Commissioner Of Income Tax Vs Nahar Spinning Mills Ltd.

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 6, 2011

Acts Referred: Constitution of India, 1950 â€" Article 141
Income Tax Act, 1961 â€" Section 115, 115J, 115J(1A, 115J(A), 115JA

Citation: (2012) 250 CTR 367 : (2011) 339 ITR 557

Hon'ble Judges: A.K. Goel, Acting C.J.; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: Denesh Goyal, for the Appellant; Sanjay Bonsal with Robin Jarial, for the Respondent

Final Decision: Allowed

Judgement

Ajay Kumar Mittal, J.

This appeal has been preferred by the Revenue under s. 260A of the IT Act, 1961 (in short ""the Act"") against the order dt. 3rd June, 2003 passed

by the income tax Appellate Tribunal, Chandigarh, Bench ""A"",Chandigarh (hereinafter referred to as ""the Tribunal"") in ITA No.1078/Chd/1997,

relating to the asst. yr. 1989-90. The appeal was admitted on 11th July, 2006 to consider the following substantial question of law :

Whether, on the facts and in the circumstances of the case, the interpretation of s. 234B(4) made by the Tribunal is sustainable in law as the same

being based on misinterpretation of law as well as facts of the case inasmuch as order passed under s. 147 r/w s. 143(3) of the IT Act in view of

Expln. 2 to s. 234B was a regular assessment as earlier only processing under s. 143(1)(a) was made

Briefly stated, the facts necessary for adjudication as narrated in the appeal are that the assessee filed its return on 1st Jan., 1990 declaring an

income of Rs. 43,58,142 under s. 115J of the Act. The said return was processed under s. 143(1)(a) of the Act on 26th Feb., 1990 which

resulted into a refund of Rs. 1,76,518. Thereafter, notice under s. 148 of the Act was issued to the assessee for the excess deduction claimed

under ss. 80HHC and 80-I of the Act on 28th Sept., 1990. Notices under ss. 142(1)and 143(2) of the Act were issued on 4th July, 1991. The

assessment for the first time was completed on 25th Aug., 1992 under s. 143(3)/147 ofthe Act at a total income of Rs. 11,62,739. The AO vide

order dt. 25thAug., 1992 computed the total income as per provisions of s. 115J of the Act at Rs. 45,90,182 and also charged interest under s.

234B of the Act. Feeling aggrieved, the assessee approached the CIT(A) who vide order dt.27th Nov., 1992 partly allowed the appeal on the

issue of charging of interest under s. 234B of the Act. Feeling dissatisfied, the Department took the matter before the Tribunal and the assessee

filed cross-objections. The Tribunal upheld the order of the CIT(A) vide order dt.28th Aug., 2001 by observing that the assessment completed

under s. 147 of the Act was not a regular assessment. Further, the assessment made by the AO was revised by the Department under s. 263 of

the Act vide order dt. 23rd March, 1995 and a direction was issued to the AO to withdraw relief granted Under s. 80I of the Act on the receipt of

duty drawback relating to the goods exported-which were manufactured by the assessee in the industrial undertaking. Accordingly, the AO made

assessment under s. 143(3) of the Act on 31st Jan., 1997 and recomputed the assessed income at Rs. 68,83,294 after recomputing deduction

under s. 80I of the Act, The interest under s. 234B of the Act was increased by Rs. 9,82,000 on account of enhancement. Against the said

assessment order, the assessee filed an appeal before the CIT(A) who vide order dt. 12th Aug., 1997 upheld the quantum addition. On the issue

of charging of interest under s. 234B of the Act, the CIT(A) held that the same was not chargeable as the assessment order which had been

revised was not a regular assessment. Being dissatisfied, the Department approached the Tribunal. The Tribunal vide order dt. 3rdJune, 2003

upheld the order of the CIT(A) and dismissed the appeal. Hence, the present appeal by the Revenue.

