IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH-C, AHMEDABAD

THIRD MEMBER

R V Easwar, Vice President

ITA No. 2667/Ahd/2002

Assessment Year: 1998-99

M/s Kanel Oil & Export Inds Ltd, 205, Abhijeet, Mithakali Six Road, Ahmedabad	**Vs.**	**Jt. Commissioner of Income-tax (Asst), SR-2, Ahmedabad**

Appellant Rep by: Divyakant Parikh, AR

Respondent Rep by: N S Dayam, DR

ORDER UNDER SECTION 255(4) OF THE I. T. ACT, 1961

Per: R V Easwar:

The following point of difference has been referred to me u/s.255 (4) of the Income Tax Act:

"Whether on the facts and in the circumstances of the case, the interest u/s.234B and u/s/234C is leviable for income computed u/s.115JA of the Income-tax Act, 1961 for the Assessment Year 1998-99?"

2. Since the facts giving rise to the controversy have been brought out in the dissenting orders I do not propose to repeat them. The parties before me have not disputed the basic facts.

3. The learned JM who has written the leading order has based his decision entirely on the judgment of the Bombay High Court in Snowcem India Ltd v DCIT (2009) 221 CTR (Bom) 594**.** He has accordingly held that interest u/s.234B and S.234C is not chargeable when the assessment is made on the book profit u/s.115JA of the Act. Now a perusal of the judgment shows that the Bombay High Court has noticed that the judgment of the Karnataka High Court in Kwality Biscuits Ltd v CIT (2000) 243 ITR 519**,** which held that interest under the above sections cannot be charged where the assessment is made on the books profit of a company u/s.115J, was upheld by the Supreme Court in CIT v Kwality Biscuits Ltd (2006) 284 ITR 434 and thus the judgment of the Karnataka High Court stood affirmed by the Supreme Court and the law declared by the Supreme Court was binding on it. The learned JM has followed the judgment of the Bombay High Court (supra) and has not therefore given effect to the order of the Special Bench (Ahmedabad)

of the Tribunal in ACIT vs Ashima Syntex Ltd (2009) 117 ITD 1 (Ahd) (SB)**.** The judgment of the High Court was rendered on 5-1-2009, subsequent to the order of the Special Bench (supra) which was rendered on 17-10-2008.

4. The learned AM in his dissent saw no reason to depart from the decision taken by the Special Bench in Ashima Syntex Ltd. (supra). He has given several reasons for the same. They are as under: (a) the provisions of sub-section (4) of section 115JA are similar to the provisions of sub-section (5) of section 115JB which have been explained in Circular No.13 dated 9-11-2001 by the CBDT; (b) the levy of interest is automatic and mandatory and has to be charged without reference to the assessee; (c) the Special Bench (supra) decision takes note of the observations of the Karnataka High Court in Kwality Biscuits Ltd (supra) to the effect that section 115J contained only a fiction that 30% of the book profit of the company shall be deemed to be its total income but did not contain a further fiction "so as to include other provisions of the Act, which are not specifically made applicable" and further goes on to say that the further fiction is created by sub-section (4) of section 115JA and therefore the interest can be levied on the book profit in case the assessment is made u/s.115JA; (d) sub-section (4) of section 115JA specifically stipulates that all other provisions of the Act apply to an assessment made on book profit under that section; (e) the Karnataka High Court in its later decision in Jindal Thermal Power Company Ltd v DCIT & anr. (286 ITR 182) has, after referring to its earlier judgment in Kwality Biscuits (supra), held that since sub-section (5) of sec. 115JB has provided that save as otherwise provided in the section, all the other provisions of the Act shall apply to a company subjected to book profit tax, the earlier judgment in Kwality Biscuits (supra) which dealt with section 115J, which did not have a sub-section similar to sub-section (5) of section 115JB, will no longer apply to a company subjected to tax u/s.115JB; (f) Kwality Biscuits (supra) was not rendered in the context of sec.115JA and was rendered u/s.115J; (g) the Bombay High Court judgment in Snowcem India Ltd (supra) cannot be applied without analysing the facts or without having regard to the context, especially when the attention of the High Court was not brought to the provisions of sub-section (4) of section 115JA or to the decisions of the Karnataka High Court in Jindal Thermal Power (supra), Madras High Court in CIT vs Geetha Ramakrishna Mills P. Ltd (288 ITR 489) or the Punjab and Haryana High Court in CIT vs Upper India Steel Mfg. & Engg. Co. Ltd (279 ITR 123) or even the Board Circular cited supra; (h) in any case, the judgment of a High Court does not have binding force outside the state as held, inter alia, by the Bombay High Court in CIT v Thane Electricity Supply Ltd (1994) 206 ITR 727 and the Gujarat High Court in N.R. Paper and Board Ltd & others v DCIT (1998) 234 ITR 733*;* (i) the decision of a Special Bench is binding on division benches of the Tribunal, otherwise the very purpose of constituting them will get frustrated and the decision can be disregarded or distinguished only if there is any contrary view expressed by the jurisdictional High Court or the Supreme Court.

5. In addition to what has been expressed above, the learned AM also held that the argument that the book profit for the purpose of section 115JA can be ascertained only after the close of the accounting year making it impossible for the assessee to pay advance-tax on the same during the relevant accounting year cannot be accepted because (a) in that case no assessee who maintains regular books of account would be liable to

pay advance tax because in that case also the income can be determined only after the books are closed at the end of the year; (b) any hardship caused to the assessee in determining or estimating his book profit for purposes of paying advance-tax cannot be taken note of since the levy of interest is automatic and mandatory and (c) the provisions of sections 207 to 209 of the Act do not exclude the income determined u/s 115JA from the purview of current income that is subject to advance-tax and (d) even before the introduction of MAT provisions such as sec. 115J, companies were paying advance-tax by estimating their income and, by drawing up an estimated profit and loss account.

6. For the above reasons, the learned AM held that the order of the Special Bench in Ashima Syntex (supra) should be followed and the levy of interest be upheld.

7. I have considered the rival arguments presented before me by both the sides. It all boils down to this, namely, whether the order of the Special Bench upholding the levy of interest in light of sub-section (4) of sec. 115JA should be followed or the judgment of the Bombay High Court in Snowcem India Ltd (supra), also rendered in the context of sec. 115JA, has to be applied. Both the decisions are under sec.115JA with which we are concerned. One is of a Special Bench of the Tribunal, Ahmedabad and the other is of a High Court, though not the jurisdictional High Court. A simple answer would be that the judgment of a High Court, though not of the jurisdictional High Court, prevails over an order of the Special Bench even though it is from the jurisdictional Bench (of the Tribunal) on the basis of the view that the High Court is above the Tribunal in the judicial hierarchy. But this simple view is subject to some exceptions. It can work efficiently when there is only one judgment of a High Court on the issue and no contrary view has been expressed by any other High Court. But when there are several decisions of non-jurisdictional High Courts expressing contrary views, it has been recognised that the Tribunal is free to choose to adopt that view which appeals to it. In Rishiroop Chemicals Co P. Ltd vs ITO (1991) 36 ITD 35 (SB) (Del), it was held by the Special Bench, Delhi that "if there were conflicting decisions of the High Courts, other than the jurisdictional High Court, the Benches of the Tribunal were free to adopt the view which to the Benches appear to be better and that in certain circumstances the view which was favourable to the taxpayer should be adopted". Following this case the Ahmedabad Bench in Chandulal Venichand v ITO (1991) 38 ITD 138, which was cited before me on behalf of the assessee, came to the conclusion that amongst the several decisions cited before it, the decision of the Patna High Court appeared to be better and followed it. The bench also observed that incidentally it was also in favour of the assessee. The Tribunal did not apply the rule that if different views are expressed on an issue the view that is favourable to the assessee should be adopted. The view expressed by the Patna High Court appeared to the Tribunal to be the better of the different views expressed by different High Courts and was hence followed.

