

## Prannoy Roy and Another Vs Commissioner of Income Tax and Another

**Court:** Delhi High Court

**Date of Decision:** Dec. 21, 2001

**Acts Referred:** Constitution of India, 1950 " Article 226, 227  
Income Tax Act, 1961 " Section 10(3), 139(1), 139(4), 139(8), 140(3)

**Citation:** (2002) 3 AD 569 : (2002) 96 DLT 269 : (2002) 254 ITR 755

**Hon'ble Judges:** S.B. Sinha, C.J; A.K. Sikri, J

**Bench:** Division Bench

**Advocate:** M.S. Syali, Satyen Sethi and Manu K. Giri, for the Appellant; Sanjiv Khanna and Premlata Bansal, for the Respondent

**Final Decision:** Allowed

### Judgement

S.B Sinha, C.J.

Interpretation of the provisions of Section 234A of the Income Tax Act, 1961 (hereinafter referred to as the "Act") is in question in this writ petition.

2. The brief facts are as under:-

The petitioners earned substantial capital gains for the assessment year 1995-96 for which the return was due to be filed on 31.10.1995.

However, taxes due were paid on 25.09.1995, i.e, before the due date of filing of the return, but the return was filed on 29.09.1996, i.e., after a

delay of about 11 months. Though returned income was accepted on 29.01.1998, yet interest has been charged under the provisions of Section

234A on the ground that tax paid on 25.09.1995 cannot be reduced from the tax due on assessment. The assessed filed a revision petition u/s 264

of the Act on 09.11.1998 before the Administrative Commissioner requesting to delete interest charged u/s 234 of the Act. The Commissioner in

his order dated 09.03.1999 upheld the action of the Assessing Officer stating that reduction of tax paid on 25.09.1995 is not provided in Section

234A of the Act, as it compensates for delay/default in filing of return of income and not the tax. Thus, against the said order of the Commissioner

passed on 09.03.1999, the assessed filed a writ petition under Article 226/227 of the Constitution of India (in short, the "Constitution") before this

Court seeking for a writ of certiorari in respect of the said order passed u/s 264 of the Act upholding levy of interest u/s 232A of the

Act.

3. The heading of Chapter XVII-F is "Interest Chargeable in Certain Cases." It comprises of Sections 234A, 234B and 234C. The said

provisions were inserted by Direct Tax Laws (Amendment) Act, 1987 with effect from 01.04.1989.

234A Section of the Act reads thus:-

234A. Interest for defaults in furnishing return of income

(1) Where the return of income for any assessment year under Sub-section (1) or Sub-section (4) of Section 139, or in response to a notice under

Sub-section (1) of Section 142, is furnished after the due date, or is not furnished, the assessed shall be liable to pay simple interest at the rate of

[one and one-half per cent.] [w.e.f. 1-6-2001 one and one-fourth per cent.] for every month or part of a month comprised in the period

commencing on the date immediately following the due date, and,-

(a) where the return is furnished after the due date, ending on the date of furnishing of the return; or

(b) where no return has been furnished, ending on the date of completion of the assessment u/s 144,

On the amount of the tax on the total income as determined under Sub-section (1) of Section 143 or on regular assessment as reduced by the

advance tax, if any, paid and any tax deducted or collected at source.

Explanation 1.-In this section, "due date" means the date specified in Sub-section (1) of Section 139 as applicable in the case of the assessed.

Explanation 2.- In this sub-section, "tax on the total income as determined under Sub-section (1) of Section 143" shall not include the additional

Income Tax, if any, payable u/s 143.

Explanation 3. Where, in relation to an assessment year, as assessment is made for the first time u/s 147, the assessment so made shall be regarded

as a regular assessment for the purposes of this section.

(2) The interest payable under Sub-section (1) shall be reduced by the interest, if any, paid u/s 140A towards the interest chargeable under this

section.

