(2011) 07 P&H CK 0072

In the Punjab And Haryana At Chandigarh

Case No : Income Tax Appeal No''s. 586 and 761 of 2008

Commissioner of Income Tax — APPELLANT

Vs

Hutchison Max Telecom P. Ltd. — RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:
Income Tax Act, 1961 — Section 115JB, 115JB(2), 143(3), 234C, 234D

Citation : (2011) 338 ITR 614

Hon'ble Judges : A.K. Goel, Acting C.J.;Ajay Kumar Mittal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ajay Kumar Mittal, J.—This order will dispose of income tax Appeal Nos. 586 and 761 of 2008 as the learned counsel for the parties agreed that identical question of law arises in both the appeals. The facts have been taken from income tax Appeal No. 586 of 2008.

2. This appeal u/s 260A of the income tax Act, 1961 (for short "the Act") has been filed by the Revenue against the order dated February 29, 2008, passed by the income tax Appellate Tribunal, Chandigarh Bench "B", Chandigarh (in short "the Tribunal"), in I. T. A. No. 623/Chandi/2007, relating to the assessment year 2004-05.

3. The appeal was admitted by this court for determination of the following substantial question of law :

Whether, on the facts and the circumstances of the case and in law, the hon''ble income tax Appellate Tribunal was right in holding that the provision for bad and doubtful debts should not be added back for the purpose of computation u/s 115JB ?

4. The facts, in brief, necessary for adjudication as narrated in the appeal, are that the assessee is a company engaged in the business of cellular services. The

assessee filed return of income for the assessment year in question on October 29, 2004, declaring its income as nil. The return was selected for scrutiny. The assessee-company had shown its profit in the sum of Rs. 2,33,73,44,847 and after making various adjustment, the net profit was shown at Rs. 1,89,61,50,677. Against this income, the assessee claimed brought forward business loss and unabsorbed depreciation for the earlier years, amounting to Rs. 1,92,31,50,677 and shown the net assessable income at nil. During the proceedings u/s 143(3) of the Act, it was observed that the assessee had claimed provision for doubtful debts at Rs. 11,79,85,000 in the profit and loss account and had paid tax u/s 115JB of the Act and while doing so, the assessee made a note and accordingly the Assessing Officer made the adjustment in net profit by increasing the net profit. The assessment was completed at an income of Rs. 1,85,87,67,000 and a demand of Rs. 95,91,174 including the interest amounts of Rs. 38,59,236 and Rs. 5,21,077 calculated under sections 234C and 234D of the Act, respectively, was created by the Assessing Officer, vide order dated December 11, 2006.

5. The assessee approached the Commissioner of income tax (Appeals) (for short "the CIT(A)"), by filing appeal. The Commissioner of income tax (Appeals) by his order dated March 21, 2007, deleted the addition of Rs. 11,79,85,000 made by the Assessing Officer for calculating the book profit u/s 115JB. It was held that the adjustment on account of provision for doubtful debts did not fall under clause (c) of the Explanation to section 115JB of the Act.

6. Aggrieved by the above order, the Revenue preferred an appeal before the Tribunal. The Tribunal upheld the decision of the Commissioner of income tax (Appeals) and, accordingly, dismissed the appeal by order dated February 29, 2008.

7. We have heard learned counsel for the parties and have perused the record.

8. Learned counsel for the Revenue argued that clause (i) of Explanation 1 had been inserted in section 115JB(2) of the Act by the Finance (No. 2) Act, 2009, which is effective retrospectively from April 1, 2001. According to clause (i), any amount or amounts set aside as provision for diminution in the value of any asset shall not reduce the book profits of an assessee. It was submitted that provision for bad and doubtful debts would be covered thereunder. Support was gathered from the decision of this court in Commissioner of Income Tax Vs. Steriplate P. Ltd., . Learned counsel for the Revenue also placed reliance on a judgment of the Madras High Court in Deputy Commissioner of Income Tax Vs. Beardsell Ltd., . Learned counsel for the assessee, however, cited the judgment of the Supreme Court in Commissioner of Income Tax-IV, Delhi Vs. HCL Comnet Systems and Services Ltd., but he could not controvert the submission of the learned counsel for the Revenue that the insertion of clause (i) in Explanation 1 to section 115JB(2) retrospectively with effect from April 1, 2003, was applicable but it was submitted that the matter requires to be considered by the Assessing Officer regarding the applicability of other clauses mentioned in the Explanation 1.

9. After hearing counsel for the parties, we are of the opinion that identical issue came up for consideration before this court in Commissioner of Income Tax Vs. Steriplate P. Ltd., where this court had observed that introduction of clause (i) of Explanation 1 to section 115JB(2) of the Act was made effective from April 1, 2001, and would, therefore, apply to the assessment year 2001-02 and subsequent assessment years.

10. In view of the above, the issue needs to be decided afresh by the Assessing Officer. The judgment of the apex court referred to by the learned counsel for the assessee in the wake of the aforesaid amendment made retrospectively does not advance the case of the assessee in any manner.

11. Accordingly, the appeals are allowed and the matter is remitted to the Assessing Officer to decide the same afresh in accordance with law.