Section 208, has failed to pay such tax or where advance tax paid by such assessee under the provisions of Section 210 is less than ninety per cent of the assessed tax. The beginning point is first day of April next following the relevant financial year. Different end points are prescribed. They are (i) up to the date of determination of total income under sub-section (1) of Section 143; (ii) the date of regular assessment when a regular assessment is made and (iii) where there is an order of re-assessment or re-computation under C Section 147, or the difference of assessed income on re-assessment or re-computation and originally assessed income till date of re-assessment or re-computation, as the case may be. Sub-section (3) provides the modalities to be adopted.

- D Section 234C deals with interest for deferment of advance tax.

E As noted above, great emphasis is laid by the assessee on sub-section (4) of Section 245D which, inter alia, provides that where as a result of an order of the Settlement Commission under sub-section (4) of Section 245D the amount on which interest was payable under sub-section (1) or sub-section (3) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly. From this, according to the assessee, the inference to be drawn has to be that only the quantum of income on which interest is charged which is varied, but the period remains fixed.

- F One basic feature of Chapter XIX is that it relates to income which was not disclosed before the income-tax authorities. This is evident from Section 245C which reads as follows:

“Section 245C: Application for settlement of cases.

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

settled and any such application shall be disposed of in the manner hereinafter provided: A

Provided that no such application shall be made unless, -

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

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

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

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

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

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

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

(1C) The additional amount of income-tax payable in respect of the H

- A *income disclosed in the application* relating to the previous year referred to in sub-section (1B) shall be, -
- (a) in a case referred to in clause (i) of that sub-section, the amount of tax calculated under that clause;
- B (b) in a case referred to in clause (ii) of that sub-section, the amount of tax calculated under that clause as reduced by the amount of tax calculated on the total income returned for that year;
- (iii) in a case referred to in clause (iii) of that sub-section, the amount of tax calculated under that clause as reduced by the amount of tax calculated on the total income assessed in the earlier proceeding for assessment under section 143 or section 144 or section 147".
- C

(Underlined for emphasis)

- D Prior to substitution by Finance Act, 1987 w.e.f. 1.6.1987, the proviso to sub-section (1) read as follows:

“provided that no such application shall be made unless the additional amount of income tax payable on the income disclosed in the application exceeds fifty thousand rupees.”

- E The word fifty thousand rupees in the earlier proviso has been substituted by the expression “one hundred thousand rupees” by the Finance Act, 1995 w.e.f. 1.7.1995. Some changes were introduced by Finance Act, 1987 w.e.f. 1.6.1987 in sub section (1B) and (1C) which do not have much importance for the present appeals.

- F The Commission is not bound to proceed with any application filed under Section 245C as is clear from Section 245D. The special provisions so far as relevant read as follows:

Section 245D: Procedure on receipt of an application under section 245C.

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

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

Provided further that the Commissioner shall furnish the report within a period of forty-five days of the receipt of communication from the Settlement Commission in case of all applications made under section 245C on or after the 1st day of July, 1995 and if the Commissioner fails to furnish the report within the said period, the Settlement Commission may make the order without such report.

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(2) x x x x x

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(2A) Subject to the provisions of sub-section (2B), the assessee shall within thirty-five days of the receipt of a copy of the order under sub-section (1) allowing the application to be proceeded with, pay the additional amount of income-tax payable on the income disclosed in the application and shall furnish proof of such payment to the Settlement Commission.

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(2B) If the Settlement Commission is satisfied, on an application made in this behalf by the assessee, that he is unable for good and sufficient reasons to pay the additional amount of income-tax referred to in sub-section (2A) within the time specified in that sub-section, it may extend the time for payment of the amount which remains unpaid or allow payment thereof by instalments if the assessee furnishes adequate security for the payment thereof.

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

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(2D) x x x x

(3) Where an application is allowed to be proceeded with under sub-section (1), the Settlement Commission may call for the relevant

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A records from the Commissioner and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case.

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(4) After examination of the records and the report of the Commissioner, received under sub-section (1), and the report, if any, of the Commissioner received under sub-section (3), and after giving an opportunity to the applicant and to the Commissioner to be heard, either in person or through a representative duly authorized in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner under sub-section (1) or sub-section (3).

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(5) x x x x x

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(6) Every order passed under sub-section (4) shall provide for the terms of settlement including any demand by way of tax, penalty or interest the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

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

H The principles indicated by the Constitution Bench in *Anjum's* case (supra) are as follows:

“1. Commission in exercise of its power under Section 245D(4) and (6), does not have the power to reduce or waive interest statutorily payable under Sections 234A, 234B and 234C, except to the extent of granting relief under the Circulars dated 23rd May, 1996 issued by the Board under Section 119 of the Act. While exercising the power derived under the Circulars of the Board, the Commission does not act as a subordinate to the Board but will be enforcing the relaxed provisions of the circulars for the benefit of the assessee in the process of settlement.

