

SUPREME COURT OF INDIA

C. I. T., Mumbai

Vs.

Rolta India Ltd.

C.A.No.135 of 2011

(S.H.Kapadia,CJI., K.S.Panicker Radhakrishnan and Swatanter Kumar,JJ.,)

07.01.2011

JUDGMENT

S.H.Kapadia, CJI.,

1. Leave granted.
2. 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 book profits under Section 115JA? In other words, whether advance tax was at all payable on book profits under Section 115JA?
3. The lead matter in this batch of cases is Joint CIT v. Rolta India Ltd. (Civil Appeal arising out of S.L.P. (C) No. 25746/09).
4. Assessee furnished a return of income on 28.11.1997 declaring total income of Rs. Nil. On 28.3.2000, an order under Section 143(3) was passed determining the total income at nil after set off of unabsorbed business loss and depreciation. The tax was levied on the book profit worked out at Rs. 1,52,61,834/- determined as per the provisions of Section 115JA. The interest under Section 234B of Rs. 39,73,167/- was charged on the tax on the book profit as worked out in the order of assessment. Aggrieved by the said order, the assessee went in appeal before CIT (A). The appeal on the question in hand was dismissed. On charging of interest under Section 234B the appeal was dismissed by the Tribunal on the ground that the case fell under Section 115JA and not under Section 115J, hence, judgment of the Karnataka High Court in the case of M/s Kwaliti Biscuits Ltd. was not applicable. At one stage the Bombay High Court decided the matter in favour of the Department but later on by way of review it took the view following the judgment of Karnataka High Court in the case of Kwaliti Biscuits Ltd. that interest under Section 234B cannot be charged on tax calculated on book profits, hence, the CIT has come to this Court by way of Civil Appeal(s).
5. We quote hereinbelow Sections 234B and 234C of the Income Tax Act, 1961 (in short "the Act"): "Interest for defaults in payment of advance tax. 234B. (1) Subject to the other

provisions of this section, where, in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of section 210 is less than ninety per cent of the assessed tax, the assessee shall be liable to pay simple interest at the rate of one and one-half per cent for every month or part of a month comprised in the period from the 1st day of April next following such financial year to the date of determination of total income under sub-section (1) of section 143 and where a regular assessment is made, to the date of such regular assessment, on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid as aforesaid falls short of the assessed tax. Explanation 1.--In this section, "assessed tax" means,--

“(a) for the purposes of computing the interest payable under section 140A, the tax on the total income as declared in the return referred to in that section;

(b) in any other case, the tax on the total income determined under sub-section (1) of section 143 or on regular assessment, as reduced by the amount of tax deducted or collected at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income.

Explanation 2.--Where, in relation to an assessment year, an assessment is made for the first time under section 147, the assessment so made shall be regarded as a regular assessment for the purposes of this section.

Explanation 3.--In Explanation 1 and in sub-section (3) "tax on the total income determined under sub-section (1) of section 143" shall not include the additional income-tax, if any, payable under section 143.

(2) Where, before the date of determination of total income under sub-section (1) of section 143 or completion of a regular assessment, tax is paid by the assessee under section 140A or otherwise,--

(i) interest shall be calculated in accordance with the foregoing provisions of this section up to the date on which the tax is so paid, and reduced by the interest, if any, paid under section 140A towards the interest chargeable under this section;

(ii) thereafter, interest shall be calculated at the rate aforesaid on the amount by which the tax so paid together with the advance tax paid falls short of the assessed tax.

(3) Where, as a result of an order of re-assessment or re-computation under section 147, the amount on which interest was payable under sub-section (1) is increased, the assessee shall be liable to pay simple interest at the rate of one and one-half per cent for every month or part of a month comprised in the period commencing on the day

following the date of determination of total income under sub-section (1) of section 143 and where a regular assessment is made as is referred to in sub-section (1) following the date of such regular assessment and ending on the date of the re-assessment or re-computation under section 147, on the amount by which the tax on the total income determined on the basis of the re-assessment or re-computation exceeds the tax on the total income determined under sub-section (1) of section 143 or on the basis of the regular assessment aforesaid.

