

(1993) 06 BOM CK 0080

**Bombay High Court****Case No:** Income-tax Reference No. 264 of 1978

Commissioner of Income Tax

APPELLANT

Vs

Bennett Coleman and Co. Ltd.

RESPONDENT

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**Date of Decision:** June 18, 1993**Acts Referred:**

- Income Tax Act, 1961 - Section 163, 183, 28, 40

**Citation:** (1996) 217 ITR 216**Hon'ble Judges:** V.A. Mohta, J; B.P. Saraf, J**Bench:** Division Bench**Advocate:** Deokinandan, Dr. V. Balasubramaniam and J. P. Devadhar, K.M.L. Majele and P.J. Pardiwala, for the Appellant;

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**Judgement**

V.A. Mohta, J.

u/s 256(1) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal has referred the following questions at the instance of the Revenue :

"1. Whether, on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting fully the interest levied u/s 215 by holding that under rule 40(1) of the Income Tax Rules, 1962, such interest is to be totally waived and not merely reduced to that leviable for a period up to one year after the submission of the return, for 1966-67 and 1967-68 assessment years?

2. Whether Tribunal was justified in holding that under rule 40(5) of the Income Tax Rules, 1962, the waiver of interest was justified and even if so, whether the refusal of the Inspecting Assistant Commissioner to waive interest under rule 40(5) would be tantamount to a refusal by the Income Tax Officer so as to make such an order appealable to the Appellate Assistant Commissioner for 1966-67 assessment year?

3. Whether, on the facts and in the circumstances of the case and in law, the Appellate Tribunal was justified in directing the Income Tax Officer to evaluate the

perquisite of rent-free accommodation or accommodation at concessional rate as per rule 3 of the Income Tax Rules, 1962, for the purpose of disallowance u/s 40(c)(iii) of the Act for 1966-67 and 1967-68 assessment years?

4. Whether, on the facts and in the circumstances of the case and in law, the Appellate Tribunal was justified in directing the Income Tax Officer to allow depreciation of buildings and machineries with respect to the written down value arrived at by starting with the purchase price and deducting therefrom the depreciation actually allowed in the intervening years, for 1966-67 assessment years?"

2. Question No. 1 pertains to the assessment years 1966-67 and 1967-68. The assessments for these years were completed more than one year after the submission of the return and the finding of fact reached is that the delay in the assessment was not attributable to the assessee. Against the factual backdrop, the question is whether it was mandatory for the Income Tax Officer to levy interest for the first year.

3. Section 215 provides for charging interest, at the time of regular assessment, from the assessee who have paid advance tax on their own estimate in an amount which falls short of the assessed tax by more than 25 per cent, thereof. Section 215(1) specifies that interest is to be calculated from the 1st day of April next following the financial year and up to the date of the regular assessment. Section 215(4) speaks of the discretion of the Income Tax Officer to reduce or waive such interest in such cases and circumstances as may be prescribed. Rule 40 of the Income Tax Rules prescribes the cases and circumstances. At the material time, it read thus :

"R. 40. Waiver of interest. - The Income Tax Officer may reduce or waive the interest payable u/s 215 or section 217 in the cases and under the circumstances mentioned below, namely :-

(1) When the relevant assessment is completed more than one year after the submission of the return, the delay in assessment not being attributable to the assessee.

(2) Where a person is u/s 163 treated as an agent of another person and is assessed upon the latter's income.

(3) Where the assessee has income from an unregistered firm assessed under the provisions of clause (b) of section 183.

(4) Where the previous year is the financial year or any year ending about the close of the financial year and large profits are made after the 1st March (or the 15th March in cases where the proviso to section 211 applies), in circumstances which could not be foreseen.

(5) Any case in which the Inspecting Assistant Commissioner considers that the circumstances are such that a reduction or waiver of the interest payable u/s 215 or section 217 is justified."

4. The case was quite obviously covered by rule 40(1). The stand of the Revenue is that even in such cases interest to the first year had to be charged and there was no discretion left to the Income Tax Officer in the matter. We see no justification for such a construction. The only requirements of sub-rule (1) are that (a) assessment should have been completed more than one year after the submission of the return and (b) the delay in the assessment is not attributable to the assessee. The rule does not even faintly indicate that where these conditions are satisfied, interest for the first year must be levied. The rule in fact provides for waiver or reduction of interest without any such limitations. No doubt, section 215(1) gives the date from which interest can be charged but the said sub-section cannot be read in isolation. Sub-section (4) cannot be ignored and all parts of section 215 will have to be read harmoniously as a whole. From the general scheme of rule 40, it would be clear that under sub-rule (5), the Inspecting Assistant Commissioner has the widest power in the matter of waiver of interest with no statutory limitations or conditions prescribed for its exercise. All the five sub-rules of rule 40 deal with different situations and they are independent of each other. Therefore, it cannot be said that sub-rule (5) will not operate in cases governed by sub-rule (1). Rule 40 nowhere limits the discretion, once the conditions are satisfied. To hold otherwise, would amount to rewriting the rule.

5. In our view, the line of approach adopted by the Tribunal is perfectly correct. Even if the language presents some doubt in interpretation, its benefit must go to the assessee.

6. Under the circumstances, question No. 1 is answered in the affirmative and in favour of the assessee.

7. In view of our answer to question No. 1, question No. 2 need not be answered.

8. Question No. 3 is answered in the negative and in favour of the Revenue in view of the decision of this court in the case of [Bombay Burmah Trading Corporation Ltd. Vs. Commissioner of Income Tax, Bombay City-IV](#), .

9. Question No. 4 is answered in the affirmative and in favour of the assessee in view of the decision of this court in the case of [Commissioner of Income Tax Vs. Bennet Coleman and Co. Ltd.](#), .

10. The questions are answered accordingly.

11. No order as to costs.