(2009) 04 MAD CK 0304

In the Madras High Court

Case No : Tax Case (Appeal) No. 740 of 2008

Commissioner of Income Tax — APPELLANT

Vs

Beardsell Ltd. — RESPONDENT

Date of Decision : 17-04-2009

Acts Referred:

Income Tax Act, 1961 — Section 115J, 115J(1A), 115JA, 115JA(3), 115JA(4)

Citation : (2009) 04 MAD CK 0304

Hon'ble Judges : M.M. Sundresh, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : Pushya Sitaraman, for the Appellant; Venkatanarayanan, for Subbaraya Iyer, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—By formulating the following Substantial Question of Law, the Revenue is on appeal against the order of the Income Tax Appellate Tribunal, Madras "A" Bench, dated 31.12.2007 made in ITA.No.422/Mds/2007. The relevant assessment year is 2002-2003.

Whether, in the facts and circumstances of the case, the Tribunal was right in allowing deduction u/s 80HHC on the basis of book profits u/s 115JB even though the eligible profits u/s 80HHC was Nil as per normal computation?

2. The facts as culled out from the statement of facts in the memorandum of grounds are as follows:

The assessee company is engaged in the manufacture of Expander Polystyrene. For the assessment year 2002-03, the assessment was made on book profit basis. The assessee claimed that the benefit u/s 80HHC of the Act should be calculated taking the book profit as profits of the business. Since the actual profits of the business as per regular working was Nil and the carried forward losses had been set off, the Assessing Officer held that the assessee is not eligible for deduction u/s 80HHC of the Act. Aggrieved by the order of the

Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) confirmed the computation of deduction u/s 80HHC of the Act based on the business profits computed under the normal provisions of the Income Tax Act and not with reference to the book profits. However, the Income Tax Appellate Tribunal on appeal being taken to it held that the computation of deduction u/s 80HHC of the Act is to be worked out on the basis of the adjusted book profits, since this is a MAT assessment. The correctness of the said order is now canvassed before this Court by filing this appeal.

3. We heard the argument of the learned Senior Standing Counsel for the Revenue, who fairly submits that the issue involved in this case is covered by a decision of the Division Bench of this Court in which one of us is a party (K. Raviraja Pandian, J.) in Commissioner of Income Tax Vs. Rajanikant Schnelder and Associates P. Ltd., , wherein after taking into consideration the ratio laid down by the Apex Court in M/s. Surana Steels Pvt. Ltd. Vs. The Deputy Commissioner of Income Tax and Ors, and in Apollo Tyres Ltd. Vs. Commissioner of Income Tax, Kochi, , this Court has held as follows:

4. We are not able to subscribe our view to the grounds taken in the appeal that the deduction u/s 80HHC is allowable only on the profit and gains arrived at under Sections 28 to 44B of the Income Tax Act. In the case on hand, it is the stand of the assessee that the relief u/s 80HHC should be based on the profit ascertained u/s 115JA only but not on income computed u/s 28 to 44 of the Act. The Tribunal after considering the judgments of the Supreme Court in the case of M/s. Surana Steels Pvt. Ltd. Vs. The Deputy Commissioner of Income Tax and Ors, and in the case of Apollo Tyres Ltd. Vs. Commissioner of Income Tax, Kochi, and analysing the order impugned found that the provisions of Section 115J are similar to the provisions of Section 115JA of the Act. In order to come to the conclusion the Tribunal has also taken note of Sub-Section (4) of Section 115JA and referred to the dictum laid down by the Supreme Court in the case of Apollo Tyres Ltd. Vs. Commissioner of Income Tax, Kochi, , wherein it was held that the assessing officer while computing the book profits of a company u/s 115J of the Income Tax Act, 1961, has only the power to examine whether such books of accounts 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 Section 115J. The assessing officer does not have the jurisdiction to go behind the net profits shown in the profit and loss account except to the extent provided in the Explanation. The use of the words "in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act" in Section 115J was made for the limited purpose of empowering the assessing officer to rely upon the authentic statement of accounts of the company. While so looking into the accounts of the company, the assessing officer has to accept the authenticity of the accounts with reference to the provisions of the Companies Act, which obligate the company to maintain its

accounts in a manner provided by that Act and the same to be scrutinised and certified by statutory auditors and approved by the company in the general meeting and thereafter to be filed before the Registrar of Companies, who has a statutory obligation also to examine and be satisfied that the accounts of the Company are maintained in accordance with the requirements of the Companies Act. Sub-section (1A) of Section 115J does not empower the assessing officer to embark upon a fresh enquiry in regard to the entries made in the books of account of the Company.

5. The assessing officer is not entitled to touch the profit and loss account prepared by the assessee as per the provisions contained in the Companies Act, while arriving at the book profit u/s 115J and the book profit so arrived at should be the basis for taxation and therefore the computation u/s 80HHC should be limited to the case of profits of eligible category only. The Tribunal has also come to the conclusion that in view of the non obstinate Clause available in Section 115JA it was clear that the provision is a self-contained one and no other provision would have effect on it and thereby it was to be implemented as contained in the said provision. The Tribunal has also further given a reason to the effect that Section 80HHC is clear about this aspect that profit only is to be taken into account but not income and Sub-section (3) of Section 115JA itself took care of the provisions relating to the adjustment of loss or depreciation and carry forward of the income. The finding arrived at by the Tribunal is correct and followed the decision of the Supreme Court. We are of the view that the conclusion arrived at by the Tribunal cannot be complained of.

4. Following the same, the tax case appeal is liable to be dismissed and accordingly, the same is dismissed.