(4) Where, as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) or sub-section (3) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and-- (i) in a case where the interest is increased, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly;

(ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded. (5) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989 and subsequent assessment years. Interest for deferment of advance tax. 234C. (1) Where in any financial year,-- (a) the company which is liable to pay advance tax under section 208 has failed to pay such tax or—

(i) the advance tax paid by the company on its current income on or before the 15th day of June is less than fifteen per cent of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of September is less than forty-five per cent of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of December is less than seventy-five per cent of the tax due on the returned income, then, the company shall be liable to pay simple interest at the rate of one and one-half per cent per month for a period of three months on the amount of the shortfall from fifteen per cent or forty-five per cent or seventy-five per cent, as the case may be, of the tax due on the returned income;

(ii) the advance tax paid by the company on its current income on or before the 15th day of March is less than the tax due on the returned income, then, the company shall be liable to pay simple interest at the rate of one and one-half per cent on the amount of the shortfall from the tax due on the returned income: Provided that if the advance tax paid by the company on its current income on or before the 15th day of June or the 15th day of September, is not less than twelve per cent or, as the case may be, thirty-six per cent of the tax due on the returned income, then, it shall not be liable to pay any interest on the amount of the shortfall on those dates;

(b) the assessee, other than a company, who is liable to pay advance tax under section 208 has failed to pay such tax or,--

(i) the advance tax paid by the assessee on his current income on or before the 15th day of September is less than thirty per cent of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of December is less than sixty per cent of the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of one and one-half per cent per month for a period of three months on the amount of the shortfall from thirty per cent or, as the case may be, sixty per cent of the tax due on the returned income;

(ii) the advance tax paid by the assessee on his current income on or before the 15th day of March is less than the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of one and one-half per cent on the amount of the shortfall from the tax due on the returned income: Provided that nothing contained in this sub-section shall apply to any shortfall in the payment of the tax due on the returned income where such shortfall is on account of under-estimate or failure to estimate--

(a) the amount of capital gains; or

(b) income of the nature referred to in sub-clause (ix) of clause (24) of section 2, and the assessee has paid the whole of the amount of tax payable in respect of income referred to in clause (a) or clause (b), as the case may be, had such income been a part of the total income, as part of the remaining instalments of advance tax which are due or where no such instalments are due, by the 31st day of March of the financial year: Explanation.--In this section, "tax due on the returned income" means the tax chargeable on the total income declared in the return of income furnished by the assessee for the assessment year commencing on the 1st day of April immediately following the financial year in which the advance tax is paid or payable, as reduced by the amount of tax deductible or collectible at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection and which is taken into account in computing such total income.

(2) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989 and subsequent assessment years."

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% 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% 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% 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% 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% or 45% or 75%, as the case may be, of the tax due on the returned income.

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% of the book profit, the total income of the assessee shall be deemed to be an amount equal to 30% of such book profit. The object is to tax zero-tax companies.

8. Section 115J was inserted by Finance Act, 1987 w.e.f. 1.4.1988. This section was in force from 1.4.1988 to 31.3.1991. After 1.4.1991, Section 115JA was inserted by Finance Act of 1996 w.e.f. 1.4.1997. After insertion of Section 115JA, Section 115JB was inserted by Finance Act, 2000 w.e.f. 1.4.2001. 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 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'* 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 *Kwality Biscuits Ltd.* was not shared by the Gauhati High Court in *Assam Bengal Carriers Ltd. v. CIT reported in²* and *Madhya Pradesh High Court in Itarsi Oil and Flours (P.) Limited v. CIT reported in³* as also by the Bombay High Court in the case of *CIT v. Kotak Mahindra Finance Ltd. reported in⁴* which decided the issue in favour of the Department and against the assessee. It appears that none of the assessee 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 *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 in⁵. Thus, the judgment of Karnataka High Court in *Kwality Biscuits* stood affirmed. However, the Karnataka High Court has thereafter in the case of *Jindal Thermal Power Company Ltd. v. Dy. CIT reported in⁶* distinguished its own decision in 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 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.

Judgment Referred.

¹(2000) 243 ITR 0519

²(1999) 239 ITR 0862

³(2001) 250 ITR 0686

⁴(2003) 130 TAXMAN 0730

⁵(2006) 284 ITR 0434

⁶(2006) 154 TAXMAN 0547