**IN THE INCOME TAX APPELLATE TRIBUNAL**
**AHMEDABAD SPECIAL BENCH 'B', AHMEDABAD**

**[Before Shri G D Agarwal, President,**
**Shri Pramod Kumar, Accountant Member, and**
**Shri Rajpal Yadav, Judicial Member]**

ITA No.498/Ahd/2011
Assessment year: 2008-09

***Claris Life Sciences Limited*** ***...............................Appellant***
*Corporate Towers, Near Parimal Crossing*
*Ellisbridge, Ahmedabad 380006*
*[PAN: AAACC6366Q]*

**Vs.**

***Deputy Commissioner of Income Tax (OSD)***
***Range 1, Ahmedabad*** ***.........................Respondent***

**Appearances by:**

**S N Soparkar, Senior Advocate,** along with **Urvashi Shodhan, D K Parikh** and **Parin Shah** *for the appellant*

**Jagdish, Commissioner (DR), and Prasoon Kabra** *for the respondent*

Date of concluding the hearing : June 30, 2017
Date of pronouncing the order : September 26, 2017

**ORDER**

**Per Pramod Kumar, AM:**

**Background:**

1. On a Division Bench's recommendations dated 18th December 2014, doubting correctness of another division bench order holding that the provisions of Section 221 (1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') cannot be invoked in respect of non-payment of self-assessment tax under section 140A at the time of filing an income tax return which has been revised subsequently, Hon'ble President has constituted this Special Bench to decide the following question:

> **Whether an assessee is liable to penalty under section 221(1) of the Act in a case in which the though the assessee has not paid the self assessment tax under section 140A, while filing the return of income, but revises the income, by filing revised return of income, and pays the**

**tax on the revised return of income at the time of filing the revised return of income?**

2. The above question arises in this backdrop. The assessee before us is a public company which had filed its return of income on 30th September 2008 declaring a taxable income of Rs 44,69,33,790. The total tax due, as per this return of income, was Rs 16,84,01,690 which included income tax of Rs 15,19,12,796 and interest thereon amounting to Rs 1,64,88,896. It was declared by the assessee that the tax deducted at source was Rs 26,91,930 and the remaining amount of tax liability, i.e. Rs 16,84,01,690 has been paid as self- assessment tax under section 140A. This claim was, however, found to be incorrect. Accordingly, the Assessing Officer, informed the assessee, vide letter dated 28th April 2009, that "you have shown payment of self-assessment tax Rs 16,57,09,760 on 28.9.2008" but "the payment of Rs 16,57,09.760 (as claimed by you) is not being reflected in the income tax department software". The assessee was thus "requested to kindly furnish proof of payment of Rs 16,57,09,760 immediately". Vide letter dated 28th April 2009, which was received by the Assessing Officer on 4th May 2009, the assessee accepted that the amount was not actually paid by the assessee and stated that "on account of the financial stringency and liquidity crunch, at the time of filing of the return of income, the company could not make payment of self-assessment tax". In the same letter, the assessee further submitted that "subsequently, certain apparent mistakes and omissions were found and in respect of which we are in the process of revision of accounts a filing of the revised return of income". On 21st May 2009, the assessee filed his revised return of income declaring total income of Rs 37,57,13,110 and paid the admitted self-assessment tax liability thereon which was Rs 14,76,22,910 in respect of income tax and Rs 19,58,090 in respect of fringe benefit tax. On these facts, the Assessing Officer imposed a penalty of Rs 50,00,000 on account of non-payment of self-assessment tax liability under section 140A. Aggrieved, assessee carried the matter in appeal before the CIT(A) but without any success. The assessee came in appeal before this Tribunal. When the matter was being heard by a division bench of this Tribunal, the assessee relied upon a decision of another division bench, in the case of **ACIT Vs Shri Shakti Credits Limited [(2014) 66 SOT 0175 (Lucknow)]** which has, inter alia, held as follows:

