COMMISSIONER OF INCOME TAX, MUMBAI

v.

ANJUM M.H. GHASWALA AND ORS.

OCTOBER 18, 2001

[DR. A.S. ANAND, C.J., K.T. THOMAS, R.C. LAHOTI, N. SANTOSH HEGDE AND S.N. VARIAVA, JJ.]

Inocme Tax Act, 1961 :

Sections 245D(4) and (6)—AY 1989-90 onwards—Interest—Reduction or waiver of—By Settlement Commission—Powers regarding—Held: The Commission can only stipulate the conditions of payment like instalments, last date for payment etc.—Hence, the Commission 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 issued by the Board under S.119.

Section 119—Central Board of Direct Taxes—Circulars issued by—Statutory force of—Held: Such Circulars have statutory force and are binding on every income-tax authority—Clarificatory Notes or Press Release issued by the Board do not have such statutory force.

Interpretation of Statutes :

Rule of construction—Statute—Vesting of power—In an authority—Exercise of—Held: Has to be exercised only in the manner provided in the statute itself.

Purposive Interpretation—Exercise of—By looking into object and scheme of Act—Held: Would arise only if the language is either ambiguous or conflicting or gives a meaning leading to absurdity.

External aids—Reliance on—Held: Is not permissible if the language of a statute is clear and unambiguous.

Practice and Procedure :

Inherent Power—Exercise of—Held: Cannot be exercised contrary to express provisions of the Act.

A *Words and Phrases :*

"Terms" and "interest"—Meaning of—In the context of S.245D(6) of the Income Tax Act, 1961.

"Settlement"—Meaning of—In the context of S.245D(4) of the Income B *Tax Act, 1961.*

In this appeal the following question arose before the Court :-

Whether the Settlement Commission constituted under Section 245B C **of the Income Tax Act, 1961 has the jurisdiction to reduce or waive the interest chargeable under Sections 234A, 234B and 234C of the Act, while passing orders of settlement under Section 245D(4) of the Act?**

Disposing of the appeals, the Court

D **HELD : 1. The expression "terms" used in Section 245D(6) of the Income Tax Act, 1961 does not refer to the power of the Settlement Commission to waive or reduce tax, penalty or interest because quantification of amount payable under each of those expressions are dealt with under separate provisions of the Act like the payment of the tax is governed by various provisions of the Act as defined in Section 2(43) of** E **the Act while penalty is covered by Section 245H and interest under Sections 234A, 234D and 234C of the Act. Therefore, all that the expression "terms" in Section 245D(6) means is that the Commission can stipulate the conditions of payment like instalments, last date for payment etc. Beyond that Section 245D(6) does not authorise the waiver or reduction of** F **tax, penalty or interest settled under Section 245D(4). [314-H; 315-A-B]**

CIT **v.** *Express Newspapers Ltd.,* **206 (1994) ITR 443 (SC), held inapplicable.**

Ashwani Kumar Aggarwal, In re **195 ITR 861, referred to.**

G

2. Undoubtedly, the Central Board of Direct Taxes is an executive authority being a part of the Ministry of Finance. Its actions are amenable to scrutiny by the said Ministry as also by audit bodies and also the Parliament whereas the Commission constituted under Section 245B of the Act is a quasi-H **judicial body (Section 245L) and its orders are not amenable to either super-**

visory or appellate jurisdiction of the Ministry of Finance or any of the audit bodies and for that matter even by the Parliament. Its orders under Section 245I are conclusive which cannot be reopened in any proceedings under the Act or under any other law for the time being in force. Therefore, it cannot be said that in the context in which the power under Section 119 could be exercised by the Board, the Commission could either equate itself with the Board or claim the right to exercise the power vested in the Board under Section 119, which is an administrative power. [316-G-H]

3.1. It is no doubt true that the terminology 'settlement' has a very wide dictionary meaning and in the absence of a statutory definition generally the word 'settlement' in Section 245D(4) would give the Commission sufficient power to arrive at a settlement which it deems fit, but when the statute qualifies such an expression like 'settlement' with mandatory words like 'in accordance with the provisions of this Act' the width of the term 'settlement' becomes 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 245D(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. Assuming that there is any room for interpretation of the provisions of Part F of Chapter XVII and Chapter XIX-A, 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. [319-B-D]

