Bombay High Court Cit vs Kotak Mahindra Finance Ltd. on 30 April, 2003 Equivalent citations: 2003 130 TAXMAN 730 Bom Author: S Kapadia JUDGMENT S.H. Kapadia, J. Being aggrieved by the judgment and order dated 20-8-2001 passed by the Tribunal in Income Tax Appeal No. 9987/Bom./92 for assessment year 1989-90, the department has come by way of appeal under section 260A of the Income Tax Act. This appeal is a cross appeal to Income Tax Appeal No. 77 of 2002, which appeal was preferred by the assessee whereas, the present appeal is preferred by the department. Facts 2. The assessee is a leasing and financing company having its income from lease rent, bill discounting and service charges. During the course of hearing before the assessing officer, certain issues were raised. One of the issues was concerning depreciation. The assessee was allowed normal depreciation on trucks, buses and motor vans leased out to its customers. However, the assessee had claimed higher depreciation at 50 per cent of the written down value on the said vehicles. As stated in our judgment in Income Tax Appeal No. 77 of 2002, the Tribunal took the view that the assessee was not entitled to higher depreciation by merely leasing out the above vehicles. That, the assessee did not run the vehicles on hire and nor does the assessee carry on the business of running them on hire. Therefore, the Tribunal took the view that higher depreciation cannot be allowed. This view of the Tribunal has been affirmed by us in our judgment in Income Tax appeal No. 77 of 2002. However, the Tribunal came to the conclusion by placing reliance on the judgment of the Supreme Court in the case of CIT v. Shaan Finance (P) Ltd. (1998) 231 ITR 308 (SC) that the assessee would be entitled to higher depreciation if its lessees had used the vehicles in the business of running them on hire and, consequently, the Tribunal remitted the matter back to the assessing officer to ascertain whether the vehicles leased out by the assessee were used by the lessees in the business of running them on hire. It is against this finding of the Tribunal on the alternative plea of the assessee that the department has come by way of appeal to this court with two questions, one of which is as follows : 2. The assessee is a leasing and financing company having its income from lease rent, bill discounting and service charges. During the course of hearing before the assessing officer, certain issues were raised. One of the issues was concerning depreciation. The assessee was allowed normal depreciation on trucks, buses and motor vans leased out to its customers. However, the assessee had claimed higher depreciation at 50 per cent of the written down value on the said vehicles. As stated in our judgment in Income Tax Appeal No. 77 of 2002, the Tribunal took the view that the assessee was not entitled to higher depreciation by merely leasing out the above vehicles. That, the assessee did not run the vehicles on hire and nor does the assessee carry on the business of running them on hire. Therefore, the Tribunal took the view that higher depreciation cannot be allowed. This view of the Tribunal has been affirmed by us in our judgment in Income Tax appeal No. 77 of 2002. However, the Tribunal came to the conclusion by placing reliance on the judgment of the Supreme Court in the case of CIT v. Shaan Finance (P) Ltd. (1998) 231 ITR 308 (SC) that the assessee would be entitled to higher depreciation if its lessees had used the vehicles in the business of running them on hire and, consequently, the Tribunal remitted

the matter back to the assessing officer to ascertain whether the vehicles leased out by the assessee were used by the lessees in the business of running them on hire. It is against this finding of the Tribunal on the alternative plea of the assessee that the department has come by way of appeal to this court with two questions, one of which is as follows : "1. Whether the Tribunal was justified in holding that if the lessees of the assessee had used the motor trucks, buses and vans in the business of running them on hire then, the assessee was entitled to higher rate of' depreciation? If so, whether the Tribunal was justified in remanding the matter back to assessing officer to ascertain whether the motor trucks, buses and vans leased out by the assessee were used by the lessees in the business of running them on hire ?" We now propose to answer this question. However, before we come to the arguments, we would like to quote the Entry in Appendix I. "III. Machinery and Plant (1) Machinery and plant other than those covered by sub-items (2) and (3) below ** ** ** (2)(i) Aeroplanes-Aeroengines (ii) Motor buses, motor lorries and motor taxis used in a business of running them on hire." Arguments 3. Mr. R.V. Desai, learned senior counsel appearing on behalf of the department submitted that in this case, the Tribunal has held in favour of the department. That, in this case the Tribunal has held that the word "Lease" cannot be read as the word "Hire" in the above Entry. That, the assessee was in the business of leasing and financing. That, its income was from lease rent, service charges and bill discounting. That, the assessee was not in the business of running the vehicles on hire and merely because the assessee had leased the vehicles, it cannot be stated that the assessee had used the vehicles in the business of running them on hire. Mr. R.V. Desai submitted on behalf of the department that in view of the above conclusion, the Tribunal should not have remanded the matter back to the assessing officer as the entry contemplated use of the vehicles in the business of running them on Hire and since, the assessee was not in such a business, the entry had no application and, consequently, the assessee was not entitled to higher depreciation. 