

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 54 of 2004

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE KS JHAVERI

Sd/-

and

HONOURABLE MR.JUSTICE K.J.THAKER

Sd/-

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | No |
| 2 | To be referred to the Reporter or not ? | No |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | No |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ? | No |
| 5 | Whether it is to be circulated to the civil judge ? | No |
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C.I.T., BARODA-I,....Appellant(s)

Versus

CAMPHOR & ALLIED PRODUCTS LTD.....Opponent(s)

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Appearance:

MR KM PARIKH, ADVOCATE for the Appellant(s) No. 1

MS NIYATI K SHAH, ADVOCATE for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**
and

HONOURABLE MR.JUSTICE K.J.THAKER**Date : 17/10/2014****ORAL JUDGMENT****(PER : HONOURABLE MR.JUSTICE KS JHAVERI)**

1.By way of this Appeal, the appellant has challenged the judgment and order dated 09.07.2003 of the Income Tax Appellate Tribunal, Ahmedabad Bench 'A'.

2.While admitting the matter on 16.07.2004, the following substantial question of law was framed :-

"Whether the Tribunal has substantially erred in law in directing deletion of interest charged under Sections 234B and 234C of the Income-tax Act, 1961 merely on the ground that the income was determined by invoking the provisions of Section 115J of the Act for assessment year 1989-90?"

3.The facts giving rise to filing of this Tax Appeal are as under :-

The assessee is a company and the accounting period for AY 1989-1990 comprises of the period 01.07.1987 and 31.03.1989 in respect of M/s. Profeel Sentinel Ltd. 01.07.1988 to 31.03.1989 in respect of Camphor & Allied Products Ltd. This situation had arisen

pursuant to the scheme of amalgamation sanctioned by the Bombay High Court on 12.10.1989 and the Gujarat High Court on 23.11.1989 wherein the business and undertaking of Camphor & Allied Products Ltd. stood transferred to and vested in the company of M/s. Profeel Sentinel Ltd. with effect from 01.07.1988.

The assessee company filed its return of income disclosing a total loss of Rs.5,59,43,290/- comprising of loss of Rs.1,59,187/- as loss of the current year and loss of Rs.4,00,40,103/- in respect of earlier years. The assessee took stand that for the account year relevant to AY under appeal (i.e. A.Y. 1989-1990) there was no book profit after adjustment of earlier years loss against the current years profit.

Deputy C.I.T. passed an order u/s. 143(3) of the Income Tax Act by computing the book profit under section 115J of Rs.22,55,909/- being 30% of the current years profit of Rs.85,19,653/-.

Against the aforesaid order, the assessee preferred an Appeal before the Commissioner of Income Tax (Appeals), Baroda being Appeal No.CAB/XIV-191/91-92. The said was partly allowed by an order dated 12.10.1992.

Being aggrieved and dissatisfied with the aforesaid order the department had filed an appeal being ITA Nos.319/A/93 before the Income Tax Appellate Tribunal, Ahmedabad Bench "A" wherein the Tribunal partly allowed the appeal on 09.07.2003. It is against this order that the Appellant has preferred this Tax Appeal.

4.Learned Counsel for the appellant submitted that the above Tax Appeal is squarely covered by the decision of the Hon'ble Supreme Court rendered in the case of **Commissioner of Income Tax v. Kwaliti Biscuits Ltd.** reported in **284 Income Tax Reports 434** which confirmed the view taken by the High Court of Karnataka in **Kwaliti Biscuits Ltd. v. C.I.T.** reported in **243 Income Tax Reports 519**. It was further submitted that the same view is taken by this Court in **Tax Appeal No.391/1999** and **Tax Appeal No.390/1999**.

5.Hence, we do not think that we can take a different view in the facts of the case and therefore, this judgment will inure further for the benefit of the assessee.

6.We therefore, are of the view that all the questions are answered in favour of the assessee and this Income Tax Reference stands

disposed of in the above terms.

Sd/-
(K.S. JHAVERI, J.)

Sd/-
(K.J. THAKER, J)

CAROLINE