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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment delivered on: 12.09.2024***

\+ W.P.(C) 6560/2016

COMMISSIONER OF INCOME TAX (CENTRAL)-III .....Petitioner

Through: Mr. Anurag Ojha, SSC with Ms. Hemlata Rawat & Mr. V.K. Saksena, Advs.

versus

DALIP KUMAR BANTHIYA .....Respondent

Through: Ms. Kavita Jha, Sr. Adv. with Mr. Balwinder Singh Suri & Mr. Vaibhav Kulkarni, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

YASHWANT VARMA, J. (Oral)

1. The Commissioner of Income Tax questions the validity of the order passed by the **Income Tax Settlement Commission**[1] and is aggrieved to the extent that the said order restricts the applicability of interest under Section 234B of **the Income Tax Act, 1961**[2] on the total income which came to be disclosed in the **Statement of Facts**[3] up to the date of admission of that application under Section 245D(1). The ITSC has essentially rested its decision with respect to the interest liability bearing in mind the decision handed down by a Constitution

[1] ITSC
[2] Act
[3] SOF

Bench of the Supreme Court in **Brij Lal and Others v. Commissioner of Income Tax, Jalandhar**[4]. It is the correctness of the view so taken by the ITSC which is sought to be assailed in the present writ petition.

2. Before proceeding to analyse the submissions which were addressed by Mr. Ojha, learned counsel appearing for the writ petitioner, we deem it apposite to take note of the following facts. A search and seizure under Section 132 was carried out at the business and residential premises of the Radico Khaitan Group in which the respondent-assessee was the Chief Financial Officer. During the course of that search and seizure proceedings, according to the writ petitioner, a number of incriminating documents were found alongside a substantial amount of cash, jewellery and other valuables. Pursuant to the said search, a notice under Section 153A is stated to have been issued.

3. However, and before that assessment could be completed, the respondent filed a settlement application under Section 245C(1) before the ITSC. The aforesaid application was admitted on 08 February 2013. The income as declared in the SOF for **Assessment Years**[5] 2010-11 and 2011-12 was ultimately determined by the ITSC in terms as contemplated under Section 245D(4). In terms of paragraph 18 of the order impugned before us, the aspect of interest under Section 234B was determined in the following terms:

> "18. The applicant has requested for waiver of interest u/s 234A, 234B and 234C, interest u/s 234A, wherever applicable, is to be

[4] (2011) 1 SCC 1
[5] AY

> charged as per law. Interest if chargeable u/s 234B will be charged up-to the date of 245D(1) order, as per decision of Hon'ble Supreme Court in the case of Brij Lal & Ors. Vs. CIT [2010] 328 ITR 477 (S.C.) on the income computed in order u/s 245D(1) order. Interest u/s 220(2), if applicable on the sustained demand outstanding as on various dates is to be charged up to the date of this order."

4. Seeking to assail the view as taken by the ITSC it was the contention of Mr. Ojha that it was incumbent upon the ITSC to have called upon the respondent-assessee to pay interest on the income as disclosed in the SOF up to the date when the ITSC finally determined the settlement amount in terms contemplated under Section 245D(4). According to learned counsel the liability to pay interest up to that terminal date was one which clearly existed and stood embodied as a statutory obligation by virtue of the provisions contained in Section 234B(4) as it stood at the relevant time and which required a payment of interest up to the date when the ITSC makes a final order determining the settlement amount.

5. Mr. Ojha drew our attention to the decision rendered by the Supreme Court in **Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala and Others**[6], which was primarily concerned with the jurisdiction of an ITSC constituted under Section 245B to reduce or waive the interest chargeable while passing an order for settlement under Section 245D(4) of the Act. Upon taking note of the provisions of Chapter XIX-A and the powers conferred upon the ITSC therein, the Court in *Anjum Ghaswala* identified the principal issue before it being whether sub-section (6) to Section 245D

[6] (2002) 1 SCC 633

accorded the ITSC the power to waive or reduce the interest payable under Sections 234A, 234B and 234C of the Act. This becomes manifest from a reading of the initial passages of that decision which are reproduced below:

> "**1.** In these appeals the question that arises for our consideration is: whether the Settlement Commission (for short "the Commission") constituted under Section 245-B of the Income Tax Act, 1961 (hereinafter referred to as "the Act") has the jurisdiction to reduce or waive the interest chargeable under Sections 234-A, 234-B and 234-C of the Act, while passing orders of settlement under Section 245-D(4) of the Act.
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> **xxxx xxxx xxxx**
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> **15.** The moot question, therefore, for our consideration is: does subsection(6) which contemplates providing for the terms of settlement of tax, penalty or interest empower the Commission, in any manner, either to waive or reduce interest payable under Section 234-A, 234-B or 234-C in any case that arises for settlement before the Commission? If so, would this waiver of interest be in accordance with the provisions of the Act as mandated in subsection (4) of the Act?"

