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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL No. 4794 of 2010.

The Commissioner of Income-Tax
XVIII Piramal Chambers, Parel,
Mumbai-400 012. ..Appellant.

Versus

Smt. Leonie M.Almeida,
Ganesh Niwas, V.S. Marg,
Prabhadevi, Mumbai-400 025. ..Respondent.

Mr A.R.Malhotra a/with Mr N.A. Kazi for the appellant.
Mr Satish Mody a/with Aasifa K.Khan for the respondent.

CORAM : S.C. DHARMADHIKARI &
S.P. DESHMUKH, JJ.

RESERVED ON :- 9th JANUARY, 2015.
PRONOUNCED ON:-24th FEBRUARY,2015.

JUDGMENT (PER : S.P. DESHMUKH, J)

1) The appellant purports to pose question of law referred to herein below:-

> "Whether on the facts and circumstances of the case and in law, the Tribunal was right in holding that the interest under Section 220(2) will be legally leviable

> from the date of default in payment of demand by the assessee till the date of admission of application by the assessee by settlement Commission under section 245D(1) and not till the final order of settlement commission under section 245D (4)?”

2) The relevant facts can be briefly narrated as under :

The case of the respondent/assessee was taken up for assessement within the framework of Section 158BD of the Income-Tax Act, 1961. The assessment was made on 30.1.2002 determining undisclosed income @ Rs.1,40,02,500/-. In the course of said proceeding, the assessee had filed application before Settlement Commission on 11.5.2001. The application was admitted by the Settlement Commission under section 245D (1) on 16th September, 2002. Final order was passed by the Settlement Commission on 30th September, 2002 disposing of the application. The undisclosed income under the same decreased to Rs.32,20,000/-. The Assessee had paid the demand within 30 days.

3) On 14th December, 2005 the Assistant Commissioner, Income-tax, Circle XVIII, Mumbai issued a demand purporting to

give effect to the order under section 245D (4) charging and levying interest under Section 220 (2) of Income-Tax Act, 1961 from the date of assessment order - 30th January, 2002 to 30th September, 2005 - the date of order passed by the Settlement Commission. As such the matter before the Income-Tax Appeals XVIII, Mumbai ensued at the instance of the assessee.

4) The Commissioner of Income-Tax (Appeals) concurred with the submissions on behalf of the assessee that order of the Assessing Officer does not survive after application under Section 254 D(1) is admitted. The Commissioner further held that the Assessing Officer was not justified in levying interest under section 220 (2) from the date of his assessment order to the date of final order passed by the Settlement Commission, in view of decision of the Hon'ble Supreme Court in the case of **CIT vs. Damani Brothers** reported in **259 ITR 478**. Consequently, he allowed the appeal.

5) The revenue against aforesaid order dated 5.7.2006 passed by the CIT (Appeals) XVIII, Mumbai was in appeal before the Appellate Tribunal purporting to dispute the order

passed by the Commissioner (Appeals).

6) The Tribunal on perusal of record and on elaborate consideration of the matter, taking into account relevant provisions of Income-Tax Act, particularly provisions of Section 220 and 245D and the legal position as emerging from the decision referred to above namely, **CIT vs Damani Brothers** reported in **259 ITR 478,** held that interest under Section 220 (2) would be legally leviable from the date of demand raised in assessment before admission of application for settlement under section 245D (1). However, if the demand stands reduced under order of Settlement Commission, interest would undergo revision correspondingly, Accordingly under its order dated 26th March, 2009 the Tribunal purported to correct the order of the Commissioner of Income Tax (Appeals) and considered that it would not be proper to say that order of the Assessing Officer would not survive after application under section 245 D (1) is decided to be proceeded with, observing thus,

"It was accordingly held that

> *Income-tax authorities were free to proceed in the prescribed manner till the Commission decided to proceed with the application under section 245D (1). The assessment order passed by the Assessing Officer prior to the admission of the application for settlement will subsist and recovery proceedings will continue. Hon'ble Supreme Court further observed that the assessment did not get automatically set aside on the admission of the application for settlement.”*

The present appeal is against said order proposing to pose the question referred to hereinabove.

7) As can be seen, the dates which have been referred to hereinabove viz; the date of assessment order, date of making application before the Settlement Commission as well as the date on which the order passed by the Settlement Commission are not in dispute.

8) The position as far as charging interest under Section 220 (2) is concerned is no longer *res integra*. It has been made clear under the decision in the case of **Damani Brothers** (supra) as also in the decision of the Hon'ble

Supreme Court in the case of **Brij Lal and Ors v. Commissioner of Income-tax** reported in [2010] 328 ITR 477 (SC) which is a case relating to levy of interest under section 234B of the Income Tax Act, 1961, relied upon by the assessee, observing;

> *"As stated, till the Settlement Commission decides to admit the case under section 245D (1) the proceedings under the normal provisions remain open. But, once the Commission admits the case after being satisfied that the disclosure is full and true then the proceedings commence with the Settlement Commission. In the meantime, the applicant has to pay the additional amount of tax with interest without which the application for settlement would not be maintainable. Thus, interest under section 234B would be payable up to the stage of section 245D (1)".*

9) The position that interest can be charged pursuant to proceedings in normal course up to the date of decision under Section 245 D (I) of the Income Tax Act to proceed with the application appears to be prevailing.

10) In view of the aforesaid, no decision from this

Court is required in respect of the question of law sought to be raised. The case is covered by the decisions referred to hereinabove of the Hon'ble Supreme Court. As such the question as sought to be raised stands decided accordingly. Thus, appeal is dismissed. No order as to costs.

(S.P. DESHMUKH, J.) (S.C. DHARMADHIKARI,J)