8. The other exception is where the judgment of the non-jurisdictional High Court, though the only judgment on the point, has been rendered without having been informed about certain statutory provisions that are directly relevant. A judgment rendered without noticing a previous binding precedent or a relevant statutory rule is considered to have been rendered 'per incuriam'. It is even said that such a judgment need not be given effect

to by a lower court. In the present case, the attention of the Bombay High Court in Snowcem India Ltd (supra) was not drawn to sub-section (4) of section 115JA, as has been pointed out by the learned AM in his dissent. The High Court therefore had no occasion to examine the question whether the decisions of the Karnataka High Court and the Supreme Court in Kwality Biscuits (supra), rendered in the context of sec.115J which did not have a sub-section similar to sub-section (4) of sec. 115JA would still be applicable as binding precedent in a case which arises under section 115JA. This aspect has also been highlighted by the learned AM. The argument on behalf of the assessee before me was that the section in its entirety was before the Bombay High Court in Snowcem (supra), which includes sub-section (4). I am unable to accept this argument because the sub-section is considered crucial and it is the contention of the department that it has made all the difference between section 115J on the one hand and sections 115JA and 115JB on the other, and therefore non-advertance to the same makes it impossible for the assessee to rely on the judgment as authority on the interpretation of the sub-section. It is futile to speculate what would have been the decision if sub-section (4) of section 115JA had been brought to the notice of the Hon'ble Bombay High Court, but suffice to say, for the present purpose, that the judgment cannot be relied upon by the assessee as being entirely in its favour on all the aspects of section 115JA or, more particularly, on the interpretation of sub-section (4) of that section and therefore it cannot be said that it should be followed in preference to the order of the Special Bench in Ashima Syntex (supra).

9. It was contended before me on behalf of the assessee, relying on several authorities, that the effect of the judgments of the Karnataka High Court and the Supreme Court in Kwality Biscuits (supra) is that there is an inherent impossibility in the companies estimating their book profit for the purpose of paying advance-tax because the book profit itself can be ascertained only when the accounts are closed on the last day of the previous year and that was why it was held in the judgments that the provisions relating to advance-tax cannot apply to companies which are required to pay tax on book profit (MAT). I am afraid that I cannot examine this argument and render my decision since such an argument appears to have been already considered and rejected by the Special Bench, Ahmedabad in Ashima Syntex (supra) in paragraphs 44 and 45 of the order. Sitting as third Member on a dissent, the right course open to me is to follow the view of the Special Bench (supra), which is binding on me. The thrust of the difference of opinion between the learned Members is not so much on the merits of the chargeability of the interest as it is on the question as to whether the order of the Special Bench in Ashima Syntex (supra) has to be followed or the later judgment of the Bombay High Court in Snowcem India Ltd (supra) has to be followed. On this aspect, that is on the question as to whether the order of the Special bench (supra) or the judgment of the Bombay High Court (supra) should be followed, I have, for reasons already given in the preceding paragraphs, expressed my inclination to agree with the view taken by the learned AM. In this view of the matter, I do not consider it necessary to burden this order with a discussion of the authorities cited on behalf of the assessee as to the applicability of the provisions relating to advance-tax on companies that are required to pay tax on their book profit. The views expressed by the decisions have in substance been dealt with by the Special Bench in its order in Ashima Syntex (supra). I have to merely follow the Special

Bench order on those aspects of the case (i.e., the merits of the levy of interest) which I respectfully do.

10. For the reasons stated above, I respectfully agree with the views expressed by the learned AM and answer the point of difference in the affirmative.

11. The appeal will now be placed before the Bench which originally heard it for passing orders in conformity with my decision.

Dated: August 18, 2009

IN THE INCOME TAX APPELLATE TRIBUNAL

BENCH-C, AHMEDABAD

T K Sharma, JM And A N Pahuja, AM

ITA No. 2667/Ahd/2002
Assessment Year: 1998-99

M/s Kanel Oil & Export Inds Ltd, 205, Abhijeet, Mithakali Six Road, Ahmedabad	**Vs.**	**Jt. Commissioner of Income-tax (Asst), SR-2, Ahmedabad**

Appellant Rep by: Divyakant Parikh, AR

Respondent Rep by: N S Dayam, DR

ORDER

Per: T K Sharma:

This is an appeal filed by the assessee against the order dt. 20.5.2002 of the Commissioner of Income-tax (Appeals) for the Assessment Year 1998-99.

The only issue raised by the assessee in the present appeal is as under:

"The ld. CIT(A) has erred in confirming the order passed by the Assessing Officer charging interest of Rs.16,71,383 u/s.234B and of Rs.2,24,083 u/s.234C of the Act, wherein the income has been taxed on the basis of Book profit u/s.115JA."

3. At the time of hearing, the learned AR of the assessee pointed out that recently Hon'ble Bombay in the case of Snowcem India Ltd. Vs. Deputy Commissioner of Income-tax (2009) 221 CTR (Bom) 594**,** after considering judgments of various High Courts including earlier judgment of Bombay High Court in the case of CIT vs Kotak Mahindra Finance Ltd (266 ITR 119), held that the law binding would be the judgment of CIT vs. v. Kwality Biscuits Ltd. 284 ITR 434**.** The Counsel of the assessee further stated that the judgment of Hon'ble Bombay High Court in the case of Snowcem India Ltd vs DCIT (supra) relates to Section 115JA**.** Therefore, following the said judgement of Hon'ble Bombay High Court, the interest of Rs.16,71,383 u/s.234B and of Rs.2,24,083 u/s.234C of the Act charged under Sections 234B and 234C respectively be cancelled.

5. The learned DR, on the other hand, supported the impugned orders of the authorities below. He placed reliance on the decision of the ITAT, Ahmdabad Bench-B (Special Bench) in the case of ACIT v. Ashima Syntex Ltd, the ITAT, Ahmedabad (Special Bench) (2009) 117 ITD 1 (Ahd.)(SB)**,** wherein after considering various judgments of different High Courts and after analyzing the provisions contained in sub-section (4) of

section 115JA, Special Bench took the view that total income computed u/s. 115JA of the Act is liable to advance tax and in the event of default, levy of interest u/s.234C of the Act is mandatory. The learned DR pointed out that on the basis of reasoning given therein by the Special Bench, levy of interest u/s.234C is mandatory, therefore, the view take by the learned CIT(A) in the impugned order be upheld.

