(2005) 04 AHC CK 0255

In the Allahabad High Court

Case No : IT Reference No. 114 of 1997

Commissioner of Income Tax — APPELLANT

Vs

Prime Products Ltd. — RESPONDENT

Date of Decision : 29-04-2005

Acts Referred:
COMPANIES ACT, 1956 — Section 205
Income Tax Act, 1961 — Section 115J, 256

Citation : (2007) 159 TAXMAN 378

Hon'ble Judges : Rajes Kumar, J;R.K. Agrawal, J

Bench : Division Bench

Judgement

1. The Income Tax Appellate Tribunal, New Delhi, has referred the following question of law u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as the Act) for opinion of this Court:

Whether, on the facts and in the circumstances of the case, the ITAT was justified in holding that for the purpose of Section 115J(1A)(iv) the word loss in terms of proviso to Section 205(1)(b) of Companies Act will mean the loss including depreciation?

2. The present reference relates to the assessment year 1990-91.

3. Briefly stated the facts giving rise to the present reference are as follows:

The assessee-company (hereinafter referred to as assessee) filed return of income showing loss of Rs. 9,66,250. As per profit and loss account filed along with return, the net profit of Rs. 2,06,837 was shown excluding the depreciation of Rs. 2,76,963 debited to the profit and loss account. The assessing officer during the course of assessment proceedings found that in view of the book profit, the assessee-company was liable for tax as per provision contained u/s 115J of the Income Tax Act, 1961. While applying the proviso of Section 115J of the Act, the assessing officer gave working of book profit in the assessment order wherein the deduction for depreciation losses calculated for the assessment years 1987-88 to 1989-90 were not allowed because of the fact that the business loss was nil, as provided u/s 205 of the Companies Act.

4. Aggrieved with the above computation of book profit, the assessee went in appeal before the learned Commissioner (Appeals) who vide his order dated 8-2-1993 in Appeal No. Commissioner (Appeals)-II/ACIT/CIR-2(1)/91-92 confirmed the action of the assessing officer.

5. Aggrieved with the order of the Commissioner (Appeals), the assessee preferred second appeal before the ITAT, who vide his order dated 20-12-1995 decided the matter in favour of the assessee holding that the word ''loss'' as occurring in clause (b) of the first proviso to Section 205 of the Companies Act would mean loss including depreciation, following their own decision in the case of Kanodia Ploy Chem (P.) Ltd. v. CIT vide order dated 9-1-1992.

6. We have heard Sri R.K. Upadhyaya, learned standing counsel appearing on behalf of the revenue. No body has appeared on behalf of the assessee.

7. We find that the controversy raised in the present case is squarely covered by the decision of the Apex Court in the case of M/s. Surana Steels Pvt. Ltd. Vs. The Deputy Commissioner of Income Tax and Ors, . Apex Court has held that the loss mentioned u/s 115J of the Act would have to be taken after allowing the depreciation inconfirmity with the provisions of Section 205 of the Companies Act. Thus, there is no infirmity in the order of the Tribunal.

8. We, accordingly, answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the revenue.