2. We have heard learned counsel for the parties.

3. Learned counsel for the Revenue submitted that the assessee having failed to pay the advance tax on the assessed income under the provisions

of the Act was liable to pay interest under s. 234B of the Act. Learned counsel with the aid of Expln. 2 to s. 234B of the Act sought to draw

support to contend that the assessment which was framed by the AO under s. 143(3)/147 on 25th Aug., 1992 was the first assessment as earlier

the return which was filed by the assessee was processed under s. 143(1) (a) of the Act on 26th Feb., 1990 which had resulted into a refund of

Rs. 1,76,518. According to the learned counsel, the order of the CIT(A)dt. 27th Nov., 1992 and the Tribunal dt. 28th Aug., 2001 deleting the

interest levied under s. 234B of the Act was contrary to the decision of the Kerala High Court in COMMISSIONER OF INCOME TAX Vs. K.

GOVINDAN and SONS, : Commissioner of Income Tax Vs. K. Govindan and Sons., and affirmed by the Supreme Court in K.Govindan &

Sons vs. CIT (2000) 164 CTR (SC) 490 : (2001) 247 ITR 192(SC) and also Allahabad High Court in Shri Abdul Majid Vs. Commissioner of

Income Tax, . He submitted that no appeal had been filed against the said decision in view of tax effect involved being below monetary limit of Rs.

2 lacs fixed for filing appeal under s. 260A of the Act by CBDT''s Instruction No. 1979 dt. 27th March, 2000 and 1985dt. 29th June, 2000 as

mentioned in para 4 of the appeal. He urged thatthe decisions of the Tribunal and the CIT(A) being contrary to the statutory provision contained in

Expln. 2 to s. 234B of the Act and the decision of the apex Court in K. Govindan & Sons'' case (supra) which was binding under Art. 141 of the

Constitution would render the order in effective and would not take away the right of the Revenue to charge interest under s. 234B(4) of the Act.

According to the learned counsel, interest under s. 234B of the Act was correctly charged in the assessment order passed under s. 143(3)/147

and, therefore, it could be subsequently enhanced on completion of set aside assessment.

4. Controverting the aforesaid submissions, learned counsel for the assessee submitted that the CIT(A) vide order dt. 27th Nov., 1992 and the

Tribunal vide order dt. 28th Aug., 2001 had held that sub-s. (1) of s. 234B of the Act was not applicable to the present case and no interest was

chargeable there under as it was not first assessment framed in pursuance to notice issued under s. 147 of the Act. Even application filed under s.

254(2) of the Act for rectification of order dt. 28th Aug., 2001was dismissed on 11th May, 2004. Continuing further, learned counsel argued that

accordingly subs. (4) of s. 234B would not apply and the question of levy of interest under s. 234B of the Act was not called for in the present

case. He submitted that the Tribunal had rightly decided the issue in favour of the assessee. Reliance was placed by the learned counsel on the

judgment of this Court in Darshan Lal Gulati vs. CIT(2008) 5 DTR (P&H) 233 : (2008) 173 Taxman 268 (P&H)

5. In the alternative, it was urged by the learned counsel that the income having been assessed on book profits under s. 115J of the Act, the

judgment of the Karnataka High Court in Kwality Biscuits Ltd. Vs. Commissioner of Income Tax, was applicable which stood affirmed by the

apex Court as the civil appeal filed there against was dismissed by the judgment reported in Commissioner of Income Tax Vs. Kwality Biscuits

Ltd., and on that basis, no interest under s. 234B of the Act was exigible.

6. In rejoinder, learned counsel for the Revenue reiterated his earlier submissions. Adverting to the alternative plea of the assessee, he relied upon

the decision of the apex Court in Jt. Commissioner of Income Tax, Mumbai Vs. Rolta India Ltd., and the judgments of this Court in IT Appeal

No. 589 of 2006 (Amtek Auto Ltd. vs. CIT) decided on 25th March, 2011 and IT Appeal No. 176 of 2003(CIT vs. Steel Strips Leasing Ltd.)

decided on 4th March, 2011 to controvert the said contention.