2. Interest due under the mandatory provisions like Sections 234A, 234B and 234C has to be included in the settlement.

3. Wherever the Act contemplated power to waive or reduction of interest to be exercised by any particular authority in any particular situation it has done so like in Sections 139(8), 215(4), 216 and Section 220(2A) of the Act.

4. Prior to Finance Act, 1987, the corresponding sections pertaining to imposition of interest used the expression ‘may’ but the change brought about in the Finance Act, 1987 is a clear indication that the intention of the legislature was to make the collection of statutory interest mandatory. The expression ‘shall’ is used deliberately.”

Sub-section (1) of Section 245C makes it clear that at any stage of a case relating to him an assessee may make an application to the Commission disclosing fully and truly his income which *has not been disclosed before the Assessing Officer*. (Underlined for emphasis). To put it differently, an assessee cannot approach the Commission for settlement of his case in respect of an income which has already been disclosed before the Assessing Officer. The income disclosed as contemplated is in the nature of voluntary disclosure of concerned income.

Section 245F dealing with powers and procedure of Settlement Commission provides that in addition to the powers conferred on the Settlement Commission under Chapter XIX-A, it has all the powers which are vested in the income-tax authority under the Act. Sub-section (2) is of vital importance and provides that where an application made under Section 245C has been allowed to be proceeded with under Section 245D, the Commission shall until an order is passed under sub-section (4) of Section 245D, subject to the provisions of sub-section (3) of that section have exclusive jurisdiction to

- A exercise the powers and perform the functions of the income-tax authority under the Act in relation to the case. In essence, the Commission assumes jurisdiction to deal with the matter after it decides to proceed with the application and continues to have the jurisdiction till it makes an order under Section 245D. As noted by the Constitution Bench in Anjum's case (supra),
- B Section 245D(4) is the charging section and sub-section (6) prescribes the modalities to be adopted to give effect to the order. It has to be noted that the language used in Section 245D is "order" and not "assessment". The order is not described as the original assessment or regular assessment or re-assessment. In that sense, the Commission exercises a plenary jurisdiction. The assessee's stand before the Special Bench of the Commission was that
- C there is no charging section for levy of interest. Such a plea did not find acceptance by the Constitution Bench in Anjum's case (supra). The further plea that there is no requirement to pay interest as no points of terminus have been fixed is equally untenable because the Constitution Bench held that the levy is mandatory. Equally, without substance is the plea taken that terminus has to be as provided in relation to disclosed income. It cannot be even
- D countenanced that no interest is chargeable for that portion of the income forming part of the total income as determined by the Commission which was not earlier disclosed before the Assessing Officer.

- E The Commission's power of settlement has to be exercised in accordance with the provisions of the Act. Though the Commission has sufficient elbowroom in assessing the income of the applicant and it cannot make any order with a term of settlement which would be in conflict with the mandatory provisions of the Act like in the quantum and payment of tax and the interest. The object of the legislature, as noted by the Constitution Bench, in introducing
- F Section 245C is to see that protracted proceedings before the authorities or in Courts are avoided by resorting to settlement of cases. In this process an assessee cannot expect any reduction in amounts statutorily payable under the Act. Under Section 245H, the Commission has the power to grant immunity to the assessee from prosecution and penalty. The immunity extends not only to penal provisions of the Act but to offences under the Indian Penal Code,
- G 1860 (in short 'the IPC'), or under any other Central Act for the time being in force. Benefit of waiver or reduction in the imposition of penalty under the Act with respect to the cases covered by the settlement is extended as provided under Section 245H(1). Here again, the immunity is not available in cases where the proceedings for prosecution for the indicated offences have been instituted before the date of receipt of the application under Section 245C.
- H The immunity granted stands withdrawn in case of failure to pay sum specified

in the order of settlement passed under sub-section (4) of Section-245D within the specified time or the extended time. A

Harmonising various provisions of the Act and the legislative intent in introducing Chapter XIX-A, the position is indisputable that the end point of the terminus has to be the date on which the Commission passes an order under Section 245D(4). Any other interpretation would lead to absurd result because the assessee who has concealed income is placed at a more advantageous position vis-à-vis one who has declared his income truly and fairly. By way of illustration it would be seen that a person who has disclosed rupees ten lakhs as income and paid advance tax correctly is in a way deprived use of the amount paid as advance tax for the period during which an assessee who has not disclosed the correct income and has disclosed rupees two lakhs before the Assessing Officer and subsequently goes before the Commission disclosing rupees eight lakhs makes use of the amount which was required to be paid as advance tax. It is for this default in not paying the correct advance tax that interest Section 234B is levied and has to be till the date of order under Section 245D(4). B C D

A construction which reduces the statute to a futility has to be avoided. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in maxim *ut res magis valeat quam pereat* i.e. a liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties. (See *Broom's Legal Maxims* (10th Edition), page 361, *Craies on Statutes* (7th Edition) page 95 and *Maxwell on Statutes* (11th Edition) page 221.) E