6. Having heard both sides, we have carefully gone through the impugned orders of the authorities below, as well as various decisions on this issue relied on by both the parties. It is pertinent to note that recently Hon'ble Bombay High Court in the case of Snowcem India Ltd. V. Deputy Commissioner of Income-tax (2009) 221 CTR (Bom) 594**,** after considering various decisions of different High Courts held that interest u/s.234B and S.234C is not leviable in case of computation of income u/s. l15JA and the view taken by Hon'ble Bombay High Court in the case of CIT vs. Kotak Mahindra Finance Ltd (265 ITR 119)(Bom) was not good law. It is also held that once the judgement of the Karnataka High Court in Kwality Biscuits Ltd (supra) has been affirmed by the Supreme Court by dismissing the appeals, the law binding would be the judgment in Kwality Biscuits Ltd (supra). The relevant portion of the said judgment (in case of Snowcem India Ltd) is reproduced below:

"4. If the Special Leave Petitions had only been dismissed then perhaps it would have been possible to say that there was no merger of the judgment of the Karnataka High Court and that the Supreme Court had refused to grant Special leave to appeal and consequently it was not an order of affirmation. See Kunhayamrned vs. State of Kerala (2000) 162 CTR (SC) 97; 2001 (129) ELT 11 (SC)**.** However, the order passed by the Supreme Court is "The appeals are dismissed" being Civil Appeal Nos. 1284 and 285 of 2001. Once the appeals are dismissed then it can be said that the judgment of the Karnataka High Court has been affirmed by the Supreme Court. That would not be the ease in which event only Special Leave Petitions had been dismissed in which event it would be said that the Supreme Court chose not to interfere with the judgment of the Karnataka High Court. In such an event the doctrine of merger would not apply. Once the judgment of the Karnataka High Court in Kwality Biscuits Ltd (supra) has been affirmed by the Supreme Court by dismissing the appeals, in our opinion, the law binding on us would be the judgement in Kwality Biscuits Ltd (supra)."

We, therefore, following the decision of Hon'ble Bombay High Court in the case of Snowcem India Ltd. Vs. Deputy Commissioner of Income-tax (2009) 221 CTR (Bom) 594 hold that interest u/s.234B and 234C is not leviable in case of computation of income u/s.115JA. Accordingly, the interest of Rs.16,71,383 u/s.234B and of Rs.2,24,083 u/s.234C of the Act is cancelled.

7. In the result, the appeal of the assessee is allowed.

This Order is pronounced in open court on Dt.....

A N Pahuja, AM T K Sharma, JM

Per: A N Ahuja:

I have gone through the order of the ld. brother and have also discussed the issue with him, but am not able to persuade myself to agree with the conclusion drawn by him, in the light of view taken in the decision of the jurisdictional Special Bench on this issue in the case of CIT Vs Ashima Syntax Ltd., 117 ITD 1 (Ahd) (SB), to which I was a party.

2. The facts have been stated by the ld. JM and, therefore, do not require any further elaboration. The only issue is whether the assessee was liable to interest u/s 234B & 234C of the Act on the income determined in terms of provisions of sec. 115JA of the Act. The learned JM has relied upon the decision of Hon'ble of Bombay high Court in the case of Snowcem India Ltd. Vs. DCIT, 221 CTR (Bom.) 594 and cancelled the levy of interest. Here we may have a look at the reasons as to why the ld. CIT (A) sustained levy of such interest. While referring to CBDT circular in the context of non-payment of advance tax on the income computed under the new MAT provisions of sec. 115JB of the Act and decision of the Hon'ble Kerala High Court in the case of CIT Vs. R. Ramalingair, the ld. CIT (A) concluded in the light of provisions of sec. 115JA(4) of the Act that all the provisions of the Act including the provisions dealing with payment of advance tax and charging of interest in case of default, are applicable. A perusal of decision of Hon'ble Bombay High Court in the aforesaid case of Snowcem India Ltd.(supra), reveals that the Hon'ble High Court have not adverted to the aforesaid provisions of sub-sec. (4) of sec. 115JA of the Act nor the decisions of Hon'ble Karnataka High Court in the case of Jindal Thermal Power Company Ltd. Vs DCIT & Another, 286 ITR 182 (Kar) or of Hon'ble Madras High Court in the case of CIT Vs. Geetha Ramakrishna Mills P. Ltd., 288 ITR 489(Mad) or of Hon'ble Punjab & Haryana High Court in CIT Vs. Upper India Steel Manufacturing and Engg. Co, Ltd., 279 ITR 123 (Punjab & Haryana), were brought to their notice.

3. Before us, the ld. AR on behalf of the assessee relied upon the aforesaid decision of the Hon'ble Bombay High Court in the case of Snowcem., India Ltd. Vs. DCIT, 221 CTR (Bom.) 594**,** wherein following the decision of Hon'ble Supreme Court on the case of CIT Vs Kwality Biscuits Ltd., 284 ITR 434 (SC) rendered in the context of provisions of sec. 115J of the Act, Hon'ble High Court held that interest u/s 234B & 234C of the Act is not leviable in the case of income computed u/s 115JA of the Act. The learned counsel on behalf of the assessee also placed reliance on the decisions in the case of CIT Vs. Kwality Biscuits Ltd., 284 ITR 434 (SC) and Kwality Biscuits Ltd. Vs. CIT, 243 ITR 519 (Kar) as also various decisions of the ITAT in the case of Piccadily Agro Ind Ltd. Vs. ACIT, 12 SOT 544 (Delhi), Amtek Auto Ltd. Vs. Addl. CIT, 112 TTJ 464 (Delhi) and Escapade resorts P Ltd. Vs. ACIT, 107 ITD 323 (Cochin) while the ld. DR placed reliance on the decision dated 17.10.2008 of the jurisdictional Special Bench in the case of CIT Vs. Ashima Syntax Ltd.,117 ITD 1 (Ahd.)(SB)**.**

4. At the out set, we may have a look at the relevant provisions of sec. 115JA of the Act, which read as under:

115JA. Deemed income relating to certain companies.

(1) Notwithstanding anything contained in any other provisions of this Act, where in the case of an assessee, being a company, the total income, as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 but before 1st day of April, 2001 (hereafter in this section referred to as the relevant previous year) is less than thirty per cent, of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to thirty per cent, of such book profit.

(2) Every assessee, being a company, shall, for the purposes of this section prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956):

Provided that while preparing profit and loss account, the depreciation shall be calculated on the same method and rates which have been adopted for calculating the depreciation for the purpose of preparing the profit and loss account laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956):

Provided further that where a company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956) which is different from the previous year under the Act, the method and rates for calculation of depreciation shall correspond to the method and rates which have been adopted for calculating the depreciation for such financial year or part of such financial year falling within the relevant previous year.

