IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 206 OF 1999

M/s. Ceat Ltd., Mumbai .. Applicant

v/s.

The Commissioner of Income Tax,
Mumbai City-IV, Mumbai .. Respondent

Mr. Nishant Thakkar a/w Mr. Rajesh Poojary i/b Mulla & Mulla & C.B. & C for the applicant
None for the respondent

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.
DATED : 29th AUGUST, 2016.

P.C.

1. By this Reference under Section 256(1) of the Income Tax Act, 1961 (the Act) for A.Y. 1985-86, the Income Tax Appellate Tribunal (the Tribunal) has referred the following substantial question of law for our opinion :-

"(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in law to hold that interest u/s 215 was chargeable in this case?

2. Brief facts leading to this Reference are as under.

(a) The regular assessment for A.Y. 1985-86 was completed on 29th March, 1988 under Section 143(3) of the Income Tax Act, 1961 (the

Act). The Assessing Officer assessed the applicant assessee's income at Rs.7.16 crores as against the returned income of Rs.3.74 crores. The assessment order dated 29th March, 1988 directed charging of interest under Section 215 of the Act. Thereafter, the applicant assessee got some relief and the interest payable under Section 215 of the Act was reduced to nil.

(b) Thereafter, the applicant filed a revised Return of Income and in reassessment proceedings an order under Section 143 r/w Section 147 of the Act was passed on 6th March, 1990 determining the applicant assessee's income at Rs.7.44 crores. This was also with the direction that the interest under the Act be charged.

(c) The applicant assessee challenged in appeal the order dated 6th March, 1990 to levy interest u/s 215 of the Act before the Commissioner of Income Tax (Appeals) [CIT(A)]. This appeal was on the ground that as no interest was charged at the time of regular assessment, no interest could be charged under Section 215(3) of the Act, in reassessment proceedings. However, the CIT(A) by an order dated 6th September, 1999, held that on a plain reading of Section 215(3) of the Act, interests can be charged on reassessment even if no interest was charged in the regular assessment order. In the above view, the appeal of the applicant assessee was dismissed.

(d) Being aggrieved, the applicant assessee filed an appeal to the Tribunal. At the hearing before Tribunal, the Assessing Officer was directed to file a copy of the regular assessment order dated 29th March, 1988, whereupon it was found that it had directed levy of interest under Section 215 of the Act. Thus, by order dated 16th April, 1998, the Tribunal held that only because the the applicant assessee got some relief of reducing the interest chargeable to a Nil figure in the regular assessment proceedings, under Section 154 / 250 of the Act, that would not by itself mean that the interest was not originally charged. In the above view, the appeal of the applicant assessee was dismissed.

3. On the aforesaid facts, Mr. Thakkar, learned Counsel appearing for the applicant assessee states that the issue which requires determination is the meaning of the words "......._the amount on which interest was payable under sub-section (1) has been increased or reduced....._" in sub-section (3) of Section 215 of the Act. Is it descriptive of the nature of liability or does it require that actual payment of interest under sub-section (1) of Section 215 of the Act, for sub-section (3) of Section 215 of the Act to be triggered.

4. Mr. Thakkar, learned Counsel for the applicant fairly invites our

attention to the decision of this Court in ***Akbar Travels of India P. Ltd. Vs. Income Tax Settlement Commission and Ors. 332 ITR 572*** wherein an identical phrase in Section 234B(4) of the Act as is the subject of consideration herein as found in Section 215(3) of the Act was a subject matter of consideration by this Court. The phrase for consideration in Akbar Travels (supra) found in Section 234B(4) of the Act was "…..the amount on which interest was payable under sub-section(1) or sub-section(3) has been increased or reduced………". This Court held that the words "on which interest was payable" is used in a descriptive sense to identify the nature / character of the amount specified in sub-sections (1) or (3) of Section 234B of the Act. This Court further held that for the purposes of Section 234B (4) of the Act to be attracted, it is not a condition precedent that interest should have been levied in the original order of assessment under sub-Section (1) of Section 234B of the Act.

5. The construction put by this Court in Akbar Travels (supra) of the phrase as found in Section 234B(4) of the Act would be equally applicable to construe Sub-section (3) of Section 215 of the Act, which arises for our consideration. The Court held that the words interest has been increased would contemplate both a situation where interest

has been levied on the assessee in the original order of assessment and also where interest has not been levied on the assessee in the original order of assessment. The phrase, which arises for our consideration in sub-section (3) of Section 215 of the Act is identical to one which arose for consideration before this Court in *Akbar Travels (supra)*. Therefore, by virtue of the decision of this Court in Akber Travels (supra), the issue stands concluded in favour of the Revenue.

6. In view of the above, the question framed for our opinion is answered in the affirmative i.e. in favour of the respondent Revenue and against the appellant assessee.

7. The Reference is disposed of in the above terms.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**