A statute is designed to be workable and the interpretation thereof by a Court should be to secure that object unless crucial omission or clear direction makes that end unattainable. (See *Whitney v. Commissioner of Inland Revenue*, (1926) AC 37 p. 52 referred to in *Commissioner of Income Tax v. S. Teja Singh*, AIR (1959) SC 352, *Gursahai Saigal v. Commissioner of Income Tax, Punjab*, AIR (1963) SC 1062. F

The Courts will have to reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. (See *Salmon v. Duncombe*, (1886) 11 AC 627 p. 634 (PC), *Curtis v. Stovin*, (1889) 22 CBD 513) referred to in *S. Teja Singh's* case (Supra). G H

A If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. (See *Nokes v. Doncaster Amalgamated Collieries*, (1940) 3 All E.R. 549 (CL) referred to in *Pye v. Minister for Lands for NSW*, (1954) 3 All ER 514 (PC). The principles indicated in the said cases were reiterated by this Court in *Mohan Kumar Singhania v. Union of India*, AIR (1992) SC 1.

C The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.

D The Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare clause with other parts of the law and the setting in which the clause to be interpreted occurs. [See *R.S. Raghunath v. State of Karnataka and Anr.*, AIR (1992) SC 81. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the Court to avoid a head on clash between two sections of the same Act. [See *Sultana Begum v. Prem Chand Jain*, AIR (1997) SC 1006.

E Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with the other.

F The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a "useless lumber" or 'dead letter' is not a harmonised construction. To harmonise is not to destroy.

G Even though in Section 245D(4) or in section 245D(6), the terminus points for charging interest have not been specifically provided, they have to be charged in the spirit of Sections 234A, 234B and 234C. The interests charged under Sections 245D(2C) and 245D(6A) are for different types of defaults and are not really relatable to Sections 234A, 234B and 234C.

H There is another way of looking at the issue. Section 243B(3) provides

differently for regular assessment and re-assessment. In a re-assessment, ordinarily income assessed is more than what was determined originally. If two different periods are provided to meet such a situation, it is inconceivable that legislature intended to totally give a go by to interest on the income which for the first time is disclosed before the Commission. By analogy and harmony, the period has to be till the date of Commission's order.

To put it differently, the interests charged in terms of Sections 234A, B and C become payable on the income already disclosed in the returns filed, together with the income disclosed before the Commission. The concerned interest as aforesaid shall be on the consolidated amount of income, i.e. both disclosed and undisclosed. As indicated above, such interests shall be charged till the Commission acts in terms of Section 245D. Thereafter, the prescription relating to charging of interests etc. becomes operative, after the Commission allows the application for settlement to be proceeded with. In such event, there is no further charge of interest in terms of Sections 234A, B and C. The interest charged in terms of Section 245D is a separate levy and not in terms of interest chargeable under Sections 234A, B and C. Therefore, the apprehension that there is scope for charging of interest on interest is without any basis.

To sum up, the inevitable conclusion is that interest has to be charged for the period beginning from the first day of April next following the relevant financial year up to the date of Commission's order at the rate applicable, on interest chargeable under Section 234B, when an order under Section 245D(4) is passed, followed by quantification under Section 245D(6)

The appeals are allowed to the extent indicated above.

SHAH, J. I have gone through the Judgments rendered by brother Pasayat, J. and brother Dharmadhikari, J. I agree with the views expressed in those Judgments. However, for clarifying the position with regard to payment of interest I would like to add as under:

As provided under Section 245B of the Income-Tax Act, 1961, (hereinafter referred to as 'the Act') the Central Government has constituted the Income Tax Settlement Commission for the settlement of cases. The word "case" has been defined under Section 245A(b) of the Act to mean any proceeding under the Income Tax Act for the assessment or reassessment of any person in respect of any year or years and includes appeal or revision in connection with such assessment or reassessment, which may be pending

A before an Income Tax Authority on the date on which an application under sub-section (1) of Section 245C is made. Section 245C(1) provides for an application by an assessee in a prescribed form containing a full and true disclosure of his income which has not been disclosed before the assessing officer and such other prescribed particulars for settlement of his case by the Settlement Commission.

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Other requirements are that no such application could be made unless-

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

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

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The other relevant requirement which has a bearing on the question involved in these appeals is sub-section (1A) of Section 245C, which provides that the additional amount of income tax payable in respect of the income disclosed in an application should be the amount calculated in accordance with the provisions of sub-section (1B) to (1D).

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The next stage is Section 245D which empowers the Settlement Commission to reject the application or to allow the application to proceed with within a period of one year from the end of the month in which such application was made. Rejection of such application could be only after giving an opportunity of hearing to the applicant as well as after considering the report of the Commissioner of Income Tax. If the application is not rejected and the Settlement Commission decides to proceed with the application, then the assessee is required to pay the additional amount of income tax payable on the income disclosed in the application within 35 days of the receipt of the copy of the order passed by the Settlement Commission.

