
(1985) 07 RAJ CK 0036

In the Rajasthan High Court

Case No : Income Tax Reference No. 16 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Devichand Pan Mal

RESPONDENT

Date of Decision : 25-07-1985

Acts Referred:

Income Tax Act, 1961 — Section 215, 215(4), 251(1)
Income Tax Rules, 1962 — Rule 40

Citation : (1986) 52 CTR 31 : (1986) 160 ITR 545

Hon'ble Judges : S.K. Mal Lodha, J; Farooq Hassan, J

Bench : Division Bench

Advocate : B.R. Arora, for the Appellant; Vineet Kothari, for the Respondent

Judgement

S.K. Mal Lodha, J.—At the instance of the Commissioner of Income Tax, Jodhpur, the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur ("the Tribunal" herein), has referred the following questions for our opinion, which arise out of its order dated June 30, 1978, passed in Income Tax Application No. 375/JP/76-77 :

" 1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that the Appellate Assistant Commissioner of Income Tax has rightly entertained the appeal on the point of levy of penal interest u/s 215 of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the learned Appellate Assistant Commissioner had not travelled outside his jurisdiction in this case ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in sustaining the order passed by the learned Appellate Assistant Commissioner waiving interest for the period from April, 1973, to the date of assessment?"

2. The assessee is a partnership concern. The assessment year under consideration is 1971-72. For this assessment year, the return of income was

filed initially on March 23, 1972. In this return, the income declared was Rs. 1,12,370. A revised return was filed on January 19, 1974 claiming deduction u/s 80J of the Income Tax Act, 1961 (Act No. XLIII of 1961) (for short "the Act"). The assessee had claimed registration. The Income Tax Officer, however, refused the registration by a separate order passed u/s 185 of the Act. He made the assessment of the assessee in the status of an unregistered firm by an assessment order dated January 9, 1975. The income determined was Rs. 94,535. In the appeal, the Appellate Assistant Commissioner (AAC) assessed the income at Rs. 81,020. The tax payable on this amount as a registered firm was Rs. 7,685. The assessee-firm had already paid advance tax of Rs. 10,000 on October 9, 1970, being a person not hitherto assessed in terms of Section 212 of the Act. The Income Tax Officer (ITO), however, stated in the assessment order "charge interest as per the Rules". Interest to the tune of Rs. 16,970 was charged. An appeal was lodged by the assessee against the assessment order passed u/s 143 of the Act. One of the grounds taken was that the Income Tax Officer erred in levying interest amounting to Rs. 16,970 u/s 215 of the Act. The Appellate Assistant Commissioner in his order dated March 18, 1976, held that the interest was correctly charged ; however, the amount of interest chargeable may be re-calculated on the basis of the reduced income. While dealing with the question of interest, the Appellate Assistant Commissioner observed as under :

" Therefore, it is a case where the interest u/s 215 should be waived for the period beginning from April, 1973, to the date of the assessment. "

3. Repelling the contention that an appeal did not lay before him on the question of interest, the Appellate Assistant Commissioner has expressed himself in the following words :

" Though this ground is not separately appealable, I derive the power to decide the issue because the entire assessment has been challenged in appeal."

4. Being dissatisfied, the Department went in appeal. Two contentions were raised before the Tribunal :

(1) That the Act does not provide specifically for appeal against the levy of penal interest u/s 215 of the Act, and, therefore, the Appellate Assistant Commissioner should not have entertained the appeal.

(2) That the Appellate Assistant Commissioner had erred in directing that the interest charged u/s 215 should be waived.

5. The Tribunal, after noticing the authorities that were cited before it, in which diverse views have been expressed, dismissed the appeal.

6. The Commissioner of Income Tax submitted an application u/s 256(1) of the Act. The Tribunal has referred the aforesaid questions of law reproduced hereinabove to this court for its opinion.

7. We take up question No. 1 first.

8. Section 246 of the Act deals with appeals to the Appellate Assistant Commissioner. It enumerates various orders against which an appeal lies to the Appellate Assistant Commissioner. We may notice Section 246(c) of the Act which is as under ;

"(c) an order against the assessee, where the assessee denies his liability to be assessed under this Act or any order of assessment under Sub-section (3) of Section 143 or Section 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed."