6. Ultimately and while affirming the position that the ITSC does not have the power to reduce or waive interest statutorily payable the following pertinent observations came to be rendered:

> "**23.** The Commission in the impugned order placed strong reliance on the wording of Section 245-D(6) the language of which, according to the Commission, empowers it to waive or reduce statutory interest because of the reintroduction of the expression "interest" in that sub-section. According to the findings of the Commission, the inclusion of the expression "interest" clearly indicates that the statute has permitted it to pass such orders as it deems fit in regard to payment of interest when an order under sub-section (4) of Section 245-D is made by it. This assumption of the Commission proceeds on the hypothesis that sub-section (6) of Section 245-D is a substantive provision. We are unable to agree with this view of the Commission. The substantive provision in regard to settlement in Chapter XIX-A, in our opinion, is sub-section (4) of Section 245-D. It is under this provision of the Act that the Commission will have to pass orders as it thinks fit on the

matters covered by the application. In our opinion, sub-section (6) of Section 245-D is only procedural in nature. It provides for fixing the terms by which the amount settled in sub-section (4) will have to be paid. It is not a section which empowers the Commission either to waive or reduce the interest. At the cost of repetition, we must point out that apart from the fact that there is no specific empowerment of waiver or reduction of tax in Chapter XIX-A, it is also clear from the use of the expression "in accordance with the provisions of this Act" found in sub-section (4) of Section 245-D, the settlement will have to be in conformity with the Act and not contrary to or in conflict with it. There is yet another factor to be taken note of while interpreting sub-section (6) of Section 245-D. The said sub-section also provides for terms of settlement in regard to the tax. If the interpretation given by the Commission is to be accepted, it would mean that under the provisions of Section 245-D(6), the Commission also has the power of waiving or reducing the tax payable on the income settled by the Commission. If this position in law is presumed to be correct then the very purpose of the settlement contemplated in Chapter XIX-A would defeat the object of the principal Act itself. As held by the Commission itself, Chapter XIX-A was included for the purpose of quick settlement of the cases before it so that the tax due to the Revenue is collected at the earliest. The object of Chapter XIX-A is not to give amnesty to a tax-evader from paying the tax due. Hence, it would be preposterous to hold that the Commission has been conferred with the power of either reducing or waiving the tax due. We are aware that the Commission in the impugned order has not gone to the extent of holding that it has the power of either waiving or reducing the tax payable but then that would be the logical conclusion if we accept the interpretation given by the Commission in regard to the expression "interest" in Section 245-D(6) of the Act. A proper reading of sub-section (6) would show that all that it contemplates is that while the Commission makes an order of settlement under sub-section (4) it will also have to provide for the terms under which the amount payable by way of tax, penalty or interest shall be paid by the assessee. The expression "terms" used in that sub-section does not refer to the power of the Commission to waive or reduce tax, penalty or interest because quantification of amount payable under each of those expressions is dealt with under separate provisions of the Act like the payment of the tax is governed by various provisions of the Act as defined in Section 2(43) of the Act while penalty is covered by Section 245-H and interest under Sections 234-A, 234-B and 234-C of the Act. Therefore, all that the expression "term" in Section 245-D(6) means is that the Commission can stipulate the conditions of payment like instalments, last date for payment etc. Beyond that, in

our opinion, sub-section (6) does not authorise the waiver or reduction of tax, penalty or interest settled under sub-section (4) of Section 245-D.

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29. Nextly, the Commission has elaborately discussed the object of introduction of Chapter XIX-A in the Act, the history behind the introduction and schematic rationalisation of the provisions of Chapter XIX-A brought about through the Finance Act, 1987 to hold that in exercising its power under Chapter XIX-A it has almost an unbridled power to arrive at a settlement. This exercise of purposive interpretation by looking into the object and scheme of the Act and legislative intendment would arise, in our opinion, if the language of the statute is either ambiguous or conflicting or gives a meaning leading to absurdity. We do not find any such problem in the provisions of the Act to which we have already referred to. Sections 234-A, 234-B and 234-C in clear terms impose a mandate to collect interest at the rates stipulated therein. The expression "shall" used in the said section cannot by any stretch of imagination be construed as "may". There are sufficient indications in the scheme of the Act to show that the expression "shall" used in Sections 234-A, 234-B and 234-C is used by the legislature deliberately and it has not left any scope for interpreting the said expression as "may". This is clear from the fact that prior to the amendment brought about by the Finance Act, 1987, the legislature in the corresponding section pertaining to imposition of interest used the expression "may" thereby giving a discretion to the authorities concerned to either reduce or waive the interest. The change brought about by the amending Act (Finance Act, 1987) is a clear indication of the fact that the intention of the legislature was to make the collection of statutory interest mandatory. In this connection, we may usefully refer to the judgment of this Court in *Jaywant S. Kulkarni v. Minochar Dosabhai Shroff* wherein this Court held that when the legislature changes the expression "may" to "shall" by amendment of the statute, it is clear that it intended to make the provision mandatory from the existing directory provision. Therefore, the question of the Commission relying upon external aids, for the purpose of interpretation like Wanchoo Committee Report, Discussions of Select Committee of Parliament and introduction of Chapter XIX-A in the Act, press release of the Board dated 21-5-1996 etc. are purposeless because of the clear and unambiguous language used in Sections 234-A, 234-B and 234-C and Sections 245-D(4) and (6). We notice that if only the Commission were to follow the golden rule of interpretation by giving the words of the statute their natural and ordinary meaning without unnecessarily going into a forensic exercise of trying to

find out the object of the introduction of Chapter XIX-A or Part F of Chapter XVII, the Commission would not have fallen in error.

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35. For the reasons stated above, we hold that the Commission in exercise of its power under Sections 245-D(4) and (6) does not have the power to reduce or waive interest statutorily payable under Sections 234-A, 234-B and 234-C except to the extent of granting relief under the circulars issued by the Board under Section 119 of the Act."

7. We note that the issue of interest which would be payable on the amount as disclosed in an application made under Section 245C(1) appears to have constituted one of the central questions which stood posed before the Constitution Bench in *Brij Lal*. This becomes apparent from a reading of the first two paragraphs of the report and where the Constitution Bench had formulated the principal issues to be the following:

"**S.H. KAPADIA, C.J.-** Leave granted. Vide referral orders dated 14-12-2004 and 20-1-2005 the following questions have been referred to the Constitution Bench of this Court:

(i) Whether Sections 234-A, 234-B and 234-C of the Income Tax Act, 1961 (for short "the Act") are at all applicable to the proceedings of the Settlement Commission under Chapter XIX-A of the Act?