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The subsequent stage provided under sub-sections (2B) and (2C) to Section 245D is that if the assessee is not in a position to pay the said amount within a period of 35 days it may extend the time for payment of the amount which remains unpaid but the assessee would be liable to pay simple interest at the rate of 15% per annum on the amount remaining unpaid from the date of the expiry of the period of 35 days referred to in sub-section (2A).

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The question which arises is whether the assessee is required to pay

any interest on the amount of tax on the income disclosed before the Settlement Commission as contemplated under Section 234A, 234B and 234C? That question is concluded by a decision rendered by the Constitution Bench of this Court in *Commissioner of Income Tax, Mumbai v. Anjum Ghaswala*, [2002] 1 SCC 633 where it was held that the interest contemplated under Sections 234A, 234B and 234C is mandatory in nature and the power of waiver or reduction having not been expressly conferred on the Commission, waiver or reduction in payment of statutory interest is outside the purview of the settlement contemplated in Chapter XIX-A of the Act. Therefore, the assessee is required to pay interest at the prescribed rate from the date when the amount became due and payable on the undisclosed income which is disclosed before the Settlement Commission, till the date of the order of entertaining such application, passed by the Settlement Commission under Section 245C. He is given 35 days' time for making such payment under sub-section (2A) of Section 245D.

Under Section 245H, Settlement Commission has jurisdiction to grant immunity from prosecution and penalty if the Settlement Commission is satisfied that the assessee has co-operated with it in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived. The immunity from prosecution is for any offence under the Income Tax Act or under the Indian Penal Code or under any Central Act. However, no such immunity can be granted if the prosecution is already instituted before the date of the receipt of the application under Section 245C. It also empowers the Commission to reduce the penalty as provided under the Act wholly or partly with respect to the case covered by the settlement. From this Section it can be easily inferred that the Commission has no power (a) to waive tax statutorily payable under the Act, or (b) to reduce the interest on the tax payable on the income disclosed.

Therefore, it cannot be contended that the assessee would be required to pay interest on the tax payable on the income disclosed by him only from the date when he files an application under Section 245C. He has to pay the tax amount on the disclosed income and also the interest payable on the said tax. Further, when once the order under Section 245D is passed by the Settlement Commission to proceed with the application, he is required to pay the said amount i.e. the tax on the income subsequently disclosed and the interest payable thereon, within a period of 35 days. If that amount is not paid the Commission may extend the period of payment with a specific condition that he shall pay the same interest thereon. It is true that to that

- A** extent he would be required to pay interest on interest but the scheme of Section 245D contemplates that he has to pay tax on the disclosed income and as the Commission has no power to waive interest on the said tax, he is also required to pay the tax with interest. That means under sub-section (2A) to Section 245D the assessee would be required to pay the income tax payable on the disclosed income plus the interest payable thereon as contemplated under Sections 234A, 234B of 234C.

- The next step is if the Commission gives further time to pay the said amount whether assessee is required to pay interest as contemplated under sub-section (2C) of Section 245D? For simplification it can be stated that
- C** once the amount is crystallized i.e. X is the tax payable on the disclosed income and Y is the interest payable thereon, on aggregate of this amount (i.e. X+Y), if the time for payment is extended by the Settlement Commission, the assessee is also required to pay the interest on the amount of 'X+Y'. That is the scheme of sub-section (2C) of Section 245D. It specifically provides that where the additional amount of income tax is not paid within the time
- D** specified under sub-section (2A) then on the amount which remains unpaid "the assessee shall be liable to pay simple interest at the rate of 15% per annum on the amount remaining unpaid from the date of expiry of the period of 35 days referred to in sub-section (2A)". It is also to be noted that under sub-section (2D) where the additional amount of income tax referred to in
- E** sub-section (2A) is not paid by the assessee within the time specified under that sub-section or the time to pay is extended under sub-section (2B) the Settlement Commission is empowered to direct recovery of the said amount with interest payable thereon under sub-section (2C) and penalty for default in making payment of such additional amount in accordance with the provisions of Chapter XVII, by the assessing officer having jurisdiction over
- F** the assessee. The aforesaid scheme of Section 245D leaves no doubt that the assessee would be required to pay the amount with interest thereon. The amount at that stage would be the tax plus interest. In such cases, there is no question of paying interest on interest because the interest which the assessee is required to pay under Sections 234A, 234B or 234C merges with the
- G** amount as provided under sub-section (2A).

