IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 6290 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SONIA GOKANI Sd/-

and
HONOURABLE MR. JUSTICE SANDEEP N. BHATT Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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M/S SHIV SHIPPING AND LOGISTICS
Versus
INCOME TAX SETTLMENT COMMISSION ADDL. BENCH II

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Appearance:
MR SN SOPARKAR, SENIOR ADVOCATE with
MR B S SOPARKAR, ADVOCATE for the Petitioner
MR VARUN K.PATEL, SENIOR STANDING COUNSEL with
MR DEV PATEL, ADVOCATE for the Respondents

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CORAM:**HONOURABLE MS. JUSTICE SONIA GOKANI**
and
HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 01/02/2023

ORAL JUDGMENT
(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. The petitioner is before this Court seeking to challenge the order dated 29.01.2021 passed by the respondent under Section 245(D) of the Income Tax Act for the Assessment Year 2015-16 to 2018-19 as the interest under Section 234B(2A) of the Act has been levied without allowing the credit of prepaid taxes.

2. The petitioner has prayed the following prayers :

> *"7. The petitioner, therefore, prays that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction or order and be pleased to;*
>
> *(a) quash and set aside the computation of interest under Section 234B(2A) in the impugned order at Annexure-'A' to this petitioner and the same may be made giving effect to the prepaid taxes;*
> *(b) pending the admission, hearing and final disposal of this petition, to direct the respondent No.2 not to recover the settled amount to the extent of interest under Section 234B(2A)."*

3. A survey under Section 133A of the Income Tax

Act was carried out by the Income Tax Department on 15.03.2018 and 16.03.2018 at the premises of the petitioner group.

The notice under Section 143(2) was issued on 28.09.2018. The petitioner preferred an application for settlement before respondent No.1 under Section 245C(1) on 09.12.2019, which was later withdrawn.

After, the order of the Principal Commissioner of Income Tax, Rajkot under Section 264 was passed on 19.03.2020, the second application for settlement before the respondent No.1 under Section 245C(1) was filed on 21.08.2020.

The respondent No.1 allowed the said application to proceed further.

The final report under Rule 9 was called for from the Principal Commissioner of the Income Tax and respondent No.1 finally passed an order under Section 245D(4) on 29.01.2021, providing the terms of settlement including the interest under Section 234B(2A) of the Act, inter alia with other aspects of the matter.

The petitioner is aggrieved by the order only to the extent of the computation of interest under Section 234B(2A) of the Act.

4. According to the petitioner, the interest is to be levied only on the additional amount of income tax after reducing the taxes already paid by the petitioner, thus, this controversy.

The respondent authority has calculated the interest on the entire additional income offered without providing the set off of the prepaid taxes already paid. Thus, according to the petitioner, it would amount to charging double interest on the same amount.

5. The reply affidavit has been filed by respondent No.2 urging that under Section 234B(2A)(a), where the application under Section 245C(1) is made, the petitioner is liable to pay interest at the rate of 1% for every month or part thereof for the period commencing on 1st April of the assessment year and ending on the date of making the application on additional amount of income. Also taken note of the various provisions of Section 211, 234B, 234B(2A)(a), 234(2A)(b), 234(2A)(3) and 234(2A)(4) of the Income Tax Act to urge that conjoint reading would make it clear that the

petitioner is liable to pay interest on increased amount of tax. The purpose and intent of the legislation is to charge interest on the taxes, for the income which was not disclosed by the assessee. The decisions relied upon are on different facts according to the respondent which will not apply in the case of the petitioner.

6. We have heard Mr.S.N. Soparkar, learned senior advocate assisted with Mr. B.S. Soparkar, learned advocate for the petitioner and Mr. Varun K. Patel, learned senior standing counsel with Mr. Dev Patel, learned advocate for the respondents – Authorities. Rule. Learned advocate Mr.Patel waives service of notice of rule on behalf of the respondents.