(ii) Whether the Settlement Commission can reopen its concluded proceedings by having recourse to Section 154 of the Act so as to levy interest under Sections 234-A, 234-B and 234-C of the Act, though it was not so done in the original proceedings?

(iii) Whether in the absence of period of limitation prescribed for making the order of the settlement, the relevant date for determining the quantum of interest could be the date of the said order?

2. For the sake of convenience, after hearing the learned counsel on both sides, we reframe the above questions:

(I) Whether Section 234-B applies to proceedings of the Settlement Commission under Chapter XIX-A of the said Act?

(II) If answer to the above question is in the affirmative, what is the

terminal point for levy of such interest - whether such interest should be computed up to the date of the order under Section 245-D (1) or up to the date of the order of the Commission under Section 245-D (4)?

(Ill) Whether the Settlement Commission could reopen its concluded proceedings by invoking Section 154 of the said Act so as to levy interest under Section 234-B, though it was not so done in the original proceedings?"

8. After noticing the statutory provisions pertaining to the levy of interest on income as well as the distinct scheme which imbues Chapter XIX-A of the Act, the Supreme Court held as follows:

"***(I) Whether Sections 234-A, 234-B and 234-C are applicable to Chapter XIX-A proceedings?***

25. Our detailed analysis shows that though Chapter XIX-A is a self-contained code, the procedure to be followed by the Settlement Commission under Sections 245-C and 245-D in the matter of computation of undisclosed income; in the matter of computation of additional income tax payable on such income with interest thereon; the filing of settlement application indicating the amount of income returned in the return of income and the additional income tax payable on the undisclosed income to be aggregated as total income shows that Chapter XIX-A indicates aggregation of incomes so as to constitute total income which indicates that the special procedure under Chapter XIX-A has an in-built mechanism of computing total income which is nothing but assessment (computation of total income).

26. To elaborate, under Section 245-C(1-B), if the applicant has furnished a return in respect of his total income, tax shall be calculated on the aggregate of total income returned and the income disclosed in the settlement application as if such aggregate were total income. Under the Act, tax is payable on the total income as computed in accordance with the provisions of the Act. Thus, Section 143(3) provision is sought to be incorporated in Section 245-C. When Parliament uses the words "as if such aggregate would constitute total income", it presupposes that under the special procedure the aggregation of the returned income plus income disclosed would result in computation of total income which is the basis for the levy of tax on the undisclosed income which is nothing but "assessment". Similarly, Section 245-C(1-C) provides for deductions from the total income computed in terms of Section 245-C(1-B).

27. Thus, the special procedure under Sections 245-C and 245-D in Chapter XIX-A shows that a special type of computation of total income is engrafted in the said provisions which is nothing but assessment which takes place at Section 245-D(1) stage. However, in that computation, one finds that provisions dealing with a regular assessment, self-assessment and levy and computation of interest for default in payment of advance tax, etc. are engrafted. [See Sections 245-C(1-B), 245-C(1-C), 245-D(6), 245-F(3) in addition to Sections 215(3), 234-A(4) and 234-B(4).]

(II) Terminal point for the levy of interest Whether interest is payable under Chapter XIX-A up to the date of the order under Section 245-D(1) or up to the date of the order under Section 245-D(4)?

28. In our view the answer to the above question lies in the provisions of the proviso to Sections 245-C(1), 245-C(1-B) and 245-C(1-C), 245-D(4) and 245-F(3) which bring in the concepts of returned income, self-assessment, aggregation of income returned and income disclosed as if it is total income; levy of interest under Section 215(3) read with Section 245-D(4); increase of interest under Sections 234-A(4) and 234-B(4) read with Section 245-D(4) as also Sections 140-A(1-A) and (1-B) read with Sections 234-A and 234-B. For example, Section 140-A deals with self-assessment which is different from regular assessment. Under Section 140-A(1) where tax is payable on the basis of any return furnished by the assessee [see proviso (a) to Section 245-C(1)], after taking into account tax paid, the assessee shall be liable to pay such tax with interest payable for default under Section 234-B in payment of advance tax before furnishing the return.

29. This position is clarified by Sections 140-A(1-A) and (1-B) under which inter alia interest payable for default in payment of advance tax under Section 234-A shall be computed on the amount of tax on the total income as declared in the return minus the advance tax paid. Similarly, it is clarified vide sub-section (1-B) to Section 140-A that interest payable under Section 234-B for default in payment of advance tax shall be computed on an amount equal to the assessed tax [same words are used in Section 234-B(1)] or on the amount by which the advance tax falls short of the assessed tax. However, what is "assessed tax" for the purposes of Section 140-A is explained by Explanation. It says that assessed tax will be tax on the total income as declared in the return minus the amount of tax deducted at source or collected at source in accordance with the provisions of Chapter XVII (which covers Sections 207, 209 and 215 of the Act).

30. Now, Section 245-C(1) is voluntary disclosure by the assessee

of his undisclosed income. Under Section 245-C(1), the assessee has to mention in his settlement application the additional amount of tax payable by him on such undisclosed income. Under proviso (a), the application for settlement shall not be entertained till the assessee has furnished the return of income which he was required to file under the Act to the extent of his income. Under proviso (b). the assessee has to declare the additional amount of tax payable. Thus, the two provisos to Section 245-C(1) show that Chapter XIX-A, which prescribes a special procedure for assessment by settlement, contemplates a pre-assessment collection of tax.

