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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2018

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THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

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THE HON'BLE MR.JUSTICE N.SESHASAYEE

T.C.(A).NO.874 OF 2008

M/s. Tamilnadu Magnesite Ltd.,
5/53, Omalur Main Road,
Jagir Ammapalayam,
Salem - 636 302.

...Appellant

Vs.

The Joint Commissioner of Income Tax,
Special Range, Salem.

...Respondent

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'D' Bench, Chennai in I.T.A.No.1853/MDS/1995 for the Assessment Year 1990-91, and I.T.A.No.1843/MDS/2000 for Assessment Year 1997-98, dated 15.06.2007.

For Appellant : Mr. S.Sriraman
for S.Sridhar

For Respondent : Mr. S.Rajesh
Junior Standing Counsel for
Mr.T.R.Senthilkumar
Senior Standing Counsel

JUDGEMENT

(Judgement of the Court was delivered by
T.S.Sivagnanam, J.,)

Heard Mr. S.Sriraman, the learned appearing for the appellant, and Mr.S.Rajesh, the learned Junior Standing Counsel for Mr.T.R.Senthilkumar, the learned Senior Standing Counsel for the respondent.

2. The Appeal has been admitted on the following substantial question of law:-



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Whether on the facts and in the circumstances of the case, the Tribunal was justified in upholding the levy of interest in the computation under Section 115JA, in the context of Section 219, where, the credit for advance tax is given in the 'regular assessment?

3. The legal issue involved in this Appeal is no longer res integra, as it has been decided by the Hon'ble Supreme Court in Joint Commissioner of Income Tax Vs. Rolta India Ltd., reported in [(2011) 330 ITR 0470. The operative portion of the judgement is 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



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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



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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."

4. In the light of the above decision, the substantial question of law, which arisen for consideration in this Appeal has to be answered in favour of the Revenue and against the assessee, as the Hon'ble Supreme Court held in the afore said decision that interest under Section 234 B and 234C of the Income Tax Act, 1961 shall be payable on failure to pay advance tax in respect of tax payable under Section 115 JA of the Act.

5. In the result, the Tax Case Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar Income Tax Appellate Tribunal,
'D' Bench, Chennai.

2. The Joint Commissioner of Income Tax,
Special Zonal, Salem.

+1cc to Mr.T.R.Senthilkumar, Advocate, S.R.No.26372
+1cc to Mr.S.Sridhar, Advocate, S.R.No.26650

T.C. (A) .No.874 of 2008

GMR (Co)
CS/12/06/18