(3) Where the return of income for any assessment year, required by a notice u/s 148 issued [after the determination of income under Sub-section

(1) of Section 143 or] after the completion of an assessment under Sub- Section (3) of Section 143 or Section 144 or Section 147, is furnished

after the expiry of the time allowed under such notice, or is not furnished, the assessed shall be liable to pay simple interest at the rate of [one and

one-half per cent] w.e.f. 1-6-2001" one and one-fourth per cent.] for every month or part of a month comprised in the period commencing on the

day immediately following the expiry of the time allowed as aforesaid, and,-

(a) where the return is furnished after the expiry of the time aforesaid, ending on the date of furnishing the return; or

(b) where no return has been furnished, ending on the date of completion of the reassessment or re-computation u/s 147,

On the amount by which the tax on the total income determined as the basis of such reassessment or re-computation exceeds the tax on the total

[income determined under Sub-section (1) of Section 143 or on the basis of the earlier assessment aforesaid.

Explanation [inserted by DTL (Amendment) Act, 1987, and omitted by DTL (Amendment) Act, 1989, with effect from 1-4-89.

(4) Where as result of an order u/s 154 or Section 155 or Section 250 or Section 254 or Section 260 or Section 262 or Section 263 or Section

264 or an order of the Settlement Commission under Sub-section (4) of Section 245D, the amount of tax on which interest was payable under

Sub-section (1) or Sub-section (3) or this section has been increased r reduced, as the case may be, the interest shall be increased or reduced

accordingly, and -

(1) in a case where the interest is increased, the Assessing Officer shall serve on the assessed a notice of demand in the prescribed form specifying

the sum payable, and such notice of demand shall be deemed to be a notice u/s 156 and the provisions of this Act apply accordingly;

(ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.

(5) The provisions of the section shall apply in respect of assessments for the assessment year commencing on the 1st day of April 1989, and

subsequent assessment years.

4. Thus by reason thereof, a provision for payment of simple interest calculated @ 24% per annum has been made, which becomes payable by

assessed, who commits default in furnishing a return of income. When tax is not paid along with filing of the return, inter alia such interest is payable

by the assessed or who, even though liable to pay advance-tax u/s 208 of the Act, has either failed to pay such tax or advance-tax paid u/s 210 is

less than 90% of the tax assessed. Section 234C of the Act regulates the payment of interest @ 18% per annum in the case of an assessed, who is

liable to pay advance-tax u/s 208 of the Act, but either fails to pay such tax or pays the same so as to be less than 30% by the 15th of September,

or 60% by the 15th December of the tax due on the returned income.

5. The Central Board of Direct Taxes (hereinafter referred to as "CBDT") issued a circular bearing No. 549 dated 31.10.1989 182 ITR 37

wherein it was stated:-

Payment of mandatory interest to replace various interests and penalties:-

10.1. The old provisions in the Income Tax, Act, which gave the assessing authorities discretionary powers to charge interest and also to levy

penalties for the same default, were found to be rather complicated. These were contained in the following sections of the Act:-

(i) Section 139(8) relating to levy of interest for late filing or non-filing of return of income.

(ii) Section 215 relation to levy of interest for under payment of advance-tax.

(iii) Section 216 relating to levy of interest for deferment of Installments of advance-tax.

(iv) Section 217 relating to levy of interest for non-payment of advance-tax.

(v) Section 271(1)(a) relating to levy of penalty for failure to file the return of income or to file it in time.

(vi) Section 273 relating to levy of penalty for failure to file the statement/estimate or for filing an untrue statement/estimate of advance-tax payable.

(vii) Section 140A(3) relating to levy of penalty for failure to pay on self-assessment:

10.2.1. With a view to simplify the aforesaid provisions and also to remove the discretion of the assessing authorities, which had led to litigation

and consequent delay in realization of dues, the Amending Act, 1987 has substituted the above provisions by a simple scheme of payment of

mandatory interest for defaults mentioned therein. The provisions relating to charge of mandatory interest are contained in the new Section 234A,

234B and 234C inserted by the Amending Act, 1987. The mandatory interest chargeable under these sections are not appealable. At the time of

filing the return of income, such mandatory interest, if payable, is to be calculated on the basis of the returned income and paid along with tax on

self- assessment u/s 140A.