9. Section 215 of the Act lays down as to when interest is payable by the assessee. Section 217 deals with interest payable by the assessee when no estimate is made. Thus, a reading of Sections 215 and 217 make it clear that they provide that, in the circumstances set out therein, interest, shall be payable by the assessee. This is, however, mitigated by a discretion given to the Income Tax Officer to reduce or waive the interest payable by the assessee under Sections 215 and 217 of the Act. Reference in this connection may be made to Sections 215(4) and 217(2) of the Act. The discretion to reduce or waive the interest is regulated by Rule 40 of the Income Tax Rules, 1962 (for short "the Rules"). Rule 40 of the Rules is as under :

"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."

10. Learned counsel for the Revenue contends that the right of appeal is a creature of statute and in this case appeals lie to the Appellate Assistant Commissioner against the orders specified in Section 246 of the Act and not in other cases and that Section 246 does not provide for any appeal against the

order levying penal interest u/s 215 of the Act. In support of his contention, he has invited our attention to K.B. Stores Vs. Commissioner of Income Tax, Vidyapat Singhanian Vs. Commissioner of Income Tax, , Addl. Commissioner of Income Tax Vs. Allahabad Milling Co., , Commissioner of Income Tax Vs. Geeta Ram Kali Ram and Suresh Chandra, , U.P. Hotel and Restaurants Ltd. Vs. Commissioner of Income Tax, , Commissioner of Income Tax Vs. P.S. Jain Motors (P.) Ltd., Commissioner of Income Tax Vs. Associated Stone Industries (Kotah) Ltd., and Commissioner of Income Tax, Bombay City-II Vs. Shantilal J. Mehta, .

11. Mr. Vineet Kothari, appearing for the assessee, stoutly opposed the contention raised by Mr. B.R. Arora and submitted that the Appellate Assistant Commissioner has rightly entertained the appeal against the order of the Income Tax Officer levying penal interest u/s 215 of the Act when the assessee has filed the appeal denying his liability to be assessed. In other words, the submission of the learned counsel for the assessee is that the expression used in Section 246 " where the assessee denies his liability to be assessed under this Act " comprehends in itself the challenge to the penal interest, for, he denies the liability to be assessed under the Act, He urged that in an appeal against the assessment order, it is permissible in law to examine the finding relating to the levy of penal interest. It was submitted that what is not permissible in regard to the interest is that the quantum cannot be challenged. He derived support from Commissioner of Income Tax, Gujarat Vs. Sharma Construction Co., , National Products Vs. Commissioner of Income Tax, Mysore, , Commissioner of Income Tax, Bombay City-I Vs. Daimler Benz A.G., Addl. Commissioner of Income Tax, Gujarat Vs. Mustakhusein Gulamhusein Ghia, and Bihar State Road Transport Corporation Vs. Commissioner of Income Tax, .

12. In view of the sharp cleavage of judicial opinion, we must candidly state that the task before us is not free from difficulty. For the reasons which we will state hereinafter, we have reached the conclusion that the view taken by the Tribunal in this regard is correct. It is true that an order u/s 215 does not find mention in Section 246 of the Act, which enumerates various kinds of orders passed by the Income Tax Officer against which the assessee can appeal. Nevertheless Section 246(c) gives that right to the assessee, who " denies his liability to be assessed " under the Act. The expression " denies his liability to be assessed " covers not only the total denial of liability but also the denial of liability under particular Circumstances. Whether the expression " denies his liability to be assessed " includes denial of liability to pay penal interest is the precise question. This has necessitated examination of the authorities cited by the learned counsel for the parties. It will be proper to take note of the authorities that have been cited by the learned counsel for the assessee.