Explanation.-For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by--

(a) the amount of income-tax paid or payable, and the provision therefore, or

(b) the amounts carried to any reserves by whatever name called; or

(c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or

(d) the amount by way of provision for losses of subsidiary companies; or

(e) the amount or amounts of dividends paid or proposed; or

(f) the amount or amounts of expenditure relatable to any income to which any of the provisions of Chapter III applies;

if any amount referred to in clauses (a) to (f) is debited to the profit and loss account, and as reduced by,-

(i) the amount withdrawn from any reserves or provisions if any such amount is credited to the profit and loss account:

Provided that, where this section is applicable to an assessee in any previous year (including the relevant previous year), the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 but ending before the 1st day of April, 2001 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation; or

(ii) the amount of income to which any of the provisions of Chapter III applies, if any such amount is credited to the profit and loss account; or

(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

Explanation.-For the purposes of this clause,—

(a) the loss shall not include depreciation;

(b) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation, is nil; or

(iv) the amount of profits derived by an industrial undertaking from the business of generation or generation and distribution of power; or

(v) the amount of profits derived by an industrial undertaking located in an industrially backward State or district as referred to in sub-section (4) and sub-section (5) of section 80-IB, for the assessment years such industrial undertaking is eligible to claim a deduction of hundred per cent of the profits and gains under sub-section (4) or sub-section (5) of section 80-IB or

(vi) the amount of profits derived by an industrial undertaking from the business of developing, maintaining and operating any infrastructure facility as define in the Explanation to sub-section (4) of section 80-IA and subject to fulfilling the conditions laid down in that subsection ; or

(vii) the amount of profits of sick industrial company for the assessment year commencing from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accummulated losses.

Explantion.-For the purposes of this clause, "net worth" shall have the meaning assigned to it in clause (ga) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986); or

(viii) the amount of profits eligible for deduction under section 80HHC, computed under clauses (a), (b) or (c) of sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in sub-sections (4) and (4A) of that sections;

(ix) the amount of profits eligible for deduction under section 80HHE, computed under sub-section (3) of that section.

(3) Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of subsection (2) of section 32 or sub-section (3) of section 32A or clause (ii) of sub-section (1) of section 72 or section 73 or section 74 or subsection (3) of section 74A.

(4)Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section.

4.1 As is evident from the provisions of sec. 207 to 209 of the Act, every assessee has to pay advance tax on his 'current income' if liability for such tax exceeds Rs. 5,000 'Current income' has to be determined in accordance with provisions of sec 209 of the Act. The provisions of sec 209(1) of the Act stipulate that the assessee shall estimate his current income for the relevant financial year. In terms of provisions of sec. 209(2) of the Act, such current income can be last assessed income or returned income, which ever is higher, in terms of these provisions, for determining liability on account of advance tax, first step is that current income has to be estimated. Sec. 209 deals with the computation of advance tax based on rates in force for the financial year, as contained in the Finance Act. The provisions of sec. 207 to 209 contemplate estimation of current income and on the basis of such estimation, the assessee is required to pay advance tax. There is nothing in these provisions that advance tax is not payable on the current income if the current income is computed under section 115JA or any other provision of the Act. That means, the expression "current income", on which advance tax is payable under the provisions of section 207 of the Act, does not exclude the income computed under the provisions of section 115JA of the Act. The Circular No. 13 of 2001, dated 9th November, 2001 issued by the CBDT in the context of provisions of sec. 115JB of the Act and relied upon by the ld. CIT(A), supports this view. The relevant extracts from the said circular read as under:

"2. Instances have come to the notice of the Board that a large number of companies liable to tax under the new MAT provisions of section 115JB, are not making advance tax payments. It may be emphasised that the new provision of section 115JB is a self-contained code. Sub-section (1) lays down the manner in which income-tax payable is to be computed. Sub-section (2) provides for computation of "book profit". Sub-section (5) specifies that save as otherwise provided in this section, all other provisions of this Act

shall apply to every assessee, being a company mentioned in that section. In other words, except for substitution of tax payable under the provision and the manner of computation of book profits, all the provisions of the tax including the provision relating to charge, definitions, recoveries, payment, assessment, etc. would apply in respect of the provisions of this section.

3. The scheme of the Income-tax Act also needs to be referred to. Section 4 of the Income-tax Act charges to tax the income at any rate or rates which may be prescribed by the Finance Act every year. Section 207 deals with the liability for payment of advance tax, and section 209 deals with its computation based on the rates in force for the financial year, as are contained in the Finance Act. The rates of tax are provided in the Finance Act. The first proviso to section 2(8) of the Finance Act, 2001, reads as under:

"Provided that in cases to which the provisions of Chapter XII or Chapter XII-A or section 115JB or sub-section (1A) of section 161 or section 164A or section 167B of the Income-tax Act apply, 'advance tax' shall be computed with reference to the rates imposed by this sub-section or the rates as specified in that Chapter or section, as the case may be:"

The third proviso to section 2(8) of the Finance Act, 2001, further provides that the tax payable by way of advance tax in respect of income chargeable under section 115JB, shall be increased by a surcharge of 2%. The Finance Act, 2000, also contained similar provisions.

4. It is, thus, abundantly clear that all companies are liable for payment of advance tax having regard to the provisions contained in new section 115JB. Consequently, the provisions of sections 234B and 234C for interest on defaults in payment of advance tax and deferment of advance tax would also be applicable where facts of the case warrant."

4.2 . The provisions of sub-sec. (4) of sec. 115JA of the Act,mentioned above are similar to the provisions of sub-sec. (5) of sec. 115JB referred to in the aforesaid circular issued by the CBDT. I am of the considered view that in the light of aforesaid provisions of sub-sec. (4) of sec. 115JA of the Act, in the event the assessee defaults in payment of advance tax on his current income, levy of interest u/s 234B & 234C of the Act is mandatory. Such levy is automatic without any notice to the assessee as held by the Hon'ble Karnataka High Court in Union Home Products Ltd. v. Union of India [1995] 215 ITR 758**.** The Hon'ble High Court held:

“In the first place, the very purpose behind the introduction of sections 234A, 234B and 234C is to take away from the authorities concerned the discretion of reducing or waiving the levy of interest which was earlier exercisable by them. In other words, the impugned provisions do not envisage the grant of any hearing or the grant of any relief to the assessees concerned in so far as the levy of interest is concerned. The levy is automatic the moment it is proved that the assessee has committed a default within the comprehension of any one of the provisions in question. That being so it is difficult to accept the argument that the authorities must grant such a hearing and exercise the power

to grant relief, the legislative intent to the contrary notwithstanding. The principles of natural justice upon which the petitioners rely do not supplant the law, they simply supplement it. These principles have no application where a statute either by express words or by necessary implication excludes the grant of a hearing to the assessee concerned. The provisions of sections 234A, 234B and 234C are in my opinion incapable of being interpreted to mean that the assessee concerned has a right of being heard against the levy which is otherwise automatic in nature."

4.3 As is apparent from the aforesaid provisions of sec. 115JA(4) of the Act, the legislature while introducing these provisions intended that provisions of advance tax are applicable while determining the liability in terms of these provisions. In view of the decision of the Hon'ble Supreme Court in the case of CIT vs. Anjum M. H. Ghaswala And Others. 252 ITR 1 (SC)**,** affirmed by Hon'ble Apex Court in the case of CIT vs. Hindustan Bulk Carriers [2003] 259 ITR 449 (SC) and in the case of CIT vs. Sant Ram Mangat Ram Jewellers [2003] 264 ITR 564 (SC)**,** levy of interest under sections 234B and 234C is mandatory. I am of the opinion that such levy is mandatory even while determining book profits u/s 115JA of the Act and especially in view of specific provisions of section 115JA(4) of the Act. This view is fortified by the decision of jurisdictional Special Bench in the case of Ashima Syntax Ltd.(supra), wherein after considering various decisions, including the decision of Hon'ble Karnataka High Court in the case of Jindal Thermal Power Company Ltd. Vs. DCIT & Another, 286 ITR 182 (Kar)**,** Special Bench held as under:

"32. From the foregoing discussion, it is clear that once a default within the meaning of sections 234B and 234C of the Act takes place, levy of such interest is automatic and there is no scope for applying the principles of equity or rules of natural justice. No hearing is required to be given to the assessee seeking any justification for not making the payment of advance tax.

