Patel Engineering Co. Ltd. Vs. C.B. Rathi and anr.

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Court : Gujarat

Decided On : Feb-14-1983

Reported in : (1984)2GLR970; [1985]151ITR542(Guj)

Judge : P.D. Desai and; R.C. Mankad, JJ.

Acts : Income Tax Act 1961 - Sections 35B(1), 139, 140A, 143(3), 145(1), 148, 155, 207, 208, 209, 209A, 250, 260, 262, 263, 264, 273 and 273A; Income Tax Rules, 1962 - Rule 40

Appeal No. : Special Civil Application No. 1853 of 1979

Appellant : Patel Engineering Co. Ltd.

Respondent : C.B. Rathi and anr.

Advocate for Def. : B.R. Shah, Adv.

Advocate for Pet/Ap. : K.C. Patel, Adv.

Judgement :

Desai, J.

1. The petitioner is a public limited company incorporated under the provisions of the Companies Act, 1956. The petitioner is carrying on the business of manufacturing oil engines, water pumps, etc. The petitioner also carries on the business of exporting oil-engines manufactured by it.

2. The petitioner is assessed to income-tax under the I.T. Act, 1961 (hereinafter referred to as 'the Act'). The question arising for determination in the instant case relates to assessment year 1975-76, the relevant previous year being Samvat year 2030.

3. The petitioner having been previously assessed to income-tax by way of regular assessment under the Act, the ITO having jurisdiction over the petitioner made an order under sub-s. (1) of s. 210 of the Act requiring the petitioner to pay advance tax in the sum of Rs. 89,438 on the basis of the total income of Rs. 1,55,715 in respect of which the petitioner was assessed to income-tax for the assessment year 1973-74. The notice of demand dated May 13, 1974, issued in pursuance of the said order, specified that the said advance tax was payable in three equal instalments of Rs. 29,813 each during the financial year 1974-75. In compliance with the said notice, the petitioner paid two instalments of advance tax on June 15 and September 15, 1974. However, as the current income of the petitioner was likely to be greater than the

income on which the advance tax payable by it had been computed, the petitioner sent to the ITO an estimate of the current income under s. 212(3A) and therein the current income was estimated at Rs. 2,10,336. Be it stated that, according to the petitioner, the current income was estimated as Rs. 2,10,336 after taking into consideration the deduction allowable under section 35B of the Act, that is to say, the export markets development allowance. The said estimate was sent before the date on which the last instalment of advance tax fell due, that is to say, before December 15, 1974. The petitioner also calculated in the manner laid down in the relevant provisions of the Act, the advance tax payable by it, on such current income and paid within time a sum of Rs. 61,879 as and by way of the final instalment of advance tax in accordance with such calculation. The petitioner, accordingly, paid a total sum of Rs. 1,21,505 by way of advance tax.

4. On June 30, 1975, the petitioner furnished the return of income for assessment year 1975-76 showing total income of Rs. 4,18,234. The total income was computed after making a deduction in respect of the export markets development allowance permissible under s. 35B on an expenditure of Rs. 12,76,522 incurred during the relevant previous year. On July 19, 1975, the petitioner furnished a revised return of income showing total income of Rs. 2,29,149, as according to the petitioner, there were some mistakes in the return previously filed. The same deduction under s. 35B was made while computing total income as aforesaid in the revised return. On August 28, 1975, the petitioner paid a sum of Rs. 9,776 as and by way of tax on self-assessment under s. 140A. By an order made on May 9, 1978, under s. 143(3), the ITO assessed the total income of the petitioner at Rs. 4,92,950. In the course of the said order, the ITO rejected the claim in respect of the export markets development allowance on the expenditure of Rs. 12,76,522 incurred during the relevant previous year, except to the extent of Rs. 20,248, which sum reflected the expenditure incurred on travel outside India. The ITO also directed that interest shall be payable by the petitioner under s. 215 upon the amount by which the advance tax paid fell short of the assessed tax (see Ex.'A'). Be it stated that the interest payable accordingly worked out to Rs. 59,978.