> **………we find that though the assessee has not paid admitted tax at the time of filing of the original return, but this return was duly revised within the prescribed period under section 139(5) of the Act and at the time of filing the return under section 139(5) of the Act the admitted tax was paid. The revised return also substitutes the original return, as the assessment was framed on the basis of the revised return. Therefore, the assessee has filed the return under section 139 of the Act and at the time of filing of the return, the admitted tax liability was also paid. Provisions of sub-section (3) of section 140A of the Act can only be invoked where the assessee has not paid admitted tax liability while filing the return under section 139 of the Act. Since the admitted tax liability has been paid at the time of filing the return under section 139(5) of the Act, the provisions of sub-section (3) of section 140A of the Act cannot be invoked for imposing penalty under section 140A of the Act for non-payment of tax or interest on the income declared in the return. Therefore, we are of the**

**considered view that in such circumstances, the penalty under section 140A(3) of the Act cannot be levied. ….**

3. The Division Bench had reservations on correctness of this approach, and the Division Bench was thus of the view that this aspect of the matter needs to be reconsidered by a larger bench. Accepting this recommendation, Hon'ble President has constituted this special bench. That is how we have come be *in seisin* of the matter.

**Preliminary issue:**

4. Shri Soparkar begins by pointing out that what is before the Special Bench is only one of the aspects of the matter and a decision on this aspect, by itself, cannot decide the matter as to whether or not the penalty under section 221(1) can be sustained on the facts of this case. He submits that in the present case, the first question whether, given the fact that the assessee had subsequently filed a revised return and duly paid self-assessment taxes thereon, the provisions of section 221(1) can at all be invoked in respect of non-payment of self-assessment taxes at the time of filing of the original return. Even if this issue is decided against the assessee, it will still have to be decided by whether or not the assessee had a reasonable cause for non-payment of self-assessment tax under section 140A because even if the provisions of section 221(1) come into play, as long as the assessee has a reasonable cause for his failure to pay the admitted tax liability, the exception set out in second proviso to ection 221(1), which provide that "where the assessee proves to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons, no penalty shall be levied under this section", will come to the assessee's rescue. He submits that even if that issue is also decided against the assessee, there may also be other legal hurdles to cross before the Assessing Officer can impose the penalty. The question before the Special Bench is thus no more than an academic question which does not deserve to adjudicated on standalone basis. On the basis of this line of reasoning, learned counsel urges us to deal with entire appeal and not be limited to the question framed for the consideration of special bench. Shri Jagdish, learned Commissioner (DR), on the other hand, urges us to take a call on the question referred to us. He points out that the division bench has, while referring the matter to the special bench, expressed reservations on correctness of decision of another division bench, in the case of Shri Shakti Credits (supra), which was relied upon by the assessee himself. The stand so taken by the division bench was thus quite righteous and fair in approach, and, now that the division bench has raised that doubt, it is bounden duty of the special bench to express its views on the question referred to the special bench. He thus urges us to adjudicate upon the question referred to the special bench. He, however, was gracious enough to leave it to us to take this call, and assures us that no matter what path we chose, he has no issues either way. In brief rejoinder, learned senior counsel stated that he also has no issues either way and he has simply explained his point of view and he leaves it at that.

5. Having heard the learned representatives, and having given our careful consideration to their submissions we are inclined to adjudicate upon the question, as referred to us, on merits, and desist from initiating the process of enlarging the

scope of adjudication before this special bench. It is only on this question that the views of a bench of three members are relevant, since the views expressed by one division bench, on this aspect of the matter, did not find concurrence by another division bench. There is no point in enlarging the scope of issue before the special bench and extending it to areas on which there are no differences in the approach of the division benches. In any case, all other issues relating to the imposition of impugned penalty, as may be necessary for adjudication, will be considered by the division bench giving effect to this order. We, therefore, reject the submissions of the learned counsel for the assessee, and proceed to deal with the question referred to the special bench.

**Submissions by the assessee:**

6. Coming to the facts of this case, learned senior counsel for the assessee takes us through the sequence of events with a view to, as he submits, demonstrate that the revision of income tax return was *bonafide*.