33. We, therefore, find no merit in the contention that the provisions of section 234C of the Act would not be attracted in cases where a company is assessee on the income computed under section 115JA of the Act. As already observed, the levy is automatic without any notice to the assessee.

34. The ld. AR on behalf of the taxpayer vehemently placed reliance on the decision of the Hon'ble Karnataka High Court in the case of Kwality Biscuits Ltd. [2000] 243 ITR 519**,** in the context of provisions of sec. 115J of the Act, which was later affirmed by the Hon'ble Supreme Court in CIT vs. Kwality Biscuits Ltd. 284 ITR 434 (SC)**.** Hon'ble Supreme Court held in their decision that

"The appeals are dismissed."

35. Earlier, the Hon'ble Karnataka High Court in the aforesaid decision while accepting the claim of the assessee, observed:

"U/s.115J, where the total income of the company is less than 30% of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to 30% of such book profit. It is thus, by way of deeming fiction that this income has been considered to be deemed income. The profit and loss account has to be prepared in accordance with the provisions of Parts II and III of Schedule VI of the Companies Act. In the Explanation u/s.1153(1A), it is provided that for the purposes of this Section book profit means the net profit as shown in the Profit & Loss Account for the relevant previous year prepared under sub-section (1A) as increased by various amounts given in the Section. Thus, for the purpose of assessing tax u/s.115J, firstly, the profit as computed under the Income-tax Act has to be prepared, and thereafter, the book profits as contemplated by the provisions of S. 115J are to be determined and then the tax is to be levied. The liability of the assessee for payment of tax u/s.115J arises if the total income as computed under the provision of the Act, is less than 30% of its book profits. This exercise for determining the total income in accordance with the provisions of the Act and that of book profits can be only after the end of the relevant assessment year. It is only the deemed income for which the provisions of S. 115J have been incorporated. When a deeming fiction is brought under the statute, it is to be carried to its logical conclusion, but without creating further deeming fiction, so as to include other provisions of the Act, which are not specifically made applicable. Since the entire exercise of computing the income or that of book profits could be only at the end of the financial year, the provisions of S. 207, S. 208, S. 209 or S. 210 cannot be made applicable, until and unless the accounts are audited and the balance sheet is prepared, even the assessee may not know whether the provision of S. 115J would be applicable or not. The liability would be after the book profits are determined in accordance with the Companies Act. The words 'for the purposes of this Section' in the Explanation to S. 115J(1A) are relevant and cannot be construed to extend beyond the computation of liability of tax. Accordingly, we are of the view that the Income-tax Appellate Tribunal was not justified in directing to charge interest u/s.234B and u/s.234C of the Income-tax Act. This question No. 2 is therefore answered in favour of the assessee and against the Revenue."

36. From the above, it is clear that two factors weighed with the Hon'ble High Court while granting relief to the assessee. Firstly, that the provisions of section 207 are not applicable to an income determined under section 115J and; secondly, that a hardship is caused to the assessee because the liability to pay tax on the book profits is determined only at the end of the financial year. The Hon'ble Court held that when a deeming fiction is brought under the statute, it is to be carried to its logical conclusion, but without creating further deeming fiction, so as to include other provisions of the Act, which are not specifically made applicable.

37. However, the Hon'ble Guwahati, Madras, Madhya Pradesh and Mumbai High Court which took a view that even in cases covered by section 115J of the Act, the assessees are liable to pay advance-tax. In the case of Assam Bengal Carriers Ltd. [1999] 239 ITR 862, the Hon'ble Gauhati High Court observed as under:

"Section 207 of the Act envisions 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 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 spelled out what is the assessed tax', i.e., the tax determined on the basis of the regular assessment so far as such tax relates to income subject to advance tax. The evaluation of the current income as well as the determination of the assessed income accordingly, are to be made in terms of the statutory scheme comprising section 115J of the Act. Under the setting of the statute, the levy of interest is inescapable. The scheme of the statute as referred to above, unerringly points out that an assessee under the circumstances is to pay advance tax."

38. In the case of Kotak Mahindra Finance Ltd [2004] 265 ITR 119 (Bom), similar contentions raised on behalf of the assessee were repelled by the Bombay High Court and levy of interest upheld in the following terms:

"In our opinion, merely because the curtain rises in the cases of companies falling under section 115J after March 31, is no ground for the assessee-company not to pay interest under section 234B and section 234C. Under section 115J, every assessee-company had to compute the total income under the Act and, thereafter, compare such total income with the book profits and if the total income computed under the Act was less than 30 per cent, of the book profits then the total income shall be deemed to be 30 per cent. of the book profits. It is not in dispute that every such company has to prepare its profit and loss account under Schedule VI of the Companies Act after the end of the accounting year/previous year but, once it is found that the total income computed under the Act is less than 30 per cent. of the book profits and consequent upon which there is non-payment or short payment of advance tax then, the provisions of sections 234B and 234C are automatically attracted."

39. The Bombay High Court concurred with the judgments of the Gauhati High Court in the case of Assam Bengal Carriers Ltd. [1999] 239 ITR 862 and that of the Madhya Pradesh High Court in the case of Itarsi Oils & Flours (P.) Ltd. [2001] 250 ITR 686 and disagreed with the judgment of the Karnataka High Court in the case of Kwality Biscuits Ltd. [2000] 243 ITR 519. In the case of Itarsi Oils & Flours (P.) Ltd [2001] 250 ITR 686, the Madhya Pradesh High Court has also held that there is no mention in sections 234B and 234C of the Act has also cases of determination of income under section 115J, the provisions of the same would not be attracted.

40. While upholding the levy of interest under section 234B of the Act, the Hon'ble Madras High Court in the case of Holiday Travels P. Ltd [2003] 263 ITR 307 observed as under:

"It is true that for the applicability of section 115J of the Act, the starting point is the profit and loss account for the relevant previous year which should be drawn in accordance with the provisions of the Companies Act and to the net profit as shown in the profit and loss account, certain amounts which are found in the Explanation to section

115J are added to arrive at the book profit. There is no doubt that the entire exercise under section 115J of the Act is required to be made and can be made only on the basis of the net profit arrived at on the basis of the profit and loss account. However, the question remains whether it is not possible for the assessee to estimate the profit of the current year. It is axiomatic that all assessees who are chargeable to income-tax are required to estimate current income and nay advance tax on the current income. The companies have all along been estimating current income prior to the insertion of section 115J of the Act and paying the advance tax on the current income. It is significant that the company assessees have been estimating the total income after providing for the deductions admissible under the Income tax Act. The shift now is that a company has to estimate its profit and pay advance tax on the basis of the estimate of the profits of the company. We are of the view, it cannot be regarded that it would be an impossible exercise or an insurmountable difficulty for the company assessees to estimate the profits of the company during the current year itself and there would be no difficulty at all for a company maintaining its account on the mercantile basis to estimate the profits during the current year itself and pay the advance tax on the estimated current profits. We find no logic in the view that if the company can estimate the current income after providing for all deductions that may be available under the Income-tax Act, it is not possible for the company to estimate the profits of the company of the current year."