5. On May 29, 1978, the petitioner preferred an appeal to the Commissioner of Income-tax (Appeals) against the order of assessment (Ex.'A'). The Commissioner by his order dated September 30, 1978 (Ex. 'D'), partly allowed the said appeal. The disputed claim of the petitioner in respect of the export markets development allowance under s. 35B was partly allowed in the appeal and such allowance was held admissible in respect of an expenditure in the sum of Rs. 2,42,523.38 being the commission paid by the petitioner to the Gujarat Export Corporation. Be it stated that, before the Commissioner, the petitioner had relied upon a decision of the Income-tax Appellate Tribunal, Bombay, wherein the provisions of s. 35B(1)(b)(iii) were interpreted, in support of its claim for the allowance of the whole of the sum claimed by it as and by way of the export markets development allowance. The Commissioner, however, disagreed with the view expressed by the Income-tax Appellate Tribunal, Bombay, and rejected the claim in so far as it was, inter alia, rested on the said decision.

6. On October 28, 1978, the ITO having jurisdiction over the petitioner, passed an order (Ex.'E') giving effect to the aforesaid appellate order and computed the revised total income of the petitioner in respect of the assessment year in question at Rs. 4,11,109. In computing the total income as aforesaid, the ITO, inter alia, allowed a deduction in the sum of Rs. 81,841 under s. 35B on the expenditure to the tune of Rs.

2,42,523.38 which was held by the Commissioner of Income-tax (Appeals) as admissible for the purpose of computing the export markets development allowance. The ITO further directed that the tax should be recalculated on the basis of the revised total income and that interest under s. 215 should be charged on the basis of the tax assessed accordingly.

7. Meanwhile, on June 10, 1978, the petitioner had made an application (Ex.'B') to the ITO requesting him to waive the interest payable under s. 215 in exercise of the power conferred by rule 40, sub-rule (1), of the I.T. Rules, 1962 (hereinafter referred to as 'the Rules'). The waiver was requested on the ground that the return of income for the assessment year 1975-76 was filed on June 30, 1975, that the revised return was filed on July 19, 1975, that the assessment was completed by the order of assessment made on May 9, 1978, and that the assessment was, therefore, completed more than one year after the submission of the return, although the delay in assessment was not attributable to the petitioner. By an order made on July 27, 1978 (Ex. 'C') on the said application, the ITO gave partial relief to the petitioner. The petitioner was held liable to pay interest upon the amount by which the advance tax paid fell short of the assessed tax for the period from April 1, 1975, to June 30, 1976, that is to say, for the period from the first day of April of the financial year next following the financial year 1974-75, up to one year from the date of the filing of the return of income. However, the interest payable for the period 'beyond one year from the date of filing of return of income to the date of assessment' was waived. The interest waived accordingly covered the period from July 1, 1976, to May 9, 1978. The waiver in the aforesaid terms resulted in the reduction of the liability to pay interest from Rs. 59,978 to Rs. 24,315. Be it stated that in the course of the order (Ex.'C'), the ITO recorded a clear finding that on verification of the records it was seen that though the assessment had been completed more than one year after the submission of the return, the delay in assessment was not attributable to the petitioner and that, therefore, the conditions laid down in rule 40, sub-rule (1) were satisfied. However, while granting actual relief, the ITO appeared to have proceeded on the footing that under rule 40, sub-rule (1), the reduction/waiver was permissible only in respect of the period beyond one year from the date of the submission of the return and that no claim for reduction/waiver could be entertained, even if the conditions laid down in rule 40, sub-rule (1), were satisfied, for the period between the 1st day of April next following the relevant financial year and one year from the date of the date of the submission of the return.