31. With the filing of the settlement application and after such application is allowed to be proceeded with under Section 245-D(1), intimation under Section 143(1), regular assessment under Sections 143(3)/144 and reassessment under Section 147 lose their existence as under Sections 245-C(1-A) and (1-B) it is only the income disclosed in the return of income before the AO alone which survives for consideration by the Settlement Commission for settling the amount of income which is not disclosed in the return.

32. Under Section 245-C(1-B)(ii), if the applicant has furnished a return in respect of the total income, whether or not assessment is made in pursuance of the return, the additional amount of income tax payable in respect of the total income disclosed shall be on the aggregate of the total income returned and the income disclosed in his application for settlement as if such aggregate was his total income. This is pre-assessment collection of tax. Such pre-assessment is based on the estimation of the current income and tax thereon by the applicant himself. Now, when the Settlement Commission accepts the voluntary disclosure vide the application for settlement, Section 234-B(2) steps in. It is important to remember that the assessee is liable to pay advance tax, he commits default in payment to the extent of the undisclosed income but he offers to pay additional income tax then interest has to be calculated in accordance with Sections 207, 208 and 234-B(2) up to the date on which such tax is paid. This is not the interest which the assessee has to pay after assessment under Section 245-D(4).

33. Under Sections 245-C(1-B) and (1-C) the additional amount of income tax payable on the undisclosed income shall be on the total income as calculated under Section 245-C(1-B). On computation of total income under Sections 245-C(1-B) and (1-C), interest follows such computation. It is important to note that interest follows computation of total income. Once such computation takes place under Section 245-C(1-B) then Section 234-B(2) applies. The said sub-section deals with the situation where before determination of the total income under Section 143(1) or Section 143(3) tax is paid

under Section 140-A or otherwise interest shall be calculated in accordance with Section 234-B(1) up to the date on which tax is so paid. In that sense an application under Section 245-C(l) is a return. Section 245-C(l) deals with computation of total income.

34. There is one more way of looking at the Act. Chapter XIX-A refers to the procedure of settlement [see Section 245-D(1)]. As stated above, Section 245-D(1) provides for expeditious recovery of tax by way of pre-assessment collection. Interest on default in payment of advance tax comes under Sections 234-A, 234-B, 234-C, which fall in Chapter XVII which deals with collection and recovery of tax. It is important to note that interest follows computation of additional payment of income tax under Sections 245-C(1-B) and (1-C). This is how Sections 234-A, 234-B and 234-C get engrafted into Chapter XIX-A at the stage of Section 245-D(1).

35. As stated, till the Settlement Commission decides to admit the case under Section 245-D(1) the proceedings under the normal provisions remain open. But, once the Commission admits the case after being satisfied that the disclosure is full and true then the proceedings commence with the Settlement Commission. In the meantime, the applicant has to pay the additional amount of tax with interest without which the application for settlement would not be maintainable. Thus, interest under Section 234-B would be payable up to the stage of Section 245-D(1). Our view is supported by the amendment made by the Finance Act of 2007 w.e.f. 1-6-2007 in which interest is required to be paid for maintainability of the application for settlement.

36. The question is what happens in cases where 90% of the assessed tax is paid but on the basis of the Commission's order under Section 245-D(4) the advance tax paid turns out to be less than 90% of the assessed tax as defined in the Explanation to Section 234-B(1)?

37. As held hereinabove, under Section 245-C(1) read with Section 245-C(1-B)(ii) and Section 245-C(1-C)(b), the additional amount of income tax payable is to be calculated on the aggregate of total income returned and the income disclosed in the settlement application as if such aggregate is the total income. Thus, the scheme of the said sections is based on computation of total income and in that sense we have stated that such application for settlement is akin to a return of income. The said provision deals with "total income". Thus, as stated above, Sections 234-A, B and C are applicable up to the stage of Section 245-D(1) order passed by the Settlement Commission. However, Parliament has not extended the provisions and the liability to pay interest beyond the

date of application for settlement. This is the position even after the Finance Act of 2007.

38. Once this position is taken, Section 140-A is attracted. When an assessee has paid interest under Sections 234-A, B and C in self-assessment under Section 140-A, which is similar to the scheme of Section 245-C(1), and once the Settlement Commission admits the application for settlement, one finds that even under Section 140-A(1-B) interest payable under Section 234-B has to be computed on an amount equal to the assessed tax as defined in the Explanation to mean tax on the total income as declared in the return. Under sub-section (1-B) to Section 140-A interest payable under Section 234-B can also be computed on an amount by which the advance tax paid falls short of the assessed tax as defined in the Explanation thereto. Thus, there is no provision under Chapter XIX-A or even under Section 140-A (dealing with self-assessment) to charge interest beyond the date of application for settlement after the same is admitted by the Commission under Section 245-D(1).

39. Moreover, as stated above, under the Act, there is a difference between assessment in law [regular assessment or assessment under Section 143(1)] and assessment by settlement under Chapter XIX-A. The order under Section 245-D(4) is not an order of regular assessment. It is neither an order under Section 143(1) or Section 143(3) or Section 144. Under Sections 139 to 158, the process of assessment involves the filing of the return under Section 139 or under Section 142; inquiry by AO under Sections 142 and 143 and making of the order of assessment by AO under Section 143(3) or under Section 144 and issuing of notice of demand under Section 156 on the basis of the assessment order. The making of the order of assessment is an integral part of the process of assessment. No such steps are required to be followed in the case of proceedings under Chapter XIX-A. The said chapter contemplates the taxability determined with respect to undisclosed income only by the process of settlement/arbitration. Thus, the nature of the orders under Sections 143(1), 143(3) and 144 is different from the orders of the Settlement Commission under Section 245-D(4).