7. Section 234B of the Income Tax Act speaks of the interest for defaults in payment of advance tax. Section 234B(2A) provides thus :

> *"**234B(2A).** (a) where an application under sub-section (1) of section 245C for any assessment year has been made, the assessee shall be liable to pay simple interest at the rate of one per cent. for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of making such application, on the additional amount of income-tax referred to in that sub-section;*

> *(b) where as a result of an order of the Settlement Commission under sub-section (4) of section 245D for any assessment year, the amount of total income disclosed in the application under sub-section (1) of section 245C is increased, the assessee shall be liable to pay simple interest at the rate of one per cent. for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of such order, on the amount by which the tax on the total income determined on the basis of such order exceeds the tax on the total income disclosed in the application filed under sub-section (1) of section 245C;*
>
> *(c) where, as a result of an order under sub-section (6B) of section 245D, the amount on which interest was payable under clause (b) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly;"*

8. For an additional amount of income tax referred to in Section 245C(1), the assessee has been made liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of making such application. What has been emphasised is that the simple interest at the rate of one per cent, the assessee is obligated to pay for every month or part of a month on the additional amount of income tax as referred to under Section 245C(1). Section 245C provides for settlement of cases which the assessee may, at any stage of

a case, can do. He can make an application in such form and in such manner as prescribed, and containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived, the additional amount of income tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled. The manner of disposing of such application is also provided under this.

9. This Court in Special Civil Application No.4939 of 2015 was considering the challenge made by the petitioner (of that matter) to the order passed by the Income Tax Settlement Commission, terminating the petitioner's application for settlement on the ground of non-compliance of the provisions of Section 245D(2D) of the Income Tax Act.

In the matter before this Court, the cash of total Rs.1,60,000/- had been found during search operation by the departmental authority. The petitioner made a disclosure that the entire sum belonged to him and he conveyed to the department that the said amount be adjusted towards any tax liability which may arise in his case or in case of AOPs, in which he has interest.

In this background, many years later, when the question of undeposited tax of assessee in terms of the amended provisions of Section 245B came up for consideration, the assessee relied on his sum of Rs.1,60,000/- pending with the department. The Settlement Commission was requested to address the question of shortfall accordingly.

The Court quashed the order of the Settlement Commission and directed it to proceed further with the offer of the settlement made by the petitioner with the following reasons :

> *"9. In our opinion, the department was not correct in raising shortfall of Rs. 48,086/- in case of the assessee. The assessee, way back in the year 1994, had surrendered the entire amount of Rs. 1,60,000/- unconditionally and had also authorized the department to adjust the same against any of his tax dues. The contention of the counsel for the Revenue, that the order passed by the Assistant Commissioner under Section 132(5) of the Act does not partake character of assessment though the assessee was willing to surrender the amount, would not change the position insofar as the petitioner's liability to deposit tax is concerned. We are referring to the said order only for the purpose of recording the Assistant Commissioner's views on the declaration made by the assessee concerning such amount. Far more fundamental fact is the declaration itself made by the assessee in his letter dated 10.01.1994. The contention that since no final assessment was framed, there was no question of adjustment of the amount towards any assessed income*

> *tax liability of the assessee also would not change the position. The question of depositing the tax in the context of the settlement proceedings arose by virtue of amended Section 245D of the Act. The amount of Rs. 1,60,000/- lying with the department had to be adjusted towards such liability."*

10. In yet another matter in case of *Bharatbhai B. Shah versus Income Tax Officer – [2013] 355 ITR 373 (Guj.)*, the question was with regard to the charging of interest from an assessee for the late filing of return though the tax was already considered. The Court held that the provision is penal in nature which the Statute does not provide. It further held that the assessee must be held liable to pay interest under Section 234A of the Income Tax Act on the difference of amount between the tax assessed and the amount which he had paid before the due date.

The sole controversy between the parties before this Court was in respect of charging of interest on residue of tax short assessed and tax paid and not on the entire sum of the tax assessed. The Revenue's contention was that infraction referred to in Section 234A of the Act of not having filed the return within the due date complete and since none of the exclusionary clauses provided in sub-section (1) of Section 234A applied, the charging of interest for the entire amount is not only permissible but is mandatory.

Referring to Section 234A, the Court held that the issue is no longer *res integra* relying on the Delhi High Court's decision in case of *Dr.Prannoy Roy [2002] 254 ITR 755 (Delhi)*, the assessee there had made the entire payment of tax before the due date, but he had failed to file the return within the time prescribed, when the Revenue demanded interest under Section 234A of the Income Tax Act for non-filing of return within the due date. The High Court had upheld the contention of the assessee and the interest demand was denied, observing that the tax has been paid although no return was filed. This was questioned before the Apex Court by the Revenue and the Apex Court by its brief speaking order has upheld the decision of the Delhi High Court, holding that it entirely agreed with the findings recorded by the High Court as also the interpretation of Section 234A of the Act. It would be necessary to reproduce the following findings and observations of this Court as under:

> *"8. xxx*
>
> *To our mind, the issue is thus squarely covered on all material aspects by the decision of the Delhi High Court in the case of Dr.Prannoy Roy (supra) which came to be confirmed by the Apex Court in the manner noted above. The Delhi High Court, as we have noted, held that if the Revenue is allowed to recover interest on the tax which is already paid within the due date, merely because the return was not filed in time, would*

make the provision penal in nature and exposes it to challenge of its vires. In the present case, the assessee had already deposited tax of Rs.10 lacs before the due date of filing return. The return, of course, was filed belatedly. While framing the assessment of such belated return, the Assessing Officer held that the assessee should pay further tax of Rs.4,82,941/- (after giving credit of Rs.25,533 which was paid by way of tax deducted at source). Thus, the Revenue's demand for interest for the entire amount of Rs.14,82,941/- under section 234A would fall foul to the ratio of the decision of the Delhi High Court in the case of Dr.Prannoy Roy (supra). The Revenue can collect interest under section 234A only on the additional sum of Rs.4,82,941/- and not on the entire amount. Permitting the Revenue to collect interest on the entire amount, though admittedly tax of Rs.10 lacs was already paid before the due date of filing of return, would render the provisions of section 234A penal in nature which was frowned upon by the Delhi High Court and on that basis, the decision was upheld by the Apex Court. It is undoubtedly true that the Gujarat High Court, when showed the decision of the Delhi High Court in the case of Dr.Prannoy Roy (supra), took a different view in the case of Roshanlal Jain (supra). It is also true that this Court in the case of Roshanlal Jain (supra) had given detailed reasons for coming to such conclusion. The Court was of the opinion that the provisions contained in section 234A and B are not only valid, but they operate in different fields. By a conscious decision, giving detailed reasons, this Court differed from the view expressed by the Delhi High Court in the case of Dr.Prannoy Roy (supra). We may, however, notice that unfortunately, the decision of the Apex Court in the case of CIT v. Pranoy Roy (supra) confirming the view of the Delhi High Court was not brought to the notice of the Gujarat High Court when the decision in the case of Roshanlal Jain was rendered. We may record that the Apex Court

rendered its decision in the case of CIT v. Pranoy Roy (supra) on 17th September 2008 while this Court in the case of Roshanlal Jain (supra) decided the petition of the assessee on 23rd September 2008. Thus, because of close proximity of the two decisions, decision in the case of Roshanlal Jain was rendered without reference to the decision of the Apex Court in the case of CIT v. Pranoy Roy (supra). Under the circumstances, we have based our conclusion on the decision of the Delhi in the case of Dr.Prannoy Roy (supra) as approved by the Apex Court.

9. In the case of State of UP v. Synthetics and Chemicals Ltd (supra), the Apex Court after noticing the trend of English Courts with respect to decision rendered per incuriam in the context of the principle of sub-silentio observed as under:

> *"41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have cared out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to the attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd. the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam*

Kaur. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The court thus have taken recourse to this recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Sharma Rao v. Union Territory of Pondicherry it was observed, "it is trite to say that a decision is binding not because of its conclusion but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

In the present case, however, we do not find that the Delhi High Court while rendering the decision in the case of Dr.Prannoy Roy (supra) ignored any of the earlier binding decisions of the same or superior court. The decision in the case of Anjum M.H.Ghaswala (supra) rendered by the Apex Court laid down that charging of interest under section 234A, B and C, etc. is mandatory in nature. However, the question which the Delhi High Court was considering in the case of Dr.Prannoy Roy (supra) did not arise before the Apex Court in the case of Anjum M.H.Ghaswala (supra). Similarly, in the case of Damani Brothers (supra) the

Apex Court did not have the occasion to consider the chargeability of interest for late filing of return under section 234A of the Act though, the entire tax may have been paid up by the assessee before the due date. The Apex Court in the case of Damani Brothers (supra) was considering the contention of the assessee that charging interest under section 234A, B and C would amount to permitting double interest on the same amount. The Apex Court, however, drew a distinction between charging of double interest and charging of interest, may be on the same amount but for two different infractions. In this respect, the Apex Court held and observed as under:

> *"At this juncture, assessee's plea that there is no scope for double levy of interest; (i) for non payment of advance tax for which interest is chargeable under Section 234B of the Act and (ii) for delay in payment of the amount of interest, if any, payable in terms of Section 245D(2C) or Section 246D(6A) needs to be considered. There can be no dispute that double levy of interest is not permissible. But this principle is applicable only when the interest is chargeable more than once for same set of infractions. If the provisions under which interests are charged operate in different fields, there is no statutory bar on levying the interest, because in essence it does not amount to double levy of interest but levy of interest separately for different infractions. Section 234B, Section 245D(2C) and Section 245D(6A) operate in different fields. Section 234B comes into operation when there is default in payment of advance tax. Liability to pay interest under Section 245D(2C) arises when additional amount of income-tax is not paid within time specified under sub-section (2A). Section 245D(6A)*

fastens liability to pay interest when tax payable in pursuance of an order under sub-section (4) is not paid within the specified time. Therefore, when interest is charged in respect of the said provisions it does not amount to double levy of interest, as the infractions are different."