7. After giving our thoughtful consideration to the respective submissions of learned counsel for the parties, we find substantial force in the

submissions raised by the learned counsel for the Revenue.

8. It is not disputed that the earlier return which was filed by the assessee was processed under s. 143(1)(a) of the Act on 26th Feb., 1990and a

refund of Rs. 1,76,518 was made. The assessment was framed in pursuance to the notice under s. 148 of the Act on 25th Aug., 1992. The point

for consideration would be whether the assessment which was framed on 25th Aug., 1992 under s. 143(3)/147 of the Act was a regular

assessment and, therefore, interest under s. 234B of the Act could be charged by virtue of that order. Sec. 234B of the Act at the relevant time

read thus:

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 s. 208 has

failed to pay such tax or, where the advance tax paid by such assessee under the provisions of s. 210 is less than ninety per cent of the assessed

tax, the assessee shall be liable to pay simple interest @ two percent for every month or part of a month comprised in the period from the1st April

next following such financial year to the date of determination of total income under subts. (1) of s. 143 or 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,-

(a) for the purposes of computing the interest payable under s. 140A, the tax on the total income as declared in the return referred to in that

section;

(b) in any other case, the tax on the total income determined under sub-s. (1) of s. 143 or on regular assessment, as reduced by the amount of 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 local income.

Explanation 2.-Where, in relation to an assessment year, an assessment is made for the first time under s. 147, the assessment so made shall be

regarded as a regular assessment for the purposes of this section.

Explanation 3.-In Expln. 1 and in sub-s. (3) ""tax on the total income determined under sub-s. (1) of s. 143"" shall not include the additional income

tax, if any, payable under s. 143.

(2) Where, before the date of determination of total income under sub-s.(1) of s. 143 or completion of a regular assessment, tax is paid by the

assessee under s. 140A or otherwise,-

(i) interest shall be calculated in accordance with the foregoing provisions of this Explanation upto the date on which the tax is so paid, and reduced

by the interest, if any, paid under s. 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.

(3) Where, as a result of an order of reassessment or recomputation under s. 147, the amount on which interest was payable under sub-s. (1)is

increased, the assessee shall be liable to pay simple interest @ two percent for every month or part of a month comprised in the period

commencing on the day following the date of determination of total income under sub-s. (1) of s. 143 or regular assessment referred to insub-s. (1)

and ending on the date of the reassessment or recomputation under s. 147, on the amount by which the tax on the total income determined on the

basis of the reassessment or recomputation exceeds the tax on the total income determined under sub-s. (1) of s. 143 or onthe basis of the regular

assessment aforesaid.

(4) Where, as a result of an order under s. 154 or s. 155 or s. 250 or s. 254 or s. 260 or s. 262 or s. 263 or s. 264 or an order of the Settlement

Commission under sub-s. (4) of s. 245D, the amount on which interest was payable under sub-s. (1) or sub-s. (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 AO shall serve on the assessee a notice of demand in the prescribed form specifying the

sumpayable and such notice of demand shall be deemed to be a notice unders. 156 and the provisions of this Act shall apply accordingly;

(ii) in a case where the interest is reduced, the excess interest paid, ifany, 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.

9. Expln. 2 to s. 234B of the Act postulates that where an assessment is made for the first time in pursuance to proceedings under s. 147, it shall

be regarded as a regular assessment for the purposes of s. 234B of the Act.

10. Kerala High Court in K. Govindan & Sons case (supra) while considering identical Expln. 2 to s. 139(8) of the Act had recorded asunder;

Considering Expln. 2 to &. 139(8) which is clarificatory in nature and theother case law, we are of the considered view that the assessment

madefor the first time under s. 147(a) r/w s. 148 is a regular assessment and that being so, the AO could legally harge interest under s. 139(8).

