IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.373 OF 2001

The Commissioner of Income Tax,)
Mumbai City-V, Mumbai)..Appellant

Versus

M/s.Soft Ice Cream Co.Pvt.Ltd.,)..Respondents

Mr.P.S.Sahadevan for appellant.

None for respondents.

Coram : F.I.Rebello &
R.S.Mohite,JJ

Date : 18.12.2007.

PC

1. The question of law as framed is as under :-

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that ice cream was not an item of confectionary and chocolate and was not covered by Item No.6 of the XI the Schedule of the Income Tax Act,1961 and the assessee was eligible for investment allowance under Section 32A in respect of plant and machinery installed during the relevant year ?

. The learned Tribunal relied on the judgment of the Calcutta High Court in **CIT v. Kwality Ice**

Creams (P) Ltd., (2000) 245 ITR 252 (Cal). By the said judgment it is held that ice cream is not an item of confectionery and it does not fall within the item specified in Schedule XI of the Income Tax Act,1961.

2. We have no reason to take a view different than the view taken by the Calcutta High Court. Consequently, question as framed would not arise. Appeal accordingly, dismissed.

(R.S.Mohite,J) **(F.I.Rebello,J)**