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**(2000) 11 DEL CK 0036**

**In the Delhi High Court**

**Case No :** IT Reference No's. 90 to 92 of 1980 3 November 2000

Commissioner of Income Tax

APPELLANT

Vs

Dr. SARJOO PARSHAD

RESPONDENT

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**Date of Decision :** 03-11-2000

**Acts Referred:**

**Citation :** (2001) 118 TAXMAN 41

**Hon'ble Judges :** Arijit Pasayat, C.J.;D.K. Jain, J

**Bench :** Full Bench

**Advocate :** R.C. Pandey Ms. Prem Lata Bansal and Ajay Jha, for the Revenue, for the Appellant;

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## Judgement

Arijit Pasayat, C.J.

At the instance of the revenue, following question has been referred for opinion of this court u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by the Tribunal, Delhi Bench "A", New Delhi :

"Whether on the facts and in the circumstances of the case, and keeping in view the judgment in Garg and Company Vs. Commissioner of Income Tax, , the Tribunal was right in law in holding that the interest of Rs. 56,720, Rs. 39,037, Rs. 53,780 and for the assessment years 1962-63, 1963-64 and 1964-65 respectively levied u/s 139 could be deleted u/s 154 of the Income Tax Act, 1961 ?"

This judgment shall cover ITR Nos. 90 of 1980, 91 of 1980 and 92 of 1980 as the dispute involved is identical in all the three Income Tax references.

2. Brief reference of the factual aspects would suffice :

The assessed did not file his returns of income u/s 139(1) of the Act for the assessment years 1962-63 to 1964-65. Notices u/s 139(2) were also not issued for these years. Action u/s 147(a) was taken for all the three years and notices u/s 148 were issued on 15-1-1973. In response to these notices, the assessed filed

returns for the aforesaid assessment years, and assessments for all the three years were completed on 24-3-1973. Interest of Rs. 72,020 u/s 139 was levied for the assessment year 1962-63 which was subsequently reduced to Rs. 56,720. Similarly for the assessment year 1963-64, interest of Rs. 69,538 was levied which was reduced to Rs. 53,780. For the assessment year 1964-65, interest was first levied at Rs. 56,438 which was later on reduced to Rs. 39,037. The assessed did not file appeals against the orders of assessment. Rectification application in terms of section 154 of the Act was filed on 15-4-1975 pleading that in view of this court's judgment in *Garg and Company Vs. Commissioner of Income Tax*, , no interest u/s 139(1) was livable and levy was a mistake apparent from the record. By orders dated 20-5-1975, the Income Tax Officer did not accept the assessor's submission. According to him, position of law regarding charging of interest u/s 139 had undergone a change by amendment of section 139(8) with effect from 1-4-1972. Basic change that was brought about was that interest at specified rate was chargeable if return was filed later than the due date, irrespective of the fact whether any extension was granted by the Income Tax Officer or not. Appeals were preferred before the Appellate Assistant Commissioner. The assessor's stand before the Appellate Assistant Commissioner was that section 139(8)(a) was substituted by the Finance Act, 1972 with effect from 1-4-1972 and, Therefore, these provisions were not retrospective. It was pleaded that position of law prior to the aforesaid amendment was that the interest for delayed returns could only be charged if extension of time had been sought by the assessed and the Income Tax Officer had granted the extension. The Appellate Assistant Commissioner held that the provisions of section 139(8)(a) were not retrospective. Reference was made to paragraphs 17 & 18 of the Explanatory Notes on the Taxation Laws (Amendment) Act, 1978. It was further held that in view of this court's judgment in *Garg & Co.'s case (supra)*, interest u/s 139(1) could not have been levied. He, Therefore, held that applications u/s 154 of the Act were acceptable. The revenue preferred appeals before the Tribunal. It was submitted that scope of rectification u/s 154 was limited and any controversial issue would not come within the ambit of section 154. The Tribunal held that the decision of this court in *Garg & Co.'s case (supra)* was binding on Income Tax Officer and, Therefore, interest could not have been charged. It upheld the order of the Appellate Assistant Commissioner. On being moved, reference as aforestated has been made.

3. We have heard the learned counsel for the revenue. There is no appearance on behalf of assessed when the matter was called in spite of service of notice. We need not go into the question whether the case at hand was one to which section 154 was applicable. It has to be noted that in the case of *Ganesh Dass Sreeram Vs. Income Tax Officer, "A" Ward, Shillong and Others*, , the Apex Court held that interest for delay in filing of return could be legally charged under proviso (iii) to section 139(1) where the return was filed voluntarily but after the due date and that an application for extension of time for filing of return was not

a condition precedent for charging such interest. In Commissioner of Income Tax, New Delhi Vs. Garg and Co., , the decision in Garg & Co.'s case (supra) decided by this court, was held to be not in order. That being the position, the question whether section 154 had application is of academic interest. The question referred has to be answered in the negative in favor of the revenue and against the assessee.

References stand disposed of accordingly.