Rajasthan High Court
Commissioner Of Income-Tax vs Smt. Premlata Jalani on 14 July, 2003
Equivalent citations: 2003 264 ITR 744 Raj
Author: R Balia
Bench: R Balia, O Bishnoi
JUDGMENT R. Balia, J.

1. Heard learned counsel for the parties.

2. This appeal is directed against the order of the Income-tax Appellate Tribunal, Jodhpur Bench, Jodhpur, dated March 27, 2002.

3. The appeal relates to intimation/assessment under Section 143(1) of the Income-tax Act, 1961 (hereinafter called as "the Act"), for the assessment year 2000-2001 in the case of the respondent-assessee.

4. The return of income was filed by the assessee on October 30, 2000, for the assessment year 2000-2001. An intimation under Section 143(1) was sent by the Assessing Officer on November 9, 2000, making variation in the calculation computing the interest as made by the assessee under Sections 234B and 234C of the Act.

5. Aggrieved by the aforesaid additions made to the admitted liability to pay interest by the assessee while exercising jurisdiction under Section 143(1), the assessee preferred a rectification application before the Assessing Officer which was dismissed by him on January 16, 2001. He held that there is no mistake apparent on the face of the record and the Assessing Officer had jurisdiction to make such adjustment in the computation of interest in exercise of his jurisdiction under Section 143(1)(a) of the Act.

6. The appeal filed by the assessee before the Commissioner of Income-tax (Appeals) was dismissed on November 2, 2001.

7. We may notice here that no controversy arises before us in respect of variation made in the computation of interest under Section 234B. Only the issue with respect to addition on account of interest computation under Section 234C of the Act survives.

8. The assessee's contention in that regard has been, firstly that the Assessing Officer was not justified in making such recomputation of interest chargeable under Section 234C on the basis of different interpretation of law. Making such addition is outside the purview and scope of the power vested under Section 143(1) of the Act.

9. On the merits, it was contended that the provisions of Section 234C were inserted by the Act of 1987, with effect from April 1, 1989. The proviso to Section 234C excludes the inclusion of capital gains in the computation of total income for the purpose of computing the advance tax to be paid at any time before the capital gains arises. There is no liability to pay any amount of advance tax, prior

to the date capital gains accrues or arises. Therefore, no interest is chargeable in respect of shortfall in payment of advance tax relatable to capital gains, prior to the date capital gains accrued or arose and advance tax in respect thereof became payable. Then only the liability to pay interest on the short fall in payment of advance tax in relation thereto arises, if such advance tax is not paid on the instalment falling due thereafter or until March 31, of the previous year ending in respect of which income is to be assessed.

10. In the present case, the capital gain arose after March 15, 2000, when the date of payment of the last instalment of advance tax has already expired. The assessee could not have paid advance tax on such capital gains arising out after March 15, 2000. Since the assessee has not paid the tax payable in respect of such capital gains by March 31, 2000, but has paid the tax in respect thereof in April, 2000, he calculated interest payable in respect of such late payment of tax on such capital gain for one month in his return and deposited the same along with the return.

11. However, the Assessing Officer was of the opinion that since the assessee has failed to pay advance tax in respect of capital gains arising at whatever date during the previous year by March 31, 2000, he is liable to pay interest for the entire period to the extent there was short fall in payment of advance tax calculated as per the income returned by the assessee including capital gains from September 15, 1999, when the first instalment of advance tax became due and the assessee has failed to pay the minimum required percentage of advance tax on the basis of 30 per cent. of the tax on the basis of the returned income in terms of Sub-section (1) of Section 234C of the Act.

12. The Tribunal on further appeal by the assessee found against the assessee on the question that whether recalculation of interest under Section 234C on different interpretation of law at all could have been made in exercise of powers under Section 143(1). However, on the merits, it found in favour of the assessee that the Assessing Officer was not justified in charging interest for the period prior to the date the liability to tax arose. It held that on reasonable interpretation of law, the assessee was liable to pay interest only for one month during which advance tax was not paid in respect of capital gains which had arisen after March 15, 2000. With this finding the appeal of the assessee was allowed.