7. It is pointed out that the original income tax return, as filed by the assessee on 30th September 2008, was prepared on the basis of the profit and loss account for the year ended 31st March 2008- a copy of which was placed before us at page 38 of the paperbook. This profit and loss account showed net profit of Rs 122,39,74,590 which was the starting point of computation of income, attached to the original income tax return, a copy of which was placed before us at page 2 of the paperbook. The revised return of income, which was filed on 2nd June 2009, was based on the revised profit and loss account for the year ended 31st March 2008- a copy of which was placed before us at paperbook page 54. This revised profit and loss account showed a net profit of Rs 112,87,65,014 which was also the starting point of computation of revised taxable income- a copy of which was placed before us at page 24 of the paper book. It was also pointed out that there were serious mistakes in the original profit and loss account. While the sales and operating income shown in the revised profit and loss account was Rs 577,08,58,160, the original profit and loss account disclosed sales and operating income at Rs 586,05,03,708. It was also submitted that, as per note 1(a) in schedule 20 to the revised annual accounts, it was noted that subsequent to the finalization of original profit and loss accounts, “certain omissions and mistakes came to the notice of the management of the company, and, therefore, financial statements have been revised incorporating the changes required to be made to give suitable effects of omissions and mistakes”. On the basis of these facts, it is emphasized that the revision of return was wholly bonafide. It is also pointed that that the return was revised well within permissible limit and there is no, and there cannot be any, dispute on this aspect of the matter either.

8. Learned senior counsel then submits that the impact of filing of a *bonafide* revised return is that once a valid revised income tax return is filed, old income tax return is to be ignored in entirety as it supplants, supersedes and replaces the original income tax return. He invites our attention to Hon’ble Punjab and Haryana High Court’s judgment in the case of **Beco Engineering Co Ltd Vs CIT [(1984) 148 ITR 478 (P&H)]** which has, *inter alia*, held that, “in case an assessee files revised returns, they are to be taken into consideration for the purposes of making an assessment” and that “the original returns cannot be adverted to for that purpose”.

Learned counsel also points out that, in holding so, Hon'ble Punjab & Haryana High Court has followed the judgment of Hon'ble Allahabad High Court in the case of **Niranjan Lal Ram Chandra vs. CIT [(1982) 134 ITR 352 (All)]**, wherein it was observed that "once a revised return has been filed under s. 139(5), the original return is substituted by the revised return as a result of the amendments made in the original return by the revised return" and that "consequently, the IT authorities could not take into consideration the original returns for the assessment of the assessee". Learned senior counsel then points out that the views so expressed in Beco Engineering's case (supra) have been confirmed by Hon'ble Supreme Court in the case of **CIT vs Mahendra Mills [(2000) 243 ITR 56 (SC)]**. Learned counsel then refers to the judgment of Hon'ble Bombay High Court, in the case of **CIT vs Shri Someshwar Sahkari Sakar Kharana Ltd [(1989) 177 ITR 443 (Bom)]** wherein, according to the learned counsel, it was held that once a valid revised return is filed, it cannot be open to the Assessing Officer to even look at the original income tax return. Learned counsel then turns to Hon'ble jurisdictional High Court's judgment in the case of **CIT Vs Arun Textile [(1991) 192 ITR 700 (Guj)]**, in support of the proposition that, once a valid revised income tax return is filed, it cannot be open to the income tax authorities to refer to the original income tax return filed by the assessee. It is submitted that the filing of a revised income tax return thus completely supersedes and replaces the original income tax return, and, therefore, it cannot be open to the Assessing Officer to refer to the original income tax return for the purpose of ascertaining default in payment of admitted tax liability. The very foundation of the impugned penalty proceedings thus, according to the learned counsel, is vitiated in law.