- DHARMADHIKARI J.** I am in respectful agreement with the reasoning and conclusion recorded by Brother Pasayat J. in his opinion prepared by him in these appeals. I, however, consider it necessary to supplement his reasons for the conclusion reached by us. Since in these appeals common questions
- H** on interpretation and extent of application of the provisions of Chapter XIX

A of the Income Tax Act (for short the IT Act) 1961, are involved, I propose to discuss the questions involved by this common judgment. A

Brother Pasayat J. has reproduced all the relevant provisions of IT Act and the questions formulated and answered by the Special Bench of the Settlement Commission constituted in accordance with the provisions contained in Chapter XIX-A of the said Act. B

Chapter XIX-A providing forum and procedure for "settlement of cases" was introduced in the IT Act by Taxation Laws (Amendment) Act 1975 published in the Gazette of India Extraordinary Part II dated 9th May, 1973 (Pages 443 to 530). The *Statement of Objects and Reasons* for the Amendment reads thus: C

"To unearth black-money and prevent its proliferation; to fight and curb tax evasion; to check avoidance of tax through various legal devices, including the formation of trusts and diversion of income or wealth to members of family to reduce tax arrears and to ensure that in future, tax arrears do not accumulate; to rationalise the exemptions and deductions available under the relevant enactments, and to streamline the administrative set-up and make it functionally efficient". D

Clause 58 of the Bill introduced in Parliament to introduce separate Chapter in the IT Act for "settlement of cases" reads thus :- E

"Clause 58 : This clause seeks to insert a new Chapter XIXA in the Act, making provision for settlement of cases. The provisions proposed in this Chapter are mainly intended to give a statutory basis for settlements of cases which are necessitated at times in the interests of the revenue. However, settlement will not be allowed in cases where concealment of income or fraud is established before the making of an application for settlement. F

Settlements are to be made by a Committee of not less than three members of the Central Board of direct Taxes. An application for settlement once made will not be allowed to be withdrawn. G

The order of settlement shall provide for the terms of settlement, including any demand by way of tax, penalty or interest, the manner of payment of the sum due under the settlement, etc. It shall also provide that the settlement shall be void if it is subsequently found to have been obtained by fraud or mis-representation of facts. The H

A Committee may, if it is satisfied that the applicant has co-operated with it in the proceedings before it and has made full and true disclosure of his income and the manner in which it has been derived, grant to the applicant immunity from prosecution and penalty. Such immunity can, however, be withdrawn later under certain circumstances. The order of settlement will be final. There will be a bar on subsequent applications for settlement by a person if an order of settlement provides for imposition of penalty for concealment of income or if the person has, after the order of settlement, been convicted of any offence under Chapter XXII of the Act in relation to that case.”

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C On the questions formulated by the Special Bench of the Settlement Commission two main issues require consideration and answer by this Court. *The first main question* is what is the efficacy of the *regular assessment proceedings* which took place before and after the admission of the case for consideration by the Settlement Commission. *The second question* is what D would be the extent of liability towards payment of interest on the tax due as determined in a ‘case’ by the Settlement Commission in the light of various situations of no payment of tax or delayed payment of tax in the course of regular assessment. The various situations contemplated in the IT Act have been delineated in the order of the Special Bench of the Settlement Commission and reproduced in the two separate opinions of Brother Pasayat J.
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For answering these two main questions, it is necessary to examine the scheme of Chapter XIXA as reflected in its various provisions and the other relevant provision in sections 234 A to 234 C on the subject of interest chargeable in various specified circumstances on tax due.

F For taking a case for settlement before the Settlement Commission, the word ‘case’ in clause (b) of Section 245 A has been comprehensively defined to include proceeding under the Act for assessment or reassessment for any years and at any stage in original, appellate or revisional proceeding. The definition of ‘case’ excludes appeals or revisions which have not been formally G admitted by the concerned authorities. This definition clause (b) of Section 245 A indicates that the Settlement Commission can take up for settlement a ‘case’ as defined which is pending at any stage of regular assessment proceeding before any of the authorities under the IT Act.

H Section 245 C enables an assessee to approach the Commission by disclosing his income which he had not earlier disclosed. On such undisclosed

income which is subsequently disclosed only before the Settlement Commission, the assessee is required to submit the return and pay additional tax along with the application in accordance with its own assessment. Clauses (i), (ii) & (iii) of sub-section (b) of Section 245 C clearly indicate the ambit of the power of Settlement Commission and provide that on such approach with disclosure of earlier concealed income, the Commission shall redetermine the taxable income after clubbing the *earlier disclosed income*, if any, and *subsequently disclosed income* before it. Such clubbing for consideration of the aggregate income of the relevant year, based on earlier and subsequently disclosed income has to be done in relation to the 'case' pending before the regular assessment authorities at the original, appellate or revisional stage as the case may be.