13. Under the aforesaid circumstances, this appeal has been preferred by the Revenue. While admitting the appeal, the following question was framed as a substantial question required to be considered in this appeal :

"Whether, on the facts and in the circumstances of the case, the holding of the Income-tax Appellate Tribunal is incorrect in law that the interest is payable only for one month on account of non-payment of instalment of advance tax on the capital gain which has arisen after March 16, 2000, whereas the entire advance tax due on such capital gain was not deposited by March 31, 2000, and is contrary to the provision of Section 234C(1)(b) of the Act ?"

14. The Tribunal has traced the long journey of amendment of Section 143(1). It shows that the endeavour has been made from time to time to curtail the necessity of taking recourse to

complexities of regular assessment under Section 143(3), by progressively making it to ensure that if tax payable on returned income is paid, it be accepted and only a few cases are to be taken up for detailed scrutiny and ordinarily the returns as filed are accepted, with the provisions for making a regular assessment for detailed scrutiny of some of the returns after issuing notices.

15. At the inception of enactment of the Income-tax Act, 1961, the assessment under Sub-section (1) of Section 143 was not provisional in nature but was a final order of assessment which the Assessing Officer could make without requiring the attendance of the assessee. It provided that where a return has been made under Section 139 and the Income-tax Officer is satisfied, without requiring the presence of the assessee, or the production by him of any evidence that the return is correct and complete, he shall determine the tax payable by him on the basis of the return. If the Income-tax Officer was not so satisfied about the correctness and completeness of such return, he was to take recourse to issue notice under Section 143(2) inviting the assessee to present and produce the evidence and explain his return. After giving such opportunity a regular assessment was made under Section 143(3).

16. The scheme of assessment without calling the assessee and after notice to the assessee was substituted by the Amending Act of 1970 with effect from April 1, 1971. While making the assessment under Section 143(1) as it existed prior to April 1, 1971, any variation in the return submitted by the assessee was not permissible. Any variation demanded a notice to the assessee before he could proceed further to make any assessment. A provision was made with effect from April 1, 1971, by enacting Section 143(1)(a) enabling the Assessing Officer to make certain adjustments while making the assessment without requiring the presence of the assessee. It also prescribed under Section 143(1)(b) what kind of adjustments were permissible under Section 143(1)(a). It, inter alia, provided that where any return and documents mentioned in Clause (a) of Sub-section (1) are filed to allow any deduction, allowance or relief which on the basis of the information available in any such return or documents is prima facie admissible. Whether such claim is made in the return or not and vice versa to disallow any allowance or relief claimed in the return, which on the basis of the information available in the accounts and documents was "prima facie" inadmissible. Under Section 143(1)(b), the Assessing Officer was further enabled to make adjustment by giving due effect to the allowance referred to in Sections 32, 32A, 33, 33A, 35A, 35D, 36, 72, 73, 74 and 74A and 80(5), which all related to the claims to deduction on account of depreciation, investment allowance, development rebate or development allowance and certain other specified deductions enumerated in provision referred to in Section 143(1)(b) including claims to set off and carry forward of losses or unabsorbed specified deduction.

17. A significant consequence was that prior to the amendment with effect from April 1, 1971, the order passed under Section 143(1) was a final assessment order and the remedy available to the Revenue was by way of having recourse to the revision of the order by the Commissioner under Section 263 or the Assessing Officer could take recourse to initiate proceedings for reassessment subject to satisfaction of pre-conditions and before the period of limitation expired. With this amendment, the adjustments could be made on prima facie satisfaction without calling upon the assessee, the whole gamut under Section 143(1) became provisional which could be corrected by the Assessing Officer either on the application of the assessee or on his own within the period prescribed

under Sub-section (2) of Section 143 of the Act.

18. This scheme was further amended in 1980 while taking away the power from the Assessing Officer to allow any deduction, allowance, etc., which he considered prima facie admissible or to disallow any claim on finding the same prima facie to be inadmissible, the power to make adjustment was left merely to arithmetic calculations on the basis of the information submitted in the return. Sub-clauses (ii) and (iii) of Clause (b) of Sub-section (1) was omitted with effect from April 1, 1980, vide Finance (No. 2) Act of 1980.