13. The question referred for opinion in Commissioner of Income Tax, Gujarat Vs. Sharma Construction Co., was whether an appeal lies to the Appellate Assistant Commissioner from any order passed by the Income Tax Officer levying interest under Sections 139 and 217 of the Act. The Division Bench of the Gujarat High

Court opined that when an appeal is filed against a regular assessment, it would be open to the assessee to take all points which may legitimately not only reduce the taxable income or the tax to be paid or with regard to the proper head under which the income should fall, but also reduce the quantum of penal interest.

14. Before the Karnataka High Court in *National Products Vs. Commissioner of Income Tax, Mysore*, the question that cropped up was whether an appeal lies against the levy of interest u/s 139 or Section 215 of the Act. It was held by the learned judges as under (headnote) :

" u/s 246 of the Act, if an assessee denies his liability to be assessed under the Act, he has the right of appeal to the Appellate Assistant Commissioner against the order of assessment. Where penal interest has been levied u/s 215, the assessee may altogether deny his liability to pay such interest on the ground that he was not liable to pay advance tax at all or that the amount of advance tax determined by the Income Tax Officer as payable ought to be reduced. "

15. It was, however, clarified that the scope of the appeal against an order of assessment levying interest is limited; the assessee can be allowed only to urge that he is not liable, wholly or partially, to be assessed to interest; he cannot question the interest assessed if he does not deny his liability to be assessed to such interest.

16. In *Commissioner of Income Tax, Bombay City-I Vs. Daimler Benz A.G.*, for nonpayment of advance tax, penal interest was levied. The question arose whether an appeal lay or not. After considering Sections 18A and 30 of the Indian Income Tax Act, 1922, Tulzapurkar, Actg. C.J., as he then was, speaking for the court, held that the appeal to the Appellate Assistant Commissioner was maintainable and directed the Appellate Assistant Commissioner to dispose of the appeal on merits. In coming to the conclusion, *National Products Vs. Commissioner of Income Tax, Mysore*, and *Commissioner of Income Tax, Gujarat Vs. Sharma Construction Co.*, were referred.

17. In *Commissioner of Income Tax Vs. Lalit Prasad Rohini Kumar*, an argument was raised regarding the competency of the appeal by the assessee to the Appellate Assistant Commissioner from the order of the Income Tax Officer against levy of interest u/s 215/217 of the Act. The learned judges examined the word " denies " and the word " assessee " as used in Section 246(c) of the Act and held that the question of interest in the appeal could be agitated though no specific provision has been made in Section 246 of the Act.

18. In *Commissioner of Income Tax Vs. Karam Chand Thapar and Bros. (P.) Ltd.*, the question of competency of appeal against levy of penal interest arose. It was held by the Division Bench that the appeal lies only when the assessee denies his liability to be assessed or liability to pay interest and the appeal would be incompetent where the assessee denies only partially his liability to be assessed and/or to pay interest.

19. In *Addl. Commissioner of Income Tax, Gujarat Vs. Mustakhusein Gulamhusein Ghia*, the question arose whether the assessee could challenge the levy of penal interest under Sections 139 and 217 of the Act in the appeal, if it is filed against the order of assessment. Following *Commissioner of Income Tax, Bombay City-I Vs. Daimler Benz A.G.*, it was held that it was permissible to challenge the levy of penal interest under Sections 139 and 217 of the Act, in an appeal filed against the order of assessment.

20. In *Bihar State Road Transport Corporation Vs. Commissioner of Income Tax*, penal interest was levied u/s 217. There was an appeal against the regular assessment. In that appeal, there was challenge to the levy of penal interest. The question mooted was whether the levy of penal interest could be challenged in the appeal against the regular assessment. It was held that the challenge to the levy of penal interest is permissible in an appeal against the regular assessment order.

21. In this case, the Income Tax Officer, while making the assessment order dated January 9, 1975, has mentioned "charge interest as per the Rules".

22. A somewhat similar order "charge interest, if leviable", came up for consideration in *Commissioner of Income Tax Vs. New Swadeshi Mills of Ahmedabad Ltd.*. It was held by the learned judges that the order, which we have referred to above, indicated that the Income Tax Officer was assigning the responsibility for levying of interest to somebody else. The contention on behalf of the assessee in that case was that interest should not have been charged at all and not that the interest should be reduced for which the Income Tax Officer had not passed any order. It was held that the order was appealable. *Commissioner of Income Tax Vs. Lalit Prasad Rohini Kumar*, was followed.