41. Similar view was taken by Hon'ble Madras High Court in CIT Vs. Geetha Ramakrishna Mills P Ltd., 288 ITR 489 (Mad)**,** when it was held

"As we have already observed, the Division Benches of different High Courts, viz., the Madras High Court, the Bombay High Court and the Punjab and Haryana High Court considered the judgment of the Karnataka' High Court in Kwality Biscuits Ltd. s case [2000] 243 ITR 519 and dissented from the view taken by the Karnataka High Court Therefore, agreeing with the view expressed by this court as also other High Courts, viz., the Gauhati High Court, the Madhya Pradesh High Court, the Bombay High Court and the Punjab and Haryana High Court, referred to above, we have no option except to hold that even where the assessment was made under section 115J of the Act, interest could be levied.

That apart, in view of the introduction of sections 115JA and 115JB of the Act with effect from April 1, 1997 by the Finance (No.2) Act, 1996, the question whether a company which is liable to pay tax under either of the provisions should pay advance tax does not assume much importance as specific provisions have been made in the section providing that all provisions of the Act shall apply to the assessee being a company mentioned in the said section and therefore, section 115J of the Act is no more available for the assessee for delaying the payment of advance tax in view of the insertion of sections 115JA and 115JB of the Act.

For all these reasons, the question referred to us is answered in favour of the Revenue and against the assessee and the appeal is allowed."

42. As is evident from the aforesaid decisions, in respect of levy of mandatory interest u/s 234B & 234C of the Act even in the context of provisions of sec. 115J of the Act, Hon'ble Guwahati, Madras, Madhya Pradesh and Bombay High Court have taken a consistent view in favour of the Revenue. Only Hon'ble Karnataka and Gujarat High Court took a contrary view. On a perusal of decision of Hon'ble Karnataka High Court in Kwality Biscuits Ltd's case [2000] 243 ITR 519**,** Hon'ble High Court, inter alia, held that when a deeming fiction is brought under the statute, it is to be carried to its logical conclusion, but without creating further deeming fiction, so as to include other provisions of the Act which are not specifically made applicable.[highlighted in para 35 above]. In the case under consideration, the provisions of sec. 115JA specifically stipulate in sub-section (4) that all other provisions of the Act shall apply. Thus, even in terms of the aforesaid decision of the Hon'ble Karnataka High Court, interest u/s 234B & 234C of the Act is leviable, since now the deeming provisions itself stipulate applicability of provisions of sec. 234B & 234C of the Act. With due respect, there is nothing to suggest in the decision in the case of Kwality Biscuits Ltd (supra) as to whether the Hon'ble High Court or Supreme Court considered that the interest under sec. 234B & 234C of the Act is mandatory. Hon'ble Karnataka High Court itself in their earlier decision in the case of Union Home Products(supra) held that the levy of interest u/s 234B & 234C is automatic the moment it is proved that the assessee has committed a default within the comprehension of any one of the provisions in question. Apparently, the said decision in the case of Union Home Products (supra) was not brought to their notice. As already mentioned earlier, Hon'ble Supreme Court in a number of decisions referred to above also held that levy of interest u/s 234B & 234C of the Act is mandatory. Since, these aspects were neither considered by the Hon'ble Karnataka High Court nor Supreme Court while affirming the decision of Hon'ble Karnataka High Court or in a later decision by Hon'ble Gujarat High Court in the case of Associated Crown Closures Pvt. Ltd. (supra), rendered in the context of provisions of sec. 115J of the Act, we are of the opinion that the aforesaid decisions relied upon by the taxpayer in the context of provisions of sec. 115J can not be straight away followed for deciding the issue in the present appeals in the context of provisions of sec. 115JA of the Act. The taxpayer also placed reliance on certain decisions of the ITAT, following the view taken in the case of Kwality Biscuits Ltd. With respect, we are not inclined to follow the view taken in these decisions, since these decisions did not analyse the issue in the context of aforesaid observations of Hon'ble Karnataka High Court in the case of Kwality Biscuits Ltd. and the provisions of sec. 115JA(4) of the Act We are not inclined in favour of the view that provisions of sec.115JA(4) make no difference.

43. As regards decisions of Hon'ble Apex Court and jurisdictional High Court relied upon by the taxpayer in the context of doctrine of merger in civil appeals, we are duty bound to respect and follow these decisions in the contexts these were rendered. As already observed, these decisions can not be straight away applied without analyzing the facts and the context in which these were rendered, especially when Hon'ble Karnataka High Court in the case of Kwality Biscuits Ltd,(supra) themselves held that when a deeming fiction is brought under the statute, it is to be carried to its logical conclusion, but without creating further deeming fiction, so as to include other provisions of the Act, which are not specifically made applicable. In the context of levy of interest u/s 234B & 234C of

the Act in the case under consideration, provisions of subsection (4) of sec. 115JA specifically stipulate applicability of all other provisions of the Act. Thus, the said decision in a way supports the case of Revenue in the case under consideration. As is apparent, the aforesaid decisions in the case of Kwality Biscuits Ltd.(supra) and Associated Crown Closures Pvt. Ltd(supra) were not rendered in the context of provisions of sec. 115JA of the Act nor the relevant decisions of Hon'ble Apex Court, holding levy of interest u/s 234A & 234B & 234C of the Act mandatory, were brought to the notice of their Lordships. In this context, Hon'ble Supreme Court in the case of CIT Vs. Sun Engineering Pvt. Ltd., 198 ITR 257 observed**:**

"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by this court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this court. A decision of this court takes its colour from the questions involved in the case in which it is rendered and, while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this court, to support their reasonings. In Madhav Rao Jivaji Rao Scindia Bahadur vs. Union of India [1971] 3 SCR 9; AIR 1971 SC 530, this court cautioned *(*at page 578 of AIR 1971 SC)."

Thus, reliance by the ld. AR on these decisions, which were rendered in a different context, not relevant to provisions of sec. 115JA of the Act, is misplaced.

44. As already mentioned, for the purpose of payment of advance tax, all assessees including companies, are required to make an estimate of their current income. Even before the introduction of the provisions of section 115J of the Act, companies had been estimating their total income after providing deductions admissible under the Act. In fact, all assessees who maintain books of account have to undertake this exercise for the purpose of payment of advance tax. If a profit and loss account can be drawn up on estimate basis for the purpose of the Income-tax Act, it is not understood as to why a similar profit and loss account on estimate basis under the Companies Act cannot be drawn up. If the explanation of the companies that the profits under section 115JA of the Act can only be determined after the close of the year were to be accepted, then no assessee who maintains regular books of account would be liable to pay-advance tax as in those cases also, income can only be determined after the close of the books of account at the end of the year. As already observed , the provisions of section 207 to 209 of the Act do not exclude the income determined under section 115JA of the Act from the purview of current income on which advance tax is payable. Similarly, there is no scope for considering the hardship of the assessee as the levy is automatic and does not require any opportunity to be given to the assessee. Section 4 of the Act envisages charge to tax the income at any rate or rates which may be prescribed by the Finance Act every year and section 207 deals with liability for payment of advance tax and section 209 deals with its computation based on the rates in force for the financial year, as are contained in the relevant Finance Act.