8. The petitioner had also made an application (Ex. F) on September 2, 1978, to the IAC praying that the interest payable under s. 215 should be waived in exercise of the powers conferred by rule 40, sub-rule (5). In the course of the said application, the petitioner referred to the order dated July 27, 1978 (Ex. C), passed by the ITO, whereunder the interest payable was reduced/waived to the extent of Rs. 35,663 and the liability to pay interest was confined to Rs. 24,315. The petitioner requested for the waiver of the reduced interest payable in the sum of Rs. 24,315 on the ground, inter alia, that the amount paid by way of advance tax had fallen short of the assessed tax because, as a result of the rejection of the claim of the petitioner for the export markets development allowance under s. 35B, the total income was computed at a higher assessment proceedings. The petitioner submitted that its claim for the export markets development allowance was founded on various decisions of the Income-tax Appellate Tribunal and that, therefore, it was justified in estimating its current income by making allowance for the said deduction and paying the amount of advance tax in accordance with such estimate under s. 212(3A). Under the

circumstances, according to the petitioner, the waiver of interest was justified. The IAC by his order dated October 12, 1978 (Ex. G), rejected the said application by a laconic order stating that after a careful consideration of the facts and circumstances of the case, he was disinclined to interfere in the matter.

9. On November 4, 1978, the petitioner made a revision application (Ex. H) to the Commissioner of Income-tax under s. 264 against the order (Ex. G) passed by the IAC on the application for waiver of interest (Ex. F). The petitioner placed for the consideration of the Commissioner the same facts and circumstances to which the attention of the IAC was invited in the course of the proceedings under rule 40, sub-rule (5). In addition, the petitioner submitted before the Commissioner that as a result of the decision recorded in the appeal which it had carried against the original assessment, the assessed total income was reduced on account of the partial allowance of the claim for export markets development allowance and that the full claim in that behalf was not allowed because the Commissioner of Income-tax (Appeals) had disagreed with the view expressed by the Income-tax Appellate Tribunal on the correct interpretation of s. 35B(1)(b)(iii). The petitioner submitted that in view of those facts, inter alia, the circumstances were such that the waiver of interest was justified.

10. At the hearing of the revision application before the Commissioner, the petitioner directed its challenge against the order of the ITO as well as against that of the IAC. It was submitted on behalf of the petitioner that its request for waiver of interest in its entirely was rejected by the ITO because the relevant provisions of rule 40 were misconstrued as laying down that interest for the period from the first day of April next following the relevant financial year up to one year from the date of the submission of the return cannot be waived and that interest for the said period will be chargeable even if the conditions laid down in rule 40, sub-rule (1) were satisfied. Alternatively, it was submitted that the IAC erred in not appreciating that the petitioner, having made an honest estimate of its current income after making bona fide deduction in respect of the export markets development allowance and having paid the advance tax on such current income under s. 212(3A), the circumstances were such that the waiver of interest was justified under rule 40, sub-rule (5).

11. The Commissioner, by his order dated February 28, 1979 (Ex. I), rejected the revision application. The reasons which weighed with the Commissioner require to be set out in his own words and the relevant portion of this order is, therefore, extracted and set out hereinbelow :

'..... Where the completion of assessment is delayed beyond one year after the submission of the return and this delay in assessment is not attributable to the assessee, rule 40(1) provides for reduction of interest. The language of the rule clearly suggests that in such cases interest shall be charged only up to the end of one year from the submission of the return. The contention of the assessee that the rule contemplates complete waiver of interest in such cases, if accepted, would lead to illogical results. It would mean that in cases where an assessment is completed within one year of the filing of the return, interest will be payable up to the date of completion of the assessment, but in cases where the assessment is delayed by more than a year, interest will not be charged at all. This obviously could not be the purport of the rule. The language of the rule clearly shows that, such cases, where the assessment is unreasonably delayed, the liability of the assessee is limited to payment of interest till the end of one year from the filing of the return, even though under the

provisions of section 215, interest would have been payable for the entire period till the completion of the assessment..... Even if the contention of the assessee that it honestly believed its estimate to be correct is accepted, the fact remains that by making this estimate, it withheld payment of taxes due to the Government and it was, therefore, rightly liable to pay interest.'