Thus, neither the decision in the case Anjum M.H.Ghaswala nor the case of Damani Brothers involve directly the question with respect to charging of interest under section 234A of the Act even when tax was already paid before the due date. We, therefore, cannot uphold the contention of the counsel for the Revenue that the decision of the Delhi High Court in the case of Dr.Prannoy Roy (supra) should be held to have been decided per incuriam or sub-silentio.

10. It is, of course, true that there is minor difference between the case of Dr.Prannoy Roy (supra) and the case of the present assessee on hand. In the case of Dr.Prannoy Roy (supra), the assessee had paid up the entire tax before the due date. In the present case, the assessee deposited a sum of Rs.10 lacs under section 140A of the Act. In addition thereto, the assessee had also suffered tax deduction at source to the tune of Rs.25,533/-. Eventually, the Assessing Officer, assessed the tax liability of the assessee at total of Rs.15,08,474/-. Thus the assessee had short-paid tax to the tune of Rs.4,82,941/-. To our mind, however, when we look at the ratio of the decision of the Delhi High Court in the case of Dr.Prannoy Roy (supra), such distinction would not be material. What was held by the Delhi High Court was that charging of interest from an assessee for late filing of return though the tax was already paid, would render the provision penal in nature, which the statute did not provide. If we apply the same ratio in the present case, the only modification we need to adopt is that the assessee must be held to be

> *liable to pay interest under section 234A of the Act on the difference of amount between the tax assessed and the amount which he had paid before the due date to which even the assessee has not raised any serious objection.*
>
> *11. In the result, the petition is allowed. Payment of interest on the entire amount of Rs.14,82,941/- is set aside. Revenue, however, shall be entitled to collect such interest under section 234A of the Act on a sum of Rs.4,82,941/- for the entire period i.e. 1.9.96 (after due date of filing of return) till 27th March 1998 (date on which the return was filed). The petition is accordingly allowed with consequential effect. Rule is made absolute accordingly."*

11. As against that, the decision in case of *Sahitya Mudranalaya versus Income Tax Settlement Commission – [2008] 175 Taxman 30 (Guj.)*, is relied upon by Revenue, where the challenge was to the orders dated 28.03.1995 and 11.09.1995 made by the Settlement Commission and prayers are divided into two issues. Para 2F is reproduced as under :

> *(i) Whether the petitioners are liable to be charged interest for assessment years 1989-90 and 1990-91 under Section 234B of the Income Tax Act, 1961 (the Act) in cases where under Section 234B(1) of the Act, no interest was liable ? and*
> *(ii) Whether the petitioners, whose assessments have been reopened in exercise of powers under Section 245E of the Act by the Commission, are liable to pay interest for assessment years 1985-86 to 1988-89 under Sections 139(8), 215 and 217 of the Act ?*

The Court has held thus :

> *"7. In relation to issue No.1, the contentions raised on behalf of the petitioners may have merited consideration if the Apex Court decision had not categorically dealt with the issue, though in a different context. The question posed before the Apex Court in the case of Commissioner of Income-tax Vs. Hindustan Bulk Carriers (supra) was what would be the second terminus for the purposes of computing the amount of tax or arriving at the figure of tax for the purposes of levy of interest under Sections 234A, 234B and 234C of the Act. In that context the Apex Court has come to the conclusion that the order of the Commission made under Section 245D(4) of the Act is in relation to the additional income tax payable on the undisclosed income, namely, income which was not disclosed in the return of income filed by an assessee. Hence, for the purposes of computing the interest which is chargeable under the provisions of the Act the contention that the second terminus (the first being already provided in the Act and there being no dispute as to the same) would not be the terminus normally provided by the provisions of the Act but the order of the Commission which deals with that component of income which came up for assessment / settlement before the Commission for the first time. In this context the following observations of the Apex Court may be usefully reproduced:*
>
> > *"Sub-section (1) of section 245C makes it clear that at any stage of a case relating him an assessee may make an application to the Commission disclosing fully and truly his income which has not been disclosed before the Assessing Officer. To put it differently, an*

assessee cannot approach the Commission for settlement of his case in respect of an income which has already been disclosed before the Assessing Officer. The income disclosed as contemplated is in the nature of voluntary disclosure of concealed income.[Emphasised supplied]