9. Learned senior counsel's next plank of argument is that the default in payment of admitted tax liability under section 221 r.w.s.140A is an event specific lapse for non-payment of admitted tax liability at the time of filing of the income tax return, unlike, for example, time specific lapses such as the lapses referable to Section 201, 218, 220(1) r.w.s 220(4) etc which relate to lapses at a particular point of time. In this case, according to the learned counsel, filing of an income tax return is integral to penalty under section 221(1), and, therefore, the imposition of penalty cannot be divorced from the filing of income tax return, but then, as learned counsel hastens to add, once the income tax return itself is lawfully revised, the original return ceases to have any relevance. Learned counsel argues that when penalty under section 221(1) r.w.s 140A is to seen as penalty for an event specific lapse, as we are obliged to view the same, it is immaterial whether the payment was not made at the time of filing original income tax return and was made only at the point of time when revised return of income is filed. Viewed thus, according to the learned counsel, merely because admitted tax liability was not paid at the time of filing the original income tax return, though paid at the time of filing the revised income tax return, penalty under section 221 r.w.s 140A cannot be imposed.

10. Finally, learned senior counsel submits, even if we are of the view that the views so canvassed by the assessees is not legally correct, it is at least a possible view of the matter, and when two reasonable views are possible, the view in favour of the assessee should be adopted. In support of this proposition, he relies upon oft quoted decision of Hon'ble Supreme Court, in the case of **CIT vs Vegetable Products Ltd [(1973) 88 ITR 192 (SC)]**. We are thus urged to concur with the views

expressed by the Tribunal in the case of Shiv Shakti Credits *(supra)*, as it is, at the minimum, a reasonable and possible view of the matter and is in favour of the assessee.

**Stand of the revenue:**

11. Shri Jagdish, learned Commissioner (DR), vehemently opposes the submissions of the assessee. He beings by pointing out that, on facts, assessee has behaved in a very irresponsible manner and resorted to outright falsehoods. He points out that, as evident from the original income tax return- a copy of which is filed before us at page 1 of the paper-book, the assessee claims to have paid Rs 16,67,09,760 but no such payment was actually made. Learned Departmental Representative that this misstatement was detected when the discrepancy in claim of tax payment of Rs 16,67 crores vis-à-vis the actual tax payment figures in income tax department's software was reported. Until the time the assessee was confronted with this discrepancy- as evident from the letter dated 28$^{th}$ April 2009 written by the Assessing Officer to the assessee, according to the learned Departmental Representative, the assessee did not accept his misrepresentation about the payment of taxes. It was only in response to Assessing Officer's letter dated 28$^{th}$ April, 2009, as pointed out by the learned Departmental Representative, that the assessee accepted the lapse and proposed a fresh payment schedule for the admitted tax liability. The impugned penalty is for this lapse by the assesse in not making the payment of admitted tax liability. It is then submitted that the filing of a revised income tax return is a subsequent event which happened much later, and the fact that the assessee paid admitted tax liability at the time of filing revised return cannot exonerate the assessee of its earlier lapse. It is also pointed out that even a subsequent payment of the admitted tax liability does not take away the penal consequences of the lapse in not paying the admitted tax liability at the time of filing of the return. Learned Departmental Representative then submits that if we are to proceed on the basis that filing of correct and *bonafide* revised return, with due admitted tax payment, will exonerate the assessee of its earlier lapse in not paying the admitted tax liability at the time of filing of original income tax return, it will not only be inequitable inasmuch as it will be tilting in favour of the person making mistake in filing of original income tax return, it will also incentivise making mistakes in filing of the income tax returns. Learned Departmental Representative then invites our attention to Hon'ble Bombay High Court's judgment in the case of **Reliance Industries Ltd Vs CIT [(2015) 377 ITR 74 (Bom)]** in support of the proposition that penalty under section 221 is leviable even if tax has been subsequently deposited before the initiation of penalty proceedings. Learned Departmental Representative then invites our attention to Hon'ble Supreme Court's judgment in the case of **Prakash Nath Khanna Vs CIT [(2004) 266 ITR 1 (SC)],** in support of the proposition that, as held by Hon'ble Supreme Court, even if a return is filed under section 139(4), the assessee is still at fault for not filing the income tax return within time prescribed under section 139(1) and the penal consequences would follow. Our attention is then invited to Hon'ble Delhi High Court's judgment in the case of **Vinod Kumar Khatri Vs DCIT [(2016) 129 DTR 377 (Del)]** wherein it is observed that "there is merit in the contention that the revised return should relate back to the return originally filed, minus the omissions and the wrong statements" and that "even if the revised return replaces the original return, the assessment proceedings leading upto the revised

return donot get obliterated". On the strength of these submissions, learned Departmental Representative urges us to hold that merely because the assessee has subsequently filed a revised return, and paid due admitted tax liability thereon, earlier lapse of the assessee in not making payment of admitted tax liability does not come to an end.