12. Both the submissions made by the assessee before the Commissioner were rejected on the abovementioned grounds.

13. On May 3, 1979, the petitioner instituted this writ petition seeking an appropriate writ, order or direction quashing and setting aside the order (Ex. I) and commanding the Commissioner to pass an order in accordance with law waiving the amount of interest charged under s. 215. By way of interim relief, the petitioner prayed for an order restraining the tax authorities from proceeding further with the recovery of interest which the petitioner was held liable to pay under s. 215. Rule nisi was issued on the petition on July 24, 1979. No interim relief was, however, granted. The petition has now reached hearing before this Bench.

14. In order to appreciate the points in controversy between the parties, it would be necessary to make a quick survey of the relevant provisions of law. Chapter XVII of the Act contains provisions relating to the collection and recovery of tax. Part C thereof which comprises of ss. 207 to 219, deals with advance payment of tax. Section 207 specifies income which is subject to advance tax and provides that such advance tax shall be payable in accordance with the provisions of ss. 208 to 219. Section 208 lays down the conditions attracting the liability to pay advance tax. Section 209 and 209A prescribe the mode of computation and payment of advance tax. Broadly stated, in the case of an assessee who has been previously assessed, the amount of advance tax is to be computed on the basis of the total income of the latest previous year in respect of which he has been assessed by way of regular assessment after making certain deductions. In the case of an assessee who has not previously been assessed by way of regular assessment, an estimate of his current income and of the advance tax payable on the current income calculated in the manner laid down in s. 209 has to be made and the advance tax had to be paid. Section 210 provides for the making of an order by the ITO requiring a person, who has been previously assessed by way of regular assessment, to pay advance tax. Section 211 provides for the payment of advance tax in three equal instalments during the financial year on three specified dates, namely, 15th June, 15th September and 15th December, in the case of an assessee whose total income to the extent of 75 per cent. thereof or more is derived from sources for which the previous year ends on or before 31st day of December; and in any other case, the instalments are to be paid on 15th September, 15th December and 15th March. Section 212 enables as assessee, who is liable to pay advance tax, to make an estimate of his current income and to pay advance tax on the basis of such estimate under certain circumstances. Sub-ss. (1) and (3A) of the said section provide for such an estimate being made by a person previously assessed by way of regular assessment whereas sub-s. (3) provides for such an estimate being made by a person not previously so assessed. Broadly speaking, sub-s. (1) gives an option to the assessee to estimate his current income and to pay advance tax on the basis of such estimate his current income, if such income, subject to advance tax, is likely to be less than that on the basis of which advance tax is demanded. Sub-s. (3A) deals with a case where the assessee's current income is likely to be greater than the income on the basis of which advance tax has been demanded and enjoins upon the assessee in such a case to estimate the current income and pay advance tax thereon.

Since, in the instant case, the petitioner had submitted an estimate of the current income and paid advance tax on the basis of such current income under sub-s. (3A), it would be proper to set out verbatim the relevant portion of the said sub-section.

'(3A) In the case of any assessee who is required to pay advance tax by an order under section 210, if, by reason of the current income being likely to be greater than the income on which the advance tax payable by him under section 210 has been computed or for any other reason, the amount of advance tax computed in the manner laid down in section 209 on the current income (which shall be estimated by the assessee) exceeds the amount of advance tax demanded from him under section 210 by more than 33 1/3 per cent. of the latter amount, he shall at any time before the date on which the last instalment of advance tax is due from him, send to the Income-tax Officer an estimate of -

(i) the current income, and

(ii) the advance tax payable by him on the current income calculated in the manner laid down in section 209,

and shall pay such amount of advance tax as accords with his estimate on such of the dates applicable in his case under section 211 as have not expired, by instalments which may be revised according to sub-section (2).'