19. Thereafter, Section 143(1) was again substituted by the Direct Tax Laws (Amendment) Act, 1987, which came into force with effect from April 1, 1989. Section 143(1) as substituted by the Amendment Act, 1987, with effect from April 1, 1989, reads as under :

"Section 143(1) as it stood between April 1, 1989, and May 31, 1999, 143(1), as substituted (with effect from April 1, 1989) and as subsequently amended from time to time, prior to its substitution (with effect from June 1, 1999), by the Finance Act, 1999, stood as under :

'(1)(a) Where a return has been made under Section 139, or in response to a notice under Sub-section (1) of Section 142,--

(i) if any tax or interest is found due on the basis of such return, after adjustment of any tax deducted at source, any advance tax paid and any amount paid otherwise by way of tax or interest, then, without prejudice to the provisions of Sub-section (2), an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under Section 156 and all the provisions of this Act shall apply accordingly ; and' "

20. It would be seen that after this amendment no provision like Sub-section (2) of Section 143 as it existed prior to April 1, 1989, was there enabling the asses-see to make an application to the Assessing Officer within one month for protesting against such adjustment. However, intimation made under Section 143 was made subject to correction through rectification under Section 154. The term assessment was also not assigned to the adjustment made under Section 143(1) but was simply described as intimation. The only remedy made available against intimation issued under Section 143(1) and demand raised in pursuance of such intimation was to apply for rectification under Section 154. The provisions of appeal against such intimation did not find place on the statute book until Section 46 was amended vide Finance Act of 1994, with effect from June 1, 1994.

21. Under the provisions which came into force with effect from April 1, 1989, the scope of adjustment was further limited by restricting it to adjust arithmetical errors, in the computation of loss to be carried forward, deduction, allowance or relief which on the basis of the information in such return, accounts or documents is prima facie admissible but which is not claimed in the return to be allowed and conversely any loss, deduction or allowance claimed in the return which on the basis of the information available in such return accounts or documents is prima facie inadmissible is disallowed. There was no room for determining any debatable issue at any stage of making adjustment for computation of income. Demand of additional tax or interest on late payment was

confined only to such adjusted computation of income.

22. Finding that the power enabling the Assessing Officer of prima facie adjustment in the computation of income and the assessment of tax and other dues, was not properly understood by the assessing authorities notwithstanding consistent circulars issued by the Central Board of Direct Taxes and judicial pronouncements, resulted in further amendment in 1999 and Section 143(1) was recast as under :

"143. Assessment.--(1) Where a return has been made under Section 139, or in response to a notice under Sub-section (1) of Section 142,--

(i) if any tax or interest is found due on the basis of such return after adjustment of any tax deducted at source, any advance tax paid, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest, then, without prejudice to the provisions of Sub-section (2), an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under Section 156 and all the provisions of this Act shall apply accordingly ; and

(ii) if any refund is due on the basis of such return, it shall be granted to the assessee and an intimation to this effect shall be sent to the assessee ;"

23. With effect from June 1, 1999, Sub-section (1) of Section 143 does not contain any provisions for any adjustment in respect of any claims made by the assessee in his return.

24. Apparently the adjustment required to be made in the amount of tax or interest found due on the basis of such return after adjustment of tax deducted at source, any advance tax paid or any tax paid on self-assessment and any amount paid otherwise by way of tax or interest, only suggests that on the basis of the return submitted and claims made by the assessee in respect of any of his liabilities, allowance, or claim to deductions the same has to he accepted and tax and interest is to be computed payable on that basis and any amount already paid by way of advance tax or tax deducted at source which becomes part of the tax paid by the assessee or any tax paid on self-assessment as well as any amount paid otherwise than in the aforesaid manner by way of tax or interest, against that liability, the balance has to be intimated either in the form of demand which may remain outstanding on such computation or order refund, of the amount if any, which is found to have been paid in excess of tax and other dues payable on such income under the Act.