3. Mr. R.V. Desai, learned senior counsel appearing on behalf of the department submitted that in this case, the Tribunal has held in favour of the department. That, in this case the Tribunal has held that the word "Lease" cannot be read as the word "Hire" in the above Entry. That, the assessee was in the business of leasing and financing. That, its income was from lease rent, service charges and bill discounting. That, the assessee was not in the business of running the vehicles on hire and merely because the assessee had leased the vehicles, it cannot be stated that the assessee had used the vehicles in the business of running them on hire. Mr. R.V. Desai submitted on behalf of the department that in view of the above conclusion, the Tribunal should not have remanded the matter back to the assessing officer as the entry contemplated use of the vehicles in the business of running them on Hire and since, the assessee was not in such a business, the entry had no application and, consequently, the assessee was not entitled to higher depreciation. Mr. Irani, learned counsel appearing on behalf of the assessee contended that one has to look at the object of the above entry. He contended that even if the word "Hire" in the said entry cannot be equated to a "Lease" still if the assessee proves that the lessees had used the leased vehicles in the business of

running them on Hire, the assessee would still be entitled to a higher depreciation. In other words, the assessee had invoked the test of end-user as laid down by the judgment of the Supreme Court in the case of Shaan Finance (P) Ltd. (supra). This argument was accepted by the Tribunal. The Tribunal has remanded the matter back to the assessing officer to decide this Issue on facts. Findings 4. At the outset, it may be mentioned that in this case, the assessing officer has granted normal depreciation. Therefore, we are not required to go into the question as to whether the transactions entered into by the assessee were genuine or fake. The genuineness of the transactions was never challenged. The department has accepted that the assessee was in the business of leasing and financing and that, in the course of business, the assessee had leased out the vehicles to its customers lessees. The vehicles are owned by the assessee. The assessee is not using those vehicles itself. The assessee earns lease rent by letting out those vehicles and by allowing the lessees to use those vehicles. The assessee did not run those vehicles on hire nor does it carry on the business of running them on Hire. However, if the vehicles were used by the lessees in the business of running them on hire then the matter certainly needs re-examination by the assessing officer because, one has to look to the purpose and object of the above entry. As laid down by the Madras High Court in the case of CIT v. Madan & Co. (2002) 254 ITR 445 (Mad), vehicles, which were let out to the hirers/lessees who are in the business of running them on Hire, are likely to undergo rough use as compared to vehicles owned by and used for personal purpose of the owner. it is in recognition of this fact that Hire rate of depreciation is provided for. In the circumstances, we do not wish to interfere with the order of the Tribunal remanding the matter back to the assessing officer to decide whether the lessees were in the business of running the vehicles on hire. Hence, the above question is answered in the affirmative, i.e., in favour of the assessee and against the department. 4. At the outset, it may be mentioned that in this case, the assessing officer has granted normal depreciation. Therefore, we are not required to go into the question as to whether the transactions entered into by the assessee were genuine or fake. The genuineness of the transactions was never challenged. The department has accepted that the assessee was in the business of leasing and financing and that, in the course of business, the assessee had leased out the vehicles to its customers lessees. The vehicles are owned by the assessee. The assessee is not using those vehicles itself. The assessee earns lease rent by letting out those vehicles and by allowing the lessees to use those vehicles. The assessee did not run those vehicles on hire nor does it carry on the business of running them on Hire. However, if the vehicles were used by the lessees in the business of running them on hire then the matter certainly needs re-examination by the assessing officer because, one has to look to the purpose and object of the above entry. As laid down by the Madras High Court in the case of CIT v. Madan & Co. (2002) 254 ITR 445 (Mad), vehicles, which were let out to the hirers/lessees who are in the business of running them on Hire, are likely to undergo rough use as compared to vehicles owned by and used for personal purpose of the owner. it is in recognition of this fact that Hire rate of depreciation is provided for. In the circumstances, we do not wish to interfere with the order of the Tribunal