15. Section 213 is not relevant for the present purpose and it need not be adverted to. Section 214 provides for the payment of interest by the Central Government on the advance tax paid by an assessee during any financial year in case the aggregate sum so paid exceeds the amount of tax determined on regular assessment. Section 215, 216 and 217 provide for the payment of interest by an assessee under certain circumstances. Since, in the instance case, the question arises in the context of s. 215, the provisions thereof are set out hereunder :

'215. Interest payable by assessee. - (1) Where, in any financial year, an assessee has paid advance tax under section 212 on the basis of his own estimate, and the advance tax so paid is less than seventy-five per cent. of the assessed tax, simple interest at the rate of twelve per cent. per annum from the 1st day of April next following the said financial year up to the date of the regular assessment shall be payable by the assessee upon the amount by which the advance tax so paid falls short of the assessed tax.

(2) Where before the date of completion of a regular assessment, tax is paid by the assessee under section 140A or otherwise, -

(i) interest shall be calculated in accordance with the foregoing provision up to the date on which the tax is so paid; and

(ii) thereafter, interest shall be calculated at the rate aforesaid on the amount by which the tax as so paid (in so far as it relates to income subject to advance tax) falls short of the assessed tax.

(3) Where as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 262 or section 264, the amount on which interest was payable under this section has been reduced, the interest shall

be reduced accordingly and the excess interest paid, if any, shall be refunded.

(4) In such cases and under such circumstances as may be prescribed, the Income-tax Officer may reduce or waive the interest payable by the assessee under this section.

(5) In this section and sections 217 and 273, 'assessed tax' means the tax determined on the basis of the regular assessment (reduced by the amount of tax deductible in accordance with the provisions of sections 192 to 194, section 194A, section 194C, section 194D and section 195) so far as such tax relates to income subject to advance tax and so far as it is not due to variations in the rates of tax made by the Finance Act enacted for the year for which the regular assessment is made.'

16. Sections 218 and 219 are not relevant for the present case and they need not, therefore, be referred to.

17. Section 215(4), which has been extracted above, empowers the ITO to reduce or waive the interest payable by an assessee under the said section 'in such cases and under such circumstances as may be prescribed'. Sub-rules (1) and (5) of rule 40 of the Rules, which, at the material time, read as follows, are relevant in this connection and they may require to be cited :

'40. Waiver of interest. - The Income-tax Officer may reduce or waive the interest payable under section 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.....

(5) any case in which the Inspecting Assistant Commissioner considers that the circumstances are such that a reduction or waiver of the interest payable under section 215 or section 217 is justified.'

18. Two more statutory provisions may be referred to next before coming to grips with the problem arising for consideration herein. Section 264 confers revisional power on the Commissioner in respect of any order (other than an order to which s. 263 applies) passed by an authority sub-ordinate to him and, subject to the provisions of the Act, empowers him to pass such orders as he thinks fit but which are not prejudicial to the assessee. The section spells out certain limitations in the exercise of these powers, but we are not concerned with the same herein. Section 273A which was enacted by the Taxation Laws (Amendment) Act, 1975, with effect from October 1, 1975, empowers the Commissioner, in his discretion, to reduce or waive penalty, etc., in certain cases upon fulfilment of certain conditions. The power so conferred on the Commissioner is 'notwithstanding anything contained in this Act'. Under s. 273A, sub-s. (1), clause (ii), the Commissioner is empowered to reduce or waive the amount of interest paid or payable, inter alia, under s. 215, provided he is satisfied that prior to the issue of a notice to him under s. 139, sub-s. (2), or where no such notice has been issued and the period for the issue of such notice has expired, prior to the issue of notice to him under s. 148, the concerned assessee has voluntarily and in good faith made a true and full disclosure of the income and has paid the tax on the income so disclosed and also has co-operated in any enquiry relating to the assessment of his income and has either paid or made satisfactory arrangements for the payment of any

tax or interest payable in consequence of an order passed under the Act, in respect of the relevant assessment year. Under sub-s. (3), the power of reduction or waiver is exercisable only once. It would thus appear that, on and with effect from October 1, 1975, the power to reduce or waive interest payable under s. 215 is conferred upon the Commissioner (subject to certain conditions) in addition to the similar power conferred upon the ITO and the IAC.

