

(2000) 06 GAU CK 0034
In the Gauhati High Court
Case No : Income-tax Reference No. 8 of 1998

Commissioner of Income Tax	Vs	APPELLANT
Mech Technik India (P.) Ltd.		RESPONDENT

Date of Decision : 16-06-2000

Acts Referred:

Companies Act, 1956 — Section 205(1)
Income Tax Act, 1961 — Section 115J

Citation : (2000) 245 ITR 60

Hon'ble Judges : Brijesh Kumar, C.J.; D.N. Chowdhury, J

Bench : Division Bench

Advocate : K.P. Sharma, for the Appellant; None, for the Respondent

Judgement

Brijesh Kumar, C.J.—The Income Tax Appellate Tribunal, Guwahati. Bench, Guwahati, by order dated April 22, 1998, has referred the following question of law u/s 256(1) of the Income Tax Act, 1961, arising out of the Tribunal's order dated March 14, 1997.

"Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in allowing" depreciation as per rate applicable in Income Tax while computing the assessee's income u/s 115J of the Income Tax Act, 1961 ?"

2. We have heard Shri K. P. Sharma, learned counsel appearing" for the Revenue. None puts in appearance on behalf of the respondent-assessee.

3. The matter pertains to the assessment year 1989-90. The reference is at the instance of the Revenue. The question which fell for consideration of the authorities relates to setting off the amount of loss against the profit after taking into account the amount of depreciation u/s 115J of the Income Tax Act. Aggrieved by the order passed by the assessing authority, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) directed the Assessing Officer to allow depreciation as per rate applicable in the Income Tax Rules. The order of the Commissioner of

Income Tax (Appeals) was upheld by the Tribunal by order dated March 14, 1997, viz., depreciation was to be allowed as per rate applicable under the Income Tax Rules while computing the assessee's income u/s 115J of the Income Tax Act and not according to the relevant provision of the Companies Act, namely Parts II and III of Schedule VI to the Companies Act, 1956. The appeal preferred by the Revenue before the Income Tax Appellate Tribunal was dismissed by order dated March 14, 1997. The present reference has been made on a question arising out of the aforesaid order.

4. A perusal of the order dated March 14, 1997, passed by the Income tax Appellate Tribunal shows that the appeal was filed only on the ground as quoted in the judgment of the Tribunal as follows :

"(1) For that the learned Commissioner of Income Tax (Appeals) was not justified in directing the Assessing Officer to allow depreciation as per rate applicable in Income Tax while computing the assessee's income u/s 115J instead of rate of depreciation as provided in the Companies Act."

5. The Tribunal basing its decision on a case reported in V.V. Trans-investments (P.) Ltd. Vs. Commissioner of Income Tax, and other two decisions reported in Apollo Tyres Ltd. v. DCIT [1992] 43 ITD 464 (Coc) and Modem Woollens Ltd. v. DCIT [1993] 47 ITD 154 (Bom) and Bombay Tyres International Ltd. v. DCIT [1994] 51 ITD 339 (Bom) , held that the aforesaid decisions support the view taken by the Commissioner of Income Tax (Appeals). The Tribunal quoted a passage from the decision of V.V. Trans-investments (P.) Ltd. Vs. Commissioner of Income Tax, to the following effect (headnote) :

"Once a provision was borrowed from one enactment and incorporated into another enactment, the interpretation of the provision under the parent enactment was irrelevant and the borrowed provision had to be interpreted in accordance with the provisions of the latter, namely, the borrowing enactment. Therefore, the interpretation of "loss" and "depreciation" for the purpose of declaring dividend under the Companies Act, 1956, was irrelevant and their interpretation under Clause (iv) of the Explanation to Section 115J should be in accordance with the provisions of the Income Tax Act."

6. On the basis as indicated above, the appeal preferred by the Revenue was dismissed upholding the order of the Commissioner of Income Tax (Appeals). Shri K. P. Sharma, learned counsel appearing for the Revenue submits that the view taken by the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal is not tenable in law. It is submitted that V. V. Trans-Investments (P.) Ltd., went up in appeal before the Supreme Court which was allowed by the Supreme Court and the decision of the Andhra Pradesh High Court reported in V.V. Trans-investments (P.) Ltd. Vs. Commissioner of Income Tax, , was set aside. The decision relied upon on behalf of the Revenue is reported in M/s. Surana Steels Pvt. Ltd. Vs. The Deputy Commissioner of Income Tax and Ors, and other connected appeals. It is thus submitted that the basis of the decision

of the Income Tax Appellate Tribunal is no more available. Our attention has been particularly drawn to paragraphs 11, 12 and 13 (page 786) of the decision. It is contended that Section 205 of the Companies Act, 1956, has been lifted and incorporated into the body of Section 115J of the Income Tax Act. According to the observations made by the Supreme Court it would often be legitimate to read the incorporated provision in the sense as it bore in the original Act from which it was taken. The incorporated provision has to be plainly read and rules of interpretation are to be applied only in case any ambiguity survives. The Supreme Court observed as follows (page 786) :

"We are of the opinion that the term "loss" as occurring in Clause (b) of the proviso to Section 205(1) of the Companies Act has to be understood and read as the amount arrived at after taking into account the depreciation. Then alone the formula prescribed in this clause would make sense and it would be consistent with the object sought to be achieved by enacting Section 115J of the Income Tax Act, 1961. If "loss" were to be taken as pre-depreciation loss then the resultant computation will not be in conformity with the tenor of the provisions of Section 205. The language of Clause (b) of the proviso to Section 205(1) is clear. It applies to those cases where the depreciation has been provided in accordance with the provisions of Sub-section (1) of Section 205. The depreciation is provided for in the profit and loss account. The loss is arrived at after taking into account the depreciation provided. It is therefore clear that the word "loss" as used in the proviso, Clause (b) to Section 205(1) signifies the amount arrived at after taking" into account the amount of depreciation and it has to be so read and understood in the context of Section 115J of the Income Tax Act, 1961. We do not agree with the view taken by the High Court that in case there is profit in a year but after adjustment of depreciation it results in loss, no adjustment in the book profit u/s 115J can be allowed. The view taken by the High Court would partially defeat the object sought to be achieved by Section 115J of the Income Tax Act, 1961. We also do not agree with the High Court saying that having lifted Section 205(1), proviso, Clause (b), from the Companies Act into Section 115J of the Income Tax Act, there is no occasion to refer to the Companies Act, 1956, at all."

7. In the light of the fact that the judgment of the Andhra Pradesh High Court in the case of V.V. Trans-investments (P.) Ltd. Vs. Commissioner of Income Tax, relied upon by the Tribunal has been set aside and the view taken by the Supreme Court as quoted above, the order dated March 14, 1997, passed by the Income Tax Appellate Tribunal is incorrect and the reference is answered in the negative. There would, however, be no order as to costs.