

(2001) 10 CAL CK 0035

Calcutta High Court

Case No: IT Ref. No. 89 of 1993 9 October 2001 A.Y. 1985-86

Commissioner of Income Tax

APPELLANT

Vs

HALDIBARI TEA ASSOCIATION  
LTD.RESPONDENT

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Date of Decision: Oct. 9, 2001

**Acts Referred:**

- Income Tax Act, 1961 - Section 209A

**Citation:** (2001) 172 CTR 142**Hon'ble Judges:** Y.R. Meena, J; Y. R. Meena, J; Arunaba Barua, J**Bench:** Full Bench

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**Judgement**

Y.R. MEENA, J.

On an application u/s 256(2) of the Income Tax Act, 1961, the Tribunal has referred following questions set out at page 2 of the paper book for our opinion.

1. "Whether on the facts and in the circumstances of the case and on a correct interpretation of section 209A of the Income Tax Act, 1961, the Tribunal was justified in law in holding that there was no statutory obligation on the assessee to file the estimate of Income Tax filed by it and in that view holding that no penalty u/s 273(1)(a) of the said Act was exigible in this case ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in cancelling the penalty u/s 273(1)(a) of the Income Tax Act, 1961 ?"

2. The assessee is a company. The return if filed by the assessee on 3-12-1985, for assessment year 1985-86. During this year assessee has total production of green leaves 19,72,700 kgs. and net production of tea is 16,32,444 kgs. The rate of production during this year comes to 24.05 per cent while in the preceding assessment year the production of green leaves was 16,32,444 kgs., the rate of production was 25.11 per cent. A query was put to the counsel of the assessee

regarding shortfall of percentage in the yield. In reply reason given for the shortfall in the production of tea that the tea production depend upon quality of the green leaves produced in the garden and quality depend upon rain and weather condition.

The assessing officer has further found that assessee has filed an untrue estimate of advance tax payable during the previous year relevant to the assessment year under consideration. He imposed the penalty of Rs. 7,03,000 u/s 273 as per provisions of the Income Tax Act, 1961.

In appeal the Commissioner (Appeals) has cancelled the penalty. According to him, penalty should not be imposed only because assessee filed the untrue estimate. For penalty a finding should be given that assessee has furnished the statement of advance tax payable by him which he knew or had reason to believe to be untrue.

In appeal before the Tribunal the Tribunal held that when assessee was not liable to file the estimate for advance tax even then if assessee filed the estimate, penalty cannot be imposed even if the estimate is untrue.

3. Learned counsel for the assessee Mr. Bajoria submits that the nil income was assessed in the just earlier year and he placed reliance on the decision of the court in the case of [Commissioner of Income Tax Vs. Indian Molasses Co. \(P.\) Ltd.](#) , [Director of Income Tax \(Exemption\) Vs. Shree Sitaram Public Charitable Trust](#) ,

4. Learned counsel for the revenue has submitted that year ending in this case is 28-2-1985, estimate filed on 3-12-1985, income estimated was Rs 12,79,000 tax paid Rs. 7,42,000, income assessed Rs. 29,93,290 tax paid Rs. 16,87,795, 83-1/3 per cent thereon Rs. 14,06,000. On these facts when the estimate filed was untrue, the penalty u/s 273 has rightly been imposed Rs. 7,03,000.

5. In case of Indian Molasses Company (P) Ltd. (supra) this court has taken the view that where the assessed income and the returned income of the latest previous year of the assessee-company were minus figures no statement of advance tax u/s 209A of the Income Tax Act, 1961, is required to be sent by the assessee and consequently interest u/s 217 of the Act is not payable by the assessee.

6. In [Patel Aluminium Pvt. Ltd. Vs. Miss K.M. Tawadia, Income Tax Officer and another](#), the Bombay High Court held that the petitioners had been assessed to nil income in the previous assessment year, the provision u/s 209A(1)(a), did not make the petitioner liable to payment of advance tax, the petitioners were not obliged to send the statement referred to in section 209A(1)(a). Assessee was not liable to pay interest u/s 271(1)(a) or penalty u/s 273(1)(b) of the Act.

7. In [Commissioner of Income Tax Vs. Power Plants Sale and Services Pvt. Ltd.](#), the Rajasthan High Court has observed as under :

" ..... The provisions of section 212(3) as it was existing at the relevant time, therefore, would be applicable even in a case where the assessment was made and

nil tax liability was determined (sic). From this proposition of law, it would be seen that the assessee is under no obligation to file the estimate of advance tax. If the estimate of advance-tax is filed even if there was no obligation to file such an estimate without notice or order on an assessee u/s 210(3), then the estimate filed cannot be considered as having been filed u/s 212(3). The view which has been taken by the Tribunal cannot be said to be incorrect and, therefore, we are of the view that the Tribunal was justified in holding that no penalty was exigible u/s 273(a) of the Income Tax Act in the case of the assessee for the assessment year 1975-76 and cancelling the penalty of Rs 2,557. The reference is answered in favour of the assessee and against the revenue."

8. When assessee was not under obligation to file the estimate of advance tax it he has filed the estimate of advance tax without notice or orders served on an assessee u/s 210(3). In that case the estimate filed cannot be considered for purpose of penalty. We agree with the view taken by Rajasthan High Court in case of Power Plant Sale and Service (P) Ltd. (supra).

In the result, we answer both the questions in affirmative, i.e., in favour of assessee and against revenue.