23. From the conspectus of the aforesaid authorities, it is abundantly clear that in an appeal against the assessment, where the assessee denies his liability to be assessed under the Act, it is open to the assessee to attack the levy of penal interest u/s 215 of the Act in an appeal against the assessment order.

24. We may notice *Commissioner of Income Tax Vs. Associated Stone Industries (Kotah) Ltd.*, Both the learned counsels want to derive support from it. We may usefully excerpt the following (headnote p. 871):

"The right of appeal is a creature of statute and unless an appeal is provided for specifically or by necessary intendment, such a right cannot be availed of by any party. As there is no specific provision in Section 30 of the Act of 1922 giving a right of appeal in respect of an order imposing penal interest u/s 18A(6) or Section 18A(8) of the Act, no appeal would be maintainable against the penal interest charged if the same is claimed to be excessive or erroneously imposed. However, if the assessee denies his liability to be assessed in respect of advance tax and thereby denies altogether his liability to pay tax, then, in an appeal filed against the order of assessment, the assessee could also challenge the imposition of penal interest, because, in that event, the assessee would be "

denying his liability to be assessed under this Act " u/s 30. In substance, penal interest calculated and charged under Sub-section (6) or Sub-section (8) of Section 18 can be challenged only in an appeal filed against the order of assessment to tax and the assessee would be entitled to deny his liability to pay penal interest also while denying his liability to be assessed to tax u/s 18A. "

25. One important principle that emerges from this decision is that if the assessee denies his liability to be assessed in regard to advance tax and thereby denies altogether his liability to pay tax, then, in an appeal against the order of assessment, the assessee can also challenge the imposition of penal interest because in that event the assessee would be denying his liability to be assessed under the Act. The principle laid down in *Commissioner of Income Tax Vs. Associated Stone Industries (Kotah) Ltd.*, to this extent supports the learned counsel for the Revenue that where an assessee denies his liability to be assessed in respect of advance tax and thereby denies his liability to pay tax, then, in the appeal against the order of assessment, the imposition of penal interest can be assailed. *K.B. Stores Vs. Commissioner of Income Tax*, was noticed by the Tribunal. In that case, interest was charged for delayed filing of return u/s 139(8) of the Act. This was considered by the Tribunal, Gauhati. It was held therein that no appeal lies to the Appellate Assistant Commissioner from an order of the Income Tax Officer u/s 139(8) of the Act charging interest for delayed filing of the return, as Section 246 does not provide for such an appeal. In that case, there was no question of denial of liability to be assessed under the Act as envisaged by Section 246(c) of the Act.

26. It was held in *Vidyapat Singhania Vs. Commissioner of Income Tax*, , that the levy of interest u/s 18A(6)/18A(8) of the old Act--for too low an estimate of income for purposes of advance tax--which is popularly called penal interest, is not one of the matters mentioned in Section 30 of the old Act. The expression "denying his liability to be assessed under the Act" occurring in Section 30 of the old Act was considered. This was considered to be a total denial and it was held that a person who objects to a part of the assessment order cannot be said to deny his liability to be assessed. The learned judges did not agree with the view taken by the Bombay High Court. In view of the law laid down by the Supreme Court in *Commissioner of Income Tax, U.P., Lucknow Vs. Kanpur Coal Syndicate*, , we do not find any justification to construe the expression " denying his liability to be assessed " as denial of the total liability, for, the Supreme Court has observed (p. 229) :

" What is the substance of the objection of the assessee ? The assessee denies his liability to be assessed under the Act in the circumstances of the case and pleads that the members of the association shall be assessed only individually. The expression " denial of liability " is comprehensive enough to take in not only the total denial of liability but also the liability to tax under Particular circumstances." (Underlining* is ours).

27. In view of those observations, it could not be held that the expression "

denies the liability to be assessed under the Act " refers only to total denial of liability. The denial may be total as well as partial and the liability to pay penal interest, in our opinion, would certainly be a partial denial to be assessed under the Act, as envisaged by Section 246(c) of the Act.