3.2. Assuming that the Commission has any inherent power, it is a well-established legal principle that any inherent power vested in an authority cannot be exercised contrary to the express provisions of the Act. In the instant case, there being express provisions in regard to the levy of interest under Part F of Chapter XVII even if there is any inherent power in the Commission such power cannot be exercised contrary to the provisions of the said Chapter. [319-F]

4. Under Section 245-H the Commission has the power to grant immunity to the assessee from prosecution and penalty. This immunity is not confined only to the penal provisions of the Act but it is also available if granted by the Commission to offences under the Indian Penal Code or under any other Central Act for the time being in force and also get the

A benefit of waiver or reduction in the imposition of penalty under the Act with respect to the cases covered by the settlement. Merely because the Settlement Commission has not been vested with the power of waiving or reducting the interest, Chapter XIX-A would not either become otiose or serve any purpose. [320-G-H]

B

5.1. Every Clarificatory Note or Press Release issued by the Board does not have the statutory force like the Circulars issued by the Board under Section 119 of the Act. Only those Circulars issued by the Board under the provisions of Section 119 of the Act will have the statutory force and will be binding on every income-tax authorities. [320-A]

C

5.2. The Circulars of the Board are legally binding on the Revenue. Since these Circulars are beneficial to the assessees, such benefit can be conferred also on the assessees who have approached the Settlement Commission under Section 245C of the Act on such terms and conditions as D contained in the Circular. It is for this purpose that section 245F of the Act has empowered the Settlement Commission to exercise the power of an income-tax authority under 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 E the benefit of the assessee in the process of settlement. [321-D-E]

UCO Bank v. *CIT*, (1999) 237 ITR 889 (SC), relied on.

6.1. It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then F the said authority has to exercise it only in the manner provided in the statute itself. If that be so since the Commission cannot exercise the power of relaxation found in Section 119(2)(a) in the manner provided therein it cannot invoke that power under Section 119(2)(a) to exercise the same in its judicial proceedings by following a procedure contrary to that provided G in Section 119(2). [317-C]

6.2. The exercise of purposive interpretation by looking into the object and scheme of the Act and legislative intendment would arise if the language of the Statute is either ambiguous or conflicting or gives a meaning leading to absurdity. [318-C] H

6.3. The question of the Commission relying upon external aids for the purpose of interpretation is purposeless because of the clear and unambiguous language used in Sections 234A, 234B and 234C and Sections 245D(4) and (6). If only the Commission were to follow the golden rule of interpretation by giving the words of the Statute their natural and ordinary meaning without unnecessarily going into a forensic exercise of trying to find out the object of the introduction of Chapter XIX-A or Part F of Chapter XVII, the Commission would not have fallen in error. [318-H; 319-A]

Jaywant S. Kulkarni **v.** *Minochar Dosabhai Shroff,* **AIR (1988) SC 1817, relied on.**

7. The Commission, therefore, in exercise of its power under Sections 245(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 issued by the Board under Section 119 of the Act. [321-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4126-50 of 2000.

From the Judgment and Order dated 12.12.97 of the Income Tax Settlement Commission Special Bench, Mumbai in Settlement Application Nos. 5/XIII/59-63/94-95-IT, 6/II/024-025/94-95/IT, 10/C/040/95-96/IT, 10/C/037, 038, 039 & 047/95-96/IT, 10/III/005/94-95/IT, 10/III/150/91-92/IT, 10/III/035/95-96/IT, 10/III/029/92-93/IT, 10/III/017-018 & 71/93-94/IT, 10/C/135 & 149/91-92/IT, 5/VIII/II/91-92/IT & 5/VIII/81/91-92/IT, 5/NER/70 and 72/91/IT.

WITH

C.A. Nos. 6275-86/98, 1561, 3859/99, SLP(C) Nos. 17832-34, 16404-05,16407-11/2000, C.A. Nos. 6414-15, 3744/98, 5655-59/99, 16810/96 and 1858 of 1999.