25. The question of any determination as to the liability of interest on the tax otherwise than as per the claims made by the assessee is not within the scope of Sub-section (1) of Section 143 as it has come into force with effect from April 1, 2000, and governs the assessment proceedings for the assessment year 2000-2001.

26. However, it is apparent that the Assessing Officer has indulged in determination of a question of law as to what ought to be the liability of the interest in respect of capital gains which has been earned after the last date for the payment of the last of the instalments of advance tax, by

interpreting Section 234C. This exercise in our opinion apparently could not fall within the exercise of calculation envisaged under Sub-section (1) of Section 143 with effect from April 1, 2000. There is no room for determining any disputed or debatable question or undertaking any interpretative exercise while computing the tax or interest payable on the basis of the information emanating from return submitted by the assessee, under Section 143(1)(a). If such an exercise be taken, disagreeing with the claim of the assessee about his liability to such levy, recourse had to be taken to Section 143(2) and regular assessment under Section 143(3) of the Act, after calling upon the assessee.

27. It is relevant to notice that prior to June 1, 1999 the Explanation was appended at the end of Section 143 by the Finance Act of 1994, which reads as under :

"An intimation sent to the assessee under Sub-section (1) or Sub-section (1B) shall be deemed to be an order for the purposes of Sections 246 and 264."

28. This Explanation has also been omitted along with substitution of Sub-section (1) in Section 143 with effect from June 1, 1999.

29. Prior to the insertion of above provision by the Finance Act of 1994, the intimation under Section 143(1)(a) was not considered as an order and was therefore, not appealable. By the aforesaid legal fiction, the intimation was deemed to be an order and became appealable under Section 246. This legal fiction has again been removed from the statute with effect from June 1, 1999.

30. With the substitution of Sub-section (1) as aforesaid with effect from June 1, 1999, no room was left for making any intimation to the assessee except making arithmatical calculation of tax, penalty or interest payable on the basis of claims made by the assessee, so as to make him aggrieved of the order to prefer an appeal. Any arithmetical error in the computation of tax, interest could be corrected by rectification. Determination of any question about the liability otherwise has to be computed as per the return submitted by the assessee, after accepting all the claims to the deduction, allowance or the existence of the liability and any deviation required recourse to regular assessment, which could be the subject matter of regular appeal.

31. Therefore, in our opinion, the recourse by the learned Assessing Officer to reject the assessee's claim to the extent of liability of interest in respect of capital gains only for one month, and to raise demand by holding him liable to pay interest for a longer period on the basis of his own reading of Section 243C, while making an intimation to the assessee, was an error apparent on the face of the record which was clearly amenable to rectification proceedings under Section 154 of the Act.

32. In this connection, we may notice that the Finance Minister in his speech while introducing the Finance Bill, 1999, along with the memorandum explaining the amendment in direct taxes in the Finance Bill, 1999, had given indication that provision enabling the Assessing Officer to make prima facie adjustment and the provision for levy of additional tax on any such additional demand raised on the basis of such adjustment was to spare the time and to utilise other important work which has not been properly understood by the Revenue authorities and has given rise to more litigation than to save.

33. The following explanation while proposing to amend Section 143 circulalated by the Central Board of Direct Taxes is relevant (see [1999] 240 ITR (St.) 3, 36) :

"46.2 It is seen that the present system of prima facie adjustments has become some sort of assessment in itself where every return is examined minutely and such adjustments are also open to appellate remedy. Most of the time of the Assessing Officer is utilised in processing the returns in the above manner leaving very little time for thorough investigation and other important activities. The ever increasing number of returns resulting from the drive to widen the tax base may make it more difficult. In view of the above, the Act has amended Section 143 of the Income-tax Act to modify the present provisions contained in Section 143(1)/143(1A)/143(1B) and to do away with the provisions relating to prima facie adjustments, additional tax and issue of intimations in all cases. Filing of the return by itself would complete the process of assessment limiting its scope to raise demand where taxes are not paid and issue refund wherever due, on the basis of return of income so filed. With the exception of issuing intimations where any sum is payable by the assessee or any refund is due to him, the acknowledgment shall be deemed to be an intimation. The Act has also amended Section 154 of the Income-tax Act to provide for rectification of intimation or deemed intimation referred to in subsection (1) of Section 143."