19. Against the statutory background aforesaid, two questions arise for consideration. First, whether, upon a true construction of sub-rule (1) of r. 40, the power to reduce or waive the interest payable under s. 215 is exercisable by the ITO only in respect of the amount of interest payable for the period exceeding one year from the date of the submission of the return, and, secondly, whether, on the facts and in the circumstances of the case, the refusal to waive the interest payable under s. 215 in exercise of the power conferred by sub-r. (5) of r. 40 is patently erroneous in law. We are of the view that the answer to the second question posed above must be in the affirmative and that the petitioner is entitled to succeed on that ground alone and that it is not necessary, therefore, to deal with and answer the first question.

20. Before proceeding to deal with the question under consideration in the light of the facts of the case, it is worthwhile to recall that it is settled law that where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the court will require it to be exercised (see Julius v. Lord Bishop of Oxford [1880] 5 AC 214 (HL)). In other words, if the conditions laid down for the exercise of discretion are satisfied, the authority has no discretion to refuse to exercise the discretion. The authority is under a statutory duty to exercise the discretion. If there is omission to exercise the discretion, inter alia, on account of the failure on the part of the authority to genuinely address itself to the matter before it, or due to misconception of the scope of its power under the statute, mandamus can issue directing such authority to rehear and determine the matter afresh according to law. (See Madhukar Manilal Modi v. CWT : [1978]113ITR318(Guj) .

21. Now, in the instant case, the petitioner had made an application to the IAC for invoking the provisions of sub-r. (5) of r. 40. The petitioner had requested for the waiver of interest on the ground, inter alia, that the advance tax had fallen short of the assessed tax because, as a result of the rejection of the claim of the claim of the petitioner for the export markets development allowance under s. 35B, the total income and, consequently the tax, was assessed at a higher amount in the course of the assessment proceedings. The petitioner had also submitted that its claim for the export markets development allowance was founded on the various decisions of the Income-tax Appellate Tribunal and that, therefore, it was justified in estimating its current income after making deduction in respect of such allowance and in paying the amount of advance tax in accordance with such estimate under s. 212(3A). The IAC, however, rejected the application by a laconic order stating that after a careful consideration of the facts and circumstances of the case, he was disinclined to interfere in the matter. In the revision application before the Commissioner, the abovementioned facts and circumstances were placed for consideration and it was submitted that the claim for export markets development allowance was partially allowed in the appeal against the original assessment and that the full claim was not allowed because the Commissioner of Income-tax (Appeal) had disagreed with the

view expressed by the Income-tax Appellate Tribunal as regards the correct interpretation of s. 35B(1)(b)(iii). The submission of the petitioner was that it had made an honest estimate of its current income under s. 212(3A) and that it had paid advance tax on such current income and that, on the facts and in the circumstances of the case, there was a justifiable case for the waiver of interest. The Commissioner, while dealing with this submission, found that even if the contention of the assessee that it honestly believed its estimate to be correct is accepted, still there cannot be any reduction or waiver of interest because, in fact, by making such estimate, the payment of tax due to the Government was withheld.