10.2.2. Charge of mandatory interest for non-filing or late filing of the return of income (new Section 234A).- The provisions of the new Section

234A inserted by the Amending Act, 1987, which have replaced the old provisions of Sections 139(8), 140(3) and 271(1)(a), are as follows:-

(i). Sub-section (1) provides that where a return of income is furnished after due date or is not furnished, the assessed shall pay simple interest @

2% for every month or part of a month comprised in the period of default on the amount of tax on total income determined on regular assessment

(as reduced by any advance tax paid or tax deducted at source.

It has been clarified that,-

i. the due date for filing of a return of income is the date specified in Section 139(1), as applicable in the case of the assessed;

ii. for the purposes of computing interest under this section, additional Income Tax payable under the new Section 158B shall not be taken into

consideration;

iii. for the purpose of this section as assessment made for the first time u/s 147 shall be regarded as a regular assessment.

(ii). Sub-section (20 provides that any interest chargeable under this section, which has already been paid by the assessed u/s 140A, shall by

adjusted against interest determined to be payable on regular assessment.

(iii) Sub-section (3) provides for charge and mode of computation of interest where during the course of reassessment proceedings (after an

assessment has been completed u/s 143(3) or 144 or 147) the return of income is either filed late or not filed in response to a notice u/s 148.

(iv). Sub-section (4) provides for automatic revision of the amount of interest where the amount of tax is varied as a result of an order of

rectification, appeal, revision of settlement mentioned in the sub-section.

(v) Sub-section (5) provides that the provisions of this section shall apply to the assessment year 1989-90 and subsequent assessment years.

6. The rate of interest earlier was 15% per annum, which was enhanced to 24% by reason of the aforementioned provisions. It is not in dispute

that Section 234A of the Act is an amalgam of Sections 139(8), 271(1)(a) and 140A(3) of the Act. The aforementioned provisions mandate

payability of the tax as the basis for calculation of the compensation or penalty due to the Department in case of violation. Section 140A(3) of the

Act as stood prior to coming into force of the Direct Tax Laws (Amendment) Act, 1987 did not refer to interest, but only to tax.

7. In Dr. S. Reddappa v. Union of India and Ors. reported in (1998) ITR 62, it has been held:-

Seen in the light of this case law, it is fairly obvious that the provisions of Section 234A, 234B and 234C, which replace the earlier provision

postulating payment of interest and are in pari materia with the said provisions cannot be anything except compensatory in character. The only

material difference in the two situations is that while the old provisions conferred power to waive or reduce the levy of interest, the impugned

provisions make the same automatic.

8. The rationale of levy of interest and penalty has been succinctly stated by the Apex Court while considering of Section 139(8) of the Act, which

is in pari materia with Section 234A in the following terms:-

Now, it will be apparent that delay in filing a return of income results in the postponement of payment of tax by the assessed resulting in the State

being deprived of a corresponding amount of revenue for the period of the delay. It seems that in order to compensate for the loss so occasioned,

Parliament enacted the provision for payment of interest.

9. Yet again, in the case of Central Provinces Manganese Ore Co. Ltd. Vs. Commissioner of Income Tax, the Apex Court observed as under:-

At the very outset, it is necessary to consider the nature of the levy of interest under Sub-section (8) of Section 139 and u/s 215. It is not correct

to refer to the levy of such interest as a penalty. The expression "penal interest" has acquired usage, but is in fact an inaccurate description of the

levy. Having regard to the reason for the levy and the circumstances in which it is imposed, it is clear that interest is levied by way of compensation

and not by way of penalty. The Income Tax Act makes a clear distinction between the levy of a penalty and other levies under that statute. Interest

is levied under Sub-section (8) of Section 139 and u/s 215 because, by reason of the omission or default mentioned in the relevant provision, the

Revenue is deprived of the benefit of the tax for the period during which it has remained unpaid. The very period for which interest is levied under

the relevant provisions points to the nature of the levy".