**Rejoinder:**

12. In his brief rejoinder, learned counsel for the assessee submits that we must bear in mind the fact that the impugned penalty is not for misreporting the facts or for making incorrect statements, but for non payment of admitted tax liability at the time of filing income tax return. It is, therefore, not even relevant whether the assesse made any wrong statement about payment of admitted tax liability. Such a lapse of the assessee, even if actually committed, is not relevant for the present purposes. As for Hon'ble Supreme Court's judgment in the case of Prakash Nath Khanna (supra), learned counsel points out that this decision in the context of not adhering to time limit for filing of income tax return. Learned counsel once again points out that the lapse in not making payment of admitted tax liability, at the time of filing income tax return, is event specific and not time specific. Nothing therefore, in the opinion of the learned counsel, turns on this Supreme Court decision. Coming to Hon'ble Delhi High Court's judgment in the case of Vinod Khatri *(supra),* learned counsel submits that this decision has been delivered in an altogether different context, and, the observations made therein, therefore, have no application in the situation before us. It is pointed out that in the said decision the question was whether non issuance of notice under section 143(2), post filing of the revised return, would invalidate the assessment proceedings. The observations made in an altogether different context should not be taken into consideration, for the present purposes, as the law laid down by Their Lordships. Learned counsel once again reiterates his submissions and urges us to hold that since the assessee has filed a valid revised return and the assessee has duly paid admitted tax liability thereon, penalty under section 221(1) r.w.s. 140A cannot be imposed in respect of lapse in non-payment of admitted tax liability in respect of original income tax return.

13. We have considered the rival submissions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

**Our analysis:**

14. In order to express our opinion on the question referred to us, it is necessary to understand as to what is the nature of lapse which is sought to be penalized by imposition of penalty under section 221(1) read with section 140A, and the impact of revision of income tax return so far as this lapse is concerned.

15. We may begin by reproducing the relevant statutory provisions, i.e. sections 140A(1) and 221(1) as they stood at the relevant point of time, which are as follows:

***140A (1) – Self Assessment***

***Where any tax is payable on the basis of any return required to be furnished under section 115WD or section 115WH or section 139 or section 142 or section 148 or section 153A or, as the case may be, section 158BC, after taking into account the amount of tax, if any, already paid under any provision of this Act, the assessee shall be liable to pay such tax together with interest payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return and the return shall be accompanied by proof of payment of such tax and interest.***

***221. (1) Penalty payable when tax in default***

***When an assessee is in default or is deemed to be in default in making a payment of tax, he shall, in addition to the amount of the arrears and the amount of interest payable under sub-section (2) of section 220, be liable, by way of penalty, to pay such amount as the Assessing Officer may direct, and in the case of a continuing default, such further amount or amounts as the Assessing Officer may, from time to time, direct, so, however, that the total amount of penalty does not exceed the amount of tax in arrears :***

***Provided that before levying any such penalty, the assessee shall be given a reasonable opportunity of being heard:***

***Provided further that where the assessee proves to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons, no penalty shall be levied under this section.***

***Explanation.— For the removal of doubt, it is hereby declared that an assessee shall not cease to be liable to any penalty under this sub-section merely by reason of the fact that before the levy of such penalty he has paid the tax.***