34. The object of amendment was clearly to take notice of the ground reality of the failure on the part of the Assessing Officer to understand the scope of the provisions about the power to make proper prima facie adjustment in a judicious manner and in its proper perspective, which has resulted in proliferation of disputes by way of appeals and rectification applications by the asses-see, aborting the very purpose of simplifying the procedure for giving more time to detailed and thorough examination of selected cases. The Legislature intervened to give quietus to such prima facie adjustments resulting in enhanced liability on debatable grounds only before such questions were left to be determined only through regular assessment through participatory process provided by way of regular assessment.

35. It became a matter of computation of tax and interest as per the claim made in the return subject to arithmetic calculation and adjusting such tax liability or interest liability against the tax or interest already paid by way of tax, advance tax, self-assessment tax or otherwise. This being the clear position, in our opinion, the Tribunal was not justified in rejecting the preliminary objection raised by the assessee to the exercise of jurisdiction under Section 143(1) by the Assessing Officer for deciding important questions of law by interpreting the provisions.

36. The assessee's plea for rectification was not that the liability to pay interest under Section 234C is disputable. But his contention was that under Section 143(1), the Assessing Officer had no authority to make such adjustment to interest statutory provision and on which possibly two opinions can exist. Such issues can be determined only under Section 143(3) and not under Section 143(1). Therefore, it was beyond the jurisdiction of the Assessing Officer to have increased the interest liability by deciding the question of extent of interest chargeable on capital gains accruing after 15th March, 2000, unilaterally without notice to the assessee.

37. This issue in our opinion notwithstanding noticed by the Tribunal, has not been decided by it at all but has been examined on the arguability of the issue of the liability to pay interest under Section 234C of the Act.

38. It must be noticed that exercise of jurisdiction which clearly did not vest in the assessing authority in determining the liability to pay interest for a period otherwise than what was admitted by the assessee was a question related to jurisdiction and if the jurisdiction has been exercised apparently on wrong premises, it becomes a mistake apparent on the face of the record liable to be rectified and such issue could have been decided by recourse to the regular assessment proceedings. The Tribunal itself has opined that the question whether the liability to pay interest in respect of tax payable on capital gains prior to the date such income from capital gains had arisen is a debatable issue involving interpretation of Section 234C in conjunction with the other provisions of the Act. On this finding, the error in exercising jurisdiction under Section 143(1) on that basis was apparent and ought to have been rectified.

39. The liability to pay interest to the extent for one month in the case of the petitioner or a longer period was certainly disputable issue and could not have been rectified on the merits of the issue.

40. In view of the aforesaid circumstances, we are of the opinion that the Tribunal was not right in overruling the preliminary objection which pertains to exercise of jurisdiction under Section 143(1) of the Act, and not on the arguability of the issue of exact liability to interest on the merits.

41. The assessment under Section 143(1) could be made only on being satisfied that the return filed by the assessee is correct and complete and does not require any further evidence or explanation. Obviously it would not require any appeal, rectification or adjustment thereby. When the scheme of Section 143(1) was changed from regular assessment to provisional assessment, the jurisdiction was never given to the Assessing Officer to decide any issue on which two views are possible without having recourse to regular assessment proceeding after issuing notices under Section 143(2). As noticed above, since the Amendment Act, 1999, any such discretion in the Assessing Officer to make prima facie adjustment of any claim made by the assessee, or the liability admitted by the assessee fell beyond the jurisdiction of the Assessing Officer. Having noticed this aspect of the matter but in not deciding the question squarely on the ground of jurisdiction to make such additions and alterations in the assessment year in question vide intimation under Section 143(1), the Tribunal clearly erred.

42. Be that as it may, both learned counsel argued at length on the merits regarding the extent of liability to pay interest for non-payment of advance tax in respect of capital gains prior to its accrual and the scope of appeal under Section 260A is much wider than it existed earlier while opining on the question of law referred to it. We deem it proper to deal with this aspect also and do not consider it proper to pursue the assessment proceedings de novo and leave this case again to go through the same process. The Tribunal too has decided the appeal on the merits of the issue.