10. In *Union Home Products Ltd. Vs. Union of India and another*, the Karnataka High Court inter alia held that while looking to the basis for

calculation, period of calculation and nature thereof must be considered for the purpose of holding that it was compensatory in nature. It was

observed:-

In other words, the amount on which the interest is calculated is the amount payable by the assessed towards tax, less the amount already paid by

him. This means that the amount of tax which ought to have been paid by the assessed but was not paid because of the non-filing of the return,

becomes the principal amount for the purpose of calculation of the assessed's liability on account of interest ...

11. The said decisions had been approved by a Division Bench of the Karnataka High Court in *Dr. S. Raddappa (supra)*. Reference in this

connection may also be made to reported in *Union Home Products Ltd. Vs. Union of India and another*, and *Uganda Industries Co. v.*

Commissioner of Income Tax reported in (1986) 158 ITR 569.

12. It is true that the Court must interpret provisions of the statute upon ascertaining the object of the legislation through the medium or authoritative

forms in which it is expressed. It is well settled that the Court should, while interpreting the provisions of the statute, assign its ordinary meaning.

13. It is well-settled that for the purpose of imposition of penal interest express provisions in that regard in a statute must exist. See Commissioner

of Income Tax, *Mumbai Vs. Anjum M.H. Ghaswala and Others*,

14. In relation to beneficent construction, the basic rules of interpretation are not to be applied where (i) result would be re-legislation of a

provision by addition, substitution or alteration of words and violence would be done to the spirit of the provision; (ii) where words of provision

are capable of being given only one meaning; and (iii) where there is no ambiguity in a provision- Where there is a doubt however, court may apply

the rule of beneficent construction in order to advance the object of the Act. Shyam Sunder and Another Vs. Ram Kumar and Another,

15. We are not unmindful that the golden rule of interpretation of statute is that it should be read liberally.

16. In Gurudevdatto VKSSS Maryadit and Others Vs. State of Maharashtra and Others, it has been held that:-

It is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and

construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in

the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning.

It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to

that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The courts have

adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle

of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable

with the contemplation of the statute.

17. The said principles were reiterated in Harshad S. Mehta and Others Vs. The State of Maharashtra, and Dental Council of India and Another

Vs. Hari Parkash and Others,

18. But it is equally well settled that where a statute is capable of two interpretations, the principles of just construction should be taken recourse

to.

19. In Siddappa Vasappa Kuri and Another Vs. Special Land Acquisition Officer and anr, it was held in the following terms:-

Section 23(1A) admits of no meaning other than the meaning that we have placed upon it. There is no room here for any construction other than

that given above. It is only where a provision is ambiguous that a construction that leads to a result that is more just can be adopted.

20. The contention of the Revenue is that by reason of Section 234A, interest is charged for default in filing return as regards where to it does not

cease or stop with payment of taxes, whereas, on the other hand, the contention of the assessed is that in a situation of this nature, where the

assessed could not file a return for reasons beyond his control, it is not liable to pay interest as thereby the Revenue does not suffer any loss

inasmuch as tax although strictly not in terms of definition of advance-tax as contained in Section 208 of the Act has been paid, but tax Therefore

has already been paid.

21. For the purpose of determining the issue, it is necessary to consider as to whether penalty and interest both were charged for failure to perform

a statutory obligation. We think not. Failure to comply with the statutory provisions may lead to penal consequences. Interest, on the other hand, is

payable either by way of compensation or damages. Even penal interest can be levied only in case of chronic defaulter.

22. The question as regards payment of interest came up for consideration before a Full Bench of the Andhra Pradesh High Court recently in Kota

Ramakrishna Reddy and Others Vs. Salt Commissioner, Government of India and Others A.P 1 While interpreting the provisions of Sections 156

and 220(2) of the Income Tax Act, 1961 (short, the "Act"), as inserted by Taxation Laws (Continuation and Validation of Recovery Proceeding)

Act, 1964, it was notice that:-

Interest is payable if a sum is due. Where the assessed is in default in making payment of the assessed amount demanded from him he is liable to

pay interest. Although interest is payable to the revenue by an assessed in terms of Section 220 of the Income Tax Act by way of compensation,

the same would not mean that, although there does not exist any demand, interest would become payable.

