(2006) 08 DEL CK 0128

In the Delhi High Court

Case No : IT Appeal No. 1219 of 2006 29 August 2006 A.Y. 1999-2000

Commissioner of Income Tax APPELLANT

Vs

Eicher Ltd. RESPONDENT

Date of Decision : 29-08-2006

Acts Referred:

Citation : (2006) 205 CTR 469 : (2006) 287 ITR 170 : (2007) 159 TAXMAN 293

Hon'ble Judges : Vipin Sanghi, J;Madan B. Lokur, J

Bench : Full Bench

Advocate : Ms. P.L. Bansal, for the assessed Ms. Kaidta Jha, for the Revenue, for the Appellant;

Final Decision : Dismissed

Judgement

The revenue is aggrieved by an order dated 27-1-2006 passed by the Tribunal, Delhi Bench ''C'' in ITA No. 3968/D/2002 relevant for the assessment year 19992000 (reported as Asstt. CIT v. Eicher Ltd. (2006) 101 TTJ (Del) 369-Ed. 1.

2. The only question that has arisen is with regard to the decision of the assessing officer in adding the amount being the provision made by the assessed for bad and doubtful debts for the purposes of increasing book profits u/s 115JA of the Income Tax Act. We find from the assessment order that the assessing officer has given absolutely no reason for increasing the book profits.

3. Be that as it may, before the Commissioner (Appeals) the assessed contended that the book profits could not be increased in the manner as has been done by the assessing officer because of Expln. (c) u/s 115JA(2) of the Act. This Explanation reads as follows :

"For the purposes of this section, "book profit" means the net profit as shown in the P&L a/c for the relevant previous year prepared under sub-section (2, as increased by-

(a) xxxx

(b) xxxx

(c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities;

(d) xxxx

(e) xxxx

(f) xxxx"

A bare perusal of the above Expln. (c) makes it clear that the increase shall be of the amount or amounts set aside for meeting liabilities other than ascertained liabilities. In the present case, there does not appear to be any dispute about the fact that liability was ascertained. Ex facie, Therefore, Expln. (c) is not applicable.

4. The Commissioner (Appeals) also considered the provisions of Part III of Sch. VI to the Companies Act, which defines the term ''provision''. Clause 7(1)(b) thereof defines ''provision'' to mean any amount written off or retained, inter alias by way of providing for any known liability of which the a -mount cannot be determined with substantial accuracy.

5. So far as the present case is concerned, the accuracy has been determined fully, or at least there is no controversy about it. In any event, the occasion for resorting to the provisions of the Companies Act does not arise, since in our opinion, a reading of Expln. (c) of section 115JA(2) of the Income Tax Act itself is very clear. The Commissioner (Appeals) allowed the appeal of the assessed and that was upheld by the Tribunal in the impugned order.

6. In view of our discussion above, while commending the view of the Commissioner (Appeals), we do not find that the Tribunal has taken an unreasonable view.

On the contrary, this view is justified from a plain reading of the statute. We are of the opinion that no substantial question of law arises for our consideration.

Dismissed.