Clauses (a), (b) & (c) of sub-section (1C) of Section 245 C are also indicative of the scope, power and jurisdiction of the Settlement Commission. It has been provided therein that it is on the determination of the 'aggregate income' by the Settlement Commission, the tax payable for the relevant assessment year shall be calculated by giving adjustment to the tax, if any, already paid by the assessee when its case was pending at whatever stage in the regular assessment proceeding. Sub-section (1D) of Section 245 C also requires the Settlement Commission to undertake the exercise of clubbing the disclosed income, if any, of the assessee in the regular proceeding and subsequently disclosed income before the Commission and treat it as an '*aggregate income*' for the purpose of determining taxable income of a particular year. The Settlement Commission, thus, is empowered to this limited extent to reopen the assessment proceedings already undertaken, for settlement of 'case' before it on the basis of subsequently disclosed income and pass a composite order determining the liability of assessee towards tax, penalty and interest. This is clear from sub-section (6) of Section 245 D which requires the Settlement Commission to make an order providing for terms of settlement, indicating the demand towards tax, penalty and interest and the manner in which it shall be paid. The above discussed provisions make it clear that once a case is admitted by the Settlement Commission for consideration, it shall have exclusive jurisdiction to exercise all powers of regular authorities under the IT Act for the purpose of effecting a settlement and for recovery of tax penalty and interest. Sub-section (1) & (2) of Section 245 F are important for the questions raised before us and they read thus :-

"245F.(1) In addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which

A are vested in an income-tax authority under this Act. .

(2) Where an application made under Section 245 C has been allowed to be proceeded with under Section 245 D, the Settlement Commissioner shall, until an order is passed under sub-section (4) of section 245 D, have, subject to the provisions of sub-section (3) of that section, exclusive jurisdiction to exercise the powers and perform the functions of an income-tax authority under this Act in relation to the case”.

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The exclusive jurisdiction which the Settlement Commission derives for exercise of powers and functions of regular income-tax authority in accordance with Sub-section (1) & (2) of Section 245 F can be exercised only when the Commission makes a formal order to admit or allow the application to be proceeded with for the purpose of effecting a settlement. This is clear from the language of Sub-section (1) of Section 245 D which reads :-

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

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One of the questions that is posed before us in these appeals, therefore, can be easily answered on the basis of the above quoted portion as underlined of sub-section (1) of Section 245 D read with sub-sections (1) & (2) of Section 245 F. It is only when the Settlement Commission formally allows the application for being considered for “settlement” the regular assessment proceedings and recoveries initiated for tax penalty or interest pursuant thereto, shall become subject to the powers of Commission and not prior to the same. In other words, it means that mere filing of an application by the assessee for settlement and before the same is formally allowed for consideration, would have no adverse effect on the proceeding of assessment or recovery pending or initiated against the assessee under the regular procedure for assessment and recovery of dues under the IT Act.

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The Settlement Commission has no power to waive tax or interest because as laid down in sub-section (4) of Section 245 D, it has to pass

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orders on the matter of determining the quantum of income and tax in accordance with the other relevant provisions of the Act applicable to the relevant assessment year or years. There is no power with the Settlement Commission to settle the 'case' de hors the provisions of IT Act applicable to regular assessment because the provisions contained in scheme of settlement under Chapter XIX A as examined above, do not envisage and allow the Commission to settle a 'case' based on disclosure of income before it in any other manner. As has been found from the Statement of Objects and Reasons for introducing Chapter XIX A, which can be taken aid of for construing various provisions of the Act, the forum of Settlement Commission is constituted for 'early recovery of tax and to unearth black money'. The only impetus given to the assessee to avail the forum is to allow him to make a request to the Settlement Commission to grant immunity from prosecution and penalty in exercise of its powers under Section 245 H. In all other respects, on the question of tax and interest, the Settlement Commission has to settle a 'case' in accordance with the other provisions of the Act as are applicable to regular assessment proceedings. The Act does not make distinction or differentiation in treatment between the assesseees who honestly disclose income and are willing to pay the tax and the other assesseees who do not fully or partly disclose the income to avoid payment of tax in due time and approach the Commission for disclosure of their earlier concealed income. Such distinction or differentiation between the above mentioned two classes of assesseees is not permitted by the provisions contained in Chapter XIX A, it being neither legally valid nor just. The Chapter XIX A providing settlement of cases is not intended to benefit the assesseees who had not earlier honestly disclosed their income and paid the tax in due time. The settlement procedure aims to bring such assesseees at par with the assesseees who had honestly disclosed their income and paid the tax. The provisions of Chapter XIX A, therefore, have to be read harmoniously with other provisions of the Act and thus applied to give full effect to other relevant provisions of the IT Act which confer all powers of income-tax authority under the Act on the Settlement Commission for assessing the income and determining the tax.

On the second question with regard to liability towards interest in various *statutorily* contemplated contingencies of a 'case' brought for settlement under Chapter XIX A of the Act, it is to be noticed that after insertion of the said Chapter for Settlement of Cases, corresponding legislative changes have been effected by insertion of sections 234 A and 234 C in IT Act to redetermine quantum of interest payable in various contemplated contingencies under the Act. Section 234 A creates liability of interest *for defaults in furnishing*

A *return of income*. Such interest can be charged from the assessee whose 'case' has been 'settled' by the Commission even though no return of income was filed by him for regular assessment. Sub-section (4) of Section 234 A requires necessary adjustments to be given for the interest earlier charged in regular assessment and the interest chargeable after re-determination of the taxable income and the quantum of tax. Sub-section (4) of Section 234 A reads thus :-

C "234A.(4) Where as a result of an order under Section 154 or Section 155 or Section 250 or Section 254 or Section 260 or Section 262 or Section 263 or Section 264 or an order of the Settlement Commission under sub-section (4) of Section 245 D, the amount of tax on which interest was payable under sub-section (1) or sub-section (3) of this section has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and

D (i) in a case where the interest is increased, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be a notice under Section 156 and the provisions of this Act shall apply accordingly;

E (ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded".

