

**(1993) 09 BOM CK 0044**

**Bombay High Court**

**Case No:** IT Ref. No. 265 of 1981

Commissioner of Income Tax

APPELLANT

Vs

Associated Film Industries (P.)  
Ltd.

RESPONDENT

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**Date of Decision:** Sept. 6, 1993

**Acts Referred:**

- Income Tax Act, 1961 - Section 139, 215, 28

**Hon'ble Judges:** D.R. Dhanuka, J; B.P. Saraf, J

**Bench:** Division Bench

**Advocate:** Mrs. Shobha Jagtiani, Deokinandan, K.M.L. Majele, for the Appellant; G.S. Jetly and P.S. Jetly, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

Dr. B.P. Saraf, J.

This is a cross reference under s. 256(1) of the IT Act, 1961, both at the instance of the assessee and the Revenue. The following questions have been referred by the Tribunal to this Court for its opinion :

At the instance of the assessee

"(1) Whether the Tribunal was justified in law in holding that the surtax liability was not an allowable deduction in computing the appellant's total income under the IT Act ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that an amount of Rs. 1,50,000 out of total expenditure of Rs. 2,55,585 represented capital expenditure merely because the expenditure has resulted in a definite advantage over the earlier structure ?"

At the instance of the Revenue

"(3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in entertaining the assessee's grounds of appeal regarding levy of interest under ss. 139 and 215 of the IT Act, 1961, on the ground that the assessee denies his liability to pay any such interest ?"

2. The learned counsel for the assessee fairly stated before us that the first question referred at the instance of the assessee is covered by decision of this Court in the case of *Lubrizol India Ltd. vs. CIT* (1991) 187 ITR 25. Following the same we answer the said question in the affirmative, i.e., in favour of the Revenue and against the assessee.

3. So far as the second question is concerned, in view of the long lapse of time and in view of the fact that the assessee has been getting depreciation on the said amount at the rate of 5% for about 20 years, this question has become academic and as such not pressed.

4. So far as the third question, which is referred at the instance of the Revenue, is concerned we find that the assessee in this case denies his liability to pay the interest under ss. 139 and 215 of the IT Act, 1961. In that view of the matter following the ratio of the decision of the Hon"ble Supreme Court in the case of [Central Provinces Manganese Ore Co. Ltd. Vs. Commissioner of Income Tax](#), we hold that the Tribunal was right in entertaining the assessee's ground of appeal regarding the levy of the interest. The third question is, therefore, answered in the affirmative, i.e., in favour of the assessee and against the Revenue. We make no order as to costs.