Section 245F dealing with powers and procedure of the Settlement Commission provides that in addition to the powers conferred on the Settlement Commission under Chapter XIX-A, it has all the powers which are vested in the income-tax authority under the Act. Sub-section (2) is of vital importance and provides that where an application made under section 245C has been allowed to be proceeded with under section 245D, the Commission shall, until an order is passed under sub-section (4) of section 245D, subject to the provisions of subsection (3) of that section have exclusive jurisdiction to exercise the powers and perform the functions of the income-tax authority under the Act in relation to the case. In essence, the Commission assumes jurisdiction to deal with the matter after it decides to proceed with the application and continues to have the jurisdiction till it makes an order under section 245D. As noted by the Constitution Bench in Anjum's case [2001] 252 ITR 1 (SC), section 245D(4) is the charging section and sub-section (6) prescribes the modalities to be adopted to give effect to the order. It has to be noted that the language used in section 245D is "order" and not "assessment". The order is not described as the original assessment or regular assessment or reassessment. In that sense, the Commission exercises a plenary jurisdiction. The assessee's stand before the Special Bench of the Commission was that there is no charging section for levy of interest. Such a plea did not find acceptance by the Constitution Bench in Anjum's case [2001] 252 ITR 1 (SC). The further plea that there is

no requirement to pay interest as no points of terminus have been fixed is equally untenable because the Constitution Bench held that the levy is mandatory. Equally without substance is the plea taken that the terminus has to be as provided in relation to disclosed income. It cannot be even countenanced that no interest is chargeable for that portion of the income forming part of the total income as determined by the Commission which was not earlier disclosed before the Assessing Officer." xxx xxx "

There is another way of looking at the issue. Section 234B(3) provides differently for regular assessment and reassessment. In a reassessment, ordinarily income assessed is more than what was determined originally. If two different periods are provided to meet such a situation, it is inconceivable that the Legislature intended to totally give a go by to interest on the income which for the first time is disclosed before the Commission. By analogy and harmony, the period has to be till the date of the Commission's order.

To put it differently, the interests charged in terms of sections 234A, 234B and 234C become payable on the income already disclosed in the returns filed, together with the income disclosed before the Commission. The concerned interest as aforesaid shall be on the consolidated amount of income, i.e. both disclosed and undisclosed. As indicated above, such interests shall be charged till the Commission acts in terms of section 245D. Thereafter, the prescription relating to charging of interests, etc., becomes operative, after the Commission allows the application for settlement to be proceeded with. In such event, there is no further charge of interest in terms of sections 234A, 234B and 234C. The interest charged in terms of section 245D is a separate levy and not in terms of interest chargeable under sections 234A, 234B and 234C. Therefore, the

> *apprehension that there is scope for charging of interest on interest is without any basis.*
>
> *To sum up, the inevitable conclusion is that interest has to be charged for the period beginning from the first day of April next following the relevant financial year up to the date of the Commission's order at the rate applicable, on interest chargeable under section 234B, when an order under section 245D(4) is passed, followed by quantification under section 245D(6).”*
>
> *8. Therefore, it becomes more than abundantly clear that while passing an order under Section 245D(4) of the Act the Commission exercises powers of an income-tax authority as provided under Section 245F of the Act and the Commission cannot be precluded from fastening liability to pay interest for that portion of income forming part of the total income as determined by the Commission which was not earlier disclosed before the AO, even if no interest could have become leviable if originally disclosed income is considered in isolation by operation of Section 234B(1) of the Act.”*

12. This decides the powers of the Settlement Commission, where the Court also has recognised its power to fasten the liability to pay interest for that portion of income which forms the part of total income as determined by the Commission and not disclosed earlier before the Assessing Officer, even when no interest could have been leviable if originally they disclosed income would have been considered in isolation by operating Section 234B(1) of the Act.

In a matter before the Apex Court in case of *Commissioner of Income Tax versus Anjum M.H. Ghaswala – [2001] 119 Taxman 352 (SC)*, the question that arose for consideration was whether the Settlement Commission constituted under Section 245B has jurisdiction to reduce or waive interest chargeable under Sections 234A, 234B and 234C while passing the orders of settlement under Section 245D(4) of the Act. The Court held that the Commission, after examination of the records and reports submitted to it on availing and affording an opportunity to the applicant and to the Commission of being heard may pass such order as it thinks fit on the matters covered by the application, provides that Section 245D(4) confers wide powers on the Commission in the process of settling a case, the Act still mandates that the same will be done in accordance with the provisions of the Act.