Similarly, necessary adjustment to be made towards interest payable on the tax due after settlement of case in case of default in payment of advance tax can be found in sub-section (4) of Section 234B which reads thus :-

F "234B.(4) Where, as a result of an order under Section 154 or Section 155 or Section 250 or Section 254 or Section 260 or Section 262 or Section 263 or Section 264 or an order of the Settlement Commission under sub-section (4) of Section 245 D, the amount on which interest was payable under sub-section (1) or sub-section (3) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and

G (i) in a case where the interest is increased, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be a notice under Section 156 and the provisions of this Act shall apply accordingly;

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- (ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded".

All the aforesaid changes incorporated in Section 234 A to Section 234 B clearly indicate that interest payable on the tax due, has to be determined by the Commission after settlement of case and *the starting point* for charging interest would be the due date under the regular assessment proceedings and *end point* the date of order of the Settlement Commission. The aforesaid provisions clearly indicate that interest, if any, already paid on the tax earlier due and demanded, would be adjusted from the interest found due on the tax, as determined and quantified by the Settlement Commission. Starting point for calculating the interest has to be the due date in accordance with the procedure indicated in regular assessment and the terminal date would be the date of the order of the Settlement Commission. The assessee would have right of claiming adjustment of tax and interest paid in the intervening period. This appears to be the scheme of the Chapter XIX A as harmoniously construed with the other provisions of the Act in the light of *aims and objectives* for introduction of Chapter XIX A. The forum of Commission for 'Settlement of Cases' is not created to put a premium on fraud or misrepresentation of tax evaders. The provisions contained in Chapter XIX A merely aim at encouraging tax payers to approach the Settlement Commission with full disclosure of their income which they had not earlier disclosed in the course of regular assessment. Such assessee who co-operate with the assessing authorities in making proper assessment of tax can be granted immunity from prosecution and penalty. There is no provision that they can be granted immunity from payment of interest on the tax assessed. Brother Pasayat J. in his two opinions separately rendered in the appeals has taken note of the decision in the case of *Commissioner of Income Tax v. Express Newspapers Limited*, [1994] 2 SCC 374 and *Commissioner of Income Tax, Mumbai v. Anjum Ghaswala*, [2002] 1 SCC 633 which authoritatively construe some of the provisions in Chapter XIX A and records its conclusions on some aspects of the question raised before us for answer.

In the case of *Express Newspapers (supra)* it was found that in regular assessment for the years 1985-86, 1986-87 and 1987-1988 the assessee had fraudulently claimed certain *losses* and when they were being enquired into and investigated by the assessing authorities for reaching to a finality, the assessee approached the Settlement Commission for settlement of the cases. The Supreme Court was of the view that it was a case of fraud in claiming certain losses where there were none for the assessment years in question

A and it was not a case of any subsequent disclosure of *income* by the assessee. It was, therefore, held that it was not open to the assessee to avail the procedure of settlement of cases before the Forum of the Settlement Commission. While construing sub-section (4) of Section 245D, it was observed that the Commission is empowered to direct the waiver of penalty as well as interest and to direct that the tax payable in question shall be paid in prescribed instalments.

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C The decision of three Judge Bench of this Court in the case of *Express Newspapers Limited*, (supra) came up for consideration before the five Judges Bench of this Court in the case of *Anjum Ghaswala* (supra) and the former case was distinguished by observing thus:

D “In our opinion, this observation in *Express Newspapers* case does not help the Commission in support of its conclusion in regard to its power under Sections 245-D(4) and (6). *It is to be noted that in that case the settlement sought was with regard to Assessment Years 1985-86, 1986-87 and 1987-88. It is an admitted fact that during those assessment years, Sections 234-A, 234-B and 234-C were not in the statute book. On the contrary, the corresponding provisions existing in the statute, namely, Sections 139(8), 215(4) and 216 in terms empowered the income tax authorities to waive or reduce interest.* It is in that context that this Court observed, in the paragraph extracted hereinabove, that under Section 245-D(4), the Commission has the power to direct the waiver of penalty as well as interest because that was within the scope of the provisions of the Act, as then existing, whereas at present and for the assessment years involved in this case, Sections 234-A, 234-B and 234-C being applicable, that observation does not apply to the cases in hand. *The sentence “except to mention that the Commission is empowered to direct the waiver of penalty as well as interest” is used in that judgment on the basis of the then existing law and to apply the same to the facts of the present case with the mandatory change in law would amount to applying those principles in *Express newspapers* case out of context.”* [Italics by court to supply emphasis]