45. In our opinion, all other provisions of Act including the provisions relating to payment of advance tax are applicable even when the income is computed under section 115JA of the Act. Section 115JA has a specific provision in the shape of sub-section (4) which reads as under:

"Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section."

It is well settled that all words of a statute are to be given effect, and the legislature is presumed not to use words that are superfluous or redundant. It is also in consonance with the principle of harmoniously interpreting to make the statute workable and giving a meaning to all the provisions of the statute without making any one of them redundant If the interpretation as sought by ld. AR on behalf of the taxpayer is applied that would make provisions of sub-section (4) of section 115JA otiose and redundant. It is not permissible to adopt a construction which would render any expression superfluous or redundant. Therefore, the argument of the ld. AR that interest u/s 234C of the Act can not be levied on deemed book profits is not tenable since the deeming provisions of sec. 115JA specifically stipulate in sub-section (4) that all other provisions of the Act shall apply.

46. The view which we have taken finds support from the decision of Hon'ble Karnataka High Court in the case of Jindal Thermal Power Company Ltd. Vs. DCIT & Another, 286 ITR 182 (Kar)**,** wherein after considering their own decision in the case of Kwality Biscuits Ltd. v. CIT [2000] 243 ITR 519**,** Hon'ble High Court held in the context of levy of interest u/s 234B & 234C of the Act while computing income in terms of provisions of sec. 115JB of the Act that

"The Central Board of Direct Taxes Circular No. 13/2001 was issued on 18 November 9, 2001, regarding the liability for payment of advance tax under the new MAT provisions of section 115JB of the Act and it is abundantly made clear in the said circular that the new provision of the section 115JB as introduced by the Finance Act, 2000 is a self-contained code. Sub-section (1) lays down the manner in which income-tax payable is to be computed. Subsection (2) provides for computation of "book profit". Sub-section (5) specifies that save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company mentioned in that section. In other words, except for substitution of tax payable under the provision and the manner of computation of book profits, all the provisions of the tax including' the provision relating to charge, definitions, recoveries, payment, assessment, etc., would apply in respect of the provisions of this section and in view of the scheme of the Income-tax Act. Section 4 of the Act charges to tax the income at any rate or rates which may be prescribed by the Finance Act every year and section 207 deals with liability for payment of advance tax and section 209 deals with its computation based on the rates in force for the financial year, as are contained in the Finance Act and the first proviso to section 2(8) of the Finance Act, 2001, provides that the tax payable by way of advance tax in respect of income chargeable under section 115JB as introduced by the Finance Act, 2000, and consequently the provisions of sections 234B and 234C for interest on defaults in

payment of advance tax and deferment of advance tax would also be applicable where the facts of the case warrant."

47. Similarly Hon'ble Punjab & Haryana High Court, in CIT Vs. Upper India Steel Manufacturing and Engg. Co, Ltd., 279 1TR 123 (Punjab & Haryana), in the context of levy of interest u/s 234B & 234C of the Act while determining income in terms of provisions of sec. 115JA of the Act, held

"We fully concur with the view expressed in the aforesaid judgments. The Madras High Court has correctly pointed out that for the purpose of payment of advance tax, all assessees including companies, are required to make an estimate of their current income. Even before the introduction of the provisions of section 115J of the Act, companies had been estimating their total income after providing deductions admissible under the Act. In fact, all assessees who maintain books of account have to undertake this exercise for the purpose of payment of advance tax. If a profit and loss account can be drawn up on estimate basis for the purpose of the Income-tax Act, it is not understood as to why a similar profit and loss account on estimate basis under the Companies Act cannot be drawn up. It the explanation of the companies that the profits under section 115J of the Act can only be determined after the close of the year were to be accepted, then no assessee who maintains regular books of account would be liable to pay-advance tax as in those cases also, income can only be determined after the close of the books of account at the end of the year.

Before parting, we would like to observe that it cannot be said that even in a case of extreme hardship, the assessee is left with no remedy to seek waiver or reduction of interest leviable under section 234A, 234B or 234C of the Act, Section 119(2) of the Act confers powers upon the Board to grant relaxation of any of the provisions mentioned in the sub-section including sections 234A, 234B and 234C of the Act. As a matter of fact, the Board in exercise of its power under section 119(2)(a) has already issued a notification on May 23, 1996 which was subsequently partly modified on January 13, 1997, authorising the Chief Commissioner of Income-tax and Director General of Income-tax to reduce or waive interest under these provisions under certain circumstances.

In view of the above, we are satisfied that the Tribunal was not right in holding that the assessee was not liable to pay interest under sections 234B and 234C of the Act. Accordingly, the appeals are allowed and the findings of the Tribunal are reversed. No costs.

48. In view of the foregoing, we hold that the total income computed under the provisions of sec. 115JA of the Act is liable to advance tax and in the event of default in relevant provisions of payment of advance tax, levy of interest u/s 234C of the Act is mandatory. In this view of the matter, the findings of ld. CIT (A) are vacated and the action of the AO in charging interest u/s 234C of the Act is confirmed."

4.4 In the light of view taken in the aforesaid decision of jurisdictional Special Bench of the Tribunal and in the decisions of various High Courts, including the decision of Hon'ble Karnataka High Court in the case of Jindal Thermal Power Company Ltd. Vs. DCIT & Another,286 ITR 182 (Kar) and of, Hon'ble Madras High Court in CIT Vs. Geetha Ramakrishna Mills P. Ltd., 288 ITR 489 (Mad)**,** the preponderance of the judicial opinion is in favour of Revenue. In the case of CIT vs. B.C. Srinivasa Setty (1981) 21 CTR (SC) 138: (1981) 128 ITR 294 (SC)**,** Hon'ble Supreme Court have held that preponderance of judicial opinion should be respected. I am of the opinion that the decision of Hon'ble Bombay High Court in the case of Snowcem India Ltd. (supra), following the view taken by the Hon'ble Karnataka High Court in the case of Kwality Biscuits Ltd.(supra), later affirmed by the Hon'ble Supreme Court, can not be straight away applied without analyzing the facts and the context in which these decisions were rendered, especially when Hon'ble Karnataka High Court in the case of Kwality Biscuits Ltd.(supra) themselves held that when a deeming fiction is brought under the statute, it is to be carried to its logical conclusion, but without creating further deeming fiction, so as to include other provisions of the Act, which are not specifically made applicable. In the context of levy of interest u/s 234B & 234C of the Act in the case under consideration, provisions of sub-section (4) of sec. 115JA specifically stipulate applicability of all other provisions of the Act. Thus, the said decision in a way supports the case of Revenue in the case under consideration. At the cost of repetition, it is reiterated that the aforesaid decisions in the case of Kwality Biscuits Ltd. (supra) were not rendered in the context of provisions of sec. 115JA of the Act nor the relevant decisions of Hon'ble Apex Court, holding levy of interest u/s 234B & 234C of the Act mandatory, were brought to the notice of their Lordships. In this context, Hon'ble Supreme Court cautioned in their recent decision dated 6.3.2009 in the case of State of AP Vs. M Radha Krishna Murthy, [Criminal Appeal no. 386 of 2002]