Harish N. Salve, Solicitor General, M.L. Verma, J. Ramamurti, S. Ganesh, R.P. Agarwal, Joseph Vellapally, Ranbir Chandra, Rajiv Tyagi, K.C. Kaushik, Rajiv Nanda, Pritesh Kapur, S. Goswami, Ms. Neera Gupta, Siddharth Chowdhury, Ms. Aprajita Singh, Ms. Gayatri Goswami, B.V.B. Das, Ramesh Goenka, Vijay Hansaria, Sunil K. Jain, Amitesh Lal, Ms. Priya Kumar for P.N. Puri, S. Rajappa, Sameer Parekh, Ms. Sonali Basu Parekh, P.H. Parekh, U.A.

A Rana, Ms. Shalini Mittal, Mrinal Bhatti, A.T.M. Sampath for the appearing parties.

The Judgment of the Court was delivered by

SANTOSH HEGDE, J. *CA Nos. 4126-50/2000 :*

B

In these appeals, the question that arises for our consideration is: whether the Settlement Commission (for short 'the Commission') constituted under Section 245B of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') has the jurisdiction to reduce or waive the interest chargeable under Sections 234A, 234B and 234C of the Act, while passing orders of settlement C under Section 245D(4) of the Act?

Earlier, this question arose before the Commission in the case of Ashwani Kumar Aggarwal, In re (195 ITR 861) wherein a 5-Member Special Bench of the Commission held that under Section 245D(4) or sub-section (6), the Commission does not have the power either to waive or reduce the D statutory interest payable under the Act.

This view of the 5-Member Bench of the Commission was overruled by a larger Bench comprising of 7 Members of the Commission which held otherwise by the impugned order. It held that the Commission is vested with E the power to waive or reduce the interest chargeable under Section 234A, 234B and 234C of the Act in cases pending before it for the assessment year 1989-90 and onwards (i.e. the year in which Chapter XVII-F was introduced in the Act). It further held that this power can be exercised by any of the Benches constituted to settle cases under Section 245BA of the Act. While coming to this conclusion, the Commission held that the constitution of the F Commission is based on the concept of "compromise and settlement", hence, it has the necessary power to waive or reduce the interest, even if statutorily mandated, in view of the wordings of Section 245D(6) of the Act.

It also held that in view of the definition of the term "income-tax authority" under Section 245A(d), the Commission being an income-tax au- G thority it has all the powers of the Board which are incidental to the functions of the Commission, which includes the Boards power under Section 119 of the Act to relax the rigors of Sections 234A, 234-B and 234C of the Act.

By applying the rule of construction, the Commission further held that H taking into consideration the object for which the Commission is constituted,

it should be held by the process of purposive interpretation that it has the power of waiver or reduction of statutory interest because the object of the Legislature was to settle the case without there being any restriction on Commission's power to settle the case.

For the purpose of deciding the above issue, it is necessary for us to examine the various provisions of the Act which are germane to the controversy in hand.

The constitution of the Commission and its powers are traceable to the provisions of Chapter XIX-A of the Act. As noted above, Section 245B provides for the constitution of a Commission by the Central Government for settlement of cases under that Chapter. It also provides for appointment of a Chairman, Vice-Chairman and members of the Commission, the Constitution of various Benches of the Commission and empowers those Benches to exercise power and authority vested in the Commission under Chapter XIX-A of the Act. Section 245A defines various expressions under sub-clauses (a) to (g) but does not define the expression 'settlement'.

Section 245C provides for filing of an application by an assessee at any stage of the case relating to him in a prescribed manner giving full and true disclosure of his income which has not been disclosed before the assessing officer and further informing the manner in which such income has been derived by him and the quantum of additional amount of income-tax payable on such income amongst other particulars that may be prescribed with a prayer to the Commission to have the case settled.

