IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.2.2015

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND
THE HON'BLE MR.JUSTICE R.KARUPPIAH

T.C.(A).No.1514 of 2007

M/s.Sanmar Speciality Chemicals Ltd.
9, Cathedral Road
Chennai - 600 086. .. Appellant/Respondent

Vs.

The Deputy Commissioner of Income Tax
Company Cirlce - III(2)
Chennai. .. Respondent/Appellant

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai, dated 31.5.2007 made in I.T.A.No.1092/Mds/2003 for the assessment year 2000-2001.

Against the order of Commissioner of Income Tax (Appeals)V, Madras-34 made in ITA.215/2002-03 dt.19.3.03 and against the order of Deputy Commissioner of Income Tax Company Circle VI(I) Chennai, made in PAN/GIR No.SA-119/AABCS0201P dt.30.12.02 for the Assessment Year 2000-01.

For Appellant : Mr.Venkat Narayanan
for M/s.Subbaraya Aiyar

For Respondent : Mr.M.Swaminathan

J U D G M E N T
(Delivered by R.SUDHAKAR, J.)

The assessee has filed this appeal challenging the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai, dated 31.5.2007 made in I.T.A.No.1092/Mds/2003 for the assessment year 2000-2001, and the same was admitted on the following question of law:

> “Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that interest under Section 234B of the Income Tax Act can be levied for default in payment of advance tax when the income is computed under Section 115JA of the Act?”

2. The learned counsel for the assessee fairly submits that the issue raised in this appeal is no longer res integra in view of the decision of the Supreme Court in Joint Commissioner of Income Tax v. Rolta India Limited, (2011) 330 ITR 450 (SC), wherein an identical issue was answered against the assessee and in favour of the department.

3. In Rolta India Limited case, referred supra, the issue considered by the Supreme Court is as under:

> "A short question which arises for determination in this batch of cases is whether interest under section 234B can be charged on the tax calculated on the book profits under section 115JA? In other words, whether advance tax was at all payable on book profits under section 115JA?"

and while answering the said issue, the Supreme Court held as under:

> "6. At the outset, it may be stated that sections 234B and 234C do not make any reference to section 115J/115JA. Section 234B lays down that where advance tax is required to be paid under section 208 and there is a failure on that if the amount of advance tax paid under section 210 is less than 90 per cent. of the assessed tax, then, in that case the assessee is liable to pay interest. Section 234C refers to interest for deferment of advance tax. It says that if the assessee has to pay advance tax on its current income on or before 15th of June and the tax paid is less than 15 per cent. of the tax due on the returned income or the amount of the advance tax paid on or before 15th of September is less than 45 per cent. of the tax due on the returned income or the amount of such advance tax paid on or before 15th of December is less than 75 per cent. of the tax due on the returned income, then the assessee shall be liable to pay interest at the specified rate on the amount of the shortfall from 15 per cent. or 45 per cent. or 75 per cent., as the case may be, of the tax due on the returned income.
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> 7. In our view, section 115J/115JA are special provisions. Section 207 envisages that tax shall be payable in advance during any financial year on current income in accordance with the scheme provided in sections 208 to 219 (both inclusive) in respect of the total income of the assessee that would be chargeable to tax for the assessment year immediately following that financial year. Section 215(5) of the Act defined what is "assessed tax", i.e., tax determined on the basis of regular assessment so far as such tax relates to income subject to advance tax. The evaluation of the current income and the determination of the assessed income had to be made in terms of the statutory scheme comprising

section 115J/115JA of the Act. Hence, levying of interest was inescapable. The assessee was bound to pay advance tax under the said scheme of the Act. Section 115J/115JA of the Act were special provisions which provided that where in the case of an assessee, the total income as computed under the Act in respect of any previous year relevant to the assessment year is less than 30 per cent. of the book profit, the total income of the assessee shall be deemed to be an amount equal to 30 per cent. of such book profit. The object is to tax zero-tax companies.

8. Section 115J was inserted by the Finance Act, 1987 with effect from April 1, 1988. This section was in force from April 1, 1988 to March 31, 1991. After April 1, 1991, section 115JA was inserted by the Finance Act of 1996 with effect from April 1, 1997. After insertion of section 115JA, section 115JB was inserted by the Finance Act, 2000 with effect from April 1, 2001. It is clear from reading sections 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) is made in the section saying that all other provisions of the Act shall apply to the MAT company (section 115JA(4) and section 115JB (5)). Similarly, amendments have been made in the relevant Finance Acts providing for payment of advance tax under sections 115JA and 115JB. So far as interest leviable under section 234B is concerned, the section is clear that it applies to all companies. The pre-requisite condition for applicability of section 234B is that the assessee is liable to pay tax under section 208 and the expression "assessed tax" is defined to mean the tax on the total income determined under section 143(1) or under section 143(3) as reduced by the amount of tax deducted or collected at source. Thus, there is no exclusion of section 115J/115JA in the levy of interest under section 234B. The expression "assessed tax" is defined to mean the tax assessed on regular assessment which means the tax determined on the application of section 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 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 Kwality 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 per cent. 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 Kwality Biscuits Ltd. was not shared by the Gauhati High Court in Assam Bengal Carriers Ltd. v. CIT reported in [1999] 239 ITR 862 and the Madhya Pradesh High Court in Itarsi Oil and Flours (P.) Ltd. 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 assessees challenged the decisions of the Gauhati High Court, Madhya Pradesh High Court as well as the Bombay High Court in the Supreme Court. However, it may be noted that the judgment of the Karnataka High Court in Kwality 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 Kwality Biscuits Ltd. is reported in [2006] 284 ITR 434. Thus, the judgment of the Karnataka High Court in Kwality Biscuits stood affirmed. However, the Karnataka High Court has thereafter in the case of Jindal Thermal Power Co. Ltd. v. Deputy CIT reported in [2006] 154 Taxman 547 distinguished its own decision in the case of Kwality 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 aforestated reasons, Circular No. 13 of 2001 dated November 9, 2001 issued by the Central Board of Direct Taxes reported in [2001] 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 the 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 the provisions of sections 234B and 234C imposing interest on default in payment of advance tax were also applicable."

4. In view of the law enunciated in the decision referred supra, we have no hesitation to hold that the Tribunal was right in imposing interest under Section 234B of the Act for default in payment of advance tax.

In the result, this appeal is dismissed by answering the question of law against the assessee and in favour of the Revenue. No costs.

Sd/-
Assistant Registrar
Dated:5.3.15

True Copy

Sub Assistant Registrar

To:
1. The Assistant Registrar,
Income Tax Appellate Tribunal, Rajaji Bhavan, Besant Nagar,
Chennai Bench "C", Chennai.

2. The Commissioner of Income Tax (Appeals)-V
Chennai-34.

3. The Deputy Commissioner of Income Tax
Company Circle VI(1), Chennai.

4. The Deputy Commissioner of Income Tax,
Company Circle III (2) Chennai

+1 cc to M/s.M.Swaminathan, Advocate,SR.9135.

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