40. Even in *CIT v. Anjum M.H. Ghaswala* there is no finding by this Court that the order of the Settlement Commission under Section 245-D(4) is an order of assessment under Section 143(3) or under Section 144. In *Ghaswala* case the only question decided by this Court is that the interest under Section 234-B is mandatory in nature and that the Settlement Commission, therefore, had no authority to waive it.

41. Further, as stated above, the jurisdiction of AO is not fettered merely because the applicant has filed the settlement application. The Act does not contemplate stay of the proceedings during that period i.e. when the Settlement Commission is deciding whether to proceed or reject the settlement application. The jurisdiction of the Settlement Commission to proceed commences only after an order is passed under Section 245-D(1). That, after making an application for settlement the applicant is not allowed to withdraw it [see Section 245-C(3)]. Once the case stands admitted, the Settlement Commission shall have exclusive jurisdiction to exercise the powers of the Income Tax Authority.

42. The order of the Settlement Commission under Section 245-D(4) shall be final and conclusive under Section 245-1 subject to two qualifications under which it can be recalled viz. fraud and misrepresentation but even here it is important to note that under Section 245-D(7) where the settlement becomes void on account of fraud and misrepresentation the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission. This further supports our view that there are two distinct stages under Chapter XIX-A and that the legislature has not contemplated the levy of interest between order under Section 245-D(1) stage and Section 245-D(4) stage. Thus, interest under Section 234-B will be chargeable till the order of the Settlement Commission under Section 245-D(1) i.e. admission of the case.

43. Lastly, the expression "interest" in Section 245-D(6-A) fastens the liability to pay interest only when the tax payable in pursuance of an order under Section 245-D(4) is not paid within the specified time and which levy is different from liability to pay interest under Section 234-B or under Section 245-D(2-C)."

9. As would become evident from the aforesaid extracts of the opinion handed down by the Constitution Bench, it found that the liability of interest would be governed firstly by the provisions of Section 245C(1) and which speaks of aggregation of the income which may be disclosed in a return submitted in ordinary course and the declarations that may be made by virtue of an application of settlement made in terms thereof. The Supreme Court has explained the scheme of Section 245C(1) as thus dealing with the aggregation of

the amounts as disclosed in the application for settlement together with that disclosed in the Return of Income to constitute total income.

10. It had also taken into consideration the statutory liability which stood placed upon the applicant to ensure that the amount of tax liability which would arise by virtue of a declaration made in such an application being duly deposited for the purposes of its maintainability. It thus came to conclude that Chapter XIX-A envisages two distinct stages, with the first being the submission of an application under Section 245C(1) and which upon due consideration would have ultimately come to be admitted by the ITSC in light of Section 245D(1) and the second being the order of determination which may be framed by the ITSC in accordance with Section 245D(4). It had on a conspectus of the statutory provisions come to hold specifically that the interest under Section 234B would be payable only up to the stage of Section 245D(1).

11. Ms. Jha, learned senior counsel appearing for the respondent-assessee, has drawn our attention to Section 234B as it stood at the relevant time to submit that interest under that provision was concerned solely with the Return of Income as ordinarily filed and that reference to proceedings before the ITSC were only found in sub-section (4) as it existed. Learned senior counsel submitted that sub-section (4) of Section 234B stood confined to the amount of interest that would have been leviable by virtue of sub-sections (1) and (3) of Section 234B and clearly did not control the computation of interest liability for the purposes of Section 245C(1).

12. Our attention was drawn by Ms. Jha also to the significant

amendments which have come to be introduced by virtue of Finance Act, 2015 with effect from 01 June 2015 and which now make additional provisions with respect to interest and the liability that would arise by virtue of an application being made under Section 245C(1). According to learned senior counsel once the assessee had made an application under Section 245C(1) and declared the amount at which it sought the settlement of all disputes, interest on that amount as declared and disclosed would cease to run once that application came to be admitted under Section 245D(1). Ms. Jha commends for our consideration the significant and pertinent observations rendered by the Constitution Bench in *Brij Lal* in this respect.

13. Dealing with the amendments which came to be introduced in Section 234B and which saw the introduction of sub-section (2A), Ms. Jha also drew our attention to the Memorandum which explained the provisions of the Finance Bill, 2015 and which while dealing with the proposed amendments to 234B had observed as follows:

> "**Interest for defaults in payment of advance tax in case of re-assessment and where additional income is disclosed before the Settlement Commission under section 245C.**
>
> The existing provisions contained in clause (3) of section 234B of the Income-tax Act provides that where the total income is increased on reassessment under section 147 or section 153A the assessee shall be liable for interest at the rate of 1 per cent on the amount of the increase in total income for the period commencing from date of determination of total income under sub-section (1) of section 143 or on regular assessment and ending on the date of reassessment under section 147 or section 153A.
>
> Interest is charged under section 234B on the principle that the amount of tax determined on the total income determined under section 143(1) or on assessment or reassessment or total income declared in a settlement application was the tax payer's true

liability right from the beginning and it was with reference to that amount the advance tax should have been paid within the prescribed due date.

Accordingly, it is proposed to amend clause (3) of section 234B of the Income-tax Act to provide that the period for which the interest is to be computed will begin from the 1st day of April next following the financial year and end on the date of determination total income under section 147 or section 153A.

The existing provision contained in sub-section (4), *inter alia*, provide that where on an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) or sub-section (3) is increased or reduced, the interest shall be increased or reduced accordingly. However, in case an application is filed before the Settlement Commission under section 245C declaring an additional amount of income-tax, there is no specific provision in section 234B for charging interest on that additional amount.

Accordingly, it is proposed to insert a new subsection (2A) so as to provide that 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. Further, 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.

These amendments will take effect from 1st day of June, 2015."