The word case has been defined under Section 245-A(b) thus :

> "case" means any proceeding under this Act for the assessment or reassessment of any person in respect of any year or years, or by way of appeal or revision in connection with such assessment or reassessment, which may be pending before an income-tax authority on the date on which an application under sub-section (1) of section 245C is made :
>
> Provided that where any appeal or application for revision has been preferred after the expiry of the period specified for the filing of such appeal or application for revision under this Act and which has not

A been admitted, such appeal or revision shall not be deemed to be a proceeding pending within the meaning of this clause;"

Under the provisions of Chapter XIX-A, on such application being made, the Commission is empowered to dispose of the same in the manner B provided thereunder. Section 245D provides for the procedure and exercise of power to be followed by the Commission on receipt of an application under Section 245C. Under this provision, the Commission has the authority to call for the report from the Commissioner of Income Tax (for short 'the Commissioner) and on the basis of the material contained in such report and having regard to the nature and circumstances of the case or the complexity of the C investigation involved therein, it may by order allow the application to be proceeded with or reject the application.

If the Commission allows the application filed under Section 245C then under sub-section (3) of Section 245D it can call for the relevant records from D the Commissioner and if it forms any opinion that any further inquiry or investigation in the matter is necessary, it may direct the Commissioner to make or cause to be made such further inquiry or investigation and furnish a report on the matters covered by the application and other matters relating to the case.

E

Sub-sections (4) and (6) of Section 245D being of importance for the purpose of our discussion, the same are extracted in verbatim hereunder :

(4) After examination of the records and the report of the Commissioner, received under sub-section (1), and the report, if any, of the F 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 authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission *may, in accord-* G *ance 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).

H x x x

(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. (emphasis supplied).

From the above provisions of law, it is seen that the Commission after examination of the records and reports submitted to him and after giving an opportunity to the applicant and to the Commissioner of being heard, may pass such order as it thinks fit on the matters covered by the application. Though Section 245D(4) confers wide power on the Commission in the process of settling a case, the Act still mandates that the same will be done in accordance with the provisions of the Act.

While that is the mandate which is given to the Commission, a perusal of sub-section (6) of Section 245D shows that it has also empowered the Commission to 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. It is an admitted position that by its plain language sub-section (4) of Section 245D does not empower the Commission to waive or reduce statutory interest payable under the provisions of Sections 234A, 234B or 234C.

The moot question, therefore, for our consideration is: does sub-section (6) which contemplates providing for the terms of settlement of tax, penalty or interest empowers the Commission, in any manner, either to waive or reduce interest payable under Sections 234A, 234B or 234C in any case that arises for settlement before the Commission ? If so, would this waiver of interest be in accordance with the provisions of the Act as mandated in sub-section (4) of the Act ?

For answering the above question, we will have to examine the character of interest payable under the provisions of Sections 234A, 234B and 234C. A perusal of these Sections shows that the interest for default in furnishing return of income, default in payment of advance tax and interest for deferment of advance-tax are mandatory in nature. Section 234A which refer to the payment of interest for default in furnishing the return of income-tax mandates :

A "234A. (1) Where the return of income for any assessment year under sub-section (1) or sub-section (4) of section 139, or in response to a notice under sub-section (1) of section 142, is furnished after the due date, or is not furnished, the assessee *shall be liable to pay* simple interest at the rate of [one and one-half] {Substituted for "two" by the B Finance Act, 1999 w.e.f. 1.6.1999} per cent for every month or part of a month comprised in the period commencing on the date immediately following the due date, and, ----" (emphasis supplied).

Similarly, Sections 234B and 234C also use similar mandatory words in regard to payment of interest. At this stage, it is of importance to notice sub-C section (4) of Section 234A which reads thus :

"(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) or section 245D, the amount of tax on which interest was D 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 —*

(i) in a case where the interest is increased, the Assessing Officer E 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;

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

A perusal of this sub-section which refers to sub-section (4) of Section 245D mandates that if by virtue of an order passed under Section 245D, the amount of tax on which interest was payable under sub-section (1) or sub-G section (3) of this Section has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly. This Section is an indicator of the fact that so far as the interest falling due by virtue of default in furnishing a return of income, default in payment of advance-tax or interest for deferment of advance-tax are concerned. Part F of Chapter XVII has been H obligated with the duty of levy of interest, as also to make the necessary

changes in the payment of interest dependent on the change that may occur consequent to the order of settlement under Section 245D(4). A