remanding the matter back to the assessing officer to decide whether the lessees were in the business of running the vehicles on hire. Hence, the above question is answered in the affirmative, i.e., in favour of the assessee and against the department. 5. The second question which arises for consideration in this case is as follows : 5. The second question which arises for consideration in this case is as follows : "2. Whether on facts and circumstances of this case and in law, the Tribunal erred in the holding that interest under section 234B and section 234C was not leviable in case income was subjected to tax under section 115J as it stood at the relevant time Facts 6. This appeal is preferred by the department against judgment and order of the Tribunal dated 20-8-2001 in Income Tax Appeal No. 9987/Bom./92 for the financial year ending 31-3-1989 relevant to the assessment year 1989-90. It may be mentioned that the accounts of the company under Schedule VI of the Companies Act were duly finalized on 22-6-1989. That, as per the provisions of the Income Tax Act, the assessee returned its income of Rs. 52,86,939 on which the assessee paid the total tax of Rs. 30,53,207 less TDS. In other words, on taxable income of Rs. 52,86,939, the assessee had to pay Rs. 14,55,158 as per computation under the Income Tax Act. As against Rs. 14,55,158, the assessee paid Rs. 15 lakhs by way of advance tax on 15-3-1989. However, as per the provisions of section 115J of the Income Tax Act, the taxable income stood at Rs. 73,47,279 on which the tax liability was Rs. 26,45,004 after taking into account the TDS. As stated above, as against the tax liability of Rs. 26,45,004, the assessee had paid advance tax of Rs. 15 lacs on 15-3-1989. Therefore, there was a short payment of tax to the tune of Rs. 11,45,004. The accounts were finalized under Schedule VI of the Companies Act on 22-6-1989 and on 29-6-1989, i.e., within 7 days, the assessee paid self-assessment tax of Rs. 11,64,200. 6. This appeal is preferred by the department against judgment and order of the Tribunal dated 20-8-2001 in Income Tax Appeal No. 9987/Bom./92 for the financial year ending 31-3-1989 relevant to the assessment year 1989-90. It may be mentioned that the accounts of the company under Schedule VI of the Companies Act were duly finalized on 22-6-1989. That, as per the provisions of the Income Tax Act, the assessee returned its income of Rs. 52,86,939 on which the assessee paid the total tax of Rs. 30,53,207 less TDS. In other words, on taxable income of Rs. 52,86,939, the assessee had to pay Rs. 14,55,158 as per computation under the Income Tax Act. As against Rs. 14,55,158, the assessee paid Rs. 15 lakhs by way of advance tax on 15-3-1989. However, as per the provisions of section 115J of the Income Tax Act, the taxable income stood at Rs. 73,47,279 on which the tax liability was Rs. 26,45,004 after taking into account the TDS. As stated above, as against the tax liability of Rs. 26,45,004, the assessee had paid advance tax of Rs. 15 lacs on 15-3-1989. Therefore, there was a short payment of tax to the tune of Rs. 11,45,004. The accounts were finalized under Schedule VI of the Companies Act on 22-6-1989 and on 29-6-1989, i.e., within 7 days, the assessee paid self-assessment tax of Rs. 11,64,200. In the circumstances, the above facts show that under the normal provisions of the Income Tax Act the assessee had paid the full tax. That, under the normal provisions of the Income Tax Act, the assessee had paid an advance tax of Rs. 15 lacs on 15-3-1989 which covered

the full amount of tax of Rs. 14,55,158. However, in view of section 115J of the Income Tax Act, the tax liability increased from Rs. 14,55,158 to Rs. 26,45,004 and, therefore, there was a short payment of tax to the tune of Rs. 11,45,004. The department has, therefore, invoked provisions of section 234B and 234C of the Income Tax Act. It is against this levy of interest that the matter has come by way of appeal to this court with the above quoted question No. 2. Scope of section 234B and section 234C of the Income Tax Act. 7. Section 234B and section 234C fall under Chapter XVII of the Income Tax Act which deals with Collection and Recovery. Chapter XVII-F deals with interest chargeable in certain cases. Section 234B along with section 234A and section 234C were inserted by Direct Tax Laws (Amendment) Act, 1987 with effect from 1-4-1989. It is well settled that interest under section 234B is compensatory in character. It is not penal in nature. So also, interest under section 234C is compensatory in character. It is for this reason that section 234B does not envisage grant of hearing insofar as levy of interest is concerned. The levy is automatic on it being proved that the assessee has committed a default as governed by section 234B. This reasoning also applies to levy of interest under section 234C. Therefore, the question of equity, rules of natural justice and justification for not making payment do not arise for determination in cases where interest is leviable under section 234B and section 234C. In this case, we are concerned with assessment year 1989-90. Section 234B makes provision for charging of interest for non-payment or short payment of advance tax. The provision is compensatory in nature. It has no element of penalty in it. 7. Section 234B and section 234C fall under Chapter XVII of the Income Tax Act which deals