14. Ms. Jha laid emphasis on the Memorandum itself acknowledging the absence of a provision enabling the levy of interest on the amount as determined by the ITSC in excess of that disclosed in the application and interest thereon running up to the passing of the

final order determining the amount of settlement. According to learned counsel, the aforesaid acknowledgement reinforces the stand of the respondent-assessee that the interest on the amount as disclosed in the Section 245C(1) application would run only up to the date when the same comes to be admitted by the ITSC.

15. For the purposes of evaluating the rival submissions which were addressed, we deem it apposite to extract Section 234B as it presently stands hereunder:

> "**Interest for defaults in payment of advance tax.**
>
> **234B.** (1) Subject to the other provisions of this section, where, in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of section 210 is less than ninety per cent of the assessed tax, 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 from the 1st day of April next following such financial year [to the date of determination of total income under sub-section (1) of section 143 [and where a regular assessment is made, to the date of such regular assessment, on an amount]] equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax.
>
> [*Explanation 1*.—In this section, "assessed tax" means the tax on the total income determined under sub-section (1) of section 143 and where a regular assessment is made, the tax on the total income determined under such regular assessment as reduced by the amount of,—
>
> (i) any tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income;
>
> [(i-a) any relief of tax allowed under Section 89;]
>
> (ii) any relief of tax allowed under section 90 on account of tax paid in a country outside India;
>
> (iii) any relief of tax allowed under section 90A on account of tax paid in a specified territory outside India referred to in that section;

(iv) any deduction, from the Indian income tax payable, allowed under section 91, on account of tax paid in a country outside India; and

(v) any tax credit allowed to be set off in accordance with the provisions of section 115-JAA [or section 115-JD].]

Explanation 2.—Where, in relation to an assessment year, an assessment is made for the first time under section 147 [or section 153A], the assessment so made shall be regarded as a regular assessment for the purposes of this section.

[*Explanation 3*.—In *Explanation 1* and in sub-section (3),—

(i) "tax on total income as determined under sub-section (1) of section 143" shall not include the additional income-tax, if any, payable under section 140-B or section 143; and

(ii) tax on the total income determined under such regular assessment shall not include the additional income-tax payable under section 140-B.]

(2) Where, before the date of [determination of total income under sub-section (1) of section 143 or] 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 provisions of this section up to the date on which the tax is so paid, and reduced by the interest, if any, paid under section 140A towards the interest chargeable under this section;

(ii) thereafter, interest shall be calculated at the rate aforesaid on the amount by which the tax so paid together with the advance tax paid falls short of the assessed tax.

[(2-A)(a) where an application under sub-section (1) of section 245-C 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 245-D for any assessment year, the amount of total income disclosed in the application under sub-section (1) of section 245-C 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 245-C;

(c) where, as a result of an order under sub-section (6-B) of section 245-D, 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.]

[(3) Where, as a result of an order of reassessment or recomputation under section 147 or section 153-A, the amount on which interest was payable in respect of shortfall in payment of advance tax for any financial year under sub-section (1) 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 next following such financial year and ending on the date of the reassessment or re-computation under section 147 or section 153-A, on the amount by which the tax on the total income determined on the basis of the reassessment or re-computation exceeds the tax on the total income determined under sub-section (1) of section 143 or on the basis of the regular assessment as referred to in sub-section (1), as the case may be.]

(4) 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 263 or section 264 [* * *], the amount on which interest was payable under sub-section (1) or sub-section (3) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and—

(i) in a case where the interest is increased, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly;

(ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.

(5) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989 and subsequent assessment years."

16. A reading of that provision would indicate that it principally governs the issue of liability to pay interest in cases of default in payment of advance tax as per the time frames stipulated in the statute.

Section 234B(4) prior to the deletion of the phrase "*or an order of the Settlement Commission under sub-section (4) of Section 245D*" by Finance Act, 2015 had contemplated interest being payable under sub-sections (1) and (3) and on the variation that may occur by virtue of an order of the ITSC.

17. However, as we read sub-section (4) it becomes apparent that it stands confined to the computation of interest which would have been leviable by virtue of sub-sections (1) and (3) of Section 234B and was clearly not concerned with the computation of interest for purposes of an application referable to Section 245C(1) being entertained.

18. An applicant desirous of seeking closure of disputes and settlement was obliged to move an application in terms of Section 245C(1). That provision is extracted hereinbelow:

> "**Application for settlement of cases.**
>
> **245C.** (1) An assessee may, at any stage of a case relating to him, make an application in such form and in such manner as may be 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 and any such application shall be disposed of in the manner hereinafter provided:"

19. Originally and prior to its amendment by Finance Act, 2010 the First Proviso to Section 245C(1) read as follows:

> "**Provided** that no such application shall be made unless,-
>
> (i) the additional amount of income-tax payable on the income disclosed in the application exceeds three lakh rupees; and
>
> (ii) such tax and the interest thereon, which would have been paid under the provisions of this Act had the income disclosed in the application been declared in the return of income before the

Assessing Officer on the date of application, has been paid on or before the date of making the application and the proof of such payment is attached with the application."

20. Post the amendments introduced in terms of Finance Act, 2010 that Proviso presently reads as under:

"**Provided** that no such application shall be made unless,-

(i) in a case where proceedings for assessment or reassessment for any of the assessment years referred to in clause (b) of sub-section (1) of (b) of sub-section (1) of section 153A or clause (b) of sub-section (1) of section 153B in case of a person referred to in section 153A or section 153C have been initiated, the additional amount of income-tax payable on the income disclosed in the application exceeds fifty lakh rupees,

[(i-a) in a case where—

(A) the applicant is related to the person referred to in clause (i) who has filed an application (hereafter in this sub-section referred to as "specified person"); and

(B) the proceedings for assessment or re-assessment for any of the assessment years referred to in clause (b) of sub-section (1) of section 153A or clause (b) of sub-section (1) of section 153-B in case of the applicant, being a person referred to in section 153A or section 153C, have been initiated,

the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees,]

(ii) in any other case, the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees, and such tax and the interest thereon, which would have been paid under the provisions of this Act had the income disclosed in the application been declared in the return of income before the Assessing Officer on the date of application, has been paid on or before the date of making the application and the proof of such payment is attached with the application.]"