The Court, while answering to the question as to whether under Sub-section 6 which contemplates providing for the terms of settlement of tax, penalty or interest, empowers the Commission to waive or reduce the interest payable under Sections 234A, 234B or 234C of the Act, when arises for settlement before the Settlement Commission, answers that the interest for default in furnishing return of income,

in payment of advance tax and interest for deferment of advance tax are mandatory in nature. Para 30 is reproduced as under :

> *"30. It is then contended that if it is to be construed that the Commission has no power of waiver or reduction of interest then the entire purpose of Chapter XIX-A would be defeated since a person making an application to the Commission would not be in any way better off than pursuing his remedy otherwise provided in the Act. We are unable to accept this argument advanced on behalf of the respondents because the persons who approach the Commission under Chapter XIX-B are admittedly the persons who had not declared their true incomes to the income-tax authorities as required under the Act. In spite of this default, Section 245C comes to the aid of such assessees by providing a way out of the statutory implications of their default. The object of the Legislature in introducing this Section is to see that the protracted proceedings before the authorities or in Courts are avoided by resorting to settlement of cases. In this process, an assessee cannot expect any reduction in amounts statutorily payable under the Act. While the settlement Commission arrives at the taxable income of the assessee on the basis of records available before it, it has to levy the mandatorily chargeable tax on such income arrived at by it and wherever interest is due under the mandatory provisions like Sections 234A, 234B and 234C, it has to include the said interest also in the settlement. But, at the same time, the assessee who because of his non-disclosure would otherwise have been liable for various penal actions, gets an opportunity of getting immunity from penal proceedings. It is to be seen that under Section 245H the Commission has the power to grant immunity to the assessee from prosecution and penalty.*

> *This immunity is not confined only to the penal provisions of the Act but it is also available if granted by the Commission to offences under the Indian Penal Code or under any other Central Act for the time being in force and also get the benefit of waiver or reduction in the imposition of penalty under the Act with respect to the cases covered by the settlement. Therefore, it is futile to contend that merely because the Settlement Commission has not been vested with the power of waiving or reducing the interest, Chapter XIX-A would either become otiose or would not serve any purpose. Hence, this argument has to be rejected."*

13. Reverting to the facts on hand, it appears that the challenge herein is to the orders passed under Section 245D(4) of the Income Tax Act dated 29.01.2021 for the Assessment Year 2015-16 to 2018-19, wherein it levied the interest under Section 234B(2A) and the prepaid taxes have not been credited.

14. The petitioner is a partnership firm. A survey under Section 133A was carried out on 15.03.2018 and 16.03.2018. The application for settlement before the respondent was after the notice under Section 143(2) has been issued on 28.09.2018. Such an application dated 09.12.2019 has been withdrawn. The order came to be passed by the Commissioner of Income Tax, Rajkot under Section 264 on 19.03.2020 and the petitioner preferred second application for settlement under Section 245C(1) on

21.08.2020, which was allowed. Final order passed on 29.01.2021 under Section 245D(4) included the interest under Section 234B(2A). His request was rejected by the respondent for calculating the interest only on the additional income offered without providing the set off on the prepaid taxes.

15. In case of M/s. Shiv Shipping Services and in case of M/s. Shiv Shipping & Logistics, taxes paid and additional income disclosed before the Commission with interest to be paid has been given by the petitioner in two separate charts as under:

