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HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 14 of 2017

1. Joint Commissioner Of Income Tax Range-1, Bilaspur, Chhattisgarh.

---- Appellant

Versus

1. South Eastern Coalfields Limited, Seepat Road, Bilaspur, Chhattisgarh.

---- Respondent

For Appellant/Revenue	Ms. Naushina Ali, Advocate
For Respondent/Assessee	Shri Rajeshwar Rao, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board

By

Prashant Kumar Mishra, J.

06/02/2018

1. With the consent of learned counsel appearing for the parties we have heard this appeal finally at motion stage on the following substantial questions of law :

(I) Whether the Income Tax Appellate Tribunal (for short 'the Tribunal') has rightly held the matter to be beyond the scope of explanation under Section 115J of the Income Tax Act, 1961 (for short 'the Act, 1961') and, therefore, the assessee was entitled to claim depreciation of the previous year amounting to Rs.256.61 lacs ?

(II) Whether the Assessing Officer was justified in disallowing the said depreciation while calculating the book profit in terms of the explanation under Section 115J of the Act ?

2. The *lis* has a checkered history, as it is continuing since last about 28-30 years, the relevant assessment year being 1988-89. It happened thus that the Finance Act, 1987 introduced a new chapter XII-B containing Section 115J w.e.f. 01.04.1988 making provision for levy of minimum tax on 'book profit' of certain companies. The whole purpose of introduction of the provision was to tax a company which had no taxable income but showed a book profit. In other words, the company which had not disclosed any taxable income was liable to be taxed by treating the book profit as net profit if the book profit is less than 30%.

3. For the relevant assessment year 1988-89, the present assessee's book profit was less than 30%, therefore, the company was assessed in terms of Section 115J and the Assessing Officer vide its order dated 27.12.1989 finalized the computation of income and while doing so it disallowed the depreciation of the previous year at Rs.256.61 Lakhs, which the assessee had claimed. The order passed by the Assessing Officer was assailed before the Commissioner of Income Tax (Appeals) [for short 'the CIT (A)'], which dismissed the appeal. Against which the assessee preferred further appeal before the Tribunal. Vide order dated 27.03.1995, the

Tribunal allowed the appeal and remitted the matter back to the CIT (A) with the following operative order :

> We are of the opinion that the lower authorities were not justified in not taking into consideration this aspect. However, how the figure of Rs.256.61 was arrived at is no where discussed by the Assessing Officer or the CIT (Appeals). Under the circumstances, we are of the opinion that this part of the order of the CIT (Appeals) should be set aside and restored to his file with a direction to him to ask the assessee to give such details before him and the CIT (Appeals) should pass a fresh order after hearing both the parties.

4. On remit, the CIT (A) again dismissed the appeal preferred by the assessee and confirmed the action of the Assessing Officer on the ground that the books of account of the assessee were not drawn up in accordance with the relevant provisions of the Companies Act. The assessee, thereafter, preferred further appeal before the Tribunal, which has now allowed the appeal of the assessee by the order impugned relying on the judgment of the Supreme Court in **Apollo Tyres Ltd. v Commissioner of Income Tax, Kochi**[1].

5. Assailing the order impugned, Ms. Naushina Ali, learned counsel appearing for the Revenue, would argue that depreciation of a prior period adjustment is not permissible, therefore, the Assessing Officer has rightly refused to allow depreciation and the interference by the Tribunal is contrary to law. Referring to explanation under Section 115J of the Act, Ms. Naushina Ali would argue that the

1 (2002) 9 SCC 1

matter in issue concerning depreciation of the previous year would be covered under the explanation (iv) to Section 115J (1), therefore, the reliance placed by the Tribunal on the judgment of the Supreme Court in **Apollo Tyres Ltd.** (supra) is misplaced.

6. *Per contra*, Shri Rajeshwar Rao, learned counsel appearing for the assessee, would submit that the matter in issue is squarely covered by the law laid down by the Supreme Court in **Apollo Tyres Ltd.** (supra) and reinforced by a later decision of the Supreme Court rendered in **Malayala Manorama Company Limited v Commissioner of Income Tax, Trivandrum**[2]. According to him, clause (iv) of explanation to Section 115J (1) only permits reopening of the method of depreciation and not the claim of depreciation itself. Shri Rajeshwar Rao would putforth that the method of depreciation adopted by the assessee being not in question, it is outside the purview of explanation (iv) to Section 115J (1) of the Act.

7. Indisputably, the company submitted its return under the normal rule showing nil income and, thereafter, it had submitted returns under Section 115J on 01.08.1988 showing the income of Rs.297.91 lacs and subsequently, filed another return on 29.12.1988 showing the income of Rs.157.95 lacs.

2 (2008) 12 SCC 612

8. The Assessing Officer, thereafter, carried on the assessment under Section 115J and passed the original order on 27.12.1989, which has given rise to this litigation, determining the income of Rs.548.75 lacs. This included disallowance of depreciation of Rs.256.61 lacs. The whole issue revolves around this disallowance of depreciation of Rs.256.61 lacs

9. In **Apollo Tyres Ltd.** (supra), the Supreme Court has referred to the objects of introducing Section 115J in the Income Tax Act by referring to the budget speech of the then Hon'ble Finance Minister of India.