with Collection and Recovery. Chapter XVII-F deals with interest chargeable in certain cases. Section 234B along with section 234A and section 234C were inserted by Direct Tax Laws (Amendment) Act, 1987 with effect from 1-4-1989. It is well settled that interest under section 234B is compensatory in character. It is not penal in nature. So also, interest under section 234C is compensatory in character. It is for this reason that section 234B does not envisage grant of hearing insofar as levy of interest is concerned. The levy is automatic on it being proved that the assessee has committed a default as governed by section 234B. This reasoning also applies to levy of interest under section 234C. Therefore, the question of equity, rules of natural justice and justification for not making payment do not arise for determination in cases where interest is leviable under section 234B and section 234C. In this case, we are concerned with assessment year 1989-90. Section 234B makes provision for charging of interest for non-payment or short payment of advance tax. The provision is compensatory in nature. It has no element of penalty in it. Issue Whether interest under section 234B and section 234C is chargeable even in a case where tax liability arises only by applicability of section 115J ? Arguments 8. Mr. R.V. Desai, learned senior counsel appearing on behalf of the department contended that Chapter XVII-C deals with advance payment of tax. He invited our attention to sections 207 and 208 of the income-tax Act. He contended that section 207 refers to liability for payment of advance tax. He contended that under section 207, tax shall be payable in advance during any financial year in accordance with sections 208 to 219 in respect of the

total income of the assessee which would be chargeable to tax for the assessment year immediately following the previous year. He submitted that section 207 has equated total income of the assessee with the current income whereas, section 208 of the Income Tax Act refers to conditions of liability to pay advance tax. He contended that section 207 must be read with section 208 and, if so read, it is clear that where the assessee had a current income, the assessee is liable to pay advance tax under section 207 which in turn refers to estimation of current income by the assessee whereas, section 208 refers to computation of advance tax which has to be done under sections 208 to 219. He, therefore, contended that section 207 imposes liability for payment of advance tax whereas, section 208 refers to computation of advance tax in accordance with Chapter XVII of the Income Tax Act. He contended that the liability for payment of advance tax is in respect of total income of the assessee during the current year and, therefore, that liability cannot exclude provisions of section 115J. He contended that when the assessee is required to estimate its current income, all provisions of the Income Tax Act as applicable to the assessee, including section 115J, are attracted. He, therefore, contended that section 115J cannot be left out while estimating the current income. In the circumstances, it was argued that the Tribunal erred in holding that interest under section 234B and interest under section 234C was not leviable in cases where income was subjected to tax under section 115J In this connection, reliance was placed on the judgment of the Gauhati High Court in the case of Assam Bengal Carriers Ltd. v. CIT (1999) 239 ITR 862 (Gau). He also relied upon the judgment of the Madhya Pradesh High Court in support of his contention in the case of Itarsi Oils & Flours (P) Ltd. v. CIT (2001) 250 ITR 686 (MP). He contended that the entire that the concept of advance tax was that the assessee must pay the tax during the financial year when he earns income because, in a cost push economy, the money value falls each day and, therefore, whether the assessee is assessed under normal provisions of the Income Tax Act or under section 115J of the Income Tax Act was immaterial. He contended that once an assessee cams income in the current year then, he would be liable to pay the advance tax under sections 207 and 208 of the Income Tax Act. He contended that the scheme of advance tax under Chapter XVII-C is that it shall apply to all assessees irrespective of the fact whether they have assessed under normal provisions of the Income Tax Act or under section 115J of the Income Tax Act. Mr. Desai vehemently urged that section 115J had nothing to do with the payment of advance tax and if advance tax, is not paid or short paid then, interest under section 234B and section 234C which is compensatory in character shall apply. That, section 234B and section 234C have not curved out any exceptions for section 115J of the Income Tax Act. He, therefore, contended that in this case both sections 234B and 234C are applicable. 8. Mr. R.V. Desai, learned senior counsel appearing on behalf of the department contended that Chapter XVII-C deals with advance payment of tax. He invited our attention to sections 207 and 208 of the income-tax Act. He contended that section 207 refers to liability for payment of advance tax. He contended that under section 207, tax shall be payable in advance during any financial year in accordance with sections 208 to 219 in respect of the total