SHIV SHIPPING AND LOGISTICS

Calculation of Tax and Interest Liabilty

Particulars		ASSESSMENT YEARS				Total
		2015-16	2016-17	2017-18	2018-19	
Income as per the return of income filed u/s. 139(1)/148		17,591,836	22,385,420	15,988,810	28,523,077	**84,489,143**
Add: Additional Income Disclosed		25,250,000	47,826,184	29,752,544	24,636,596	**127,465,323**
Revised Total Income		**42,841,836**	**70,211,604**	**45,741,354**	**53,159,673**	**211,954,466**
Tax payable as per returns of income	A	5,977,597	7,745,243	5,529,600	9,871,268	29,123,708
Additional tax payable on the income disclosed	B	**8,584,343**	**16,553,589**	**10,300,568**	**8,526,232**	**43,964,731**
Tax Payable	C=A+B	**14,561,940**	**24,298,832**	**15,830,168**	**18,397,500**	**73,088,439**
Refund Received addedd back	D	-	2,097,890	2,437,540	-	**4,535,430**
Net Tax payable	E=C+D	14,561,940	26,396,722	18,267,708	18,397,500	77,623,869
Less: Taxes Paid						
TDS		2,424,224	9,681,681	7,789,949	7,585,752	**27,481,606**
Advance tax paid		1,300,000	-	-	-	**1,300,000**
Self Assessment Tax		2,471,860	-	-	2,822,320	**5,294,180**
Total taxes paid	F	6,196,084	9,681,681	7,789,949	10,408,072	34,075,786
Net Payable	G=E-F	8,365,856	16,715,041	10,477,759	7,989,428	43,548,083
Further taxes paid						
Tax paid on 07.12.2019		14,500,000	25,800,000	15,400,000	10,800,000	66,500,000
Tax paid on 18.08.2020		100,000	-	-	200,000	300,000
Total regular Tax Paid	H	**14,600,000**	**25,800,000**	**15,400,000**	**11,000,000**	66,800,000
Excess of payment over taxes	I=G-H	**(6,234,144)**	**(9,084,959)**	**(4,922,241)**	**(3,010,572)**	**(23,251,917)**

SHIV SHIPPING SERVICES

Calculation of Tax and Interest Liabilty

Sr. No.	PARTICULARS		ASSESSMENT YEARS						Total
			2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	
1	Income as per the return of income filed u/s. 139(1)/148		19,334,751	21,837,080	33,348,560	43,498,020	47,281,190	9,972,320	6,652,095	181,924,016
2	Add: Additional Income Disclosed		9,025,000	8,499,690	9,339,490	11,267,121	51,205,699	12,205,941	12,040,515	113,583,454
3	**Revised Total Income**		**28,359,751**	**30,336,770**	**42,688,050**	**54,765,141**	**98,486,889**	**22,178,261**	**18,692,610**	**295,507,470**
4	Tax payable as per return of income	A	5,974,437	6,747,657	11,335,175	14,784,977	16,363,075	3,081,447	2,055,499	60,342,267
5	Additional tax on income disclosed	B	2,788,726	2,626,404	3,174,492	3,829,695	17,721,267	4,594,005	4,413,639	39,148,228
6	**Tax Payable**	C=A+B	**8,763,163**	**9,374,061**	**14,509,667**	**18,614,672**	**34,084,342**	**7,675,452**	**6,469,138**	**99,490,495**
7	Add: Refund Received added back	D	7,150,340	3,428,630	9,670,370	25,124,130	-	30,745,249	-	76,169,519
8	**Net Tax payable**	E=C-D	15,913,503	12,852,691	24,179,937	43,738,802	34,084,342	38,421,701	6,469,138	175,660,114
	Less: Taxes Paid									
	TDS		12,676,733	9,707,264	20,480,186	38,402,673	43,950,292	31,074,099	24,039,788	180,331,035
	Advance tax paid		-	-	-	-	-	-	-	-
	Self Assessment Tax		112,298	-	-	-	-	-	-	112,298
9	Total taxes paid	F	12,789,031	9,707,264	20,480,186	38,402,673	43,950,292	31,074,099	24,039,788	180,443,333
10	**Net payable**	G=E-F	**3,124,472**	**3,145,427**	**3,699,751**	**5,336,130**	**(9,865,950)**	**7,347,602**	**(17,570,650)**	**(4,783,219)**
	Further Taxes paid									
	Tax paid on 07.12.2019		**6,950,000**	**6,100,000**	**6,350,000**	**8,550,000**	-	**10,450,000**	-	**38,400,000**
	Tax paid on 18.08.2020		**450,000**	**450,000**	**500,000**	**550,000**	-	**650,000**	-	**2,600,000**
11	**Total regular tax paid**	H	**7,400,000**	**6,550,000**	**6,850,000**	**9,100,000**	-	**11,100,000**	-	**41,000,000**
12	**Excess of payment over taxes**	I=G-H	**(4,275,528)**	**(3,404,573)**	**(3,150,249)**	**(3,763,870)**	**(9,865,950)**	**(3,752,398)**	**(17,570,650)**	**(45,783,219)**
	Add: Interest Payable									
	u/s 234A		525,790	-	-	-	-	-	-	525,790
	u/s 234D		2,788,633	974,016	2,272,513	5,652,929	-	2,613,431	-	14,301,522
13	**Total Interest**	J	**3,314,423**	**974,016**	**2,272,513**	**5,652,929**	-	**2,613,431**	-	**14,827,312**
14	**Balance of excess payment**	I+J	**(961,105)**	**(2,430,557)**	**(877,736)**	**1,889,059**	**(9,865,950)**	**(1,138,967)**	**(17,570,650)**	**(30,955,907)**

16. The moot point is as to whether the interest needs to be paid on the entire amount or the additional amount of taxes paid by the petitioner and we find that the interest shall need to be calculated only on the additional taxes offered after providing the set off of the prepaid taxes already paid by the petitioner.

