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**% 28.07.2011**

Present: Mr. N.P. Sahni with Mr. Ruchesh Sinha, Advocates for the appellant.  
Mr. Ajay Vohra, Ms. Kavita Jha and Mr. Somnath Shukla, Advocates for the respondent

**+ ITA No. 584/2010**

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Though two issues are raised in this appeal but so far as first issue is concerned, is wrongly raised as the same has, in fact, been decided in favour of the appellant by the Tribunal.

On second issue raises the following substantial question of law:

- “(a) Whether the ITAT was correct in law in holding that the unascertained liability of Rs.2.10 crores was not liability to be added in the book profit while computing the income under provisions of Section 115JB of the Income Tax Act, 1961?*
- (b) Whether the ITAT was correct in law in directing the Assessing Officer to allow deduction of interest liability of Rs.1,79,26,028/- under the normal provisions of the Income Tax Act although the Auditors had clarified that this was unascertained and contingent liability?*

The assessee had claimed deduction of ascertained liability of the aforesaid amount on the ground that it had been crystallized. The Assessing Officer, however, was still uncertain about the contingency of liability. For this purpose, he relied upon the comments of the Auditor in the Audit and Balance Sheet.

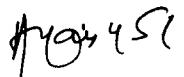
We may point out on this behalf that the assessee filed a suit for recovery of dues against the revenue. The said suit was filed in the High



Court of Judicature at Calcutta and undisputed fact is that a decree in the said suit was passed by the Calcutta High Court with directions to pay interest @ 24% per annum from the date of decree and future interest @ 10% per annum from the date of decree.

Before the Tribunal an affidavit was filed by the assessee that the assessee had accepted the said decree and had not filed any appeal challenging the same. On these facts, the Tribunal has held the view that the liability had been ascertained in view of the said decree and it cannot be said that it was still a contingent liability. No fault can be found in this view taken by the Tribunal on the aforesaid facts. We may also record that insofar as comments of Auditor are concerned, it laid under the head of "accrued interest" amounting to Rs.2.10 crore and interest income amounting to Rs.1,19,07,474/- for the period from 1<sup>st</sup> April, 2000 to 31<sup>st</sup> March, 2011 has not been provided in the books of accounts. Thus, the Auditor nowhere stated that it was a contingent liability.

No question of law arose in this appeal. Dismissed.

  
**A.K. SIKRI, J.**

  
**M.L. MEHTA, J.**

**July 28, 2011**

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