

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL No.459 OF 2006

NAHAR EXPORTS

Appellant (s)

VERSUS

COMMISSIONER OF INCOME TAX, LUDHIANA

Respondent(s)

(with office report)

Date: 07/08/2008 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE J.M.PANCHAL

For Appellant(s) Mrs. Shashi M.Kapila, Adv.
Ms.Monisha Handa, Adv.for
Mr. Vikas Mehta, Adv.

For Respondent(s) Mr. Mohan Parasaran, ASG
Mr. K.Radhakrishnan, Sr. Adv.
Mr. Gaurav Dhingra, Adv.
Mr. Chidananda D.L., Adv.for
Mr. B.V.Balaram Das, Adv.

UPON hearing counsel the Court made the following
ORDER

The following two issues arise for determination in the present appeal:

"(i) Whether Minimum Alternate Tax (MAT) envisaged under Section 115JA of the Income Tax Act, 1961 is payable by way of Advance Tax and consequently interest for default in payment of advance tax under Sections 243B and 243C of the Income Tax Act, 1961, is leviable under a Summary Assessment.

(ii) Whether a complex debatable issue such as MAT being payable by way of Advance Tax and interest under Sections 234B & 234C being chargeable can be made under a Summary Assessment under Section 143(1) of the Act, particularly after this section was amended w.e.f. 1.6.1999. And as per amended provisions the return has to be accepted as such, without any variations."

Punjab & Haryana High Court in the present case has recorded its dissent against the judgment of the Karnataka High Court in Kwality Biscuits Ltd. vs. Commissioner of Income-tax reported in (2000) 243 ITR 519 and agreed with the contrary view taken by the four other High Courts namely, Gauhati High Court in the case of Assam Bengal Carriers Limited vs. Commissioner of Income Tax, (1989) 239 ITR 862; Madhya Pradesh High

Court in the case of Itarsi Oils and Flours Pvt. Ltd. vs. Commissioner of Income Tax, (2001) 250 ITR 686; Bombay High Court in the case of Commissioner of Income Tax vs. Kotak Mahindra Finance Ltd. (2004) 265 ITR 119; and Madras High Court in the case of Commissioner of Income Tax vs. Holiday Travels Private Limited (2003) 263 ITR 307.

Later on, Madras High Court has followed its own decision reported in 263 ITR 307 in the case of CIT vs. Geetha Ramakrishna (2007) 288 ITR 489.

Revenue had filed special leave petitions against the judgment of the Karnataka High Court in Kwality Biscuits Limited (supra) in this Court, in which leave was granted and subsequently appeals were dismissed by this court by passing the following order,

"The Appeals are dismissed."

meaning thereby that this Court had affirmed the decision of the Karnataka High Court and the same is reported in (2006) 284 ITR 434(SC). This Court had not taken note of the contrary view taken by four other High Courts.

We have strong reservations about the correctness of the view taken by the Karnataka High Court but since this Court has already affirmed the judgment of the Karnataka High Court by passing a non-speaking order, we deem it appropriate to refer this matter to a larger Bench. We order accordingly.

Office is directed to place the papers before Hon'ble the Chief Justice of India for placing this matter before a larger Bench.

(Parveen Kr. Chawla)
Court Master

(Kanwal Singh)
Assistant Registrar