

(2011) 08 KAR CK 0088

Karnataka High Court

Case No: IT Appeal No. 88 of 2006 (A.Y. 2002-03)

Commissioner of Income Tax

APPELLANT

Vs

Bhartiya Reserve Bank Note
Mudran (P.) Ltd.

RESPONDENT

Date of Decision: Aug. 30, 2011

Acts Referred:

- Income Tax Act, 1961 - Section 115 JB, 234 B, 234 C

Citation: (2012) 209 TAXMAN 148

Hon'ble Judges: Ravi Malimath, J; N. Kumar, J

Bench: Division Bench

Advocate: M.V. Seshachala, for the Appellant; S. Parthasarathi and Mallaharao K., for the Respondent

Judgement

N. Kumar, J.

This appeal is admitted to consider the following substantial questions of law:

(1) Whether the law declared by this Hon"ble Court in M/s. Kwaliti Biscuits holding that no levy of interest can be made u/s 234B & 234C of the Act when computation of total income is made u/s 115J of the Act can also be extended to computation of total income made u/s 115JB of the Act which commences with a non obstante clause to compute the total income in accordance with the book profits, as contemplated in the said Section and saves all other provisions of the Act under sub-Section (5) of the said Section which would include Section 234B & 234C of the Act?

(2) Whether the Tribunal should have taken into consideration the object of introducing the new provisions of Section 115JB of the Act, the Finance Act pertaining to assessment year 1998-99 and the Board Circular which clearly contemplated that under the new provisions, levy of interest u/s 234B & 234C of the Act was mandatory?

This Court in the case of CIT v. Jupiter Bio-Science Ltd. [2011] 13 taxmann. com 161 (Kar.) and connected matter, answering the said question, has held as under:

(16) Section 4 of the Income Tax Act deals with the charge of income tax at the rate, which may be prescribed by the Finance Act of every year. Section 207 deals with the liability for payment of advance tax and Section 209 deals with its computation based on the rate imposed for the financial year, as are contained in the Finance Act. As is clear from Section 207, the advance tax was payable on the total income of the assessee which would be chargeable to tax for the assessment year immediately following the financial year. Prior to amendment in so far as payment of advance tax by the companies is concerned. Section 115JB provided that the tax is payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after 1st April of 2001 is less than seven and one half per cent of its book profit and the tax payable for the relevant previous year shall be deemed to be seven and one-half per cent of such book profit.

(17) Though section 115JB provided the rate of tax payable, the measure of tax has to be computed as per Section 207 for the purpose of payment of advance tax. Subsequently by virtue of amendment of Finance Act, 2002, a deeming provision was introduced by which book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income tax at the rate of seven and one half per cent and retrospective effect is given from 01.04.2001. Therefore, prior to this amendment, the advance tax was payable on the total income whereas after this amendment the advance tax is payable on book profit which is deemed to be the total income. This advance tax is payable as per Section 211 on the dates specified above. Though the advance tax was paid on the date so specified, the advance tax payable was computed on the total income. Now the advance tax is to be computed on the book profit which is deemed to be the total income. The assessee is not disputing the liability to pay the advance tax on this deemed income during the relevant period. But the grievance is that he is not liable to pay interest for the difference in the said amount.

18. The Apex Court in the case of [Star India \(P\) Ltd. Vs. CCE](#), explaining the principles underlying the liability to pay interest has held that the liability to pay interest would only arise on default and it is in the nature of a quasi-punishment. Such liability although created retrospectively could not entail punishment by payment of interest with retrospective effect. By a catena of decisions, the Supreme Court has laid down that the payment of interest for delayed payment of tax is compensatory in nature. It is a suffered liability. Though such a liability could be created retrospectively, when such a liability is retrospectively created, the assessee cannot be accused of committing default and he cannot be charged with interest for such default. As the assessee was under no obligation on the date of the alleged default to pay tax at that particular rate, he cannot be accused of having committed default and made to pay interest as compensating the revenue for having not paid the money. The

liability to pay advance tax on payable income tax is not disputed. In that view of the matter, the charging of interest on the difference in the advance tax cannot be sustained. Therefore what emerges from the aforesaid discussion is:

(a) The assessee is liable to pay advance tax as per the amended provisions of Section 115JB for the relevant period. However, he is not liable to pay interest on the amount due as per the amended provision.

(b) If he has not paid the advance tax as per the provision existing prior to amendment, he is liable to pay interest on the said amount.

(c) He has no liability to pay interest on the difference in the tax paid.

2. In the light of the aforesaid judgment, we do not see any justification to interfere with the order passed by the Tribunal. Accordingly, the substantial question of law is answered in favour of the assessee and against the Revenue.