10. The Supreme Court thereafter observed that in our opinion, reliance placed by the Revenue on sub-section (1A) of Section 115-J of the IT Act in support of the above contention is misplaced. Sub-section (1A) of Section 115-J does not empower the assessing officer to embark upon a fresh inquiry in regard to the entries made in the books of account of the company. The said sub-section, as a matter of fact, mandates the company to maintain its account in accordance with the requirements of the Companies Act which mandate, according to us, is bodily lifted from the Companies Act into the IT Act for the limited purpose of making the said account so maintained as a basis for computing the company's income for levy of income-tax. Beyond that, we do not think that the said sub-section empowers the authority under the Income Tax Act to probe

into the accounts accepted by the authorities under the Companies Act. If the statute mandates that income prepared in accordance with the Companies Act shall be deemed income for the purpose of Section 115-J of the Act, then it should be that income which is acceptable to the authorities under the Companies Act. There cannot be two incomes one for the purpose of Companies Act and another for the purpose of income tax both maintained under the same Act. If the legislature intended the assessing officer to reassess the company's income, then it would have stated in Section 115-J that "income of the company as accepted by the assessing officer". In the absence of the same and on the language of Section 115-J, it will have to held that view taken by the tribunal is correct and the High Court has erred in reversing the said view of the Tribunal.

11. In its subsequent decision rendered in **Malayala Manorama Company Limited** (supra), the Supreme Court relied and approved the decision rendered by it in **Apollo Tyres Ltd.** (supra) by observing thus in paras 14 & 15:

> 14. In Apollo Tyres (supra), this Court examined the object of introducing Section 115J in the 1961 Act. The Court relied on the budget speech of the then Honble Finance Minister of India made in Parliament while introducing the said section. The relevant portion of the speech is reproduced as under (SCC p.7, para 6):

It is only fair and proper that the prosperous should pay at least some tax. The phenomenon of so-called 'zero-tax' highly profitable companies deserves attention. In 1983, a new Section 80-VVA was inserted in the Act so that all profitable companies pay some tax. This does not seem to have helped and is being withdrawn. I now propose to introduce a provision whereby every company will have to pay a 'minimum corporate tax' on the profits declared by it in its own accounts. Under this new provision, a company will pay tax on at least 30% of its book profit. In other words, a domestic widely held company will pay tax of at least 15% of its book profit. This measure will yield a revenue gain of approximately Rs.75 crores.

15. The Court held that the purpose of introducing this section was that: (SCC pp.7-8, para 7)

'the Income Tax Authorities were unable to bring certain companies within the net of income tax because these companies were adjusting their accounts in such a manner as to attract no tax or very little tax. It is with a view to bring such of these companies within the tax net that Section 115J was introduced in the 1961 Act with a deeming provision which makes the company liable to pay tax on at least 30% of its book profits as shown in its own account. For the said purpose, Section 115J makes the income reflected in the companies books of accounts as the deemed income for the purpose of assessing the tax. If we examine the said provision in the above background, we notice that the use of the words 'in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act' was made for the limited purpose of empowering the

assessing authority to rely upon the authentic statement of accounts of the company. While so looking into the accounts of the company, an Assessing Officer under the Income Tax Act has to accept the authenticity of the accounts with reference to the provisions of the Companies Act which obligates the company to maintain its account in a manner provided by the Companies Act and the same to be scrutinized and certified by statutory auditors and will have to be approved by the company in its general meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and satisfy that the accounts of the company are maintained in accordance with the requirements of the Companies Act.'

In spite of all these procedures contemplated under the provisions of the Companies Act, the Court observed (SCC p.8, para 7) that it is

'difficult to accept the argument of the Revenue that it is still open to the Assessing Officer to rescrutinize this account and satisfy himself that these accounts have been maintained in accordance with the provisions of the Companies Act.'

The Court categorically held that (Apollo Tyres case, SCC p.8, para 8) :

'8.....the assessing officer while computing the income under Section 115-J has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The assessing officer thereafter has the limited power of making increases and reductions as provided for in the Explanation to the

> said section. To put it differently, the assessing officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to Section 115-J.

12. In view of the above settled legal position, particularly what has observed in paras 7 & 8 of **Apollo Tyres Ltd.** (supra) that there cannot be two incomes, one for the purpose of Companies Act and another for the purpose of income tax, both maintained under the same Act, therefore, allowing the argument raised by the Revenue that the depreciation of Rs.256.61 lacs, which is already approved through the final audited account of the assessee company, would mean reopening of the accounts by disallowing the depreciation of the previous year, which has been held impermissible by the Supreme Court in **Apollo Tyres Ltd.** (supra). The explanation (iv) to Section 115J of the Act cannot be read or enlarged in the manner putforth by the Revenue, because doing so would amount to reopening of the account, which has otherwise held impermissible by the Supreme Court in **Apollo Tryes Ltd.** (supra).

13. For the reasons stated hereinabove, we answer both the questions of law against the Revenue. Consequently, the appeal is dismissed at the admission stage itself.

Sd/-	Sd/-
Judge	Judge
Prashant Kumar Mishra	Ram Prasanna Sharma

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