11. The apex Court while affirming the decision of the Kerala High Courtin K. Govindan & Sons case (supra) had held as under :

The view taken by us that a first or initial assessment under s. 147 of the Act is a "regular assessment" within the meaning of s. 139(8) of the Act,

has been the position of law even before the Explanation in s. 139(8) was added by amendment. In that view of the matter the Explanationmerely

clarified the position taking it beyond the pale of doubt. Parliament thought it necessary to add the Explanation with a view toremove the doubt

raised in certain decisions of different High Courts inwhich a contrary view was taken. Thus, the Explanation is merely aclarificatory provision and

has application to the period of assessment inthe case, i.e., asst. yr. 1984-85.

12. It would be apposite to refer to the order of the Tribunal dt. 28thAug., 2001 which had affirmed the order of the CIT(A) dt. 27th Nov.,

1992deleting the levy of interest under s. 234B of the Act in the order of assessment under s. 143(3)/147 dt. 25th Aug., 1992 passed by the

AO.The relevant observation in the order reads thus :

12. In this case the assessee filed its original return declaring income atRs. 43,58,142. The same was processed under s. 143(1)(a) and the

AOfound that the assessee has claimed excess deduction under ss. 80HHCand 80I which were allowed while processing the return under s.

143(1)(a) on 26th Feb., 1990, was served upon the assessee on 11th Oct., 1990. Thereafter, the assessment under s. 147/143(3) of IT Act was

framed on 25th Aug., 1992 and the AO charged interest under s. 234B ofIT Act.

13. On going through the provision of Explns. 1 and 2 of s. 234B, theCIT(A) came to the conclusion that the interest s. 234B can only be charged

by the AO in the case of regular assessment framed by the AOunder s. 143(1)(a) or first time under s. 143(3) of IT Act because subs. (3)of s.

234B of IT Act gives power to AO to increase the interest under s. 234B if the interest is charged under s. 143(1) or under regular assessment

and not otherwise.

The CIT(A), thereafter concluded that as the assessment was made for the first time under s. 147 but has been framed without assessmentunder s.

143(1) has already been completed so the AO was not justifiedin invoking the provisions of s. 234B for charging interest from the assessee as it

was not a regular assessment first time framed by the AO.The CIT(A) thus deleted the interest amount charged under s. 234B of theIT Act by the

AO.

14. Keeping in view the provisions of s. 234B, we do not find any illegalityor infirmity in the well reasoned and well discussed order of

CIT(A)because assessment framed under s. 147 being not made for the firsttime is not a regular assessment and hence the order of CIT(A) in

holdingthat the interest under s. 234B of IT Act can only be charged in a case ofregular assessment, does not call for any interference from outside

andaccordingly the same, in this regard is upheld. In this view of the matter,we find support from the decision of Jurisdictional High Court of

Punjab& Haryana in the case of SMT. KAMLA VATI Vs. COMMISSIONER OF Income Tax (CENTRAL), PATIALA., wherein it has been

held that the assessment or reassessmentmade under s. 147 cannot be considered to be a regular assessment.Accordingly, ground No. 3 of

Revenue"s appeal, having no merits, isrejected.

13. The legal position enunciated in the order of the Tribunal dt. 28thAug., 2001 being contrary to statutory provision and settled law as heldby the

apex Court in K. Govindan & Sons case (supra) decided on 1stDec, 2000, the order of the Tribunal would not affect the rights of theRevenue as

the law declared by the apex Court was binding under Art. 141 of the Constitution of India. Further, it may be noticed that assubmitted by the

learned counsel for the Revenue, no appeal under s.260A of the Act had been filed against the order of the Tribunal dt. 28thAug., 2001 as the tax

effect involved was below monetary limit prescribedby the circulars of the CBDT. The order of the Tribunal being contrary tostatutory provision

and the legal enunciation of the apex Court would berendered ineffective in view of law propounded in para 16 in Director of Settlements, Andhra