It is also to be noted that wherever the Act contemplated power of waiver or reduction of interest to be entrusted with any particular authority in any particular situation, it has done so like in Section 220(2A) of the Act. It is also worthwhile to note that the Act wherever it contemplated that there should be no levy of interest, it has clearly made provision for the same as could be seen from Section 158BF which mandates that no interest under the provisions of Section 234A, 234B or 234C shall be levied or imposed upon the assessee in respect of the undisclosed income determined in the block assessment. B C

If the scheme of levy of interest is thus to be analysed on the anvil of the provisions referred to hereinabove, it shows 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, the same indicates that so far as the payment of statutory interest is concerned, the same is outside the purview of the settlement contemplated in Chapter XIX-A of the Act. D

The Commission, however, traced its power to waive or reduce interest to the objects of the Act and to what it termed as schematic rationalisation of the provisions of Chapter XIX-A. It also based its finding on the statutory provisions i.e. Sections 245D(4) and (6) and Section 119(2) of the Act. E

From amongst the above grounds on which the impugned order is founded, we will examine the correctness of the statutory basis of the order first. F

The Commission in the impugned order placed strong reliance on the wording of Section 245D(6) the language of which, according to the Commission, empowers it to waive or reduce statutory interest because of the reintroduction of the expression "interest" in that sub-section. According to the findings of the Commission, the inclusion of the expression interest clearly indicates that the Statute has permitted it to pass such orders as it deems fit in regard to payment of interest when an order under sub-section (4) of Section 245D is made by it. This assumption of the Commission proceeds on the hypothesis that sub-section (6) of Section 245D is a substantive provision. We are unable to agree with this view of the Commission. The substantive provi- G H

A sion in regard to settlement in Chapter XIX-A, in our opinion, is sub-section (4) of Section 245D. It is under this provision of the Act that the Commission will have to pass orders as it thinks fit on the matters covered by the application. In our opinion, sub-section (6) of Section 245D is only procedural in nature. It provides for fixing the terms by which the amount settled in sub-section (4) B will have to be paid. It is not a Section which empowers the Commission either to waive or reduce the interest. At the cost of repetition, we must point out that apart from the fact that there is no specific empowerment of waiver or reduction of tax in Chapter XIX-A, it is also clear from the use of the expression "in accordance with the provisions of this Act" found in sub-section (4) of C Section 245D, the settlement will have to be in conformity with the Act and not contrary to or in conflict with it. There is yet another factor to be taken note of while interpreting sub-section (6) of Section 245D. The said sub-section also provides for terms of settlement in regard to the tax. If the interpretation given by the Commission is to be accepted, it would mean that under the provisions of Section 245D(6), the Commission also has the power of waiving or reducing D the tax payable on the income settled by the Commission. If this position in law is presumed to be correct then the very purpose of the settlement contemplated in Chapter XIX-A would defeat the object of the principal Act itself. As held by the Commission itself, Chapter XIX-A was included for the purpose of quick settlement of the cases before it so that the tax due to the Revenue E is collected at the earliest. The object of Chapter XIX-A is not to give amnesty to a tax evader from paying the tax due. Hence, it would be preposterous to hold that the Commission has been conferred with the power of either reducing or waiving the tax due. We are aware that the Commission in the impugned order has not gone to the extent of holding that it has the power of either F waiving or reducing the tax payable but then that would be the logical conclusion if we accept the interpretation given by the Commission in regard to the expression "interest" in Section 245D(6) of the Act. A proper reading of sub-section (6) would show that all that it contemplates is that while the Commission makes an order of settlement under sub-section (4) it will also have to G provide for the terms under which the amount payable by way of tax, penalty or interest shall be paid by the assessee. The expression "terms" used in that sub-section does not refer to the power of the Commission to waive or reduce tax, penalty or interest because quantification of amount payable under each of those expressions are dealt with under separate provisions of the Act like H the payment of the tax is governed by various provisions of the Act as defined

in Section 2(43) of the Act while penalty is covered by Section 245H and interest under Sections 234A, 234B and 234C of the Act. Therefore, all that the expression "term" in Section 245D(6) means is that the Commission can stipulate the conditions of payment like instalments, last date for payment etc. Beyond that, in our opinion, sub-section (6) does not authorise the waiver or reduction of tax, penalty or interest settled under sub-section (4) of Section 245D.