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H In the case of *Anjum Ghaswala* (supra) the main question that fell for consideration before the Supreme Court was whether the Settlement Commission has power to waive interest for non-payment or delayed payment of tax found due. The Supreme Court answered the question holding that the scheme contained in Chapter XIXA does not empower the Commission to

waive interest payable for non-payment or delayed payment of tax found due. A
Brother Pasayat J. has also reached the same conclusion and I am in respectful
agreement with the same that such waiver of interest by the Settlement
Commission is neither intended in the scheme of Chapter XIX-A nor such a
power can be inferred because conceding such power to Settlement Commission
to waive interest would help the tax evaders who did not disclose full income B
at the relevant time and made a disclosure subsequently. Such interpretation
would also be discouragement to an honest tax payer who fully discloses his
income and on the basis of regular assessment makes payment of tax and
interest. In the case of *Anjum Ghaswala* (supra), the five judges bench of this
Court came to the conclusion that Settlement Commission has to complete the
assessment proceedings and determine quantum of tax as also interest payable C
in accordance with the provisions applicable to regular assessment. The
observations in that case pertinent for this case read as under :-

“It is no doubt true that the terminology “settlement” has a very wide
dictionary meaning and in the absence of a statutory definition D
generally the word “settlement” in sub-section (4) of Section 245-D
would give the Commission sufficient power to arrive at a settlement
which it deems fit, but when the statute qualifies such expression like
“settlement” with mandatory words like “in accordance with the
provisions of this Act” the width of the term ‘settlement’ becomes E
subject to the mandate found in that section, which would mean that
while a Commission has sufficient elbow room in assessing the income
of the applicant under Section 245-D(4) it cannot make any order with
a term of the settlement which would be in conflict with the mandatory
provisions of the section, like in the quantum and payment of tax and/
or interest. *In this view of the matter, we are of the opinion that F
assuming that there is any room for interpretation of the provisions
of Part F of Chapter XVII and Chapter XIX-A, we would hold that
it would not in any manner empower the Commission to either waive
or reduce interest which is statutorily payable under the provisions
of Part F of Chapter XVII.”*

Brother Pasayat J. has also rightly observed that if interest on tax not G
paid or paid after delay is governed by different provisions on the basis of
the starting point of levy of interest and the date of payment of tax, the
interest will have to be demanded and recovered in accordance with the
provisions applicable to regular assessment may be that the tax is redetermined
by the Settlement Commission under special Chapter XIX A of the IT Act. H

A A note of caution is required to be recorded. If on quantum of income and tax earlier disclosed in regular assessment proceedings, interest had been charged on tax due, till payment no further interest will be payable for the said period on the total quantum of tax determined by the Settlement Commission and necessary adjustments would be granted. Thus, in no case there would be charge of interest on interest. The interest chargeable in different

B circumstances in regular assessment proceedings will be calculated on the basis of the quantum of income and tax determined by Settlement Commission and necessary recovery and adjustments will be granted so as to avoid demand of any interest on interest.

C In conclusion, two main questions formulated by me are answered thus:-

The first question formulated is what is the efficacy of the regular assessment proceedings which took place before and after the admission of the case by the Settlement Commission for settlement under Chapter XIX A

D of IT Act.

The answer is that it is only after a formal order of allowing or admitting the application for consideration of settlement is recorded by the Settlement Commission that all earlier assessment proceedings and recovery proceedings, if any, issued pursuant thereto, would become subject to the order of the

E Settlement Commission which will exercise all powers conferred on the income-tax authority under the IT Act.

The second question is what would be the extent of liability towards payment of interest on the tax as determined and found due in a case settled by the Settlement Commission in various situations contemplated in the IT

F Act like non-payment of tax or delayed payment of tax in the course of regular assessment.

As has been settled by five Judges Bench in the case of *Anjum Ghaswala* (supra), the Settlement Commission has no power to waive interest on the tax determined and found due while considering the case under

G Chapter XIX A in various statutory eventualities as delineated in the impugned orders of the Special Bench of the Settlement Commission. The interest on the "aggregate income" based on earlier disclosed and subsequently disclosed income, is to be determined by the Settlement Commission and on the tax found due on such income, interest will be charged in accordance with the

H provisions applicable in the regular assessment proceedings. The *starting*

point of charging interest would be the due date of payment of advance tax or tax assessed and demanded as applicable to regular assessment proceedings and the *end point* the date of the order of the Settlement Commission. The tax and interest already paid, if any, on the basis of regular assessment would be adjusted from the quantum of interest and tax found due and as determined by the Settlement Commission. It is clear that the provisions do not allow charging of any interest on interest found due.

With the aforesaid additional reasons, I respectfully concur with the opinion expressed by Pasayat J. The questions are answered accordingly.

The appeals are disposed of accordingly.

S.K.S.

Appeals partly allowed.