28. In *Addl. Commissioner of Income Tax Vs. Allahabad Milling Co.*, the question was whether an appeal can be filed before the Appellate Assistant Commissioner u/s 246(c) of the Act. The reasoning, given in *Commissioner of Income Tax Vs. P.S. Jain Motors (P.) Ltd.*, is that Section 246 of the Act makes provision for appeals to the Appellate Assistant Commissioner regarding the orders passed under the various sections mentioned therein, and as an order regarding interest passed u/s 215 is not appealable, it was inferred that the legislature in its wisdom did not make any provision for filing an appeal against an order passed u/s 215(1). We have already held on the basis of the interpretation of Section 246(c) of the Act that the expression " denies his liability " includes a partial liability to be assessed under the Act and that partial liability to be assessed under the Act includes the question that no penal interest is leviable on the assessee.

29. After examining the pros and cons of the proposition canvassed before us in the light of the provisions of Section 215 and Section 246 of the Act, we find ourselves in full agreement with the view taken by the Bombay, Delhi, Gujarat and Karnataka High Courts. This conclusion of ours. stands fortified by the view taken by the Division Bench of this court in *Commissioner of Income Tax Vs. Associated Stone Industries (Kotah) Ltd.*, We regret we have not been able to persuade ourselves to subscribe to the view taken by the Allahabad High Court in the decisions referred to here-inabove and the other High Courts which have adopted the same view.

30. In an appeal against the order of assessment, contending that the assessee is not liable to be taxed, in our opinion, it was permissible for him to question the levy of penal interest u/s 215 of the Act and the Tribunal was, therefore, right and justified in holding that the Appellate Assistant Commissioner did not err when he entertained the appeal on the question of levying of penal interest. Question No. (1) referred to us is, therefore, answered in the affirmative, i.e., in favour of the assessee and against the Revenue.

31. Question No. (3). It will be convenient to take up question No. (3) first. We have already reproduced the directions given by the Appellate Assistant Commissioner in his order dated March 18, 1976, in regard to the waiving of interest. Section 215(4) provides that in cases which warrant levy of penal interest, the Income Tax Officer may reduce or waive the interest payable by the assessee. Rule 40 of the Rules which occur in Part VII relating to payment of advance tax provides for waiver of interest. According to it, the Income Tax Officer may reduce or waive the interest payable u/s 215 or Section 217 in certain cases and under the circumstances mentioned therein. Section 251 of the Act contains the powers of the Appellate Assistant Commissioner in disposing of

the appeal. Relevant part of Section 251 is as under :

" 251. (1) In disposing of an appeal, the Appellate Assistant Commissioner [or, as the case may be, the Commissioner (Appeals)] shall have the following powers-

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment; or he may set aside the assessment and refer the case back to the Income Tax Officer for making a fresh assessment in accordance with the directions given by the Appellate Assistant Commissioner [or, as the case may be, the Commissioner (Appeals)] and after making such further enquiry as may be necessary, and the Income Tax Officer shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment.....

(c) in any other case, he may pass such orders in the appeal as he think fit."