17. The plea on the part of the petitioner is that it has required to pay the interest at a specific rate on the additional amount of Income Tax offered before the Settlement Commission was not executed. It had been emphasized that such additional amount of income tax would mean the additional income tax after reducing the tax already paid by the petitioner. In other words, the credit of prepaid taxes was requested to be allowed and only on the balance additional tax payable, the interest under Section 234B(2A) of the Act was requested to be charged. The Commission did not accept the request on the ground that the prepaid taxes could not be excluded for computing interest.

18. In our opinion, this approach is contrary to the settled position of law followed by this Court in case of Bharatbhai B. Shah vs. Income Tax Officer. The petitioner

had already paid the tax on income which has gone to the government treasury and therefore, it cannot be expected to pay interest on the taxes already paid. It ought to have been allowed the credit of prepaid tax and only on the balance additional tax payable, interest under Section 234B(2A) ought to have been charged.

19. This Court in case of Bharatbhai B. Shah (supra) has extensively dealt with the decision of Dr. Pranay Roy of Delhi High Court reported in 254 ITR pg. 755, which had been confirmed by the Apex Court in case of CIT vs. Pranay Roy and it also took note of the decision in case of Roshanlal Jain where the attention of the Court was not drawn to the decision of the Apex Court confirming the order of Delhi High Court in case of CIT vs. Pranay Roy. On 17.09.2008, while the Gujarat High Court in Roshanlal Jain's case decided the petition of the assessee on 23.09.2008, the Court on applying the Rule of Subsilentio has held that a particular point of law involved in the decision when is not perceived by the Court or present to its mind, the decision passes subsilentio.

19.1 In the very decision, this Court had taken note of the various other decisions of the Apex Court as well to eventually hold that the double levy of interest is not

permissible and that principle is applicable when the interest is chargeable more than once for the same set of infractions. It also has pointed out as to how the provisions of the Act operate in different fields and there is no statutory bar on the levying of the interest as the levy is separately for different infractions.

19.2 Section 234B would apply when there is a defect in payment of advance tax. Under Section 245D(2C), the interest liability arises when within the time specified under sub-section (2A) the additional amount of income tax is not paid, whereas the interest needs to be paid under Section 245D(6A) when the tax payable in pursuance of an order under sub-section (4) is not paid within the specified time period.

20. In the matter before this Court, the assessee had deposited a sum of Rs. 10,00,000/- under Section 140A of the Act and eventually, the assessing officer assessed the tax liability of the assessee at total Rs. 15,08,474/-. Thus, the tax short paid was Rs. 4,82,941/-. Therefore, the Court permitted to pay interest under Section 234A on the difference of amount between tax assessed and the amount which had already been paid before the due date and accordingly, on a sum of Rs. 4,82,941/- the interest under Section 234A was

permitted for the entire period i.e. from 01.09.1996 till 27.03.1998 (after due date of filing of return till the date on which the return was filed).

21. Applying the very analogy and ratio and as the case of the petitioner is covered by the decision of Bharatbhai B. Shah (supra), the amount already paid by the petitioner at the time of filing of return shall need to be excluded at the time of levying of interest under Section 234A. On the additional amount paid by the petitioner, as that becomes the tax short paid, and therefore, on that additional amount for the entire period i.e. after the due date of filing of return till the date on which the return was filed, the Revenue shall be entitled to collect the interest under Section 234A.

22. Resultantly, the petition is allowed to that extent quashing and setting aside the computation of interest directing the respondent no.2 to recover the interest on the additional tax paid as per the settled ratio.

22.1 Since the collection of the tax and interest liability is from the year 2012-13 to 2018-19, the authority by following the ratio, shall calculate the same within a period of eight (08) weeks of receipt of copy of this order and the

payment shall be made by the petitioner within two (02) weeks of its communication. This Court has chosen to calculate the interest on the additional amount of tax paid and has left it to the respondent authorities to calculate the same following the ratio laid down and details hereinabove.

22.2 Rule is made absolute to the aforesaid extent.

(SONIA GOKANI, J)

(SANDEEP N. BHATT,J)

M.H. DAVE