The Commission in support of its view on this score has placed reliance on the judgment of this Court in the case of *Commissioner of Income-Tax* v. *Express Newspapers Ltd.,* 206 (1994) ITR 443 wherein this Court observed thus :

> "Sub-section (4) of section 245D provides for passing of final orders by the Commission. It is not necessary to refer to the other provisions in the Chapter except to mention that the Commission is empowered to direct the waiver of penalty as well as interest and to direct that the tax payable shall be paid in prescribed instalments. It is further empowered to direct that the assessee whose case has been decided by it shall not be proceeded with or prosecuted under the Income-tax Act or under the Indian Penal Code or under any other Central Act for the time being in force with respect to the case covered by the settlement. The orders of the Commission are final, subject of course to constitutional remedies."

In our opinion, this observation in the *Express Newspapers'* case (supra) does not help the Commission in support of its conclusion in regard to its power under Sections 245D(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 234A, 234B and 234C 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 245D(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 234A, 234B and 234C

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 the *Express Newspapers'* case (supra) out of context.

Nextly, the Commission also traced its power either to waive or reduce the interest to Section 119(2) of the Act. In our opinion, this process of tracing Commission's power to Section 119(2) of the Act is rather convoluted. It first relied upon Section 245F which conferred on it the powers vested in an income-tax authority. Next it relied upon the definition of the expression 'income-tax authority' as found in Section 245A(d) of the Act which in turn referred to Section 116 of the Act which included the Board as one of the income-tax authorities for the purpose of the Act. Having equated itself with the Board, it traced the power of the Board to Section 119(2) to relax the rigor of Sections 234A, 234B and 234C. Thus, by this process the Commission came to the conclusion that it can also relax the rigor of Sections 234A, 234B and 234C while passing the order of settlement without really considering whether in the context in which this power is conferred on the Board, the Commission could equate itself with the Board for the purpose of exercising power under Section 119(2). Therefore, we will first examine whether the Commission can be construed as a Board for the purpose of Section 119 or in the alternative by virtue of Section 245F(d) read with Section 245A(d) read with Section 116 can the Commission exercise the power conferred on the Board under Section 119 of the Act? For this purpose it is necessary to examine the nature of power exercised by the Board under Section 119 of the Act. Undoubtedly, the Board is an executive authority being a part of the Ministry of Finance. Its actions are amenable to scrutiny by the said Ministry as also by audit bodies and also the Parliament whereas the Commission constituted under Section 245B of the Act is a quasi-judicial body (see Sec.245L) and its orders are not amenable to either supervisory or appellate jurisdiction of the Ministry of Finance or any of the audit bodies and for that matter even by the Parliament. Its orders under Section 245-I are conclusive which cannot be reopened in any proceedings under the Act or under any other law for the time being in force. Therefore, it cannot be said that in the context in which the power under Section 119 could be exercised by the Board, the Commission could either equate itself with the Board or claim the right to exercise the power vested in

the Board under Section 119 which is an administrative power.

Then it is to be seen that the Act requires the Board to exercise the power under Section 119 in a particular manner i.e. by way of issuance of orders, instructions and directions. These orders, instructions and directions are meant to be issued to other income-tax authorities for proper administration of the Act, the Commission while exercising its quasi-judicial power of arriving at a settlement under Section 245D cannot have the administrative power of issuing directions to other income-tax authorities. It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. If that be so since the Commission cannot exercise the power of relaxation found in Section 119(2)(a) in the manner provided therein it cannot invoke that power under Section 119(2)(a) to exercise the same in its judicial proceedings by following a procedure contrary to that provided in sub-section (2) of Section 119.