income of the assessee which would be chargeable to tax for the assessment year immediately following the previous year. He submitted that section 207 has equated total income of the assessee with the current income whereas, section 208 of the Income Tax Act refers to conditions of liability to pay advance tax. He contended that section 207 must be read with section 208 and, if so read, it is clear that where the assessee had a current income, the assessee is liable to pay advance tax under section 207 which in turn refers to estimation of current income by the assessee whereas, section 208 refers to computation of advance tax which has to be done under sections 208 to 219. He, therefore, contended that section 207 imposes liability for payment of advance tax whereas, section 208 refers to computation of advance tax in accordance with Chapter XVII of the Income Tax Act. He contended that the liability for payment of advance tax is in respect of total income of the assessee during the current year and, therefore, that liability cannot exclude provisions of section 115J. He contended that when the assessee is required to estimate its current income, all provisions of the Income Tax Act as applicable to the assessee, including section 115J, are attracted. He, therefore, contended that section 115J cannot be left out while estimating the current income. In the circumstances, it was argued that the Tribunal erred in holding that interest under section 234B and interest under section 234C was not leviable in cases where income was subjected to tax under section 115J In this connection, reliance was placed on the judgment of the Gauhati High Court in the case of Assam Bengal Carriers Ltd. v. CIT (1999) 239 ITR 862 (Gau). He also relied upon the judgment of the Madhya Pradesh High Court in support of his contention in the case of Itarsi Oils & Flours (P) Ltd. v. CIT (2001) 250 ITR 686 (MP). He contended that the entire that the concept of advance tax was that the assessee must pay the tax during the financial year when he earns income because, in a cost push economy, the money value falls each day and, therefore, whether the assessee is assessed under normal provisions of the Income Tax Act or under section 115J of the Income Tax Act was immaterial. He contended that once an assessee cams income in the current year then, he would be liable to pay the advance tax under sections 207 and 208 of the Income Tax Act. He contended that the scheme of advance tax under Chapter XVII-C is that it shall apply to all assessees irrespective of the fact whether they have assessed under normal provisions of the Income Tax Act or under section 115J of the Income Tax Act. Mr. Desai vehemently urged that section 115J had nothing to do with the payment of advance tax and if advance tax, is not paid or short paid then, interest under section 234B and section 234C which is compensatory in character shall apply. That, section 234B and section 234C have not curved out any exceptions for section 115J of the Income Tax Act. He, therefore, contended that in this case both sections 234B and 234C are applicable. Mr. Irani learned counsel appearing on behalf of the assessee on the other hand contended that assessment under section 115J is assessment of deemed income and, therefore, section 115J provides for a legal fiction to assess what is called as Deemed Income. He contended that it is well settled principle of interpretation that legal fiction should be strictly read and, if so read, provisions of section 234B and section 234C will not apply to

cases of assessment of income under section 115J of the Income Tax Act. He contented that in this case, one has to keep in mind the legislative intend. He submitted that if one reads section 207 of the Income Tax Act, it is clear that obligation to pay advance tax arises only during the financial year and it is for this reason that advance tax is made payable during the financial year. In this connection he placed reliance on section 207 and section 208 of the Income Tax Act. Mr. Irani contended that section 207 and section 208 come under chapter XVII-C whereas, section 115J comes under Chapter XII-B which deals with determination of tax in certain special cases. He contended that under section 115J, every assessee had to compute total income firstly under the normal provisions of the Income Tax Act and thereafter, the assessee had to compare the said total income with the figure of book profits and only if the total income computed under the normal provisions of 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. In this connection, Mr. Irani invited our attention to the explanation to section 115J which defines book profits to mean net profits as shown in the profit and loss account prepared under section 115J(1A). Mr. Irani contended that under section 115J(1A), every assessee being a company shall for the purposes of section 115J, prepare its profit and loss account for the previous year in accordance with schedule VI of the companies Act, 1956. Hr, therefore, submitted that for the purposes of computation of total income under the Income Tax Act the curtain falls on 31st March whereas, the curtain rises for finalization of profit & loss account under Schedule VI of the Companies act after 31st March. He contended that profit & loss account for the relevant previous year prepared under Schedule VI of the Companies Act can never be prepared before the end of the previous year whereas, the advance tax was payable only during the