43. The rival views of the Revenue as well as the assessee have been noticed above. It will be relevant to notice here the provisions of Section 234C to find an answer. Section 234C as it prevailed during

the relevant assessment year 2000-01 reads as under :

"234C. Interest for deferment of advance tax.--(1) Where in any financial year,--

(a) the company which is liable to pay advance tax under Section 208 has failed to pay such tax or--

(i) the advance tax paid by the company on its current income on or before the 15th day of June is less than fifteen per cent. of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of September is less than forty-five per cent. of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of December is less than seventy-five per cent. of the tax due on the returned income, then, the company shall be liable to pay simple interest at the rate of one and one-half per cent. per month for a period of three months on the amount of the shortfall from fifteen per cent. or forty-five per cent. or seventy-five per cent., as the case may be, of the tax due on the returned income ;

(ii) the advance tax paid by the company on its current income on or before the 15th day of March is less than the tax due on the returned income, then, the company shall be liable to pay simple interest at the rate of one and one-half per cent. on the amount of the shortfall from the tax due on the returned income :

Provided that if the advance tax paid by the company on its current income on or before the 15th day of June or the 15th day of September, is not less than twelve per cent. or, as the case may be, thirty-six per cent. of the tax due on the returned income, then, it shall not be liable to pay any interest on the amount of the shortfall on those dates ;"

44. The whole gamut of Section 234C is for the purpose of computing interest on short payment of advance tax referred to as deferment of advance tax. The liability to pay interest on shortfall of advance tax periodically is integrally linked with liability to pay advance tax at different dates. It would be apposite to notice the scheme of requirement of payment of advance tax.

45. The charge of income-tax as such is subject to enactment of the Central Act for any assessment year prescribing the rate or rates at which total income is to be charged to tax. In other words, the income of the assessee of the previous year is charged to tax on the enactment of the Central Act providing the rate or rates of tax for the assessment year for which such income is to be assessed. In the absence of any Central Act prescribing the rate or rates of the income-tax on which total income is to be subjected to tax for any assessment year, no income-tax would be chargeable. Unless the Central Act comes into force, the liability to tax on the total income of the previous year cannot be subject to charges. The taxable income is derived in the previous year. Thus the taxing event occurs in the previous year and the total income of the year can be computed only at the close of the year. Though liability to tax stands ex hypothesi determined on that date no tax can be levied and collected in the absence of any other provision authorising such collection prior to the enactment of such Central Act and the machinery for assessment can be put into action.

46. It is to make bridge between the taxing event and the collection of tax on being determined through the assessment so that the flow of tax to the public exchequer remains uninterrupted, it was devised that every assessee periodically pay estimated tax on such income earned during the previous year.

47. Provision for advance tax has been made in Part C of Chapter XVII, which provides for collection and recovery of tax under Section 207, and creates a liability for payment of advance tax when it says that the tax shall be payable in advance during any financial year in accordance with the provisions of Sections 208 to 219 in respect of the total income of the assessee which would be chargeable to tax for the assessment year, immediately following the financial year. Section 208 provides that advance tax shall be payable during a financial year in every case where the amount of such tax payable during that financial year as computed in accordance with the provisions of Chapter XVII is Rs. 5,000 or more. This limit has been altered from time to time. Apparently, this requires calculation of current income periodically during the previous year.

48. Section 209 provides how the computation of advance tax is to be made. Section 209, inter alia, provides that when the assessee has to make calculation of advance tax payable by him, he has to estimate about his current income and his income and income-tax shall be calculated at the rates in force in the financial year. It further postulates that the Assessing Officer is also entitled to make computation of advance tax payable by the assessee and for that purpose he has to take into account the total income as per his last assessment or as per return of latest previous year furnished by the assessee for any subsequent previous year whichever is higher. It is on that premise the assessee is required to pay advance tax either on current income estimated on his own accord or in case the assessing authority decided to issue notice under subsection (3) of Section 210, according to the notice issued by the Assessing Officer under Section 210. Section 211 provides that advance tax on the current income calculated in the manner as laid down in Section 209 is to be payable by all assessees, who are liable to pay the same, in three instalments during each financial year, the due date of, and the amount payable in, each such instalment being as on or before the 15th September, if the amount payable is not less than 20 per cent. of such advance tax ; on or before the 15th December, if the amount payable is not less than 50 per cent. of such advance tax, as reduced by the amount, if any, paid in the earlier instalment, and on or before the 15th March, the whole amount of such advance tax as reduced by the amount or amounts, if any, paid in the earlier instalment(s).