Pradesh and Others Vs. M.R. Apparao and Another, . The Supreme Court following its earlier decision in Shenoy and Co., Represented by its

Partner, Bele Srinivasa Rao Street, Bangalore and Others Vs. Commercial Tax Officer, Circle II, Bangalore and Others, had held that Art. 141 of

the Constitution of Indiaempowers the Supreme Court to declare the law and statement of Courton matter of facts may not have binding force but

the ratio of thedecision is binding. It was further observed that the judgment of the HighCourt or the subordinate Court which does not follow the

decision of the apex Court on law would be a nullity. Thus, no indefeasible right wouldaccrue on the basis of order of the Tribunal dt. 28th Aug.,

2001 in favourof the assessee notwithstanding the fact that no appeal had been filedagainst the said order. In the facts and circumstances of the

presentcase, the order of the Tribunal dt. 28th Aug., 2001 would not come in theway of the Revenue to invoke s. 234B of the Act. Once that is

so, then theassessment order dt. 31st Jan., 1997 passed in pursuance of revisionalorder dt. 23rd March, 1995 enhancing the assessed income

would makethe assessee liable to interest under s. 234B(4) of the Act. The CIT(A) and the Tribunal were not right in holding otherwise.

14. Suffice it to notice, that the reliance of the learned counsel for the assessee on Darshan Lal Gulati''s case (supra) does not come to therescue of

the assessee as the same was on the individual fact situationinvolved therein.

15. Now adverting to the alternative submission of the learned counselfor the assessee, reference is made to the Judgment of the KarnatakaHigh

Court in Kwality Biscuits Ltd''s case (supra). The High Court whiledisagreeing with the Tribunal had held as under :

Under s. 115J, where the total income of the company is less than 30per cent of its book profit, the total income of such assessee chargeableto tax

for the relevant previous year shall be deemed to be an amountequal to 30 per cent of Such book profit. It is, thus, by way of deeming fiction that

this income has been considered to be the deemed income.P & L a/c has to be prepared in accordance with the provisions of Parts IIand III of

Sch. VI to the Companies Act. In the Explanation under s. 115J(1A) it is provided that for the purposes of this section ''book profit''means the net

profit as shown in the P&L a/c for the relevant previousyear prepared under sub-s. (1A) as increased by various amounts givenin the section.

Thus, for the purpose of assessing tax under s. 115J, firstly, the profit as computed under the IT Act has to be prepared and thereafter the book

profits as contemplated by the provisions of s. 115 Jare to be determined and then the tax is to be levied. The liability of the assessee for payment

of tax under s. 115J arises if the total income ascomputed under the provisions of the Act is less than 30 per cent of itsbook profits. This exercise

for determining the total income in accordancewith the provisions of the Act and that of book profit can be only after theend of the relevant

assessment year. It is only the deemed income for which the provisions of s. 115J have been incorporated. When a deemingfiction is brought under

the statute, it is to be carried to its logical conclusion but without creating further deeming fiction so as to include other provisions of the Act which

have not specifically been madeapplicable. Since the entire exercise of computing the income or that ofbook profit could be only at the end of the

financial year, the provisions of ss. 207, 208, 209 or 201 cannot be made applicable until and unlessthe accounts are audited and the balance sheet

is prepared-even the assessee may not know whether the provisions of s. 115J would beapplicable or not. The liability could be after the book

profits aredetermined in accordance with the Companies Act. The words ''for thepurpose of this section'' in the Explanation to s. 115J(A) are

relevant andcannot be construed to extend beyond the computation of liability of tax.Accordingly, we are of the view that the Tribunal was not

justified indirecting to charge interest under ss. 234B and 234C. Thus, question No.2 is, therefore, answered in favour of the assessee and against

theRevenue.