21. The Proviso prior to 2010 as well as the provision as it stands presently on the statute book clearly establish that the applicant was liable to pay tax and interest on the entire amount of total income as

disclosed in an application under Section 245C(1), and that, by way of a fiction being extended to the entire tax liability which it would have been ordinarily liable to pay under the provisions of the Act. The fusion of the income which may have been ordinarily declared together with that which came to be disclosed in the application for settlement becomes apparent from the Proviso using the expression "*…….had the income disclosed in the application been declared in the Return of Income before the Assessing Officer on the date of application……*".

22. The statute placed a positive and unerring obligation upon the applicant to ensure that the entire amount of tax along with interest in accordance with the disclosures made in the application had been paid on or before the date of submission alone. The Proviso further required proof of such payment being attached with the said application. The entire amount of taxable liability computed upon the total or aggregate income as disclosed in that application was thus liable to be discharged prior to the application being submitted itself. This necessarily would have entailed not only the computation of tax payable on the total income as disclosed in that application as also the payment of interest that would have otherwise been attracted in terms of Section 234A, Section 234B and other cognate provisions in the statute.

23. The application once made is thereafter liable to be placed before the ITSC and which would then follow the procedure as prescribed in Section 245D. That provision reads as under:

"**Procedure on receipt of an application under section 245C.**

245D. [(1) On receipt of an application under section 245C, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant requiring him to explain as to why the application made by him be allowed to be proceeded with, and on hearing the applicant, the Settlement Commission shall, within a period of fourteen days from the date of the application, by an order in writing, reject the application or allow the application to be proceeded with:

Provided that where no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.]

(1-A) [*Omitted by the Finance (No. 2) Act, 1991, w.e.f. 27-9-1991.*]

(2) A copy of every order under sub-section (1) shall be sent to the applicant and to the [Principal Commissioner or Commissioner].

[(2A) Where an application was made under section 245C before the 1st day of June, 2007, but an order under the provisions of sub-section (1) of this section, as they stood immediately before their amendment by the Finance Act, 2007, has not been made before the 1st day of June, 2007, such application shall be deemed to have been allowed to be proceeded with if the additional tax on the income disclosed in such application and the interest thereon is paid on or before the 31st day of July, 2007.

Explanation.—In respect of the application referred to in this sub-section, the 31st day of July, 2007 shall be deemed to be the date of the order of rejection or allowing the application to be proceeded with under sub-section (1).

(2B) The Settlement Commission shall,—

(i) in respect of an application which is allowed to be proceeded with under sub-section (1), within thirty days from the date on which the application was made; or

(ii) in respect of an application referred to in sub-section (2A) which is deemed to have been allowed to be proceeded with under that sub-section, on or before the 7th day of August, 2007,

call for a report from the [Principal Commissioner or Commissioner], and the [Principal Commissioner or Commissioner] shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission.

(2C) Where a report of the [Principal Commissioner or Commissioner] called for under sub-section (2B) has been

furnished within the period specified therein, the Settlement Commission may, on the basis of the report and within a period of fifteen days of the receipt of the report, by an order in writing, declare the application in question as invalid, and shall send the copy of such order to the applicant and the [Principal Commissioner or Commissioner]:

Provided that an application shall not be declared invalid unless an opportunity has been given to the applicant of being heard:

Provided further that where the [Principal Commissioner or Commissioner] has not furnished the report within the aforesaid period, the Settlement Commission shall proceed further in the matter without the report of the [Principal Commissioner or Commissioner]:

[**Provided also** that where in respect of an application, an order, which was required to be passed under this sub-section on or before the 31st day of January, 2021, has not been passed on or before the 31st day of January, 2021, such application shall deemed to be valid.]

(2D) Where an application was made under sub-section (1) of section 245C before the 1st day of June, 2007 and an order under the provisions of sub-section (1) of this section, as they stood immediately before their amendment by the Finance Act, 2007, allowing the application to have been proceeded with, has been passed before the 1st day of June, 2007, but an order under the provisions of sub-section (4), as they stood immediately before their amendment by the Finance Act, 2007, was not passed before the 1st day of June, 2007, such application shall not be allowed to be further proceeded with unless the additional tax on the income disclosed in such application and the interest thereon, is, notwithstanding any extension of time already granted by the Settlement Commission, paid on or before the 31st day of July, 2007.]

[(3) The Settlement Commission, in respect of—

(i) an application which has not been declared invalid under subsection (2C); or

(ii) an application referred to in sub-section (2D) which has been allowed to be further proceeded with under that sub-section, may call for the records from the [Principal Commissioner or Commissioner] and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the [Principal Commissioner or Commissioner] to make or cause to be

made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case, and the [Principal Commissioner or Commissioner] shall furnish the report within a period of ninety days of the receipt of communication from the Settlement Commission:

Provided that where the [Principal Commissioner or Commissioner] does not furnish the report within the aforesaid period, the Settlement Commission may proceed to pass an order under subsection (4) without such report.

(4) After examination of the records and the report of the [Principal Commissioner or Commissioner], if any, received under—

(i) sub-section (2B) or sub-section (3), or

(ii) the provisions of sub-section (1) as they stood immediately before their amendment by the Finance Act, 2007,

and after giving an opportunity to the applicant and to the [Principal Commissioner or Commissioner] to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the [Principal Commissioner or Commissioner].

