

**(1990) 01 CAL CK 0036**

**Calcutta High Court**

**Case No:** IT Reference No. 201 of 1984

Commissioner of Income Tax

APPELLANT

Vs

Russell Properties (P.) Ltd.

RESPONDENT

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**Date of Decision:** Jan. 22, 1990

**Acts Referred:**

- Income Tax Act, 1961 - Section 207, 208, 209, 210, 211

**Citation:** (1995) 79 TAXMAN 145

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

**Bench:** Division Bench

**Advocate:** D. Pal, A.K. Roychowdhury and R.K. Biswas, for the Appellant; A.C. Maitra, for the Respondent

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### **Judgement**

Suhas Chandra Sen, J.

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

"Whether, on the facts and in the circumstances of the case and on an interpretation of the words "regular assessment" contained in section 214 the Tribunal was justified in holding that in terms of the income tax Act, 1961 the assessee was entitled to interest u/s 214 of the income tax Act, 1961 on the excess payment of advance tax till the date of refund?"

The Tribunal decided the controversy in the following manner :

"We have heard the rival submissions and perused the record. We find merit in the submissions of the learned counsel for the assessee. Subsection (2) of section 214 provides that on any portion of such amount which is refunded under this Chapter, interest shall be payable only up to the date on which the refund was made. We do not find any ambiguity in the language employed in this sub-section. Moreover the Delhi High Court in the case of [National Agricultural Co-operative Marketing](#)

[Federation of India Ltd. Vs. Union of India and others](#), has made it clear that "after the introduction of sub-section (2) in section 214 whatever may be the interpretation that might be placed on the expression "regular assessment" contained in section 214, there is no escape from the conclusion that the assessee is entitled to a refund along with interest up to the date of refund". That being the position, we are of the opinion that the assessee was entitled to interest up to the date of refund."

On this point there can be hardly any doubt. Section 214(2) of the Act is as under :

"(2) On any portion of such amount which is refunded under this Chapter, interest shall be payable only upto the date on which the refund was made."

2. Therefore, the interest will have to be paid "up to the date on which the refund was made. There is no ambiguity in the language.

3. In fact, the revenue has not even tried to make any argument on section 214(2). What was contended on behalf of the revenue was that the assessee was not entitled to any interest on the amount refunded. Some argument was made on the basis "what is regular assessment". A decision of the Andhra Pradesh High Court was cited in the case of [Kangundi Industrial Works \(P.\) Ltd. Vs. Income Tax Officer, A-Ward](#), where it was held that the assessee was entitled to payment of interest u/s 214 on the advance tax paid under sections 207 to 213 of the Act in excess of the income tax ultimately determined as payable on regular assessment only if the assessee had paid the instalments of advance tax by the due dates without committing any default. Once the assessee commits default by making belated payment of advance tax, he exposes himself to penalty proceedings and, consequently, forfeits his right to claim interest u/s 214. We fail to see what is the relevance of the case that has been cited before us.

This is not a case where the assessee has made belated payment of advance tax. No controversy, has been raised on that account before the Tribunal and the Tribunal has not referred that question to this Court.

4. Under these circumstances we answer the question referred to in the affirmative and in favour of the assessee. The revenue must pay the costs of this reference assessed at 100 G.Ms.

Bhagabati Prosad Banerjee, J.

I agree.