16. The judgment in Kwality Biscuits Ltd''s case (supra) was affirmed bythe apex Court as the Civil Appeal was dismissed as reported in

Commissioner of Income Tax Vs. Kwality Biscuits Ltd., .

17. Similar issue had also been considered by Gauhati High Court in Assam Bengal Carriers Limited Vs. Commissioner of Income Tax, ; Madhya

Pradesh High Court in Itarsi Oils and Flours Pvt. Ltd. Vs. Commissioner of Income Tax, ; Madras HighCourt in The Commissioner of Income

Tax Vs. Holiday Travels P. Ltd., and Bombay High Court in The Commissioner of Income Tax Vs. Kotak Mahindra Finance Limited, wherein it

was held that that there is no mention in s. 234B and 234C ofthe Act that in cases of determination of income under s. 115J of the Act.the

provisions of the same would not be attracted. The Bombay HighCourt had concurred with the judgment of the Gauhati High Court andMadhya

Pradesh High Court.

18. This Court in Commissioner of Income Tax Vs. Upper India Steel Mfg. and Engg. Co. Ltd., was considering identicalissue of levy of interest

under ss. 234B and 234C of the Act where therewas non-payment or short payment due to computation of income on thebasis of book profits

under s. 115J of the Act. The view of the HighCourts of Gauhati, Madhya Pradesh, Madras and Bombay was followedand that of Karnataka

High Court in Kwality Biscuits Ltd''s case (supra)was dissented. It was noted that the provisions of ss. 234A, 234B and 234C of the Act were not

penal but compensatory in the following terms :

It is, thus, clear that the provisions contained in ss. 234A, 234B and 234C of the Act are surely not penal provisions but are compensatory in

nature for breach of civil obligation. These provisions have been introduced to obviate the arbitrariness and to eliminate the subjective decisions of

the tax authorities ensuring uniform treatment to similarlysituated persons. The provisions are mandatory and the levy there underis automatic, the

moment it is proved that a default has been committed within the comprehension of any one of the provisions in question.

It was further observed :

Sec. 207 of the Act provides that tax shall be payable in advance during the financial year in accordance with the scheme provided in sections 208

to 219 in respect of the total income of the assessee that would bechargeable to tax for the assessment year immediately following that financial

year. Such income has been described as "current income". Thus, this section contemplates estimation of current income by the endof the financial

year and on the basis of such estimation, the assessee isrequired to pay advance tax. Advance tax is payable on the current income irrespective of

whether the same is computed under s. 115J orunder the other provisions of the Act. In other words, the expression "current income", on which

advance tax is payable under the provisions ofs. 207. does not exclude the income computed under the provisions of s. 115J. We, therefore, find

no merit in the contention that the provisions ofss. 234B and 234C of the Act would not be attracted in cases where acompany is assessed on the

income computed under s. 115J.

19. The view of the Karnataka High Court in Kwality Biscuits Ltd"s case(supra) was dissented with the following observations :

From the above, it is clear that two factors had weighed with the HighCourt while granting relief to the assessee. Firstly, that the provisions ofs.

207 are not applicable to an income determined under s. 115J and,secondly, that a hardship is caused to the assessee because the liabilityto pay

tax on the book profits is determined only at the end of thefinancial year. Both the grounds, according to us, are not tenable. As already observed

earlier, the provisions of s. 207 do not exclude theincome determined under s. 115J from the purview of current income onwhich advance tax is

payable. Similarly, there is no scope for considering the hardship of the assessee as the levy is automatic and does notrequire any opportunity to be

given to the assessee. We, therefore,dissent from the judgment of the Karnataka High Court in the case of Kwality Biscuits Ltd. Vs. Commissioner

of Income Tax, .