49. Thus, broadly speaking on the current income whether, estimated by the assessee or determined by the Assessing Officer in accordance with the provisions of Sections 209 and 210 of the Income-tax Act, advance tax payable by the assessee is to be computed and to be paid in the manner stated above.

50. However, it is to be noticed that advance tax becomes payable on "current income" and current income is computed on estimate basis and does not in the very nature of thing reflect the exact income which ultimately find place in the return. Such estimate on certain assumptions is founded on existing materials. It is for this reason, when there is variation between advance tax paid and actual liability to tax as per return the provision for payment of interest on shortfall in payment of advance or excess payment of advance tax has also been made.

51. The difference of advance tax and the actual tax liability as per return results either because the assessee has paid less tax than what becomes payable by him on his income earned during the previous year as per his own showing or the assessee may have paid more amount than what is payable by him on the basis of the return submitted by him after the previous year ended. It is for this deficient or excess payment of tax, provision has been made in the Income-tax Act, both for payment of interest by the Government to the assessee on the excess advance tax paid by the assessee than his tax liability as well as interest to be paid by the assessee to the State for shortfall in advance tax.

52. Section 214 of Chapter XVII mandates the Central Government to pay simple interest at the rate, which has been varied from time to time, from the first day of the next financial year to the date of regular assessment for the assessment year immediately after the financial year. Likewise, an assessee is required to pay interest with effect from April 1, on shortfall in advance tax paid by him during the financial year.

53. The scheme of Section 215 has now been recast under Section 234C which came to be inserted by the Direct Tax Laws (Amendment) Act, 1987, with effect from April 1, 1989. A separate provision has been made for payment of interest on shortfall of advance tax by the company as well as by the assessees other than companies. While Sub-section (1)(a) of Section 234C determines the liability to pay interest in the case of companies where advance tax payment falls short of the prescribed percentage of advance tax payable in the light of the returned income. Sub-section (1)(b) provides for payment of interest in the case of assessees other than companies.

54. We are concerned with an assessee other than a company. It provides that where the advance tax paid on the first instalment, i.e., on 15th September, falls short of 30 per cent. of such tax as determined on the returned income, the assessee is liable to pay interest from 15th September to 15th December, on such shortfall. Likewise after 15th December, the assessee by way of interest on shortfall of advance tax, is liable to pay interest for three months, if advance tax paid by 15th December, falls deficient to 60 per cent. of tax as per return.

55. If the full amount of tax payable on the return is not paid by 15th March, the last instalment fixed in the Act, then the assessee is liable to pay interest on the amount of shortfall on tax due on the returned income. It may be noticed that while on the shortfall in payment of advance tax below the limit prescribed in the first two instalments, interest is payable in each case from the date of instalment to the next instalment due or to any earlier date on which such deficit is paid, no such time limit is fixed in case there is shortfall on the last instalment. In that event the interest is payable under Section 234C only up to 31st March. On the amount remaining unpaid after 31st March, interest is payable until the date of actual payment, if any, before filing of the return under Section 234B.

56. We have noticed above that the liability to pay advance tax arises on current income computed by the assessee or by the Assessing Officer, as the case may be. While income from a regular source like profits and gains of business, interest on deposits, rents, salaries which occur regularly can be estimated at any given point of time up to that period, the income which accrues or arises on

completion of a particular transaction only and not out of any current or regular activity, obviously cannot be the subject matter of estimate before the event actually occurs. Considering the impossibility for the assessee or the Assessing Officer to estimate any income arising out of any particular transaction which has not occurred or come into existence, a proviso has been made to Sub-section (1) of Section 234C. It provides that the provision relating to the liability on the basis of difference between the tax payable on the returned income and advance tax paid on assessment will not apply to any shortfall in the payment of tax on the basis of the returned income where such underestimate or failure to estimate the amount of capital gains, and the assessee has paid the whole of the amount of tax payable in respect of income referred to in Clause (a) or Clause (b), as the case may be, had such income been a part of the total income, as part of the remaining instalment or instalments which are due, or where no such instalment is due, by the 31st day of March of the financial year.