“6. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes

8. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

9. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

4.5 In the light of aforesaid observations of the Hon'ble Apex Court, reliance by the ld. AR on the decision in the case of Snowcem India Ltd.(supra), rendered in a different context, without specifically adverting to the provisions of sub-sec. (4) of sec. 115JA of the Act and the aforesaid CBDT circular no. 13 or even the direct decisions of Hon'ble Karnataka High Court in the case of Jindal Thermal Power Company Ltd.(supra) or of Hon'ble Madras High Court in the case of CIT Vs. Geetha Ramakrishna Mills P. Ltd., 288 ITR 489 (Mad) or of Hon'ble Punjab & Haryana High Court in CIT Vs. Upper India Steel Manufacturing and Engg. Co, Ltd., 279 ITR 123 (Punjab & Haryana), is totally misplaced. Even otherwise the decision of a High Court does not have binding force outside the State. [Dr. T. P. Kapadia vs. CIT (1973) 87 ITR 511 (Mys.). CIT vs. Thana Electricity Supply Ltd. (1994) 206 ITR 727 (Bom.), Geoffrey Manners & Co. Ltd. vs. CIT (1996) 221 ITR 695 (Bom.), CIT vs. Vardhman Spinning (1997) 226 ITR 296 (P&H), N. R. Paper *and* Board Ltd. & Others vs. DCIT (1998) 234 ITR 733 (Guj.)]

4.6 In view of the foregoing, it may be reiterated that for the purpose of payment of advance tax, all assessees including companies, are required to make an estimate of their current income. Even before the introduction of the provisions of section 115J of the Act, companies had been estimating their total income after providing deductions admissible under the Act. In fact, all assessees who maintain books of account have to undertake this exercise for the purpose of payment of advance tax. If a profit and loss account can be drawn up on estimate basis for the purpose of the Income-tax Act, it is not understood as to why a similar profit and loss account on estimate basis under the Companies Act cannot be drawn up. If the explanation of the assessee that the profits under section 115JA of the Act can only be determined after the close of the year were to be accepted, then no assessee who maintains regular books of account would be liable to pay-advance tax as in those cases also, income can only be determined after the close of the books of account at the end of the year. As already observed, the provisions of section 207 to 209 of the Act do not exclude the income determined under section 115JA of the Act from the purview of current income on which advance tax is payable. Similarly, there is no scope for considering the hardship of the assessee as the levy is automatic and does not require any opportunity to be given to the assessee. Section 4 of the Act envisages charge to tax the income at any rate or rates which may be prescribed by the Finance Act every year and section 207 deals with liability for payment of advance tax and section 209 deals

with its computation based on the rates in force for the financial year, as are contained in the relevant Finance Act.

4.7 In view of the foregoing, all other provision's of Act including the provisions relating to payment of advance tax are applicable even when the income is computed under section 115JA of the Act Section 115JA has a specific provision in the shape of sub-section (4) which reads as under:

“Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section.”

It is well settled that all words of a statute are to be given effect, and the legislature is presumed not to use words that are superfluous or redundant. It is also in consonance with the principle of harmoniously interpreting to make the statute workable and giving a meaning to all the provisions of the statute without making any one of them redundant. If the interpretation as sought by ld. AR on behalf of the assessee is applied that would make provisions of sub- section (4) of section 115JA otiose and redundant. It is not permissible to adopt a construction which would render any expression superfluous or redundant. Therefore, the argument of the ld. AR that interest u/s 234B & 234C of the Act can not be levied on deemed book profits is not tenable since the deeming provisions of sec. 115JA specifically stipulate in sub-section (4) that all other provisions of the Act shall apply.

4.8 I am also of the opinion that a decision a special (large) Bench of the Tribunal must be held to be a binding precedent for division benches otherwise the very purpose of constituting them will get frustrated. A decision of the Special Bench can be distinguished or disregarded if there is any contrary view of the jurisdictional High Court or of the Supreme Court. In this context, we may refer to following observations of the Hon'ble Bombay High Court in the case of CIT Vs. Thana Electricity Supply Ltd., 206 ITR 727 (Bom.):

“(d) The decision of one High Court is neither binding precedent for another High Court nor for courts or Tribunals outside its own territorial jurisdiction. It is well-settled that the decision of a High Court will have the force of binding precedent only in the State or territories on which the court has jurisdiction. In other States or outside the territorial jurisdiction of that High Court it may, at best, have only persuasive effect. By no amount of stretching of the doctrine of stare decisis, can judgments of one High Court be given the status of a binding precedent so far as other High Courts or Courts or Tribunals within their territorial jurisdiction are concerned. Any such attempt will go counter to the very doctrine of stare decisis and also the various decisions of the Supreme Court which have interpreted the scope and ambit thereof. The fact that there is only one decision of any one High Court on a particular point or that a number of different High Courts have taken identical views in that regard is not at all relevant for that purpose. Whatever may be the conclusion, the decisions cannot have the force of binding precedent on other High Courts or on any subordinate courts or Tribunals within their jurisdiction. That status is

reserved only for the decisions of the Supreme Court which are binding on all courts in the country by virtue of article 141 of the Constitution."

4.9 Thus, in view of the clear-cut proposition of law laid down by the Hon'ble Bombay High Court in the aforesaid decision I am unable to agree with the learned AR that the decision of the Bombay High Court in Snowcem India Ltd.(supra) is binding on the Tribunal which is not under the superintendence or the jurisdiction of the Bombay High Court. The position is also clear from the decision in CIT vs. Sun Engineering Works P. Ltd. 1992 198 ITR 297, at page 320**.** The relevant observations have already been extracted above. In the said decision, the Hon'ble Supreme Court, also quoted with approval, the following note of caution given by it earlier in Madhav Rao Jivaji Rao Scindia Bahadur vs. Union of India, AIR 1971 SC 530, at page 578 (at page 320 of 198 ITR)

"It is not proper to regard a word, a clause or a sentence occurring in a judgement of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment."

4.10 Here we may point out that Hon'ble Supreme Court in Mattulal vs. Radhe Lal, [1975] 1 SCR 127, specifically observed that where the view expressed by two different Division Benches of Supreme court could not be reconciled, the pronouncement of a Division Bench of a larger number of judges had to be preferred over the decision of a Division Bench of a smaller number of judges.

5. In view of the foregoing, especially in view of direct decisions of Hon'ble Karnataka High Court in the case of Jindal Thermal Power Company Ltd.(supra) and Hon'ble Madras High Court in the case of Geetha Ramakrishna Mills P. Ltd.(supra) as also of Hon'ble Punjab & Haryana High Court in the case of Upper India Steel Manufacturing and Engg. Co, Ltd (supra), It is held that the total income computed under the provisions of sec. 115JA of the Act, is liable to advance tax and in the event of default in relevant provisions of payment of advance tax, levy of interest u/s 234B & 234C of the Act is mandatory. In this view of the matter, the findings of ld. CIT (A) are affirmed. Therefore, ground nos. 1 & 2 in the appeal are dismissed.

6. No additional ground having been raised in terms of the residuary ground no 3, accordingly, this ground is dismissed.

7. In the result, appeal is dismissed.

Dated: 20.4.2009

A N Pahuja, AM