20. This Court while concurring with the view of the High Courts ofGauhati, Madhya Pradesh, Madras and Bombay had concluded as under :

We fully concur with the view expressed in the aforesaid judgments. TheMadras High Court has correctly pointed out that for the purpose

ofpayment, of advance tax, all assessees including companies, are required to make an estimate of their current income. Even before

theintroduction of the provisions of s. 115J of the Act, companies had beenestimating their total income after providing deductions admissible

underthe Act. In fact, all assessees who maintain books of account have toundertake this exercise for the purpose of payment of advance tax. If

aP&L a/c can be drawn up on estimate basis for the purpose of the IT Act,it is not understood as to why a similar P&L a/c on estimate basis

underthe Companies Act cannot be drawn up. If the explanation of thecompanies that the profits under s. 115J of the Act can only bedetermined

after the close of the year were to be accepted, then noassessee who maintains regular books of account would be liable to payadvance tax as in

those cases also, income can only be determined afterthe close of the books of account at the end of the year.

21. Civil Appeal NO. 459 of 2006 had been filed against the judgment ofthis Court in CIT vs. Upper India Steel Mfg. & Engg. Co. Ltd."s case

(supra)which was heard by the apex Court along with the case of Jt. CIT vs.Rolta India Ltd. (supra) and was affirmed as has been noticed therein.

22. The apex Court in Rolta India Ltd"s case (supra) had recorded asunder:

7. In our view, s. 115J/115JA are special provisions. Sec. 207 envisagesthat tax shall be payable in advance during any. financial year on

currentincome in accordance with the scheme provided in ss. 208 to 219 (bothinclusive) in respect of the total income of the assessee that would

bechargeable to tax for the assessment year immediately following thatfinancial year. Sec. 215(5) of the Act defined what is "assessed tax", i.e.,tax

determined on the basis of regular assessment so far as such taxrelates to income subject to advance tax. The evaluation of the currentincome and

the determination of the assessed income had to be made interms of the statutory scheme comprising s. 115J/115JA of the Act.Hence, levying of

interest was inescapable. The assessee was bound topay advance tax under the said scheme of the Act. Sec. 115J/115JA ofthe Act were special

provisions which provided that where in the case ofan assessee, the total income as computed under the Act in respect ofany previous year

relevant to the assessment year is less than 30 percent of the book profit, the total income of the assessee shall be deemedto be an amount equal to

30 per cent of such book profit. The object is totax zero tax companies.

8. Sec. 115J was inserted by Finance Act, 1987 w.e.f. 1st April, 1988. Thissection was in force from 1st April, 1988 to 31st March, 1991. After

1stApril, 1991, s. 115JA was inserted by Finance Act of 1996 w.e.f. 1st April,1997. After insertion of s. 115JA, s. 115JB was inserted by

Finance Act2000w.e.f. 1 April, 2001. It is clear from reading ss. 115JA and 115JB that the question whether a company which is liable to pay tax

under either provision does not assume importance because specific provision(s) ismade in the section saying that all other provisions of the Act

shall apply tothe MAT Company [s. 115JA(4) and s. 115JB(5)]. Similarly, amendmentshave been made in the relevant Finance Acts providing for

payment ofadvance tax under ss. 115JA and 115JB. So far as interest leviable unders. 234B is concerned, the section is clear that it applies to all

companies.The prerequisite condition for applicability of s. 234B is that assessee isliable to pay tax under s. 208 and the expression ''assessed tax''

is definedto mean the tax on the total income determined under s. 143(1) or under s. 143(3) as reduced by the amount of tax deducted or

collected at source.Thus, there is no exclusion of s. 115J/115JA in the levy of interest under s. 234B. The expression ''assessed tax'' is defined to

mean the tax assessedon regular assessment which means the tax determined on the applicationof s. 115J/115JA in the regular assessment.