There is one other reason why Section 119(2) is not available to the Commission, because if we examine the provisions of Section 245A through which the Commission has traced its power to be equated with the Board which defines the expression "case" to mean "any proceeding under this Act for the assessment or reassessment of *any person in respect of any year or years....* which may be pending before an income-tax authority on the date on which an application under sub-section (1) of Section 245 is made". As per this definition, it is clear that the power of settlement is vested in the Commission in regard to a particular case pertaining to an assessee, may be for one or more years while the power of relaxation contemplated under Section 119(2)(a) can be exercised only in regard to class of cases or class of incomes. It is not open to be used in regard to any particular person or case contemplated under the definition of the expression 'case' in Section 245A (supra). Therefore, we are of the opinion that the context in which the power under Section 119 is vested in the Board and the context in which the power of settlement is vested with the Commission under Section 245C indicates that the Parliament did not intend that the power under section 119 of the Act could be used by the Commission for granting the said relief, and the Commission cannot be equated with the Board for the purpose of exercise of the power under Section 119 of the Act. Having noticed this difference, the Commission in the impugned order holds that it is not exercising the administrative

power of issuing directions or instructions, hence, it relied upon the legislative intent of giving relief of waiver or reduction of interest to the assessee while arriving at a settlement.

Nextly, the Commission has elaborately discussed the object of introduction of Chapter XIX-A in the Act, the history behind the introduction and schematic rationalisation of the provisions of Chapter XIX-A brought about through Finance Act, 1987 to hold that in exercising its power under Chapter XIX-A it has almost an unbridled power to arrive at a settlement. This exercise of purposive interpretation by looking into the object and scheme of the Act and legislative intendment would arise, in our opinion, if the language of the Statute is either ambiguous or conflicting or gives a meaning leading to absurdity. We do not find any such problem in the provisions of the Act to which we have already referred to. Sections 234A, 234B and 234C in clear terms impose a mandate to collect interest at the rates stipulated therein. The expression 'shall' used in the said Section cannot by any stretch of imagination be construed as 'may'. There are sufficient indications in the scheme of the Act to show that the expression 'shall' used in Sections 234A, 234B and 234C is used by the Legislature deliberately and it has not left any scope for interpreting the said expression as 'may'. This is clear from the fact that prior to the Amendment brought about by the Finance Act, 1987, the Legislature in the corresponding Section pertaining to imposition of interest used the expression 'may' thereby giving a discretion to the authorities concerned to either reduce or waive the interest. The change brought about by the Amending Act (Finance Act, 1987) is a clear indication of the fact that the intention of the Legislature was to make the collection of statutory interest mandatory. In this connection, we may usefully refer to the judgment of this Court in *Jaywant S. Kulkarni & Ors.* v. *Minochar Dosabhai Shroff & Ors.*, AIR 1988 SC 1817 wherein this Court held that when the Legislature changes the expression "may" to "shall" by amendment of the statute, it is clear that it intended to make the provision mandatory from the existing directory provision. Therefore, the question of the Commission relying upon external aids, for the purpose of interpretation like Wanchoo Committee Report, Discussions of Select Committee of Parliament and introduction of Chapter XIX-A in the Act, Press Release of the Board dated 21.5.1996 etc. are purposeless because of the clear and unambiguous language used in Sections 234A, 234B and 234C and Sections 245D(4) and (6). We notice if only the Commission were to follow the golden rule of interpretation by giving the words of the Statute their natural and ordinary meaning without

unnecessarily going into a forensic exercise of trying to find out the object of the introduction of Chapter XIX-A or Part F of Chapter XVII, the Commission would not have fallen in error. A

It is no doubt true that the terminology 'settlement' has a very wide dictionary meaning and in the absence of a statutory definition generally the word 'settlement' in sub-section (4) of Section 245D 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 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 245D(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 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. B C D

It was then argued that the Commission having been statutorily constituted to arrive at a settlement has also the inherent power which includes the power to waive or reduce the interest even though it is not specifically provided for. This argument, in our opinion, cannot be sustained. Assuming that the Commission has any inherent power, it is a well-established legal principle that any inherent power vested in an authority cannot be exercised contrary to the express provisions of the Act. In the instant case, there being express provisions in regard to the levy of interest under Part F of Chapter XVII even if there is any inherent power in the Commission such power cannot be exercised contrary to the provisions of the said Chapter. E F

Shri Ramamurti, learned senior counsel appearing for some of the respondents, placed strong reliance on the Press Release dated 21st May, 1996 issued by the Board in support of the contentions raised on behalf of the respondents. It is true that by this Press Release the Board had interpreted the provisions of the Act in a particular manner. Be that as it may, we would like to make it clear that every Clarificatory Note or Press Release issued by the G H

A Board does not have the statutory force like the Circulars issued by the Board under Section 119 of the Act. It is only those Circulars issued by the Board under the provisions of Section 119 of the Act, will have the statutory force and will be binding on every income-tax authorities. Therefore, the Press Release relied upon by Shri Ramamurti not being a Circular issued under B Section 119 of the Act will not be of any assistance to the respondents in support of their contentions.