23. In the afore-mentioned case, the Court noticed a recent decision of the Apex Court in M/s. Vikrant Tyres Ltd. v. First I.T. Officer, Mysore

reported in (2001) AIR SCW 624, wherein it was held:-

8. A bare reading of this section clearly indicates that if the assessed does not pay the amount demanded under a notice issued u/s 156 of the Act

within the time stipulated under Sub-section (1), the said assessed is liable to pay simple interest at one-half per cent for every month or part of a

month comprised in the period commencing from the date immediately following the end of the period mentioned in Sub-section (1) and ending

with the day on which the amount is paid, and Therefore the condition precedent under the is section is that there should be a demand notice and

there should be a default to pay the amount so demanded within the time stipulated in the said notice. Applying this section to the facts of the case,

it is seen that immediately after the assessment was made for the relevant years, demand notices were issued u/s 156(1) of the Act and admittedly

the appellant satisfied the said demands and nothing was due pursuant to the said demand notices. However, after the judgment of the appellate

authority, which went in favor of the assessed, the Revenue refunded, the amount due as per the said order of the authority. Thereafter, when the

matter taken up ultimately in Reference to the High Court and the assessed lost the case, fresh demand notices were issued and it is also an

admitted fact that in satisfaction of the said demand notices the appellant had paid the amount as demanded within the time stipulated therein. The

question, Therefore, is: whether the Revenue is entitled to demand interest in regard to the amount which was refunded to the assessed by virtue of

the judgment of the appellate authority and which was re-paid to the Revenue after decision in the Reference by the High Court on fresh demand

notices being issued to the assessed? Admittedly, on a literal meaning of the provisions of Section 220(2) of the Act, such a demand for interest

cannot be made. The High Court by a liberal interpretation of the said Section and relying upon Section 3 of the Validation Act has held that he

Revenue is entitled to invoke Section 220(2) of the Act for the purpose of demanding interest on such retention of money.

9. We are not in agreement with the High Court on the interpretation placed by it on Section 220(2) of the act in regard to the right of the Revenue

to demand interest in a situation where the assessed has promptly satisfied the demand made by the Revenue in regard to the tax originally

assessed.

10. It is settled principle of law that the Courts while construing Revenue Acts have to give a fair and reasonable construction to the language of a

Statute without leaning to one side or the other, meaning thereby that no tax or levy can be imposed on a subject by an Act of Parliament without

the words of the Statute clearly showing an intention to lay the burden on the subject. In this process, the Courts must adhere to the words of the

Statute and the so-called equitable construction of those words of the Statute is not permissible. The task of the Court is to construe the provisions

of the taxing enactments according to the ordinary and natural meaning of the language used and then to apply that meaning to the facts of the case

and in that process if the tax-prayer is brought within the net he is caught, otherwise he has to go free. This principle in law is settled by this Court

in India Carbon Ltd. etc. Vs. State of Assam, wherein this Court held ""Interest can be levied and charge don delayed payment of tax only if the

statute that levies and charges the tax makes a substantive provision in this behalf."" A Constitution Bench of this Court speaking through one of us

(Hon. Bhargava, J.) in the case of Grahak Sanstha Manch and others Vs. State of Maharashtra, reiterated the proposition laid down in the India

Carbon Ltd's case (supra) in the following words: ""The Act in question is a taxing statute and, Therefore, must be interpreted as it reads, with no

additions and no subtractions, on the ground of legislative intendment or otherwise."" If we apply this principle in interpreting Section 220 of the

Act, we find that the condition precedent for invoking the said section is only if there is a default in payment of amount demanded under a notice by

the Revenue within the time stipulated therein and if such a demand is not satisfied then Section 220(2) can be invoked.

24. The common sense meaning of "interest" in a situation of this nature, thus must be applied even in Section 234A of the Act. Even if dictionary

meaning is to be taken recourse to, we may notice the meaning of "interest" from Collins Cobuild English, Language Dictionary, reprinted in 1991,

which is as under:-

Interest is a sum of money that is paid as a percentage of a larger sum of money, which has been borrowed or invested. You receive interest on

money that you invest and pay interest on money that you borrow.