9. The question which remains to be considered is whether the assessee,which is a MAT Company, was not in a position to estimate its profits

ofthe current year prior to the end of the financial year on 31st March. In this connection the assessee placed reliance on the judgment of

theKarnataka High Court in the case of Kwality Biscuits Ltd. Vs. Commissioner of Income Tax, and, according to theKarnataka High Court, the

profit as computed under the IT Act, 1961had to be prepared and thereafter the book profit as contemplated under s. 115J of the Act had to be

determined and then, the liability of the assessee to pay tax under s. 115J of the Act arose, only if the total income as computed under the

provisions of the Act was less than 30 percent of the book profit; According to the Karnataka High Court, thisentire exercise of computing income

or the book profits of the companycould be done only at the end of the financial year and hence theprovisions of ss. 207, 208, 209 and 210

(predecessors of ss. 234B and 234C) were not applicable until and unless the accounts stood auditedand the balance sheet stood prepared,

because till then even the assesseemay not know whether the provisions of s. 115J would be applied or not.The Court, therefore, held that the

liability would arise only after theprofit is determined in accordance with the provisions of the CompaniesAct, 1956 and, therefore, interest under

ss. 234B and 234C is notleviable in cases where s. 115J applied. This view of the Karnataka HighCourt in Kwality Biscuits Ltd. case (supra) was

not shared by the Gauhati High Court in Assam Bengal Carriers Limited Vs. Commissioner of Income Tax, and Madhya Pradesh High Court in

Itarsi Oils and Flours Pvt. Ltd. Vs. Commissioner of Income Tax, as also by the Bombay High Court in the case of The Commissioner of Income

Tax Vs. Kotak Mahindra Finance Limited, which decided the issue in favour of the Department and againstthe assessee. It appears that none of

the assessees challenged the decisions of the Gauhati High Court, Madhya Pradesh High Court as wellas Bombay High Court in the Supreme

Court. However, it may be notedthat the judgment of the Karnataka High Court in Kwality Biscuits Ltd.was confined to s. 115J of the Act. The

order of the Supreme Courtdismissing the SLP in limine filed by the Departmentagainst Kwality Biscuits Ltd. is reported in Commissioner of

Income Tax Vs. Kwality Biscuits Ltd., . Thus, the judgment of Karnataka High Court inKwality Biscuits (supra) stood affirmed. However, the

Karnataka HighCourt has thereafter in the case of Jindal Thermal Power Co. Ltd vs. Dy.CIT & Anr. (2006) 203 CTR (Kar) 381 : (2006) 154

Taxman 547 (Kar)distinguished its own decision in case of Kwality Biscuits Ltd. (supra) and held that s. 115JB, with which we are concerned, is a

self-contained code pertaining to MAT, which imposed liability for payment of advance tax onMAT companies and, therefore, where such

companies defaulted in payment of advance tax in respect of tax payable under s. 115JB, it was liable to pay interest under ss. 234B and 234C of

the Act. Thus, it can be concluded that interest under ss. 234B and 234C shall be payable on failure to pay advance tax in respect of tax payable

under s. 115JA/115JB. For the aforestated reasons. Circular No. 13 of 2001, dt.9th Nov., 2001 issued by CBDT [(2001) 171 CTR (St) 45:

(2001) 252 ITR(St) 50] has no application. Moreover, in any event, para 2 of that Circularitself indicates that a large number of companies liable

to be taxed under MAT provisions of s. 115JB were not making advance tax payments. In the said circular, it has been clarified that s. 115JB is a

self-contained code and thus, all companies were liable for payment of advance tax under s.115JB and consequently provisions of ss. 234B and

234C imposing interest on default in payment of advance tax were also applicable.

23. In view of the above, the alternative contention of the assessee is also rejected as the order of the apex Court dismissing civil appeal reported

as Kwality Biscuits Ltd''s case (supra) would not come to its rescue in view ofthe decision of the Bench of three Hon''ble Judges of the apex Court

in Rolta India Ltd''s case (supra).. Accordingly, the question of law is answered in favour of the Revenue and against the assessee. The appeal

stands allowed.