

(1988) 11 BOM CK 0071**Bombay High Court****Case No:** Income-tax Reference No. 87 of 1976

Hazarimal Rekhchand

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Nov. 18, 1988**Acts Referred:**

- Income Tax Act, 1961 - Section 139(1), 143(3), 246

Citation: (1989) 75 CTR 177 : (1989) 177 ITR 69**Hon'ble Judges:** T.D. Sugla, J; S.P. Bharucha, J**Bench:** Division Bench

Judgement

Sugla, J.

The question of law in this reference at the instance of the assessee reads thus:

"Whether an appeal lies against an order charging interest of Rs. 11,475 under proviso (iii) to section 139(1) of the Income Tax Act, 1962, to the Appellate Assistant Commissioner of Income Tax ?"

2. The facts are admitted. The assessment of the assessee, a registered firm, for the assessment year 1966-67 was completed on total income of Rs. 98,445. Besides determining the tax payable by the firm, the Income Tax Officer charged interest of Rs. 11,475 under proviso

(iii) to section 139(1) of the Income Tax Act, 1961. The assessee was not aggrieved by the determination of the total income or the tax payable thereon as such. Its only ground before the Appellate Assistant Commissioner was against the charge of interest u/s 139(1). In response to a query from the Appellate Assistant Commissioner as to how the appeal filed by the assessee was competent, the Assessee relied on the provisions of section 246(c) with reference to section 143(3) in the light of this court's decision in the case of [Mathuradas B. Mohta Vs. Commissioner of Income Tax, Poona](#), and held that the appeal against levy of

interest under proviso (iii) to section 139(1) was not competent. Further appeal of the assessee to the Tribunal met the same fate.

3. Placing reliance on the Supreme Court's decision in the case of [Central Provinces Manganese Ore Co. Ltd. Vs. Commissioner of Income Tax](#), , Shri Rajagopal, learned counsel for the assessee, submitted that levy of interest is a part of the process of assessment and, therefor, the appeal against levy of interest under proviso (iii) to section 139(1) was maintainable. In particular, he took us through the observations of the Karnataka High Court in [National Products Vs. Commissioner of Income Tax, Mysore](#), extensively quoted in. The above decision of the Supreme Court in support. We invited his attention to those very observations to show the appeal against levy of interest could lie only in circumstances ask as where the claim was that the return was not belated or that the provisions of section 139(1) were not attracted at all. Shri Rajagopal was also asked by this court as to the grounds on which his clients had challenged the levy of interest while filing the appeal. To this, Shri Rajagopal fairly admitted that he was not part of the statement of case. In the circumstances. It is not possible to accept that the challenge to levy of interest u/s 139(1) was on one of the grounds mentioned in the Karnataka High Court's decision, [National Products Vs. Commissioner of Income Tax, Mysore](#), , or falls within the purview of the Supreme Court decision cited by Shri Rajagopal. In the result, the question has to be and is answered in the negative and against the assessee. The assessee will pay the costs of the Revenue.