financial year and, it is for this reason, that the assessee had to pay the entire advance tax before the end of the financial year whereas, the assessee cannot prepare its account under Schedule VI of the Companies act, before the end of the financial year. He contended that the Profit & Loss Account under Schedule VI of the Companies Act are finalised only after the auditor approves the accounts. He contended that in this case the accounts were finalized on 22-6-1989 whereas, the previous year ended on 31-3-1989. He, therefore, contended that the provisions of section 234B and section 234C are not attracted in cases falling under section 115J as book profits were determinable after the end of the financial year. He gave numerous examples to show the difficulty which will be faced by the companies if interpretation of the department was accepted. He contended that in a given case, the company may claim deduction for the entire amount whereas, the auditor may suggest spread over the deduction over a period of time. Similarly, there may be receipt which may not be taxable under the Income Tax Act being capital receipt and yet the auditor will say that every receipt under Schedule VI have got to be shown through profit and loss account and the auditor may not allow the assessee-company to show such receipt in capital reserves. He, therefore, contended that the question one must ask is whether as far as book profits are concerned, did the legislature envisage liability on the assessee under section 234B and section 234C particularly when

such profits are decided after the end of the financial year. It was urged that advance tax was always on estimation of current income whereas, section 115J was on actuals. He contended that section 115J contemplates comparison between total income computed under the Income Tax Act and total income as per profit arid loss account prepared under Schedule VI of the Companies act. He contended that under Schedule VI to the Companies Act there was no requirement for preparing profit and loss account on estimated basis. He, therefore, contended that the legislature did not intend the assessee companies falling under section 115J to prepare its profit and loss account on estimated basis. That, while estimating current income for the purposes of payment of advance tax, the assessee has to see only the provisions of the Income Tax Act. He, therefore, contended that provisions of section 207 to section 211 of the Income Tax Act are separate and distinct from section 115J as the former apply, only to the income arising during the financial year whereas, for the provisions of section 115J the curtain rises only when the accounts are duly audited by the auditor. In the circumstances, it was contended that section 234B and section 234C are not applicable to special provisions relating to companies falling under section 115J as it stood at the relevant lime. In this connection, he placed reliance on the judgment of the Karnataka High Court in the case of Kwality Biscuits Ltd. v. CIT (2000) 243 ITR 519 (Karn) 9. We find merit in the contentions advanced on behalf of the department on question No, 2. According to the assessee, assessment under section 115J of the Income Tax Act is on a deemed income and, consequently, provisions of section 234B and section 234C will not apply. We do not find any merit in this argument of the assessee. Section 207 of the Income Tax Act falls under Chapter XVIIC which deals with advance payment of tax. It states that tax shall be payable in advance during any financial year in respect of total income of the assessee which would be chargeable to tax for the assessment year immediately following the financial year. That, such income shall be referred to as current income. The basic-burden of the assessee's argument is that companies falling under section 115J of the Income Tax Act are assessed on the basis of deemed income which is computed as per Schedule VI of the Companies Act. That, such companies have to compare that total income computed under the normal provisions of the Income Tax Act with the book profits computed under Chapter VI of the Companies Act. That, the accounts of the company under Schedule VI cannot be prepared before the end of the previous year whereas, section 207 of the Income Tax Act provides for estimation of the 'current income at the end of the previous year. That, section 207 contemplates estimation of current income by the end of the financial year and on that estimation the assessee is required to pay advance lax. According to the assessee, therefore, interest cannot be levied oil account of short payment of advance tax in cases of companies falling under section 115J. We do not find any merit in this argument. The difficulty faced by the assessee in the matter of computation cannot defeat the liability for payment of advance tax. Under section 207 of the Income Tax Act, advance tax is payable during any financial year in respect of the ,current income. The words 'current income' are very crucial. The words 'current income' refer to computation of

