

(1989) 08 CAL CK 0002

Calcutta High Court

Case No: IT Reference No. 217 of 1983

Commissioner of Income Tax

APPELLANT

Vs

Surrendra Tubes and Steels (P.)
Ltd.

RESPONDENT

Date of Decision: Aug. 14, 1989

Acts Referred:

- Income Tax Act, 1961 - Section 221(1), 256(1)

Citation: (1992) 62 TAXMAN 54

Hon'ble Judges: Suhas Chandra Sen, J; Bhagabati Prasad Banerjee, J

Bench: Division Bench

Advocate: S.K. Mitra, for the Appellant; D. Pal and A.K. Roy Chowdhury, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Bhagabati Prasad Banerjee, J.

The following question of law has been referred to this Court by the Tribunal u/s 256(1) of the income tax Act, 1961 ("the Act"):

Whether, on the facts and in the circumstances of the case, the income tax Appellate Tribunal was justified in holding that the estimate filed by the assessee on 18-12-1979 was not a valid estimate and therefore, could not be acted upon for imposition of penalty u/s 221(1) of the income tax Act, 1961?

The assessment year involved in this reference is the assessment year 1980-81 for which the accounting period is ended on 31-12-1979.

2. In the instant case, the assessee was a regular assessee. No notice of demand was served upon the assessee demanding payment of advance tax. The Tribunal found that the assessee filed the estimate on 18-12-1979 which was dated 6-12-1978. The estimate was admittedly filed beyond the time prescribed under the law.

3. The point is already concluded by the judgment in the case of [Babulal Newar Vs. Commissioner of Income Tax and Others](#), . The principles laid down in that case is that an estimate which was filed beyond time was not a valid estimate and since it was not a valid estimate no interest could be charged on the basis of such estimate. In the instant case, not only the estimate was an invalid one but there was no demand by the ITO for payment of advance tax.

4. Therefore, following the principles of law laid down in the aforesaid decision the question is answered in the affirmative and in favour of the assessee. There will be no order as to costs.

Sen, J. -

I agree.