25. The question raised in this petition may be considered from another angle. Interest is payable when a sum is due and not otherwise. The object

of the amendment was to levy mandatory interest where return with tax is not paid. Provisions except for deduction of the amount of the interest if

the same has otherwise been paid is deposited A Statute must be construed having regard to its object in view.

26. In Shashikant Laxman Kale And Anr. v. Union of India and Anr. reported in (1990) 185 ITR 105, Apex Court held that interest cannot be

charged when no tax is outstanding.

27. Yet again in Ganesh Dass Sreeram Vs. Income Tax Officer, "A" Ward, Shillong and Others, it has been held:-

Where the advance tax duly paid covers the entire amount of tax assessed, there is no question of charging the registered firm with interest even

though the return is filed by it beyond the time allowed, regard being had to the fact that payment of interest is only compensatory in nature. As the

entire amount of tax is paid by way of advance tax, the question of payment of any compensation does not arise.

28. Penalty cannot be imposed in absence of a clear provision. Imposition of penalty would ordinarily attract compliance of the principles of natural

justice. It in certain situations would attract the principles of existence of mens rea. While a penalty is to be levied, discretionary power is ordinarily

conferred on the authority. Unless such discretion is granted, the provisions may be held to be unconstitutional.

29. In a situation of this nature, we are of the opinion that the doctrine of purposive construction must be taken recourse to.

30. In Ananta Kumar Bej v. State of Bengal and Ors. reported in 1999(4) SLR 661, A Division Bench of Calcutta High Court wherein one of us

was a Member had held:-

22. It is a well settled principle of law that despite absence of a rule, the Selection Committee is entitled to short list the candidates. Rule 9 (c) (ii)

of the rules only gives a statutory recognition to the aforementioned service jurisprudence. In a case of this nature, Therefore, the doctrine of

purposive interpretation should be invoked, and in such a situation the word "written test" must be held to be incorporated within the word

"interview". The answer to the question posed in this appeal, thus in the opinion of this court, should be rendered in affirmative as otherwise the

word "written examination" would become totally otiose. Such a construction is permissible by taking recourse to the doctrine of strained

construction, as has been elaborately dealt in by Francis Bennion in his Statutory Interpretation. At Section 304, of the treatise purposive

construction, has been described in the following manner:-

A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-

and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-

strained construction)

23. In DPP v. Schildkamp (1971) AC 1, it was held that the rule that severance may be effect even where the "blue pencil" technique is

impracticable.

24. In Jones v. Wrotham Park Settled Estates (1980) AC 74, the law is stated in the following term:-

I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which

would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even

where this involves reading into the Act words, which are not expressly included in it. Kammins Ballrooms Co. Ltd. v. Zenith Investments (Torquay)

Ltd (1971) AC 850 provides an instance of this, but in that case the three conditions that must be fulfilled in order to justify this course were

satisfied. First, it was possible to determine from a consideration of the provisions of the Act read as a whole precisely what the mischief was that it

was the purpose of the Act to remedy, secondly, it was apparent that the draftsman and Parliament had been inadvertent overlooked and so

omitted to deal with an eventuality that required to be dealt with if the purpose of the Act was to be achieved; and thirdly, it was possible to state

with certainty what were the additional words that would have been inserted by the draftsman and approved by Parliament had their attention been

drawn to the omission before the Bill passed into law. Unless this third condition is fulfilled any attempt by a court of justice to repair the omission

in the Act cannot be justified as an exercise of its jurisdiction to determine what is the meaning of a written law which Parliament has passed.

