

CASE NO.:
Appeal (civil) 1765 of 2008

PETITIONER:
COMMISSIONER OF INCOME TAX

RESPONDENT:
XPRO INDIA LTD.

DATE OF JUDGMENT: 04/03/2008

BENCH:
S.H. KAPADIA & B. SUDERSHAN REDDY

JUDGMENT:
JUDGMENT

O R D E R
(Arising out of SLP(C) No. 19599/07)

Leave granted.

The following substantial question of law arose for determination under Section 260-A of the Income Tax Act, 1961. The said question reads as follows:
Whether on the facts and in the circumstances of the case Hon'ble High Court was right in allowing credit for MAT, u/s. 115 JAA of the Income Tax Act, 1961 before charging interest U/S 234B and 234C of the Income Tax Act?

In our view, the High Court erred in coming to the conclusion that no substantial question of law arose and consequently the Department's appeals was dismissed. We are of the view that in the present case question of interpretation of Section 234-B in the context of short payment of interest on advances tax arises for determination before the High Court which warrants interpretation of Section 115 JAA of the 1961 Act read with Section 234-B and 234-C of the 1961 Act. The shortage in payment according to the respondent was on account of applicability of Section 115 JAA. The High Court in that connection was required to decide the nature of the levy under Section 234B whether the levy is penal or mandatory. It has also not considered the judgment of the Bombay High Court in the matter of CIT Vs. Kotak Mahindra, 265 ITR 119.

The Civil Appeal is allowed and the impugned judgment is set aside with the direction to the High Court to consider the above question in accordance with law. Accordingly, Income Tax Appeal filed before the High Court stand restored to the file of the High Court.