16. As a plain reading of the above statutory provisions would show, the lapse, referred to in section 140A(1), is the failure "**to pay such** *(admitted)* **tax together with interest payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return"** and the lapses punishable under section 221(1) are the lapses in respect of **"default in making a payment of tax".** The default triggering the penal liability under section 221(1) is the default in making payment of tax, and that the default in payment is tax is with reference to the filing of the income tax return. Viewed thus, default is committed at the point of time when a return of income is filed without making payment of the admitted tax liability. Clearly, therefore, the assessee committed a default in not paying the admitted tax liability when it filed the original income tax return, without payment of admitted tax liability, on 30th September 2008. To this extent, there is no dispute or ambiguity at all.The question then arises as to what is the impact of filing a revised income tax return. To the extent it pertains to the assessment proceedings, undoubtedly inasmuch as it is the validly revised return is the starting point for the assessment of income, the original income tax return ceases to be relevant. However, that substitution of income tax return is only for the purposes of assessment of income. All the judicial precedents cited at the bar is on these lines. The questions which have come up for consideration in the context of all these judicial precedents is assessment of income and the related claims, in the income tax returns, on that aspect of the matter. The common thread in the cases of Beco Engineering *(supra),* Niranjan Lal Ram

Chhandra *(supra)*, Shri Soemshwaar Sahkari Karkhana *(supra),* Arun Textiles *(supra)* and Mahendra Mills *(supra),* is that in all these cases, there were variations between the claims made in the original income tax return vis-à-vis the revised returns of income and the question before Hon'ble Courts above was as to which set of claims, made in the original return or made in revised returns, should be considered by the Assessing Officer. There is an unanimity in all these decisions that the claims made in revised return alone could be considered by the Assessing Officer but neither we have any quarrel with this proposition nor is that aspect at all relevant in deciding the issue before us. The claims made in an income tax return is one thing and all the actions connected with the original income tax return becoming a legal nullity quite another thing. The basic character and traits of these two set of things are materially different, and just because revised return substitutes the original income tax return for the purposes of adjudication on claims made in the income tax return does not mean that revised income tax return also substitutes original income tax return for all legal purposes, including penal consequences in respect of defaults committed in respect of the original income tax return. That will be a wholly superfluous approach, if adopted. The observations made by Their Lordships in this context cannot be viewed on standalone basis as a complete exposition of law on the question which did not even come up for consideration before Their Lordships. We may, in this regard, refer to the following oft quoted observations made by Hon'ble Supreme Court in the case of **CIT vs Sun Engineering Works Pvt Ltd [(1992) 198 ITR 297 (SC)]**:

> ***……….Such an interpretation would be reading that judgment totally out of context in which the questions arose for decision in that case. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a latter case, the Courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings. In H.H. Maharajadhiraja Madhav Rao Jiwaji Rao Scindia Bahadur v. Union of India [1971] 3 SCR 9 this Court cautioned: "It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment."***

17. We may also, in this context, refer to the words of guidance by Hon'ble Supreme Court in Mumbai Kamgar Sabha vs. Abdulbahi Faizullbhai AIR 1976 SC 1455 wherein their Lordships have, in their inimitable and felicitous words observed thus,

> ***"It is trite, going by anglophonic principles that a ruling of a superior Court is binding law. It is not of scriptural sanctity but of ratio-wise luminosity within the edifice of facts where the judicial lamp plays the legal flame. Beyond those walls and de hors the milieu we cannot impart eternal vernal value to the***

> ***decisions, exalting the precedents into a prison house of bigotry, regardless of the varying circumstances and myriad developments. Realism dictates that a judgment has to be read, subject to the facts directly presented for consideration and not affecting the matters which may lurk in the dark".***

18. It is, therefore, indeed duty of every subordinate judicial forum to apply the ruling of the superior Courts in such a manner so as to enforce the true legal principles emerging from the same, by putting the words and expression used in the ruling in the right perspective and by taking a holistic legal view of the matter. Such an exercise is not to be viewed as diluting the law laid down in a ruling, but as a cerebral judicial exercise and a call of duty in judicial offices. We have highest respects for the rulings by the higher judicial forums, but it would indeed be inappropriate to use the words and expressions employed in these ruling, in isolation, as complete exposition of law and as a blind man's walking stick, rather than luminosity of judicial knowledge with the benefit of which we have to perform our duties of office. Let us, in the light of our this understanding about the manner in which observations made by the Hon'ble Courts above are to be construed by the lower tiers of judicial hierarchy, come back to the core issue requiring our adjudication.