22. Now, under sub-s. (1) of s. 215, the Legislature has imposed the liability to pay interest in mandatory terms if the conditions therein are shown to be existent in any case. However, the Legislature has considered it just and power to confer power on the ITO under sub-s. (4) to reduce or waive the interest in certain cases and under certain circumstances and left those cases and circumstances to be prescribed by delegated legislation. Rule 40 has been enacted in exercise of the power conferred by the said sub-section. The ITO has the power under the said rule to reduce or waive the interest payable, inter alia, under s. 215 in the cases and under the circumstances therein specified and amongst the cases so specified is 'any case in which the Inspecting Assistant Commissioner considers that the circumstances are such that a reduction or waiver of the interest..... is justified'. In a case falling within that category, the IAC must first apply his mind to the circumstances justify a reduction or waiver of interest, then he may pass an order accordingly, and the ITO will have to give effect to such an order. The word 'justified' is a word of wide import. Something could be said to be justified if it is proved or shown to be fair or right or according to justice or backed by sufficient reason. Therefore, where the assessee is able to prove or show to the satisfaction of the IAC that there were sufficient and genuine reasons which led to the lesser payment of advance tax so that a reduction or waiver of interest would accord with justice or that, even otherwise, the circumstances were such that a reduction or waiver of the interest would be just or fair or right, the conditions for the exercise of the power of reduction or waiver will have been satisfied and such power, even though discretionary, will have to exercised. It must be remembered in this connection that this power is obviously conferred to mitigate the hardship resulting from the operation of the provisions of sub-s. (1) of s. 215, which are mandatory, even in genuine cases where the default might have occurred, nay, for bona fide reasons. If the power is not exercised even in such cases, the court can give suitable directions to the competent authority.

23. One cannot overlook that sub-ss. (1) and (4) of s. 215 are different parts of a single scheme and that r. 40 also is a part of that integrated scheme. All those provisions are closely interrelated and each portion works in close unison with the other. It would not be correct to assume, therefore, that merely because the conditions laid down in s. 215, sub-s. (1) are satisfied, interest becomes payable invariably and in all cases. If that were so, sub-s. (4) of s. 215 would not have been enacted nor sub-rule (5) of r. 40 would have been couched in words of such wide import. Therefore, even in cases where the advance tax paid is less than 75% of the assessed tax, if it is proved or shown that the default was bona fide or for sufficient reasons or such or similar grounds are shown or proved to exist, then the power to waive or reduce interest must be exercised so as to provide a just relief.

24. Coming now to the facts of the instant case, the IAC gave no reasons whatever for reaching the conclusion that the waiver of interest was not justified. The IAC was

undoubtedly performing a quasi-judicial function while considering the petitioner's claim for waiver of interest. It is settled law that where an authority makes an order in exercise of a quasi-judicial power, it must record its reasons in support of the order that it makes. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. (See Rasiklal Ranchhodbhai Patel v. CWT [1980] 121 ITR 219. The order of the IAC, therefore, is patently vitiated for want of reasons. When the matter went before the Commissioner, he refused to exercise his powers on the ground that even if the petitioner honestly believed its estimate to be correct, waiver or reduction could not be allowed because the payment of the tax due to the Government was anyhow withheld. This approach is manifestly contrary to the object, purpose, scope and intendment of sub-r. (5) of r. 40. The authority can be called upon to exercise the power of reduction or waiver, only in cases, where the conditions for its exercise are satisfied, namely, where on account of the short payment of advance tax, the Government dues are withheld. In such cases, what is required to be seen is whether the circumstances were such that the reduction or waiver of interest payable under s. 215 is justified. It would thus appear that there was a misconception as to the true object and scope of power under r. 40, sub-r. (5) on the part of the Commissioner and that there was a failure on his part to genuinely address himself to the matter before him.