total income under the provisions of the Income Tax Act including section 115J. Under section 207 of the Income Tax Act, the words 'total income' have been equated to the expression 'current income'. The matter can be looked at from another angle. The interest which is leviable under section 234B and section 234C is compensatory in nature. It has no element of penalty in it. Therefore, it is clear that if there is non-payment or short payment of tax on the current income, then the assessee has to pay interest as the income has accrued to the assessee for the previous year. In our opinion, merely because the curtain raises in the cases of companies falling under section 115J after 31st March, 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 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 than 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, provisions of sections 234B and 234C are automatically attracted. In this case, previous year ended on 31-3-1989 and the accounts were the finalised on 22-6-1989. However, the company came under section 115J of the Income Tax Act and it was found that the tax liability under section 115J was Rs. 26,45,004 against which the advance-tax paid was only Rs. 15 lakhs and, consequently, there was short payment of advance tax. Hence, interest under section 234B and section 234C was leviable. Our view is supported by the judgment of the Gauhati High Court in the case of Assam Bengal Carriers Ltd. (supra) and also by the judgment of the Madhya Pradesh High Court in the case of Itarsi Oils & Flours (P) Ltd. (supra). Consequently, we respectfully disagree with the judgment of the Karnataka High Court in the case of Kwality Biscuits Ltd. (supra)
9. We find merit in the contentions advanced on behalf of the department on question No, 2. According to the assessee, assessment under section 115J of the Income Tax Act is on a deemed income and, consequently, provisions of section 234B and section 234C will not apply. We do not find any merit in this argument of the assessee. Section 207 of the Income Tax Act falls under Chapter XVIIC which deals with advance payment of tax. It states that tax shall be payable in advance during any financial year in respect of total income of the assessee which would be chargeable to tax for the assessment year immediately following the financial year. That, such income shall be referred to as current income. The basic-burden of the assessee's argument is that companies falling under section 115J of the Income Tax Act are assessed on the basis of deemed income which is computed as per Schedule VI of the Companies Act. That, such companies have to compare that total income computed under the normal provisions of the Income Tax Act with the book profits computed under Chapter VI of the Companies Act. That, the accounts of the company under Schedule VI cannot be prepared before the end of the previous year whereas, section 207 of

the Income Tax Act provides for estimation of the 'current income at the end of the previous year. That, section 207 contemplates estimation of current income by the end of the financial year and on that estimation the assessee is required to pay advance lax. According to the assessee, therefore, interest cannot be levied oil account of short payment of advance tax in cases of companies falling under section 115J. We do not find any merit in this argument. The difficulty faced by the assessee in the matter of computation cannot defeat the liability for payment of advance tax. Under section 207 of the Income Tax Act, advance tax is payable during any financial year in respect of the ,current income. The words 'current income' are very crucial. The words 'current income' refer to computation of total income under the provisions of the Income Tax Act including section 115J. Under section 207 of the Income Tax Act, the words 'total income' have been equated to the expression 'current income'. The matter can be looked at from another angle. The interest which is leviable under section 234B and section 234C is compensatory in nature. It has no element of penalty in it. Therefore, it is clear that if there is non-payment or short payment of tax on the current income, then the assessee has to pay interest as the income has accrued to the assessee for the previous year. In our opinion, merely because the curtain raises in the cases of companies falling under section 115J after 31st March, 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 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 than 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, provisions of sections 234B and 234C are automatically attracted. In this case, previous year ended on 31-3-1989 and the accounts were the finalised on 22-6-1989. However, the company came under section 115J of the Income Tax Act and it was found that the tax liability under section 115J was Rs. 26,45,004 against which the advance-tax paid was only Rs. 15 lakhs and, consequently, there was short payment of advance tax. Hence, interest under section 234B and section 234C was leviable. Our view is supported by the judgment of the Gauhati High Court in the case of Assam Bengal Carriers Ltd. (supra) and also by the judgment of the Madhya Pradesh High Court in the case of Itarsi Oils & Flours (P) Ltd. (supra). Consequently, we respectfully disagree with the judgment of the Karnataka High Court in the case of Kwality Biscuits Ltd. (supra) 10. Accordingly, we answer question No. 2 in the Affirmative, i.e., in favour of the department and against the assessee. 10. Accordingly, we answer question No. 2 in the Affirmative, i.e., in favour of the department and against the assessee. Accordingly, the above appeal is disposed of with no order as to costs.