57. Apparently, capital gains arises when the transfer of capital assets is complete. Such events or transactions are not regular or recurring events and the assessee or the Assessing Officer, at a given point of time, cannot take into account while computing the current income to estimate tax liability on such current income, the capital gains where no such transfer has at all been taken place by such date. Clause (b) of the proviso refers to incomes arising out of lotteries or like events obviously such incomes are also contingent on happening of such event which cannot be predicted. Therefore, in both the cases, it envisages that no liability to interest arises merely because there is a short-fall in payment of tax on account of non-inclusion of capital gains in current income for computing advance tax instalment, vis-a-vis the tax computed on returned income.

58. The further provision that tax on such income arising out of transactions of capital gains is to be paid as part of the remaining instalments, which are to fall due after such capital gains have arisen or where no such instalments are due by the 31st day of March of the financial year, shows in clear terms that liability to pay tax by way of advance tax in respect of transactions resulting in capital gains arises only after the transaction has taken place or the event has occurred. Prior to that date, there is no liability to pay advance tax on income arising as capital gains. For example, the first instalment for payment of advance tax is due in the case of an assessee other than a company on the 15th of September, but the transaction giving rise to capital gains takes place on the 30th of September, the liability to pay tax by way of advance tax on any such income does not arise prior to the date of such accrual and that liability for payment of advance tax on such income arising with the next instalment falling due. Therefore, on a transaction which has taken place on the 30th September, the liability to pay advance tax, in respect of such income by including in current income arises only when the next instalment becomes due on or before the 15th December. But no such liability to pay advance tax in respect of capital gains accruing on the 30th September, existed on the 15th September, non-payment of which can be considered as deficiency in payment of advance tax only when it became due. Therefore, no deficit amount can be determined in respect of advance tax payable on the current income on the 15th September. Likewise, if no capital gains have arisen prior to the 15th March of any financial year, as in the present case, the assessee had no liability to include the same in the computation of current income on that date and to pay tax in respect of such income with last instalment due on the 15th March. Therefore, he has no occasion to make payment of any advance tax on such part of the income during the previous year. To collect tax even on such taxing

event which occurred after the 15th March, the proviso to Section 234C envisages that, the assessee pay advance tax in respect of such capital gains earned by the 31st March. However, it does not result in creating any obligation to pay advance tax on any capital gains prior to the date it accrues. The provision relating to payment of advance tax and consequence of non-payment or deficient payment has to be considered compendiously as part of one wholesome scheme and not divorced from each other.

59. In the aforesaid backdrop, it is reasonable to construe the provisions of this nature where interest is chargeable on delayed or deferred payment of advance tax, it shall be payable only with effect from the date the liability to pay advance tax in respect thereof has been incurred. There cannot be any interest prior to the date in respect of such liability when there was no liability to pay advance tax under any provisions of the Act. This being the clear position under Section 234C(1)(b) read with the proviso, referred to above, we have no hesitation in coming to the conclusion that the Tribunal was right in construing Section 234C that since advance tax in respect of capital gains become payable only after it accrued, the liability to pay interest on delayed or deferred payment of advance tax on capital gains arises after the 15th March, can arise only with effect from the date, the advance tax in respect of such capital gains becomes payable and not earlier thereto.

60. In that light the assessee has rightly paid interest under Section 234C along with the return, considering his liability to pay interest in respect of advance tax payable on capital gains earned by him arose after the 15th March, 2000, for a period of one month only as he was to make payment by the 31st March and the liability to pay advance tax in respect of such income arose after the 15th of March. The said liability he discharged in April, 2000.

61. In view of the aforesaid, we find no merit in this appeal and the same is hereby dismissed.