It was further noticed:-

27. In *Hameedia Hardware Stores*, represented by its partner *S. Peer Mohammed Vs. B. Mohan Lal Sowcar*, at 1067 the rule of addition of

word had been held to be permissible in the following words:-

We are of the view that having regard to the pattern in which Clause (a) of Sub-section (3) of Section 10 of the Act is enacted and also the

context, the words "if the landlord required it for his own use or for the use of any member of his family" which are found in Sub-clause (ii) Of

Section 10(3)(a) of the Act have to be read also into Sub-clause (iii) of Section 10(3)(a) of the Act. Sub-clauses (ii) and (iii) both deal with the

non-residential buildings. They could have been enacted as one sub-clause by adding a conjunction "and" between the said two sub-clauses, in

which even the clause would have read thus: In case it is a non-residential building which is used for the purpose of keeping a vehicle or adapted

for such use, if the landlord required it for his own use or for the use of any member of his family and if he or any member of his family is not

occupying and such building in the city, town or village concerned which is his own; and in case it is any other non-residential building, if the

landlord or member of his family is carrying on, a non-residential building in the city, town or village concerned which is his own." If the two sub-

clauses are not so read, it would lead to an absurd result.

31. Submission of Mr. Sanjiv Khanna to the effect that payment of tax, although the same could be made long with the return, cannot be a ground

for not charging interest in terms of Section 243A if given effect, to, the object and purpose of Section 234A would be defeated and, thus, the

same cannot be accepted. The object of Section 243A, it will bear repetition to state, is to receive interest by way of compensation. If such was

not the intention of the legislature, it could have said so in explicit terms.

32. We can take judicial notice of the fact that the legislature has enacted Section 271F w.e.f. 01.04.1999 by Finance (No.2) Act of 1998,

providing for a penalty, in case of a person, who is required to furnish a return of his income as required under Sub-section (1) of Section 139 of

the Act. The memorandum explaining the insertion of Section 271F as follows:-

Providing for penalty for non-filing of returns of income:

Under the existing provisions, no penalty is provided for failure to file return of income. The interest chargeable u/s 234A of Income Tax Act for

not furnishing the return or furnishing the same after the due date is calculated on the basis of tax payable.

33. If the Central Government itself has thought of introducing a provision of law levying penalty, having regard to the fact that no such provision

existed earlier it cannot be interpreted differently by the Department. It is bound by the aforementioned interpretation of the Central Government. If

the interpretation as proposed by the learned counsel appearing on behalf of the Revenue is accepted, the same would clearly envisage

omissus, which cannot be supplied by the Court.

34. It is now a well-settled principle of law that for the purpose of constructions of a statute, the entire is to be read as a whole, the chapter by

chapter and then section by section.

35. The purpose and object of Income Tax Act is to realize direct tax. It imposes a fiscal burden.

36. When the statute says that an interest, which would be compensatory in nature, would be levied upon happening of a particular even or

inaction, the same by necessary implication would mean that the same can be levied on an ascertained sum.

37. For the purpose of construction of statute even history of the legislation can be relied upon. See Municipal Corporation of Greater Bombay

and Others Vs. Hindustan Petroleum Corpn. and Another,

38. Interpretation clause, as is well known, is not a positive enactment. The interpretation clause also beings with the word "unless the text

otherwise requires". Advance-tax has been defined to mean the advance-tax payable in accordance with the provisions of Chapter 27C. Such a

definition is not an exhaustive one. If the word "advance-tax" is given a literal meaning, the same apart from being used only for the purpose of

Chapter 21C may be held to be tax paid in advance before its due date, i.e., tax paid before its due date. The matter might have been otherwise,

had there been an exhaustive definition of the said provision. The scheme of payment of the advance-tax is that they will have to be paid having

regard to the anticipated income on 15th September, 15th December and 15th March. A person, who does not pay the entire tax by way of

advance-tax, may deposit the balance amount of tax along his return.

39. In the instant case, tax has been paid although no return has been filed. The Revenue, Therefore, has not suffered any monetary loss.

40. We, Therefore, are of the opinion that in this case if the doctrine of purposive construction is not taken recourse to, the same would betray the

purport and object of the Act.

41. If the aforementioned construction is not resorted to, we will have to read a penal provision in Section 234A, which was not and could not

have been the object of the law for the reasons stated hereinbefore.

42. It is further well known that in case of doubt or dispute, taxation statute must be liberally construed.

43. We, Therefore, are not in a position to stringent meaning to the words "advance-tax" as submitted by Mr. Khanna, learned counsel for the

Revenue.

