

**Court No. - 32**

**Case :-** INCOME TAX APPEAL No. - 178 of 2006

**Appellant :-** M/S Ginni Filaments Ltd. Mathura

**Respondent :-** Commissioner Of Income Tax, Agra And Another

**Counsel for Appellant :-** Rakesh Ranjan Agrawal, Suyash Agrawal

**Counsel for Respondent :-** A.N. Mahajan, Sc

**Hon'ble Sunil Ambwani, J.**

**Hon'ble Surya Prakash Kesarwani, J.**

1. We have heard Shri Suyash Agrawal, learned counsel appearing for the appellant-assessee. Shri R.K. Upadhyay appears for the revenue.

2. This Income Tax Appeal, under Section 260-A of the Income Tax Act arising out of judgment and order of Income Tax Appellate Tribunal, Agra Bench, Agra dated 28.4.2006 in ITA No.136/Agra/2003 for assessment year 2001-02, has been filed on the following substantial questions of law:-

"(i) Whether on the facts and in the circumstances of case the ITAT was correct in sustaining the interest u/s 234-B and 234-C of the Income Tax Act, as the income was assessed u/s 115 JB of the Act and the appellant had no obligation to pay advance and interest thereon.

(ii) Whether the Tribunal was correct to distinguish the decision of Quality Biscuits Ltd vs. CIT 243 ITR 519 (Kar).

(iii) Whether the Tribunal rightly held that decision of ACIT vs. Hindustan Steels Industries (India) (2005) TTJ (Agra) wherein it was held that in absence of jurisdictional High Court decisions and in view of conflicting decisions of other High Courts, that High Court's decision should be followed, which favours assessee's case, is not applicable.

(iv) Whether the ITAT was right in not referring the matter to the President Tribunal, if Tribunal wanted to take a different view from one taken by earlier Bench, as held in case of Sayaji Iron and Engg. Co vs. CIT 253 ITR 749 (Guj.) and CIT vs. L.G. Rama Murthy 110 ITR 543 (Mad)."

3. The opinion expressed by a two judges bench of Supreme Court in the judgment in **CIT vs. Quality Biscuits Ltd (2006) 284 ITR 435 (SC)** was considered and was overruled by a three Judges bench of Supreme Court in **Joint Commissioner of Income-tax vs. Rolta India Ltd (2011) 330 ITR 470**.

4. The Supreme Court in **Joint Commissioner of Income-tax vs. Rolta India Ltd** (supra) held as follows:-

"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 of the current year prior to the end of the financial year on 31st March. In this connection the assessee placed reliance on the judgment of the Karnataka High Court in the case of Kwaliti Biscuits Ltd. v. CIT reported in (2000) 243 ITR 519 and, according to the Karnataka High Court, the profit as computed under the Income Tax Act, 1961 had to be prepared and thereafter the book profit as contemplated under Section 115J of the Act had to be determined and then, the liability of the assessee to pay tax under Section 115J of the Act arose, only if the total income as computed under the provisions of the Act was less than 30% of the book profit. According to the Karnataka High Court, this entire exercise of computing income or the book profits of the company could be done only at the end of the financial year and hence the provisions of Sections 207, 208, 209 and 210 (predecessors of Sections 234B and 234C) were not applicable until and unless the accounts stood audited and the balance sheet stood prepared, because till then even the assessee may not know whether the provisions of Section 115J would be applied or not. The Court, therefore, held that the liability would arise only after the profit is determined in accordance with the provisions of the Companies Act, 1956 and, therefore, interest under Sections 234B and 234C is not leviable in cases where Section 115J applied. This view of the Karnataka High Court in Kwaliti Biscuits Ltd. was not shared by the Gauhati High Court in Assam Bengal Carriers Ltd. v. CIT reported in (1999) 239 ITR 862 and Madhya Pradesh High Court in Itarsi Oil and Flours (P.) Limited v. CIT reported in (2001) 250 ITR 686 as also by the Bombay High Court in the case of CIT v. Kotak Mahindra Finance Ltd. reported in (2003) 130 TAXMAN 730 which decided the issue in favour of the Department and against the assessee. It appears that none of the assessee's challenged the decisions of the Gauhati High Court, Madhya Pradesh High Court as well as Bombay High Court in the Supreme Court. However, it may be noted that the judgment of the Karnataka High Court in Kwaliti Biscuits Ltd. was confined to Section 115J of the Act. The Order of the Supreme Court dismissing the Special Leave Petition in limine filed by the Department against Kwaliti Biscuits Ltd. is reported in (2006) 284 ITR 434. Thus, the judgment of Karnataka High Court in Kwaliti Biscuits stood affirmed. However, the Karnataka High Court has thereafter in the case of Jindal Thermal Power Company Ltd. v. Dy. CIT reported in (2006) 154 TAXMAN 547 distinguished its own decision in case of Kwaliti Biscuits Ltd. (supra) and held that Section 115JB, with which we are concerned, is a self-contained code pertaining to MAT, which imposed liability for payment of advance tax on MAT companies and, therefore, where such companies defaulted in payment of advance tax in respect of tax payable under Section 115JB, it was liable to pay interest under Sections 234B and 234C of the Act. Thus, it can be concluded that interest under Sections 234B and 234C shall be payable on failure to pay advance tax in respect of tax payable under Section 115JA/115JB. For the aforesaid reasons, Circular No. 13/2001 dated 9.11.2001 issued by CBDT reported in 252 ITR(St.)50 has no application. Moreover, in any event, para 2 of that Circular itself indicates that a large number of companies liable to be taxed under MAT provisions of Section 115JB were not making advance tax payments. In the said circular, it has been clarified that Section 115JB is a self-contained code and thus, all companies were liable for payment of advance tax under Section 115JB and consequently provisions of Sections 234B and 234C imposing interest on default in payment of advance tax were also applicable.

10. For the aforesaid reasons CIT succeeds in the civil appeal arising out of S.L.P. (C) No. 25746 of 2009 (Jt. CIT v. Rolta India Ltd.) as also in the civil appeal arising out of S.L.P. (C) No. 18367 of 2010 (CIT-3 v. Export Credit Guarantee Corporation of India Ltd.). Consequently, Civil Appeal No. 459 of 2006 (Nahar Exports v. CIT) and Civil Appeal No. 7429 of 2008 (Lakshmi Precision Screws Ltd. v. CIT) stand dismissed with no order as to costs."

5. The questions of law raised before us are thus covered by the judgment in **Joint Commissioner of Income-tax vs. Rolta India Ltd** (supra) in favour of the revenue and against the assessee.

6. The Income Tax Appeal is **dismissed**.

**Order Date :-** 21.10.2013

RKP