(4A) The Settlement Commission shall pass an order under sub-section (4),—

(i) in respect of an application referred to in sub-section (2A) or sub-section (2D), on or before the 31st day of March, 2008;

(ii) in respect of an application made on or after the 1st day of June, 2007 [but before the 1st day of June, 2010], within twelve months from the end of the month in which the application was made.]

[(iii) in respect of an application made on or after the 1st day of June, 2010, within eighteen months from the end of the month in which the application was made.]

[(5) Subject to the provisions of section 245BA, the materials brought on record before the Settlement Commission shall be considered by the Members of the Bench concerned before passing any order under sub-section (4) and, in relation to the passing of such order, the provisions of section 245BD shall apply.]

(6) Every order passed under sub-section (4) shall provide for the terms of settlement including any demand by way of [tax, penalty or interest] the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

(6A) Where any tax payable in pursuance of an order under sub-section (4) is not paid by the assessee within thirty-five days of the receipt of a copy of the order by him, then whether or not the Settlement Commission has extended the time for payment of such tax or has allowed payment thereof by instalments, the assessee shall be liable to pay simple interest at [one and one-fourth per cent for every month or part of a month] on the amount remaining unpaid from the date of expiry of the period of thirty-five days aforesaid.]

[(6B) The Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any order passed [***] under sub-section (4)—

(a) at any time within a period of six months from the end of the month in which the order was passed; or

(b) at any time within the period of six months from the end of the month in which an application for rectification has been made by the Principal Commissioner or the Commissioner or the applicant, as the case may be:

Provided that no application for rectification shall be made by the Principal Commissioner or the Commissioner or the applicant after the expiry of six months from the end of the month in which an order under sub-section (4) is passed by the Settlement Commission:

Provided further that an amendment which has the effect of modifying the liability of the applicant shall not be made under this sub-section unless the Settlement Commission has given notice to the applicant and the Principal Commissioner or Commissioner of its intention to do so and has allowed the applicant and the Principal Commissioner or Commissioner an opportunity of being heard.]

(7) Where a settlement becomes void as provided under sub-section (6), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the income tax authority concerned, may, notwithstanding anything contained in any other provision of

this Act, complete such proceedings at any time before the expiry of two years from the end of the financial year in which the settlement became void.

(8) For the removal of doubts, it is hereby declared that nothing contained in section 153 shall apply to any order passed under subsection (4) or to any order of assessment, reassessment or recomputation required to be made by the [Assessing] Officer in pursuance of any directions contained in such order passed by the Settlement Commission [and nothing contained in the proviso to sub-section (1) of section 186 shall apply to the pursuance of any such directions as aforesaid.]]

[(9) On and from the 1st day of February, 2021, the provisions of sub-sections (1), (2), (2-B), (2-C), (3), (4), (4-A), (5), (6) and (6-B) shall apply to pending applications allotted to Interim Board with the following modifications, namely:—

(i) for the words "Settlement Commission", wherever they occur, the words "Interim Board" shall be substituted;

(ii) for the word "Bench", the words "Interim Board" shall be substituted;

(iii) for the purposes of this section, the date referred to in sub-section (2) of section 245-M shall be deemed to be date on which the application was made under section 245-C and received by the Interim Board;

[(iv) *where the time-limit for amending any order or filing of rectification application under sub-section (6-B) expires on or after the 1st day of February, 2021, but before the 1st day of February, 2022, such time-limit shall be extended to the 30th day of September, 2023*.]

(10) On and from the 1st day of February, 2021, the provisions of sub-sections (6A) and (7) shall have effect as if for the words "Settlement Commission", the words "Settlement Commission or Interim Board of Settlement" had been substituted.

(11) The Central Government may by notification in the Official Gazette, make a scheme, for the purposes of settlement in respect of pending applications by the Interim Board, so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the Interim Board and the assessee in the course of proceedings to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a mechanism with dynamic jurisdiction.

(12) The Central Government may, for the purposes of giving effect to the scheme made under sub-section (11), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the said notification:

Provided that no such direction shall be issued after the 31st day of March, 2023.

(13) Every notification issued under sub-section (11) and sub-section (12) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.]"

24. As a sine qua non for the consideration of the application, the ITSC must firstly be satisfied that the applicant has made a full and true disclosure with respect to all details pertaining to income and the amount at which a settlement is prayed to be entered. This becomes apparent from Section 245D(1) enabling the ITSC to issue a notice to the applicant to explain why the application so made be allowed to be proceeded with. The ITSC is further enabled to call for reports and records from the Principal Commissioner with respect to the disclosures as made in such an application. It is only after the ITSC is convinced that a full, true and candid disclosure has been made by the applicant, that the same is admitted for further consideration. The amount which the applicant may ultimately be called upon to pay could hypothetically be more than that which may be disclosed in the SOF. This is by virtue of the exercise and inquiry which the ITSC is enabled to undertake in terms of sub-sections (3) and (4) thereof. It is only upon the conclusion of that inquiry that the ITSC proceeds to fame a formal order in terms contemplated under sub-section (4)(a) and frame consequential directions in accordance with sub-section (6).

25. *Brij Lal* makes a clear distinction between the admission of an

application under Section 245D(1) and the determinative exercise which the ITSC ultimately takes under Section 245D(4). It has in unequivocal terms observed that the interest liability flowing from Section 234 B cannot go or travel beyond the date of admission of the application under Section 245D(1). We are, therefore, of the firm opinion that the ITSC clearly committed no error in restricting the interest liability to the date of admission of the application.

26. In view of the aforesaid, we find no merit in the challenge which stands mounted. The writ petition fails and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 12, 2024/kk