

IN THE HIGH COURT OF DELHI AT NEW DELHI

09.09.2009

Present: Ms. Prem Lata Bansal, Advocate with Mr. Paras Chaudhary, Advocate and Ms. Anshul Sharma, Advocate for the appellant.

Ms. Neha Mishra, Advocate for the respondent.

I.T.A. No. 599/2008 COMMISSIONER OF INCOME TAX Vs. HOTLINE INTERNATIONAL P.LTD

In this appeal filed by the revenue against the orders dated 26th April, 2007, passed by the Income Tax Appellate Tribunal, following question of law is raised: Whether ITAT was correct in law in holding that the interest u/s 234-B and 234-C cannot be charged on the book profit computed u/s 115JA of the Act??

We find from the impugned order that counsel for the revenue had agreed before the Tribunal that the matter was squarely covered in favour of the assessee by the judgment of the Supreme Court in CIT Vs. Kwality Biscuits Limited 284 ITR 434. Learned counsel for the appellant, however, submits that that was a wrong concession given by the representative of the revenue before the Tribunal in as much as judgment of Supreme Court in Kwality Biscuits? case deals with the provisions of Section 115J and not Section 115JA and therefore the judgment of Supreme Court in Kwality Biscuits? case is not applicable in the present case. She has referred to the judgment of Madras High Court in 288 ITR 489 which according to the appellant would tilt the issue in her favour.

Since the order of the Tribunal is based on the concession and therefore there was no need to consider the aforesaid aspect, we are of the opinion that it would be proper for the petitioner to move application under Section 254 before the Income Tax Appellate Tribunal. We are doing so for two reasons, namely, (i) concession in law if wrongly given can always be withdrawn and explained and (ii) the contention raised by the petitioner as recorded

above, we find that it is an arguable case and this contention needs examination. Therefore, it would be appropriate if it is first examined at the hands of the Tribunal.

Giving the aforesaid liberty to the appellant, this appeal is disposed of.

**A.K.SIKRI, J
VALMIKI J.MEHTA, J
September 09, 2009**