(2009) 07 AHC CK 0312

In the Allahabad High Court

Commissioner of Income Tax — APPELLANT

Vs

Amrit Banaspati Co. Ltd. — RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:
Income Tax Act, 1961 — Section 115J, 260A

Citation : (2010) 320 ITR 399

Hon'ble Judges : S.K. Gupta, J;R.K. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The present Income Tax appeal filed u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), has been admitted on the following sole substantial question of law arising out of the Tribunal''s order dated December 30, 1999:

Whether, on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was legally justified in holding that the assessee has charged depreciation on the revaluation amounts on assets as per guidance note on treatment of reserve created on revaluation of fixed assets issued by the Institute of Chartered Accountants of India whereas the applicability of the provisions of Section 115J of the Income Tax Act, 1961, and clause 7(2) of Part III of Schedule VI to Companies Act is attracted as to ascertain book profit after deducting the amount of depreciation in view of Circular No. 495 dated September 22, 1987 of the Central Board of Direct Taxes reported in [1987] 168 ITR 87,110 and Explanation (b) to Section 115J(1) of the Income Tax Act ?

2. Briefly stated the facts in a nutshell are as follows:

3. The revaluation of the land and building was done by the valuer in the financial year 1984-85 raising the cost of land by Rs. 4,12,08,935 and that of the building by Rs. 2,73,88,274. The excess depreciation charged to the profit and loss account due to such revaluation comes to Rs. 9,95,569 for the relevant year

1990-91. The assessing authority by assessment order dated November 30, 1992, added this depreciation of Rs. 9,95,569 to the book profit in order to work out the assessee''s income liable to tax within the meaning of Section 115J of the Act.

4. The order of the assessing authority was confirmed by the Commissioner of Income Tax (Appeals), Muzzafarnagar by order dated June 16, 1993. The said order increasing the book profit to the extent of Rs. 9,95,569 on depreciation was set aside by the Tribunal in favour of the assessee. Hence, the present appeal by the Revenue.

5. Heard Sri A. N. Mahajan, learned standing counsel for the Department and Sri S. D. Singh, learned Counsel for the respondent.

6. The only issue relates to the allowability of depreciation of Rs. 9,95,569 being the difference in the depreciation between the revalued amount of the building and the depreciation chargeable on the actual cost.

7. That as per the provisions of Section 115J of the Act the profit shown in the profit and loss account should be in accordance with Parts II and III of Schedule VI to the Companies Act subject to the Explanation provided thereto.

8. In the year under consideration for the purpose of computing the book profit, the Assessing Officer disallowed the depreciation of Rs. 9,95,569 being the difference in depreciation between the revaluation amount of the building and the depreciation chargeable on actual cost.

9. In Apollo Tyres Ltd. Vs. Commissioner of Income Tax, Kochi, the Supreme Court held that while computing the income u/s 115J, the Assessing Officer has only the power of examining whether the books of account are certified by the authorities under the Companies Act, as having been maintained in accordance with the said Act, The Assessing Officer thereafter has the limited power of making increase and reductions as provided for in the Explanation to Section 115J and does not have the jurisdiction to go behind the net profit shown in the profit and loss account.

10. The aforesaid decision of the apex court has been subsequently followed in Malayala Manorama Co. Ltd. Vs. Commissioner of Income Tax, Trivandrum, wherein it has been held that while computing the income of the company u/s 115J of the Act the Assessing Officer does not have jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to Section 115J of the Act.

11. The Tribunal in paragraph 22 of the judgment while allowing the appeal of the assessee has observed as follows:

It is stipulated in Part III of Schedule VI to the Companies Act that depreciation debited to the profit and loss account could be considered to be in the nature of reserve only when the amount written or retained by way of providing for depreciation, renewals or diminution in value of such assets is in excess of the accounts, which in the opinion of the directors is reasonably necessary for the purpose. Admittedly, depreciation debited on the revalued figure of assets was not found to be excessive by the directors. The provision was made in conformity with the said accounting norms. Therefore, in our opinion, the Assessing Officer was not correct in increasing the book profit to the extent of depreciation attributable to the revaluation of the assets/Accordingly, we decide this issue in favour of the assessee and against the Revenue.

12. The Tribunal while deciding the issue has given convincing, cogent and satisfactory reasons upon appreciation of evidence and material available in record. We cannot substitute our opinion for that of the Tribunal unless it is found that the conclusion drawn by the Tribunal is based on incorrect facts or irrelevant or impermissible by law. It is not disputed that the books of account are duly certified by the authorities under the Companies Act and profit and loss account has been properly maintained in accordance with Parts II and III of Schedule VI to the Companies Act, 1956. Depreciation was claimed on the revaluation amount and such depreciation in the opinion of the directors was not excessive or unreasonable. We do not find any illegality or infirmity in the order of the Tribunal.

13. In view of the aforesaid discussion this appeal is accordingly dismissed.