25. It will be recalled that the lesser payment of advance tax, in the instant case, was clearly due to the partial disallowance of the claim of the petitioner in respect of the export markets development allowance. The circumstances under which the claim was advanced and partly rejected have been stated earlier. The ITO allowed the claim only to a limited extent during the course of the assessment proceedings. On appeal, the Commissioner of Income-tax (Appeals) held the claim admissible to a larger extent but not in its entirety. The petitioner was supported in its claim to the full extent by the decisions of the Income-tax Appellate Tribunal. We are not herein concerned with the question whether or not, on merits, the view taken by the assessing authority is correct. The short question for consideration is whether, under such circumstances, the deduction could be regarded as one which no reasonable person could have legitimately made while making the estimate. The answer inevitably is that when the claim depends upon the true effect of a statutory provision and its applicability to the facts of the case and that when the Income-tax Appellate Tribunal's view in regard to the interpretation of the relevant statutory provision was in accord with the claim advanced by the petitioner, it could not possibly be said that the estimate made by the petitioner after making the deduction in that behalf and the short payment of advance tax on that account was not bona fide. If so, the circumstances apparently were such as would justify the waiver or reduction, as the case may be, of the interest leviable under the relevant statutory provisions.

26. Reference may be made in this connection to the decision of this court in CIT v. Bharat Machinery and Hardware Mart : [1982]136ITR875(Guj) . That was a case in which there was a discrepancy between the income returned by the assessee and the income as assessed by the ITO and the discrepancy had arisen by reason of the fact that the assessee had submitted its return on the basis of the books of account maintained by it, but the ITO did not accept the correctness of the books and acting under s. 145(1), he had made an estimate of the gross profits and it was not shown that in prior years the assessment was made by estimate of gross profits. The tax

assessed had in those circumstances exceeded the advance tax by more than 33 1/3%. This court took the view that since the difference between the returned income and the assessed income had arisen due to the addition made by the ITO by an estimate of the gross profits under the proviso to s. 145(1), no interest could be charged under s. 217(1A) for failure of the assessee to file an estimate under s. 212(3A). The ITO had misapplied the law in levying interest under s. 217(1A) and it was a clear case or error of law committed by ITO capable of rectification under s. 154. It was observed that the assessee concerned could not have anticipated, (1) that the ITO would not accept the correctness of its books of account, and (2) that the ITO would make the estimate of the gross profits on the basis of 18 per cent. of the total sales. There was no provision in the Act which required an assessee to anticipate or foresee what fact could not be anticipated or foreseen except possibly by one possessing an E.S.P. (extra sensory perception).

27. In the instant case, having been fortified in respect of its claim for deduction in regard to the export markets development allowance by the decisions of the Income-tax Appellate Tribunal, the petitioner could not have anticipated or foreseen that its estimate of the current income would not be accepted and that the advance tax paid would be less than the assessed tax by the percentage prescribed in sub-s. (1) of s. 215. In our opinion, therefore, in the present case, it was impossible for the authorities to reach the conclusion that the circumstances of the case did not justify the waiver of interest. No other view could possibly have been taken upon a true appraisal of the scope of sub-r. (5) of r. 40 and the circumstances prevalent in the case.

28. The question then is as to what relief should be granted to the petitioner in the instant case. It was urged on behalf of the Revenue that the impugned order of the Commissioner may be quashed and that the matter may be remanded to him for reconsideration of the petitioner's claim for waiver of interest in the light of the observations made in the course of this judgment. We do not think it is necessary to undertake such an exercise. We have found earlier that, on the facts and in the circumstances of the case, it is impossible to hold that the waiver of interest is not justified. To remit the matter to the Commissioner under such circumstances would be only protracting the proceedings by asking the Commissioner to grant the relief which we can ourselves grant to the petitioner in the course of these proceedings. In the context of the wider superintendence jurisdiction of this court, in exercise of its power under art. 227, we would not be justified in merely quashing the revisional decision of the Commissioner. It would be in the interests of justice to grant any other and further reliefs so as to put an end to these proceedings once and for all. Under the circumstances, a writ will issue directing that the interest determined to be payable under s. 215 by the petitioner shall be treated as waived.

29. Rule made absolute in terms aforesaid, with no order as to costs.