19. We have noted that all the observations made by Hon'ble Courts above, on which vehement reliance has been placed by the learned senior counsel, are the observations made in the context of computation of taxable income of the assesses. That context is materially different vis-à-vis the context that we are dealing with i.e. imposition of penalty under section 221(1) for not paying admitted tax liability, under section 140A, at the time of filing an income tax return. The question before us is whether by paying the admitted tax liability at the time of filing revised income return, the lapse committed in not paying the admitted tax liability at the time of filing the original income tax return gets obliterated or wiped out so that the consequences of earlier lapse must not be visited with penal consequences. The answer has to be emphatically in negative. What has been stated in the context of computation or assessment of income does not really hold good in respect of lapse committed at the time of filing of the original income tax return- which is required to be visited with penal consequences under section 221(1). The assessee has undoubtedly committed the default in not making payment of admitted tax liability under section 140A(1) at the point of time when this income tax return was filed, and it is this default in respect of which penalty is imposable under section 221(1). As Section 221(1) itself states in so many words, the assessee "**shall not cease to be liable to any penalty under this sub-section merely by reason of the fact that before the levy of such penalty he has paid the tax**". Subsequent payment of tax, whether with or without revision of income tax return, is thus of no help to the assessee so far as penal consequences under section 221(1) are concerned. The law is clear and unambiguous. As regards learned counsel's submissions regarding event based triggers for penal consequences and time based triggers for penal consequences, even if we accept that penalty under section 221(1) r.w.s. 140A(1) requires an event based trigger, rather than a time based trigger, nothing really turns on this plea of the assessee since the event triggering the penal consequences under section 221(1)

r.w.s. 140A(1) is non-payment of admitted tax liability at the time of filing original income tax return on 30.9.2008 and subsequent revision of income tax return with due payment of admitted tax liability, for the detailed reasons set out above, does not obliterate the default at the time of filing original return of income. The payment of admitted tax liability, while filing revised return of income under section 139(5), does not affect the lapse committed at the time of filing the original return of income, even though claims made in such original income tax return stand supplanted by the claims made in the revised income tax return.

**Our conclusions:**

20. In view of the above discussions, as also bearing in mind entirety of the case, in our considered view, the assessee is, in principle, covered by the scope of the penalty under section 221(1) of the Act in a case in which the though the assessee has not paid the admitted tax liability under section 140A, while filing the original return of income, the assessee subsequently pays the tax on the revised return of income, at the time of filing the revised return of income. We, therefore, answer the question referred to the special bench in affirmative and against the assessee. However, whether the penalty under section 221(1) r.w.s. 140A(1) is actually leviable on the facts of a particular case or not will depend on the facts of that case and depending on, *inter alia*, the factual finding as to whether or not the default of the assessee was for good and sufficient reasons- something with which we are not really concerned at this stage due to inherently limited scope of the question before the special bench.

21. The matter shall now go back to the division bench for giving effect to our above observations and for deciding the matter afresh in the light of, *inter alia*, the above stated legal position. Pronounced in the open court today on the 26th day of September 2017.

| *Sd/xx* | *Sd/xx* | *Sd/xx* |
|---|---|---|
| **G D Agarwal** | **Rajpal Yadav** | **Pramod Kumar** |
| (President) | (Judicial Member) | (Accountant Member) |

***Ahmedabad: the 26th day of September, 2017***

| *Copies to:* | *(1)* | *The appellant* | *(2)* | *The respondent* |
|---|---|---|---|---|
| | *(3)* | *Commissioner* | *(4)* | *Commissioner (A)* |
| | *(5)* | *Departmental Representative* | *(6)* | *Guard File* |

*By order*

*Assistant Registrar*
*Income Tax Appellate Tribunal*
*Ahmedabad benches, Ahmedabad*