32. A perusal of Section 251(1) shows that the powers of the Appellate Assistant Commissioner are wider than those of the ordinary appellate court under the Code of Civil Procedure. His competence is not restricted to dealing with the subject-matter of appeal, he may examine all matters covered by the assessment order and correct the assessment in respect of all such matters even to the prejudice of the assessee and may remand the case to the Income Tax Officer for inquiring into items which were not the subject-matter of appeal. The Tribunal, in its order dated June 30, 1978, has observed that the Appellate Assistant Commissioner chose to decide the issue relating to waiver or reduction of penal interest himself as an appellate authority. The Income Tax Officer failed to consider the question of waiver or reduction of penal interest in accordance with Section 215(4) of the Act or for that matter under Rule 40 of the Rules. In these circumstances, two courses were open to the Appellate Assistant Commissioner : (1) to send the case back to the Income Tax Officer for considering the question of waiver ; or (2) to determine it himself. He thought it proper to adopt the second course. He took into consideration the facts of the case and also Rule 40 of the Rules. He came to the conclusion that from the records it cannot be said that the assessee delayed the assessment proceedings at any time. He, therefore, stated in his order that it is a case where interest u/s 215 should be waived for the period beginning from April, 1973, to the date of assessment. It is not in dispute that the Income Tax Officer was competent to make this order at the time of passing the assessment order, which he had not done. The Appellate Assistant Commissioner while hearing the appeal u/s 251 of the Act exercised the very same powers in this respect when he ordered that interest should be waived for the period beginning from April, 1973, to the date of assessment, which, according to him, should have been made by the Income Tax Officer. Mr. Vineet Kothari, in this connection, has referred to Commissioner of Income Tax, U.P., Lucknow Vs. Kanpur Coal Syndicate, , wherein their Lordships of the Supreme Court have observed as under (headnote) :

" The Appellate Assistant Commissioner has plenary powers in disposing of an appeal. The scope of his powers is coterminous with that of the Income Tax Officer. He can do what the Income Tax Officer can do and can also direct him to do what he has failed to do."

33. Commissioner of Income Tax, U.P., Lucknow Vs. Kanpur Coal Syndicate, was considered in Commissioner of Income Tax Vs. Lalit Prasad Rohini Kumar, by the Division Bench of the Calcutta High Court. Sabyasachi Mukharji J., as he then was, with whom Sudhindra Mohan Guha J. agreed, ruled as under (headnote) :

" Therefore, if the assessee was allowed to agitate the question of his liability to pay interest at all, in such a case, the Appellate Assistant Commissioner could give any direction which the Income Tax Officer could give. Therefore, the contention which was raised in the appeal about the quantum or waiver of interest could also form a part of the subject-matter of the direction by the Appellate Assistant Commissioner. In the facts and circumstances of the case, in the appeal which the assessee had filed from the order of the Income Tax Officer, the Appellate Assistant Commissioner was competent to give the direction regarding interest under Sections 215 and 217 of the Act."

34. It may be stated here that a SLP was filed against the judgment in Commissioner of Income Tax Vs. Lalit Prasad Rohini Kumar, , in which it was held that an appeal lay to the Appellate Assistant Commissioner against an order of the Income Tax Officer levying interest u/s 215 or Section 217 of the Act. SLP (Civil) No. 4 of 1981 was dismissed by Supreme Court on August 9, 1983, as appears from page 64 of 143 ITR (Statutes). This shows that the view taken in Commissioner of Income Tax Vs. Lalit Prasad Rohini Kumar, being proper and sound, their Lordships did not think it proper to grant special leave against that decision.

35. The upshot of the above discussion is that the Appellate Assistant Commissioner was competent and had jurisdiction to give a direction in the appeal that was filed against the assessment order dated January 9, 1975, for waiving interest for the period from April, 1973, to the date of assessment, as it is rightly not contested that the Income Tax Officer could give the direction in the assessment order which he had passed u/s 215(4) of the Act read with Rule 40 of the Rules. The view taken by the Tribunal in this respect is quite justified when it sustained the order passed by the Appellate Assistant Commissioner in regard to waiving of interest for the period beginning from April, 1973, to the date of assessment. The question is also answered in the affirmative.

36. Question No. (2) : In view of the answers given by us to question Nos. (1) and (3), it follows that the Tribunal was justified in holding that the Appellate Assistant Commissioner had not exceeded his jurisdiction when he entertained the appeal on the question of levy of penal interest and further gave a direction for waiving of interest from April, 1973, to the date of assessment. The order passed in appeal by the Appellate Assistant Commissioner cannot be said to be in

excess of his jurisdiction. This question is, therefore, answered in the affirmative.

37. Questions Nos. (1) to (3) are, therefore, answered in the affirmative, i.e., in favour of the assessee and against the Revenue.

38. There will be no order as to costs of, this reference.

39. Let the Tribunal be informed of this order as required by Section 260 of the Act.