It is then contended that if it is to be construed that the Commission has no power of waiver or reduction of interest then the entire purpose of Chapter XIX-A would be defeated since a person making an application to C the Commission would not be in any way better off than pursuing his remedy otherwise provided in the Act. We are unable to accept this argument advanced on behalf of the respondents because the persons who approach the Commission under Chapter XIX-B are admittedly the persons who had not declared their true incomes to the income-tax authorities as required under the D Act. Inspite of this default, Section 245C comes to the aid of such assessees by providing a way out of the statutory implications of their default. The object of the Legislature in introducing this Section is to see that the 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 E in amounts statutorily payable under the Act. While the Settlement Commission arrives at the taxable income of the assessee on the basis of records available before it, it has to levy the mandatorily chargeable tax on such income arrived at by it and wherever interest is due under the mandatory provisions like Sections 234A, 234B and 234C, it has to include the said F interest also in the settlement. But, at the same time, the assessee who because of his non-disclosure would otherwise have been liable for various penal actions, gets an opportunity of getting immunity from penal proceedings. It is to be seen that under Section 245H the Commission has the power to grant immunity to the assessee from prosecution and penalty. This immunity is not confined only to the penal provisions of the Act but it is also available if G granted by the Commission to offences under the Indian Penal Code or under any other Central Act for the time being in force and also get the benefit of waiver or reduction in the imposition of penalty under the Act with respect to the cases covered by the settlement. Therefore, it is futile to contend that merely because the Settlement Commission has not been vested with the power of H waiving or reducing the interest, Chapter XIX-A would either become otiose

or would not serve any purpose. Hence, this argument has to be rejected.

Learned Solicitor General has pointed out that by virtue of the power vested in the Board under Section 119(2)(a) of the Act, the Board has issued Circulars by Notification No.F.No.400/234/95-IT(B) dated 23.5.1996. As per this Circular, it has empowered that the Chief Commissioner of Income Tax and Director General of Income-tax may waive or reduce interest charged under Sections 234A, 234B and 234C of the Act in the class of cases or class of incomes specified in paragraph 2 of the said order for the period and on conditions which are enumerated therein. He submitted that in view of the said Circular, the same authority can be exercised by the Commission since the said Circular would amount to relaxation of the rigor of Sections 234A, 234B and 234C of the Act. We are in unison with this submission of the learned Solicitor General. This Court in a catena of cases has held that the Circulars of the Central Board of Direct Taxes are legally binding on the Revenue. See *UCO Bank* v. *Commissioner of Income Tax,* (1999) 237 ITR 889. Since these Circulars are beneficial to the assessees, such benefit can be conferred also on the assessees who have approached the Settlement Commission under Section 245C of the Act on such terms and conditions as contained in the Circular. In our opinion, it is for this purpose that Section 245F of the Act has empowered the Settlement Commission to exercise the power of an income-tax authority under the Act. We must clarify here that 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.

For the reasons stated above, we hold that the Commission in exercise of its power under Sections 245(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 issued by the Board under Section 119 of the Act.

In conclusion, we must note that we have taken up for consideration Civil Appeal Nos.4126-50/2000 and have decided the issue pertaining to the power of the Commission to waive or reduce the interest chargeable under Sections 234A, 234B and 234C of the Act while passing orders of settlement under Section 245D(4) of the Act. We have not decided any other issue that might arise in all the appeals/petitions.

A Having decided the abovesaid question of law, we think it proper that all these matters be placed before a Division Bench of this Court for disposal in accordance with law.

It is ordered accordingly. No costs.

V.S.S. Appeals disposed of.