44. We must also notice the following law as stated in Crawford's Statutory Construction Interpretation of Laws:-

Section 270. : Miscellaneous Statutes-Taxation, Bonds, Licenses, Elections, etc.-

In accord with the rule applicable to statutes generally which we have hitherto discussed, statutes regulating the assessment of taxes must be given

a mandatory construction, if their purpose is to protect the taxpayer. On the other hand, if the statute is simply intended to establish a uniform

system of procedure and to promote dispatch, and if non- compliance does not injure the taxpayer, the statute is to be construed as directory.

Yet again, the law has been stated thus:-

Section 271: Miscellaneous Implied Exceptions from the Requirements of Mandatory Statutes, In General.-

Even where a statute is clearly mandatory or prohibitory, yet, in many instance,s the courts will regard certain conduct beyond the prohibition of

the statute through the use of various devices or principles. Most, if not all of these devices find their jurisdiction in considerations of justice. It is a

well known fact hat often to enforce the law to its letter produces manifest injustice, for frequently equitable and humane considerations, and other

considerations of a closely related nature, would seem to be of a sufficient caliber to excuse or justify a technical violation of the law.

45. If a penal provision is to be read in Section 23A, the same may border on unconstitutionality, as Therefore the principles of natural justice are

not required to be complied with. It is also well settled that when two constructions are possible, the construction, which would uphold the

constitutionality of a provision, be applied. Had the Legislature made the amendment only for the purpose of imposition of a penalty, there was no

necessity of enacting Section 271F later on.

46. We may also keep in mind that the statute should not be construed in a manner so as to lead to a conclusion that it acts in terrorem. It may be

true that the purport and object, for which the aforementioned Section 234A, 234B and 234C were enacted, was to see that the Income Tax

return is filed within the prescribed time. The same, in our opinion, should be construed so as to achieve the object of filing of income- tax return

together with the tax as much as in a case where tax is paid, but Income Tax return is not filed, the Income Tax Officer on an information would

not only be entitled to issue an appropriate notice directing the assessed to file a return but also in a given case can take recourse to the provisions

of Sections 147 and 148 of the said Act.

47. The decisions of the Karnataka High Court in Dr. S. Reddappa (supra) and Patna High Court in Ranchi Club Ltd. Vs. Commissioner of

Income Tax and Others whereupon Mr. Khanna placed strong reliance, in our opinion, were decided on their own facts. In those cases, the

situation with which we are concerned did not exist.

48. Mr. Khanna has also placed reliance upon the marginal notes.

49. In Uttam Das Chela Sunder Das Vs. Shiromani Gurdwara Parbandhak Committee, Amritsar, , the Apex Court appears to have not taken into

consideration the earlier decisions of the Supreme Court in Commissioner of Income Tax, Bombay Vs. Ahmedbhai Umarbhai and Co., Bombay, ;

Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan and Others, and Kalawatibai Vs. Soiryabai and others, , wherein it has been held that

marginal notes in an Indian Statute in An Act of Parliament cannot be referred to for the purpose of construing the Act. However, in that case

neither the Court was dealing with marginal notes nor any final opinion was expressed.

50. Marginal notes some time may be misleading or inappropriate as has been recently seen by the Apex Court in Satya Narayan Sharma Vs.

State of Rajasthan, in the following words:-

We are informed that several High Courts, overlooking the said ban, are granting stay of proceedings involving offences under the Act pending

before Courts of Special Judges. This might be on account of a possible chance of missing the legislative ban contained in Clause (c) of Sub-

section (3) of Section 19 of the Act because the title to Section 19 is ""Previous sanction necessary for prosecution"". It would have been more

advisable if the prohibition contained in Sub-section (3) had been included in a separate section by providing a separate distance title. Be that as it

may, that is no ground for bypassing the legislative prohibition contained in the sub-section.

51. We are, Therefore, of the opinion that interest would be payable in a case. where tax has been deposited prior to the due of filing of the

Income Tax return.

52. This writ petition is allowed to the extent mentioned hereinabove, but there shall be no order as to costs.