(2007) 05 DEL CK 0265

In the Delhi High Court

Case No : Income Tax A. No. 56 of 2007

Commissioner of Income Tax APPELLANT

Vs

HCL Comnet Systems and Services Ltd. RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:
Income Tax Act, 1961 — Section 115JA

Citation : (2008) 219 CTR 226 : (2007) 292 ITR 299 : (2008) 172 TAXMAN 217

Hon'ble Judges : Vidya Bhushan Gupta, J;Madan B. Lokur, J

Bench : Division Bench

Advocate : P.L. Bansal, for the Appellant; Saubhagaya Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

1. The Revenue is aggrieved by an order dated 8th February, 2006 passed by the Income Tax Department, Delhi Bench "A" in I.T.A. No. 814/Del/03 relevant for the assessment year 1997-98.

2. The assessed had made provisions for bad and doubtful debts in its profit and loss account.

3. According to the Assessing Officer this was not an ascertained liability and, Therefore, the amount was to be included in the book profits of the assessed in view of the Explanation to Section 115JA of the Income Tax Act, 1961.

4. On appeal, the Commissioner of Income Tax (Appeals) was of the view that the amount was an ascertained liability and had been shown as such in the profit and loss account of the assessed. In view of the decision of the Supreme Court in Apollo Tyres Ltd. Vs. Commissioner of Income Tax, Kochi, , this could not be changed. Moreover, the provision amounted to a diminution in the value of assets. Consequently, the amount could not be included in the book profits of the assessed.

5. The Tribunal upheld the view of the Commissioner of Income Tax (Appeals) and held that the amount could be included in the book profits of the assessed only if it fell within the Explanation to Section 115JA of the Act.

6. On a reading of Clause (c) of the Explanation to Section 115JA of the Act, it is clear that ascertained liabilities are not to be included in the book profits as defined in that section. We are of the view that there is no reason why a bad and doubtful debt claimed by the assessed cannot be treated as an ascertained liability.

7. Learned Counsel for the Revenue submits that the debts that are bad and doubtful should have been written off. If that be so, then Clause (c) of the Explanation to Section 115JA of the Act would become completely inoperative and otiose, which is obviously not the intention of the Legislature.

8. We find that no substantial question of law arises.

9. Dismissed.